Criminal Law of Bangladesh

Ignorance of Judges is calamitous for people

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Volume-1

Magistrate Azizur Rahman Dulu

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This book is dedicated to

My father Mr. Asgar Ali (departed)
My mother Mrs. Abijonnesa Begum
Sir James Fitzjames Stephen
Sir John Romilly
Mr.Thomas Babington Macaulay
Mr.Justice Ellis
And
The persons who like to study criminal law

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Foreword

The title of the book is quite provocative. The major theme of the book mainly focuses on the scope of the criminal law in the existing legal system of Bangladesh. The author has rightly pointed out that the role of the judges has always been remained pivotal in the criminal justice system without which no legal mechanism can usher hopes for justice in cases of the violations of rights of concerned victims.

Though the author emphasizes a lot on the role and importance of judges in protecting victim of crimes and innocent people from the visible and invisible hands of the offenders, perpetrators and criminals in general but he does not forget to advocate strongly for good, decent and moral laws at all stages of criminal justice system.

Author claims that with too many flawed laws, judges may find the application of criminal law dangerous for the wider segments of our population.

Author, on the one hand, criticizes the legislatures for being insincere in their duties as lawmakers and, on the other hand, claims that if judges remain narrow-minded and corrupt, then no number of good laws can do any substantial difference in the criminal justice system of our country.

Before delving into the detailed discussion about the weakness and shortcoming of our criminal law, author begins with different systems of criminal justice that are available around the world. According to the author in any wider classification of criminal jurisprudence we need to mention that criminal justice systems are of four kinds:

a. Civil Law System
b. Common Law System
c. Islamic System
d. Socialist System

Author finds that in terms of sources of criminal law, none of the criminal justice systems is completely isolated from one another. They are competing all the time between them for asserting their stronger sides but at the same time they learn from each other how to cope with the demands of the time, age, place and specific faculties of the concerned societies.

Some readers may find the “Civil Law” articulation a bit confusing because author, all the time, has been referring to the inquisitory system of criminal justice by civil law, which in no way divide a legal issue between civil and criminal matter. Under the civil law system, judges can put the statutory laws at the top of any legal discourse, while in a Common Law tradition ultimately stronger and overwhelming character of precedents cannot be ignored at any stage of delivering justice.

Criminal law, as a whole, no more occupies the central place in any legal system under a matured democratic rule and in a country where role of law is to instigate the litigations for material compensation rather than putting people behind the bars.

The author being a judge brings a lot of means to our criminal justice system. To make him better understood by the readers, author gives a lot of examples from his work on behalf of the bench.

It appears that author advocates a genuine kind of judicial activism that he finds essential for delivering justice in criminal matters. However, author is very mindful about the limitations of judges in our adversarial system of justice. After finding it unacceptable that, in many cases, lawyers can easily manipulate laws and facts in reaping the benefits for the members of Bar rather than being positive catalysts of the system of justice.

Author believes that it is not enough that a judge would act with an activist mind to deliver justice but the most pertinent issue here is to have a set of morally correct and ethically sound laws in the hands of judges as a community striving hard to serve the cusses of disadvantageous people and to uphold human dignity all the time.

Both in substantial and procedural matters author finds a lot of loopholes in our existing legal system. Author has rightly pointed out that the colonial legacy in our system and psychological make-up of our lawyers and judges are needed to be pro-justice. However, even with our colonial legacy and set-up we could achieve a better system, if we were sincere in gaining legal acumen, wisdom and could remain in touch with the downtrodden masses of our beloved motherland.

For the judges, as a community, according to author, what we need most is the intellectual capability of interpretation of laws and their correct application to the facts about which sub-ordinate judges can

really make meaningful difference for the victims or the weaker parties to the pending cases.

Author is convinced that the police and Magistracy can really make a lot of differences in numerous cases which are under the investigation and/or for disposal.

For that, the concerned police officers and judicial Magistrates need to appreciate fully their legal, moral and ethical commitment to the nation. Author elaborates the powers and functions of different governmental agencies at local levels that are, in the final analysis, the sustainers of truth and human dignity for our people both at home and abroad.

Author tends to treat our criminal justice system as an integral part of our entire legal mechanism through which we need to improve the Justice delivery system as a whole and deter the crimes effectively.

As a whole, this book takes an approach that can be called as duty-based system rather than a right-based battle in the court of law and beyond. From this perspective, this book sides with an Islamic approach that is no more fashionable in our county. However, we can observe that the author's duty based approach is not in conflict with the right-based legal theories. Author does not try to isolate the underlying jurisprudential theories from the practicability of the legal and moral dichotomies and dilemmas. Author is keen to see our judges in a better situation in terms of their social, economic and intellectual standing. Author believes that even with the present legal climate, judges can serve better by their own contribution to make a fairly decent and livable society that would be admired by the outsiders as well. For that author recommends that the judiciary should be completely free from political intervention and judges should skillfully avoid all kinds of involvement in the ongoing political disputes and conflicts of our partisan based ideological squabbling.

Finally let me tell you what one can expect from this book and its author's articulation about his personal dilemmas as a judge. For the judges and lawyers, this book is an awakening call to stand for justice and to add values to our criminal justice system for the betterment of the society at large and the parties involved in the court of law.

For law students, it is a good read for the purpose of expanding their own horizons of legality and morality as future lawyers and judges.

Apparently there are too many issues and items in the book and it is not that, that is valuable for a knowledgeable person, who wishes to go an indepth study in laws of crimes. But that rare dimension of the book makes it more attractive to any casual reader, who has very little time to spare for any complicated jurisprudential issues.

I wish the author's great success for his endevour and future plan for writing law-related books. One last word about the book is that with its any number of weaknesses, it is generally an original work with some personal touches of a sitting judge, who one-day may become a very prominent legal mind of our nation.

Professor Dr. Maimul Ahsan Khan
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Preface

Our constitution provides in its preamble that-

"…It shall be a fundamental aim of the State to realise through the democratic process a socialist society, free from exploitation a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens."

I do believe to see the said society where all citizens of the State will get justice by the justice system of Bangladesh particularly through the judgment of the judges of Bangladesh judiciary. But I have seen something which is simply the consequence of ignorance of a judge in Gaibandha where I served as a judge (Judicial Magistarte and Senior Judicial Magistrate) which necessitates stating here to understand the impact of ignorance of a judge for not ensuring the justice to a citizen at least. In a Non-General Register (NGR) case being numbered 388 of 2008 (Gaibandha Sador Police station), a citizen named Md. Ariful Islam was arrested under section 34 of the police Act 1861 and produced before concerened Magistarte on 23.08.2008 and the said magistrate passed the order that "দেখলাম। P/R গৃহীত। আসামীকে C/W মূলে জেল হাজতে প্রেরণ করা হোক। পর: তারিখ : ০৯.০৯.২০০৮" From this order of the said Magistrate what rights of the said citizen had been violated is to be stated here. That is (1) next date was fixed after 18 days which is the violation of section 344 of code of criminal procedure as no Magistrate is empowered to send an accused to jail for more than 14 days. (2) More than 8 days was given for the custody of the said citizen in jail in violating the section 34 of the police Act 1861 i.e. section 34 of the said Act provides that-

"Any person who, on any road or in any open place or street or thoroughfare within the limits of any town to which this section shall be specially extended by the Government, commits any of the following offences, to the obstruction, inconvenience, annoyance, risk, danger or damage of the residents or passengers shall, on conviction before a Magistrate, be liable to a fine *not exceeding fifty taka, or to imprisonment with or without hard labour not exceeding eight days*…" Here the said citizen without proved evidence of the offence was sent for 18 days and if the offence was proved he would serve out maximumly 8 days imprisonment. The very unfortunate thing was that the said citizen enlarged on bail on 08.09.2008 i.e. after 17 days. Where the maximum punishment is 8 days, why did he get extr-trial punishment of 17 days without proved evidence. Moreover, the said Magistrate under sections

496 and 499 of the code of criminal procedure could enlarge the said citizen even without any application of bail submitted by any advocate as has been done by me in many cases like this. Here the right of getting bail and enjoying other fundamental rights were violated due to the ignorance of the said Magistrate. This is not a single fact but repeated and uncounted facts in Bangladesh which is going on silently.

From my University life, I had the great inclination towards the criminal law and at the time of having the training under Bangladesh Bar Council after getting enrollment as advocate, I got a class of Mohammad Abdul Mobarak who is now an election commissioner of Bangladesh Election Commission and from his class and then his legal discussion in his house, has compelled me to realize the sweetest test of the criminal law and its application. I practiced before the sub-ordinate courts of Bangladesh and the High Court Division of Supreme Court of Bangladesh in the arena of criminal law around four years and then worked as Judicial and Senior Judicial Magistrate around another four and half years and hence I felt the necessity of writing this book and after writing the contents of the book I thought that it may take more time and at least one volume should be published for the benefit of the judges, advocates and law students and for the interest of the justice of all citizens of the State.

I have given the name of the book the criminal of law Bangladesh; Ignorance of judges is calamitous for people to remove ignorance and achieve knowledge in realising the Greek adage ‘ignorant judges are calamitious for people’.

The judges having some bars of any society has a great role for ensuring the justice and hence they ought to swot and remove their ignorance for the first time in order to have wisdom as has been said by William Rotsle i.e.

“Ignorance is the beginning of knowledge; knowledge is the beginning of wisdom; wisdom is the awareness of ignorance.”

Lastly, I would be satisfied if after reading this volume, the readers become benefited and gives any advice or comment for the betterment of this book. If this volume helps a little to ensure the rights of the citizens of this State, I would think that my labour has a value and I am hopeful that other two volumes of this book shall be published very soon.

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Chapter– 1

Introductory

1.1 Criminal law defined

The law which governs in general the criminal liability is called criminal law. According to Edwin H. Sutherland the criminal law in turn is defined conventionally as a body of rules regarding human conduct which have been promulgated by political authority, which apply uniformly to all members of the classes to which the rules refer and which are enforced by punishment administered by the state.[1] The political authority has the scope of promulgating anything including religious values in the structure of criminal law. The political authority can make the structure of the criminal law with or without the religious values. In respect of this, criminal law is mainly the following two sorts.

i. the criminal law without religious values, as for example the criminal law of Bangladesh, India and Pakistan etc.
ii. the criminal law with religious values, as for example the criminal law of Iran, Saudia Arabia etc.

The sort or the form of criminal law depends upon the formation of the political authority that is the person or a group of persons of the political authority who by political process is or are capable of forming the structure of the criminal law. In other words, the psychological and understanding structure of the persons of political authority form the structure of the criminal law. There is also another important aspect, that is, whether the persons of the political authority at the time of forming the structure of law exercise their mental position independently without being imposed or directed by any factors including the foreign factors. In considering these, it can be easily stated that, law or the criminal law is nothing but the expressed thoughts of political authority in the form of law or criminal law.

The political authoritative independent thoughts and decisions in the structure of criminal law is very much important in respect of ensuring criminal justice. The cogent reason is, if the structure of criminal is defective the result must be defective because of the following scenario

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[1] *Edwin H. Sutherland, Donald R. Cressey, Principles of criminology, sixth edition, page-4*

Defective law + sincere application = more defective result

The fundamental direction of criminal is to do or not to do. If any body does any thing of not to do, he shall be punished accordingly, that is, in a sense, law including the criminal law is nothing but a limit of a circle of direction for doing or not doing some acts or omissions.

1.2 Value frame of criminal law

Before stating the value frame of criminal law, I would like to state a conception of a question which was taught by Dr. Maimul Ahsan Khan, Prof. of law, Department of law, University of Dhaka, when he taught us the subject of the Govt. and politics and the same was "every law should contain a morality and a law without a morality can not be, in fact, regarded as a law." However, the object of criminal law is to establish the peace in administering the justice for any wrong doings. i.e. establish the peaceful condition in the society in administering the justice for any wrong doings. In respect of the object of criminal law, the criminal law of Bangladesh should contain a morality or value frame. Of course, the present criminal law of Bangladesh contains a value frame. But the question is, what is the basis of the said morality or value frame and whether the same is proper and competent for keeping the peaceful condition of the society. This is of course, very much important to have a proper and competent value frame of any criminal law like the criminal of Bangladesh. The necessity of a value frame or morality lies in the mind of the people living in the society. Let you are a simple subject of Bangladesh and one of your fingers has been injured and unable to function by a wrongdoer, your mind having the injury will be inclined generally to see that the wrong doer should be suffered likely. For this, the issue of qisas gained considerable attention in the Western media in 2009 when Ameneh Bahrami, an Iranian woman blinded in an acid attack, demanded that her attacker be blinded as well.[2]

If the value frame of your criminal law does not contain the substance of punishment of pacifying your mind in giving the same or equal pain upon the same part of the body of the said wrongdoer, your mind shall not be generally pacified. The logical and philosophical reason is, every mind wonders always to the equality. In connection with example, think that one of your fingers or eyes has been destroyed permanently and after the end of the present formal Criminal Procedure and penal code, the wrongdoer has been convicted and sentenced to suffer the maximum punishment for a certain period and in getting this

[2] *http://en.wikipedia.org/wiki/Islamic_criminal_jurisprudence (visited on 12.09.2009)*

your mind may be pacified. But after the expiration of that punishment period, if that wrongdoer comes or appears before you and in seeing his two eyes or all fingers as it is, whether you will be pacified or upset is a matter of realisation. If the answer is no, your previous pacification was temporary and then your mind may not respect the value frame of the criminal law concerned and finally this may generate a contradiction and obviously such contradiction is consistent with the social harmony.

In a country, where most of the citizens are either Hindus like in India or Muslims like in Bangladesh or Pakistan and they follow and conduct their every day life as per their values. Whether the value frame of the existing criminal law of that country being inconsistent with the every day followed values can pacify the society is serious matter of question and proper research is required for giving the answer of this question and the value frame of the law should be ascertained according to such answer. The problem of the criminal law of India, Bangladesh and Pakistan lies there to my mind. However many persons support the separation of the religious belief from the state and I don't know the correctness of this view but I am inclined to think the contradiction as I said earlier and whether any law with the contradiction may pacify the society permanently. Again if the main purpose of the state is to do welfare and establish peace, what is the necessity of such separation which causes contradiction? I think there should be the parity of belief of the citizens between the individual and state function. I see the reason of this in the structure of human mind. Think simply why a man says this is a good scenario or anything and why do you say the same sometimes. The answer is the parity of mind that is, when your mind liking sees any scenario or anything and gets the parity and then you like and express. In fact, the value frame of criminal law of Bangladesh ought to be modified in respect of having no such contradiction.

1.3 Source of criminal law

As source of criminal law, except Germanic and Roman Criminal law, many early cultures had legal codes, among them Babylon, with its code of Hammurabi (about 1700 BC); The Israelites, with Mosaic Code (1200 BC); Greece, with the Draconian Code (seventh century BC); India, with the Hindu Code of Manu (Fifth century BC); and the Islamic societies, with the Quran (seventh century AD).[3] The code of Hammurabi little influence on the later law of the Persians but of its principles, such as the government's duty to compensate victims of crime, live on. The

[3] *Criminology, Freda Adler, Gerhard O.W. Muller, William S. Laufer, Shorter version, 2nd edition page 11*

Draconian code of Greeks had influence on later Greek laws, such as those formulated by Solon in 403 BC. These laws in turn influenced Roman law, most directly the law of the Twelve Tables. Early Roman Laws formed the basis for the highly sophisticated legal system of Roman Empire with the collapse of the Roman Empire in the West in AD 476, the Roman Codes were lost until the twelfth century, when were rediscovered by accident. There after they had a profound impact on the legal systems that developed all over continental Europe and on criminal justice within those systems.

From these legal systems the Roman (the so-called civil) law system spread over a great part of the world. Today all of the continental Europe, all of the Latin America, most of the countries of Africa that once were French, Belgian, Spanish or Portuguese colonies, the countries of Asia that once were Dutch colonies and Japan, China and to some extent South Africa are the heirs of the Greco-Roman System of law and justice. Even the Anglo-American system of justice derived some benefit from the Greco-Roman System, though its foundation remains Germanic (Anglo-Saxon) heritage of law and justice. The Anglo-Saxon (now called Anglo-American or Common Law) system of law and justice continues to be applied in all English speaking countries with the exception of Scotland and to some extent South Africa.

India's code of Manu lives on only in history and in some customs. The British imposed Anglo-Saxon law on India, with modifications. The Koran continues in full force in Iran and Saudi Arabia (where it has been extended by regulatory legislation and survives in large part in the legal systems of other Islamic countries including Pakistan, (otherwise a common law country) Sudan, several Persian Gulf states and the countries of Africa north of the Sahara.[4] For avoiding any contradiction as mentioned in chapter 1.2 the value frame of criminal law of Bangladesh ought to be framed on the basis of that source which is believed and cultured with necessary modifications(if it requires).

In a state like Bangladesh, it is, of course, not necessary to establish the Islamic Criminal Jurisprudence for all people. The principle should be i.e. a person or a group of persons should be justified by his or their every day beliefs and cultures.

1.4 Different criminal jurisprudence

There are almost four sorts of criminal jurisprudence which are as follows

[4] *Criminology, Freda Adler, Gerhard O.W. Muller, William S. Laufer, Shorter version, 2nd edition page 12*

1. Criminal jurisprudence of Civil law

1. Civil law is the dominant legal tradition today in most of Europe, all of Central and South Africa, and even some discrete areas of the common-law world (e.g. Louisiana, Quebec, and Puerto Rico). Public International law and the law of the European Community are in large part the product of persons trained in the civil-law tradition Civil law is older more widely distributed, and in many ways more influential than the common law.

Despite the prominence of the civil-law tradition judges and lawyers trained in the common-law tradition tend to know little about either the history or present-day operation of the civil law. Beyond the most basic generalities- e.g. the common law follows and "adversarial" model while civil law is more "inquisitorial," civil law is "code-based." civil-law judges do not interpret the law but instead follow predetermined legal rules-judges and lawyers from the United States seldom have any deeper sense of the civil-law tradition.

This overview is designed for judges and lawyers who seek to expand their knowledge of the civil-law tradition and who might wish to consider the civil-law system as a source of legal reforms. The Scope of this paper is necessarily limited. Each civil-law country has developed its own distinct legal system that draws on the rich history of the civil law, and it is not possible to discuss here such variations in detail, moreover this discussion does not attempt, except in a most general way to deal with the substantive law of the civil-law systems, which can differ markedly between individual countries and also from that of common-law countries. Instead, it focuses on general features that distinguish the civil-law tradition from the common-law tradition. Particular references are made to the civil-law systems of France and Germany and to two systems in Latin America, those of Chile and Brazil, because of their strong influence on many other systems. Those who desire more comprehensive information should consult the sources contained in the bibliography.

Understanding modern civil law requires and understanding of the history of the civil law beginning with the Roman Empire.

2. The civil-law system had its origins in the Roman Republic, before the beginning of the Empire, in the second century B.C. by the end of the Republic, in 27 B.C. a body of legal experts or jurists, had gained prominence within the legal system, separate and apart from the courts of law (the term jurist will be used throughout this discussion to mean a "legal expert" rather than only a judge). These jurists were men from the upper classes of Roman society interested in the law and in providing counsel about the law as a public service. They provided advice to parties to litigation, to the lay judiciary who presided at trials and judged the facts of a case, and to legal magistrates who instructed the lay judges on issues, procedures, and remedies available in particular case.

   Roman jurists were largely a product of the success of the Roman Empire. Expansion of the Empire led to increased trade with conquered territories and with distant lands with which Rome came into contact. The acquisition of territories brought new people into Rome and other cities of the Empire. These Persons did not come under the traditional jus civile applicable to Roman citizens, but were nevertheless important to the continued success of the Empire. Such developments created the need for a private law regime to determine and guide relationships between citizens and non citizens. In this atmosphere, and to meet such needs, the Roman jurist came into being and created for himself a unique role, primarily in the classical period from 150B.C. to 250 A.D. Another reason for the development of the Roman jurist related to the nature of the Roman judicial system and its method of disposition of cases. There were

3. Two types of civil judges: the magistrate, or praetor, and the judge for the trial or judex. This judiciary was nonprofessional. The praetors and judices seldom had any legal training.

   The judicial capacity of he praetor, elected for a one-year term, was limited because his duties consisted of conducting what a modern lawyer would call a pretrial hearing between prospective litigants to define the issues of the controversy. The praetor's source of power was the control of the remedies available to the litigants. The praetors' edicts, which were pronouncements about the law, became a primary source of private law, legislation being only a secondary source. The judex, on the other hand, filled the traditional role of judge during the trial. His appointment was even more limited than that of the praetor. The judex was selected on a strictly ad hoc basis by the litigants for the purpose of presiding over their trial, and then given authority by the praetor to decide only that case both praetors

and judies needed competent legal advice. They turned to the jurists for that counsel.

Jurists in Rome were not government officers in the modern sense of that phrase, since they had no official powers. Rather, their activities constituted a form of public service, the rewards of which were influence and popularity. They did not take charge of cases or control the course of litigation through the courts. They did not charge for their services and they received no pay from the state, a situation that emphasized the pure public nature of their service. They were, perhaps, the first pro-bono lawyers.

4. Roman law-particularly the written works of these later jurists-has an important influence on history. The written law of Rome had evolved from responsa to the legal treatises prepared by the jurists, or jurisconsults, as they came to be called. The law underwent further evolution in later periods of the Empire, culminating in a comprehensive statement of private law prepared by the jurist Gaius in the latter half of the second century A.D. Gaius's institutes were an extensive collection of legal principles and rules covering matters ranging from the rights of citizenship and the manumission of slaves to the preservation of estates and the rules of intestate succession. The Institutes could be analogized to modern "hornbooks," in that they were elementary discussions of Roman law designed to educate students, as well as assist practitioners in the resolution of issues in a particular case. An excerpt from the Institutes is reproduced in Appendix A.

   In the sixth century, the Emperor Justinian ordered the preparation of an even more comprehensive manuscript covering all aspects of Roman law. The Corpus Juris Civilis included not only a refinement of Gaius's Institues, but the Digest (writings of classical jurists), the Code (early unperial legislation), and the Novels (Justinian's legislation) The Corpus Juris Civilis provided a rich store of legal ideas for contemporary and later students and scholars of the law. It brought together legal treatises and principles of law reflection diverse viewpoints and arguments.

   In contract to the unified court system typical of common-law countries, several separate court systems often coexist in civil-law countries. A case filling within the jurisdiction of one court generally is immune from jurisdiction in all other. While the typical common-law judicial system may be drawn as a pyramid with the "highest" court at the top, the typical civil-law judicial system would be

> represented as a set of two or more distinct structures with no bridge between them. As a general matter, a system of "ordinary" courts, staffed by "ordinary" judges, adjudicates the vast majority of civil and criminal cases. Ordinary court are the modern-day successors of the various civil courts that existed in Europe during the period of the jus commune, before the growth of the modern administrative state, Their jurisdiction has expanded to include matters formerly addressed by the ecclesiastical tribunals, as well as commercial disputes. The ordinary court applies the law found in the civil, commercial, and penal codes, and in legislation supplementing those codes.

In the French system, the apex of the ordinary court structure is the Cout de Cassation (Supreme Court of Cassation). The court reviews, on a discretionary basis, only questions of statutory interpretation. The Court of Cassation is composed of about 100 judges who sit in six rotating specialized panels (five civil and one criminal) and, in certain situations, in combined panels or plenary session.

The first level of French ordinary courts consists of general civil and criminal trial courts and several specialized courts. Cases arising under the commercial code, for example, are first heard in a commercial court in which the panels of part-time judges are businessmen elected by their colleagues. Similarly, employment disputes are heard by a labor court consisting of two elected representatives from labor and management. The labor court first attempts to settle cases by conciliation, it the case proceeds to adjudication, a professional judge sits with the lay panel. Appeals from the trial-level courts proceed to a court of appeal within the territorial jurisdiction of the lower court.

The German model relies on several independent court systems, each with its own supreme court. In addition to the hierarchy of the ordinary (civil and criminal) courts, there are separate systems of labor courts, tax courts, and social security courts. The lower courts generally sit in panels of three professional judges, although commercial matters are heard by a panel of two lay judges and one professional judge. Lay involvement in labor matters also extends to the appellate level, where the judge acts in consultation with labor and management representatives, Final review from all of the German court systems is available in the Federal Constitutional Court, which exercises the power of judicial review.

Latin American court structures vary greatly, with some based on separate national subject-matter courts, and others influenced by the united state's federal-state court system (e.g., Mexico, Brazil).

Apart from the ordinary courts, typical civil-law court systems also include a set of administrative courts that exercise independent jurisdiction. The creation of administrative courts grew out of the strong tradition of separation of powers. a by-product of the French Revolution, that established the legislature as the preeminent source of law.

Within that tradition, the judiciary was not viewed as competent to render decisions on the legality of administrative action. In France the need for a review procedure was eventually met through the Council of State, a body that began as advisers to the king and gradually became the central point for review of government conduct. Today, the Council of State-whose members are public administrators with training different from that of the ordinary judiciary-is the principal source of French administrative law. Other countries, including Belgium and Italy, have followed the French model and have allocated similar administrative jurisdiction to their own.

Councils of State, in Germany and countries that follow its model, special administrative courts have been created. In theory, ordinary court and administrative court jurisdiction is separate and exclusive but disputes arise. In France, a special Tribunal of Conflicts decides which the proper court for a disputed case is. In Germany, the court in which the case is filed decides whether is has jurisdiction and may transfer cases over which it declines jurisdiction. A decision refusing jurisdiction is binding in the transferee court. In other countries, such as Italy, the Court of Cassation is the final authority on conflicts of jurisdiction.

Constitutional law poses a special problem for civil-law judicial administration. The recent adoption of written constitutions, for example in Germany and Italy since World War II, illustrates the extent to which the public-private law dichotomy affects court structure and jurisdiction. In those countries, some method of reviewing legislative action for constitutionality was necessary, yet it was clear that this power could not be exercised by the judiciary (i.e., the ordinary judiciary) without violating the doctrine of separation of powers and limiting the supremacy of the legislature.

Just as the development of the modern administrative state led to the creation of a separate jurisdiction to review the legality of administrative action in Germany and Italy the solution to the question of judicial review was to establish separate constitutional Courts. Civil-law fundamentalists have occasionally argued that these tribunals cannot really be “courts,” since civil-law courts, strictly speaking, merely interpret and apply the law made by the legislature, Nonetheless, this

view has yielded in the same way the most observers now regard entities such as the French Council of State as a "court" and its officials as "judges."

Thus, the strong principle of separation of powers and the traditional civil-law limits on judges' powers continue to apply to the work of the ordinary judiciary. Conversely, the separate administrative and constitutional courts are not thought to violate that principle.

The Legal Process

Civil Procedure

Modern codes of civil procedure stress that judicial proceedings are public and controlled by the parties, party control, however, is somewhat tempered by the extensive power of the civil-law judge to supervise and shape the fact-finding process and by the role of the public prosecutor in private actions.

In contrast to the progressive unfolding of evidence-under near complete control of the parties-that occurs through the discovery process in the American common-law system, there is no formal civil-law counterpart to discovery Nor, in most cases, is there any single event that the common-law lawyer Nor, in most cases, is there any single event that the common-law lawyer would recognize as a trial. Instead, a civil-law civil action is a continuing series of meetings, hearings, and written communications through which evidence is introduced and evaluated, testimony is taken, and motions are made and decided. Initial pleadings are quite general, and the issues are defined at the direction of the judge as the proceedings progress.

The civil process tends to be conducted primarily in writing, and the concept of a highly concentrated and dramatic "trial" in the common-law sense is not emphasized. Thus, a lawyer who wishes to question a witness must first submit to the judge and opposing counsel "articles of proof" describing the scope of the potential questions. The witness will be questioned at a later hearing at which the judge will typically ask the questions, often framing or reformulating the issues raised in the case. Cross-examination is uncommon. Instead, opposing counsel's role is to make certain that the record summary of the testimony is complete and correct.

The judge supervises the collection of evidence and preparation of a summary of the record on which decision will be based. Since there is no "pretrial" phase of the proceeding, the evidence is not "discovered" in the sense understood by common-law lawyers. Instead, the parties

submit proposed evidence to the judge in writing or at oral hearings, and the judge delivers rulings concerning the relevance and admissibility of evidence. Admissible evidence is presented, for the first and only time, in the final hearing that constitutes the trial.

Many of the differences between the common-law and civil-law judicial process may be attributed to the absence of the civil jury. While some specialized courts involve lay people in the court's decision-making process, such "lay judges" are not usually chosen on the basis of their impartiality, as are common-law jurors, Lay judges are generally selected on the basis of experience in the subject matter of the court (e.g., labor law), or as representatives of a particular interest group (e.g., unions or management). Unlike common-law jurors, lay judges usually serve for a continuing term instead of only a single case.

Civil-law procedure does not emphasize the need to have a single-event trial because there is no need to convene a jury to hear the evidence, find the facts, and apply the law to the facts. The absence of the civil jury also helps to explain the relative lack of restrictions on the admissibility of evidence in the civil-law system. Hearsay and opinion evidence is more freely admitted than in common-Law systems. Issues of evidentiary weight are left to the judge.

Nonetheless, there are indications that the common-law and civil-law procedures are not as different as they appear. American pretrial discovery, for example, significantly reduces the amount of "surprise" evidence that will come forth at trial. And efficiency concerns have led some civil-law countries, such as Germany, to experiment with more concentrated trials to resolve simple cases. A central difference between the common-law and civil-law systems, according to one analysis, is that the common-law system "leaves to partisans the work of gathering and producing the factual material upon which adjudication depends.

In contrast, lawyers in the civil-law system mainly act as "law adversaries" (i.e., arguing points of law), and judges more actively control the investigation and fact-finding process. The public prosecutor may also have a role in a civil case (see infra page 31).

Criminal procedure

The typical criminal proceeding in a civil-law court is divided into three phases: the investigative phase, the examining phase, and the trial. In the investigative phase, a government official (generally the public prosecutor) collects evidence and decides whether it is sufficient to warrant formal charges.

During the examining phase, which is primarily conducted in writing, an examining judge completes and reviews the written record and decides whether the case should proceed to trial. At this stage, the defendant may be questioned, but has the right to remain silent and to be represented by counsel. The examining judge plays an active role in the collection of evidence and interrogation of witnesses. As in civil proceedings, however, there is no counterpart to common-law cross-examination.

As a result of the thoroughness of the examining phase, the trial itself differs significantly from a common-law criminal trial. Perhaps the most striking difference is that the record already has been made and is equally available to the defense and the prosecution well in advance of trial. The main function of a criminal trial is to present the case to the trial judge and, in certain cases, the jury, and to allow the lawyers to present oral argument in public.

As noted above, civil-law countries do not have a tradition of jury trials in civil cases. Some countries, however, have introduced the jury trial for serious criminal matters, while others use a combination of lay judges and professional judges in criminal cases.

Appellate Procedure

A primary difference between common-law and civil-law appellate procedure is that intermediate appellate review in the civil-law tradition often involves a de novo review of both the facts and law of the case.

Thus, intermediate appellate courts may obtain additional testimony, supervise the collection of new evidence, and seek out expert opinions. In some civil-law systems, appellate review in criminal cases does not involve de novo factual review. In Germany

Johan H. Langbein, Restricting Adversary Involvement in the Proof of Fact: Lessons from Continental Civil Procedure. Speech to the American College of Trail Lawyers, September 25, 1984, cited in Mary Ann Glendon et al., Comparative Legal Traditions 169 n.2 (1985).

for example, most criminal trial court decisions are subject to appeal only on points of law, and those appeals are heard by an appellate court of last resort.

Appellate courts of last resort, like their common-law counterparts, generally consider only questions of law. Some of these courts follow the French system of “cassation,” in which the court decides only the question of law that has been referred to it, not the case itself. The Court

of Cassation may either affirm the lower court decision or remand the case for reconsideration to a different lower court. The remand court is, in theory, free to decide the case the same way as the previous lower court. If that occurs, a second appeal may be taken to the Court of Cassation, which will then sit in plenary session. The court may then issue a dispositive ruling in some cases; in others it must remand the case to a third lower court to issue the judgment. In the German system, the high court may reverse, remand, or modify the lower court decision and enter the judgment itself.

Legal Actors: Tradition and Transition

The division of legal labor in the civil-law world is greatly influenced by the traditional dogma of legal science. This generally accepted legal "folklore," as Prof John Merryman refers to it, deeply affects the way legislators, judges, and lawyers work.

Legal Scholars

According to the legal folklore, the legal scholar does the "basic thinking" for the legal system. Indeed, academic lawyers continue to enjoy and honored place in the civil-law tradition.

The civil-law codes historically have been greatly influenced by the work of legal scholars, as has been indicated in the earlier historical section of this treatise. Judges and legislatures, as a general matter, look to legal scholars for definitive views on the law. Though legal scholarship is not a formal source of law, the "doctrine" as developed by scholars is highly valued in the civil-law tradition.

The Legislature

The legislature in the civil-law tradition strives to supplement and update the codes in those areas in which the legal scholars have suggested that codes are defective or incomplete. New legislation, therefore, in theory employs the concepts and follows the structure established by the legal scholars and embodied in the earlier codes. Legislatures seek completeness and clarity, attempting to produce laws that are consistent with the tenets of legal science and compatible with the established legal order.

Judges

Judges typically enter judicial service at the lower levels of the judiciary-they enter directly from law school after passing state qualifying examinations. Judicial service is analogous to a career in civil service in the United States, with judges moving up the court hierarchy

based on seniority and merit. The standard image of the civil-law judge is one of "a civil servant who performs important but essentially uncreative functions"

The judge's role is a simple and narrow one, limited by strict notions of legislative supremacy. Civil-law judges, in theory, are the "operators" of the system designed by legal scientists and built by legislators. Since there is only one correct solution to a legal problem, according to legal science and the developed doctrine, judicial discretion or interpretation becomes largely unnecessary

Legal Education and Lawyers

The basic civil-law training is an undergraduate education in law. Courses tend to focus on general legal principles, as opposed to professional skills and problem solving.

Such practical skills are acquired, if necessary, through later apprenticeship. Consistent with the tradition of legal science, civil-law students study legal treatises that expound the established principles of the law with little "case-method" analysis. Active class participation is unusual; typically the professor lectures to large classes.

A civil-law student chooses, upon graduation, among the several branches of the legal profession. Since there is little mobility within the profession, the student's choice is likely to be final. These choices include a career as a judge, a public prosecutor, a government lawyer, an advocate (private practice), or a notary.

In most civil-law countries, private legal practice is roughly divided between the advocate and the notary. The advocate meets with and advises clients, and represents them in court. Advocates generally serve as apprentices to experienced lawyers for several years after law school, and then practice law in small firms or as solo practitioners. Private lawyers are generally governed by mandatory bar associations, which set practice rules and fee schedules.

The civil-law notary serves three basic functions: (1) drafting legal documents such as wills corporate charters, and contracts; (2) authenticating such documents in legal proceedings; and (3) keeping records on or providing copies of, authenticated documents (also called "public acts"). Entry to the notary profession generally involves taking a state examination.

Government lawyers serve either as public prosecutors or as lawyers for government agencies. The public prosecutor plays a dual role in the

civil-law tradition. In addition to preparing the government's case in criminal matters, the prosecutor represents the public interest in some civil cases. On the theory that the parties to a civil case will not provide the judge with a full picture of the facts and law, the prosecutor may intervene to assert the public interest, as opposed to the interest of the state. In some civil-law countries, the public prosecutor is trained as a judge, and may move easily from one position to the other during his or her career.

Transition in the Civil-Law World

As commentators both within and outside the civil-law world have observed, theory and practice are often in tension, and this tension is reflected in the changing roles of the actors in the legal system. Legislative practice often falls short of its objective to provide a clear, systematic legislative prescription for every legal problem that may arise. As a result, judges frequently must interpret vague code sections, and there is a growing body of judge-made law that provides a gloss on the codes. In countries with older code systems, such as France the effects of judicial interpretation are particularly obvious and far reaching. Thus, in France the law of delict (torts), which is covered only in the most general way by the Code Civil, is primarily the product of modern judicial decisions.

Lawyers, in turn, tend to do more than simple peruse the codes for relevant provisions. The decisions of the high courts are regularly published and lawyers cite them in subsequent cases. Likewise, judges rely on prior decisions to support their own case analysis. As in common-law systems, judges look to higher court decisions as final, authoritative ruling on interpretation of statues and a de facto system of precedent has taken root.

The civil-law world, then, is in transition. The gap between theory and reality has been aptly summarized by Merryman:

The folklore is clearly losing its power, but until some new, acceptable, coherent view of the legal process appears to replace it, it will continue to occupy the field. It is still the residual model of the legal process, and even scholars who recognize that this model is not working spend more effort trying to perfect its basic design than in trying to design a better model.[5]

[5] *Extractedfrom:http://www.fjc.gov/public/pdf.nsf/lookup/CivilLaw.pdf/$file/CivilLaw.pdf*

2. Criminal jurisprudence of Common law

Common law refers to law developed by judges through decisions of courts and similar tribunals (called case law), rather than through legislative statutes or executive action, and to corresponding legal systems that rely on precedential case law.

> The body of precedent is called "common law" and it binds future decisions. In future cases, when parties disagree on what the law is, an idealized common law court looks to past precedential decisions of relevant courts. If a similar dispute has been resolved in the past, the court is bound to follow the reasoning used in the prior decision (this principle is known as stare decisis). If, however, the court finds that the current dispute is fundamentally distinct from all previous cases (called a "matter of first impression"), judges have the authority and duty to make law by creating precedent (*Marbury v. Madison, 55 U.S. 137 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each.")*. Thereafter, the new decision becomes precedent, and will bind future courts.

In practice, common law systems are considerably more complicated than the idealized system described above. The decisions of a court are binding only in a particular jurisdiction, and even within a given jurisdiction, some courts have more power than others. For example, in most jurisdictions, decisions by appellate courts are binding on lower courts in the same jurisdiction and on future decisions of the same appellate court, but decisions of lower courts are only non-binding persuasive authority. Interactions between common law, constitutional law, statutory law and regulatory law also give rise to considerable complexity. However stare decisis, the principle that similar cases should be decided according to consistent principled rules so that they will reach similar results, lies at the heart of all common law systems.

Common law legal systems are in widespread use, particularly in England where it originated in the Middle Ages,[6] and in nations that trace their legal heritage to England as former colonies of the British

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[6] *http://www.britannica.com/EBchecked/topic/188090/English-law ;British History : Middle Ages "Common Law-Henry II and the Birth of a State". BBC. http://www.bbc.co.uk/history/british/middle_ages/henryii_law_01.shtml. Retrieved 2009-07-23*

Empire, including the United States, Singapore, Pakistan, India,[7] Ghana, Cameroon, Canada, Ireland, New Zealand, Australia, South Africa and Hong Kong.[8]

History of the common law

The term "common law" originally derives from after the Norman Conquest. The "common law" was the law that the whole country had in common, rather than particular tribal laws that might apply between smaller communities. The doctrine of precedent developed under the inquisitorial system in England during the 12th and 13th centuries,[9] as the collective judicial decisions that were based in tradition, custom and precedent. Such forms of legal institutions and culture bear resemblance to those which existed historically in societies where precedent and custom have at times played a substantial role in the legal process, including Germanic law[10] and Islamic law.[11]

The form of reasoning used in common law is known as casuistry or case-based reasoning. The common law, as applied in civil cases (as distinct from criminal cases), was devised as a means of compensating someone for wrongful acts known as torts, including both intentional torts and torts caused by negligence, and as developing the body of law recognizing and regulating contracts. The type of procedure practiced in common law courts is known as the adversarial system; this is also a development of the common law. However, The Laws of England may aptly enough be divided into two Kinds, viz. Lex Scripta, the written Law: and Lex non Scripta,the unwritten Law: For although (as shall be shewn hereafter) all the Laws of this Kingdom have some Monuments or Memorials thereof in Writing, yet all of them have not their Original in Writing for some of those Laws have obtain'd their Force by immemorial Usage or Custom, and such Laws are properly call'd Leges non Scriptae, or unwritten Laws or Customs.[12]

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[7] *India, being a common law country*

[8] *31The Common Law in the World: the Australian Experience*

[9] *Jeffery, Clarence Ray (1957). "The Development of Crime in Early English Society" Journal of Criminal Law, Criminology, and Police Science 47 (6): 647–666. doi:.%F10.2307/1140057*

[10] *see Oliver Wendell Holmes, Jr., The Common Law, Lecture I, sec. 2, "In Massachusetts today…there are some (rules) which can only be understood by reference to the infancy of procedure among the German tribes."*

[11] *Makdisi, John A. (1999), "The Islamic Origins of the Common Law", Also see: http://en.wikipedia.org/wiki/Common_law (visited on 21.09.2009)*

[12] *http://socserv2.socsci.mcmaster.ca/~econ/ugcm/3ll3/hale/common (visited on 22.10.2009)*

The problem of Common law in Bangladesh

The problem of common law in Bangladesh depends solely on the adjudicators of the Judiciary particularly in respect of administering the criminal justice. As for example, for any violation of traffic laws in England now there is a system whereby the court gives the offender a "fine card" which is somewhat like a credit card; at any shop that has a paying-in machine he pays the value of the fine to the shop, which then uses the fine card to pass that money on to the court's bank account.[13]

What is in reality going on in Bangladesh is a matter of great concern. In Bangladesh being a common law follower, if a person violates any of the traffic laws, the concerned authority or the authorised police officer seizing relevant papers, gives a case slip. The case slip which is common almost in every district contains a date of appearance before the office of the District Superintendent of police or Deputy Commissioner of police in a metropolitan area.

This appearance is not permissible in law. Section 159 of the Motor Vehicles Ordinance 1983 provides that the authorised police officer or the authority concerned is bound to impose a fine as provided in the section. He without imposing the respective fine can not give the date for appearance before the office of the District Superintendent of police or Deputy Commissioner of police in a metropolitan area. He is also bound to mention the amount of fine and the account number where the person shall deposit the fine.

The authorised police officer or the authority is not maintaining this direction of law and the greatest misfortunate is that the same is not checked and reflected in the orders of the most administrators of criminal law of Bangladesh i.e. this problem is not checked duly for unequal capacity of the Judicial Magistrates. Due to different capacity of the different Judicial Magistrates for the same law and having no uniform application, the persons of this country for violating the same laws are not getting the same remedy. But the main object of the common law is to provide the common remedy for the common offence. That is, the scope of interpretation of law in a common law system is a great problem where the adjudicators are not capable of giving the equal interpretation of the statute equally or uniformly.

The defect of law itself is also responsible. In fact, section 159 of the said Ordinance, 1983 is a defective section of law which has been stated

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[13] *http://en.wikipedia.org/wiki/Fine_(penalty) visited on 20.09.2009*
Also see: http://en.wikipedia.org/wiki/Common_law (visited on 21.09.2009)

in chapter 29C of this book in another volume along with the recommendation. However, in administering the criminal justice in Gaibandha I passed what orders which are stated in chapter 3.8 of this book In fact, for establishing the system of providing the common remedy, the scope of interpretation of statute should be shortened like civil law system.

3 Criminal jurisprudence of Islamic law

Islamic criminal law is criminal law in accordance with Islamic law. Criminal law is seen as part of the relationship between Allah and the believer, and is therefore a fundamental aspect of the religious law. There are four classes of crimes in Islam, divided according to their mention in the Quran.[14] These are Hudood, Qiasas, Tazir and Diyya.

Hudud also transliterated hadud, hudood; singular hadd, literal meaning "limit", or "restriction") is the word often used in Islamic literature for the bounds of acceptable behaviour and the punishments for serious crimes. In Islamic law or Sharia, hudud usually refers to the class of punishments that are fixed for certain crimes that are considered to be "claims of God." These are Theft (sariqa), Highway robbery (qat' al-tariq), Illegal sexual intercourse (zina') False accusation of zina' (qadhf)[15], Drinking alcohol (sharb al-khamr)(Unlike the first four offences listed above , not all jurists consider drinking alcohol to be a hudud offense.)[16], Apostasy (irtidād or ridda) includes blasphemy. (Unlike the first four offenses listed above, not all jurists consider apostasy to be a hudud offense.

Punishments

The punishments vary according to the status of the offender- Muslims generally receive harsher punishments than non-Muslims, free people receive harsher punishments than slaves, and in the case of zina', married people receive harsher punishments than unmarried. In brief, the punishments include: (1) Capital punishments- by sword/crucifixion (for highway robbery with homicide), by stoning (for zina' when the offenders are mature, married Muslims) (2) Amputation of hands or feet (for theft and highway robbery without homicide) and (3) Flogging with a varying number of strokes (for drinking, zina' when the offenders are unmarried or not Muslims, and false accusations of zina')

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[14] *Joseph Schacht, An Introduction to Islamic Law (Oxford: Clarendon Press, 1973), pp. 178-181*

[15] *http://www.dawn.com/wps/wcm/connect/dawn-content-library/dawn/the-newspaper/national/shariat-court-rules-whipping-for-drinking-unislamic-959*

[16] *Also see: (http://en.wikipedia.org/wiki/Islamic_criminal_jurisprudence (visited on 12.09.2009)*

Requirements for conviction

Only eye-witness testimony and confession were admitted. For eye-witness testimony, the number of witnesses required was doubled from Islamic law's usual standard of two to four. Moreover, only the testimony of free adult Muslim males was acceptable (in non-hudud cases the testimony of women, non-Muslims and slaves could be admitted in certain circumstances). A confession had to be repeated four times, the confessor had to be in a healthy state of mind, and he or she could retract the confession at any point before punishment. However, while these standards of proof made hudud punishments very difficult to apply in practice, an offender could still be sentenced to corporal punishment at the discretion of the judge (see tazir), if he or she was found guilty but the standards of proof required for hudud punishments could not be met.[17]

The Hudood Ordinance (also spelled Hudud) was a law in Pakistan that was enacted in 1979 as part of then military ruler Zia-ul-Haq's Islamization process, and replaced/revised in 2006 by the Women's Protection Bill. The ordinance is most criticized for making it exceptionally difficult and dangerous to prove an allegation of rape. A woman alleging rape is required to provide four adult male witnesses of good standing of "the act of penetration". In practice this is virtually impossible as no man of good standing would stand there and watch the violent act. Failure to find such proof of the rape places the woman at risk of prosecution for accusing an innocent man of adultery, which does not require such strong evidence.[18] Moreover, to prove rape the female victim has to admit that sexual intercourse had taken place. If the alleged offender, however, is acquitted for want of further evidence the woman now faces charges for either adultery, if she is married, or for fornication, if she is not married. According to a report by Pakistan National Commission on the Status of Women (NCSW) "an estimated 80% of women" in jail in 2003 were there as because "they had failed to prove rape charges and were consequently convicted of adultery."[19] In 2006, then President Pervez Musharraf again proposed reform of the Ordinance.[20] On November 15 2006, the Women's Protection Bill was passed in the National Assembly, allowing rape to be prosecutable under civil law.

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[17] *http://en.wikipedia.org/wiki/Hudud (visited on 12.09.2009)*
[18] *Washington Times, --"A victory for Pakistani women"*
[19] *Jails and prisoners, State of Human Rights 2004, HRCP The number of women "believed to be in jail in March" 2003 according to the HRCP report is 1500.*
[20] *The Hindu, //"Musharraf wants Hudood laws amended" also see. http://en.wikipedia. org/wiki/Hudood_ordinance (visited on 21.11.2009)*

But to my mind, the aforementioned problem lies in the principle of equality between and among unequal brings inequality that is, if the society or the state structure is not comprehensively Islamic, an Islamic law can not be applied for ensuring the comprehensive Islamic justice. For example, if the state or a society does not make restriction between male and female for any game programme at any stadium or in a place a female and more than one male sitting or staying together can commits rape, it must be difficult for the female to prove the committed offence of rape under the requirement of Hudud. Here the structure or the environment was not Islamic. However, the term hudud requires establishing the comprehensive Islamic structure of the society and without establishing the aforementioned state of the state, no Islamic criminal law can be introduced for getting comprehensive Islamic justice.

An example can be given for this purpose. Let your daughter or wife is in accordance with the Islamic law is prohibited alone to talk to a person of your close neighbour and if with or without your permission they go to a place which is unsafe for a woman and commits zinah, the requirements for giving punishment under hudud of Islamic law may be difficult. In fact this problem was seen in Pakistan after enacting the said ordinance. The state of Pakistan state was and is not comprehensively in the structure of Islam like Iran or Saudi Arabia. In a state like Pakistan or Bagladesh or India, even after enacting the Sharia law until forming the form of Islamic environment no one can hope to have the comprehensive Islamic justice.

4. Criminal jurisprudence of Socialist law

Socialist law is the official name of the legal system used in Communist states. It is based on the civil law system, with major modifications and additions from Marxist-Leninist ideology. While civil law systems have traditionally put great pains in defining the notion of private property, how it may be acquired, transferred, or lost, socialist law systems provide for most property to be owned by the state or by agricultural co-operatives, and having special courts and laws for state enterprises.

Prior to the end of the Cold War, Socialist Law was generally ranked among the major legal systems of the world. However, many contemporary observers no longer consider it to be such, due to similarities with the civil law system and the fact that it is no longer in widespread use following the dismantling of most communist states. Many scholars argue that socialist law was not a separate legal classification. Although the command economy approach of the

communist states meant that property could not be owned, the Soviet Union always had a civil code, courts that interpreted this civil code, and a civil law approach to legal reasoning (thus, both legal process and legal reasoning were largely analogous to the French or German civil code system).

Legal systems in all socialist states preserved formal criteria of the Romano-Germanic civil law; for this reason, law theorists in post-socialist states usually consider the Socialist law as a particular case of the Romano-Germanic civil law. Cases of development of common law into Socialist law are unknown because of incompatibility of basic principles of these two systems (common law presumes influential rule-making role of courts while courts in socialist states play a dependent role).

Characteristics or traits

4 partial or total expulsion of the former ruling classes from the public life at early stages of existence of each socialist state; however, in all socialist states this policy gradually changed into the policy of "one socialist nation without classes"

5 diversity of political views directly banned or condemned by legislation

6 the ruling Communist party was considered above the law system; in many cases party functionaries were not subject to criminal prosecution but rather to disciplinary measures taken by party committees;

7 private property was considered as remnant of the bourgeois society and, as such, harmful; this resulted in high degree of collectivization and nationalization of property;

8 low respect for privacy, extensive control of the party over private life;

9 low respect for intellectual property, unless state-owned (which directly resulted from the above two principles);

10 extensive social warrants of the state (the rights to a job, free education, etc.) in return for a high degree of social mobilization and a low degree of human rights;

11 the judicial process lacks adversary character; public prosecution is considered as "provider of justice."

A specific institution characteristic to Socialist law was the so-called burlaw court (or, verbally, "court of comrades", Russian товарищеский суд) which decided on minor offences.

Communist state

The current Communist states are China, Cuba, North Korea, Laos, and Vietnam. The elected parties but not communist are in Cyprus, India (Kerala, West Bengal, Tripura), Nepal. The formerly communist countries were Afghanistan, Angola, Albania, Benin, Bulgaria, Cambodia, Congo, Czechoslovakia, East Germany, Ethiopia, Mongolia, Mozambique, Poland, Romania, Somalia, South Yemen, Soviet Union and Yugoslavia.

1.5**. Law making source of criminal law**

Here the term 'law making source of criminal law' includes the persons who are directly and indirectly involved for processing and making the laws relating to crimes. According to our constitution the House of the Nations i.e. the Parliament is the main law making source. Parliament is nothing but a composition of some persons and hence the perfectness of the law depends upon the perfect capability of them. The procedure of consent by raising hand due to article 70 of the Constitution of the People's Republic of Bangladesh may be regarded a bar for making a perfect law. A law made by this way has a scope of being imperfect and hence the remarks of Mr. Justice Nazrul Islam Choudhury on 19th December 2009 and the response of State Minister for Law Quamrul Islam on 20th December 2009 and the followed remarks of some citizens of this country are sufficient to realise the importance of this subject-matter and which are as follows:

At a function on Saturday (19th December 2009), Justice Nazrul Islam Choudhury said, "Parliament should have been the place for rigorous and adequate debate on passage of amendment to any law. Unfortunately, we do not see that and lawmakers do not even read the draft of a law."

State Minister Quamrul yesterday (20th December 2009) said by making the "ugly and indecent" gestures and comments Justice Nazrul crossed the limit of his right as a judge and violated the rights of the lawmakers.

"If any law formulated by parliament contains any mistake, a judge can criticise it in his judgment. But in no way can he make indecent comments about the lawmakers," said Quamrul

"Truth is always bitter Mr. Minister. Thanks Mr Justice Nazrul Islam Chowdhury for his apt comment. Are the judges not citizens of the country who can criticize parliament's proceedings and MPs' characteristics? When Mr, Justice N I Chowdhury was commenting, I

think he did that as a concerned citizen of the country, not as a judge of the Supreme Court"

Zahidul Islam Biswas- "I thank Justice Nazrul Islam for his bold and true statement. What the honourable justice said is a reality. It is my personal feeling from observing reactions of the MPs on television during voting process that they actually do not know what they are passing. They generally pass the desires of the bureaucrats who use lawmakers for their own interest. Until now the real power belongs to the bureaucrats, not to politicians or military. I am surprised to see the reaction of the State Minister for Law who blamed the honourable justice without realizing the real sprit of his statement. It is really unfortunate for the nation that a responsible law maker who himself is a lawyer opposed a truth rather than supporting it." Abu Hena Reza Hasan.

A hot discussion has started on the comments of High Court Judge Nazrul Islam Chowdhury. The sharp reaction of the State Minister for Law on his comments is deplorable. The State Minister used some words which are not appreciable - ugly and indecent gestures. Two things should be considered in this respect. (1) Anybody watching the proceedings of the JS knows that bills and amendments are passed in the legislature without discussion. Many lawmakers remain absent from JS for long. Even the proceedings were adjourned because of lack of quorum. Most of the bills were passed as presented. (2) The State Minister made a judgmental statement. He said that Justice Nazrul crossed the limit of his right as a judge and violated the rights of other lawmakers. Only the judicial system of the country can judge whether person has crossed the limit of his right. Mobaidul Huq

Some lawmakers (MP) do not have enough knowledge to understand law. In our country majority of the educated people do not have enough grammatical and spelling knowledge. It is not their fault. The educational system is our country is not enough to learn good language. Majority student in the College and University are engaged themselves in politics and immoral activities. They waste their valuable time in politics and other immoral activities Therefore, politics in educational institution should be stopped. Politics only start after completion of education same as other countries. Md. Ileas Khan

The state minister and the law maker as well, should consider the merit of the matter, not what is said. The parliament turns into the funny place in the last fifteen years gradually. I fear that, if any indemnity bill is raised by the law ministry abot the extra judicial killing of the Rab, it

will be passed by claps and other means of greetings.The debate must be started about the practices of the parliament and as the opposition is absent the Govt. party leaders should play the role of that. Amit Khan[21]

This is now a question that how we can get the balanced solution. Besides the exercise of perfect parliamentary procedure, it is necessary to establish a national law research institution which shall work for more research in respect of making new law or amending the necessary law. One thing of this type of research institution is necessary that is the neutral formation and the function based on the qualified legal experts

1.6 The purpose of criminal law

Generally the purpose of criminal law is to prevent or deter the crime in the society. But this, of course depends upon the structure of the criminal law i.e. if the structure of a criminal law is perfect, the purpose can be ensured easily. Though some person of our society for the colonial legal structure of our criminal law say that British legal system is not perfect in the present context but this is absolutely wrong idea. Sometimes I question myself that whether they can make or enact a law like The Evidence Act 1872. However, there is no major defect in the structure in the British Legal system except the value frame of the law. I would like to give an example of a structure of a criminal law made by our legal expert concerned. There is a law titled as The Motor vehicles Ordinance 1983 and the section 159 of this Ordinance 1983, deals with the special procedure for of offences.

The lawmakers for the perfect execution of this section have not provided the forms and its particulars in the schedule and for this lacuna, the authorised police officer or the other authority without imposing the fine in the spot (which should be done as per section 159 of the said Ordinance) directs the person to appear before the office of the Superintendent of police or Deputy commissioner in a Metropolitan area. The form used which is known as ‘case slip’ does not contain the scope of writing the amount of fine and the account number to which the person being fined, can deposit the same. Only for this lacuna of this law thousands and thousands cases are being instituted in our country. But in England now there is a system whereby the court gives the offender a "fine card" which is somewhat like a credit card; at any shop that has a paying-in machine he pays the value of the fine to the shop, which then uses the fine card to pass that money on to the court's bank account.[22]

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[21] *Extractedfrom:http://www.thedailystar.net/newDesign/news details.php?nid= 118611 # comments*

[22] *Extracted from: http://en.wikipedia.org/wiki/Fine_(penalty) visited on 06.01.2010*

In the context of Bangladesh, we can easily introduce a form containing the amount of fine and the account number and remove the hassle of thousands of cases. However, I being the Senior Judicial Magistrate in Gaibandha have introduced the same in respect of this matter which can read in chapter 3.8 of this book.

1.7 Enforcement of criminal law

After the structure of a criminal law the enforcement of the same is very important in respect of ensuring the criminal justice. In many jurisdictions the criminal laws or penal code can be traced to a key constitutional date when a new system of government was introduced bringing changes to the role of government in general and to criminal procedures in particular. Reforms in the field of criminal law tend to establish new obligations on citizens in the form of the criminalization of an activity, and new constraints on officials in the form of procedures that should be followed when dealing with those accused of crime. In the United Kingdom there have been key constitutional events but no one defining moment has set the foundations of the modern system of criminal justice.

In contrast to many modern republics the system has evolved over a very long period of time. One key modern participant in the criminal justice system, the Justices of the Peace, can be traced back to the Justices of the Peace Act 1361. Working alongside the Justices of the Peace, usually referred to in the modern era as magistrates, is the Crown Prosecution Service, an agency established as recently as 1985. Despite the gradual evolution of the key constitutional foundations to the criminal justice system—the rule of law, parliamentary democracy, and freedoms of the individual—since the 1980s there has been a new pace of change as matters of crime, justice, law and order have dominated the political headlines and the actions of both government and citizens.[23] But unfortunately, in our country the Magistrates i.e. the Judicial Magistrates' functions are not satisfactory to my mind in respect of ensuring the rule of justice. For example as per the Rule 85(3) of the "Criminal Rules and Orders (Practice and Procedure of Subordinate Courts), 2009" the Chief Judicial Magistrate in a District or the Chief Metropolitan Magistrate in a Metropolitan area have the authority to inspect the police station within their respective jurisdictions but in reality the same is not done by them. The reasons behind according to me are as follows: (ii) the lack of proper knowledge in respect of the

[23] *http://law.jrank.org/pages/660/Comparative-Criminal-Law - Enforcemen t-England-Wales.html visited on 06.01.2010*

function of the police in the police station, (ii) the lack of training, (iii) the absence of the tradition of the inspection of the police station, (iv) the absence of judicial activism and (v) etc.

There is the same scenario in respect of the inspection of Jail. In visiting the Jail, what is possible in order to ensure criminal justice is very much important and I personally visiting the same once in a month at least what has been done was unimaginable before me. For this, a question's answer ought to be given here for better understanding in respect of the Jail visit. The question is whether a Judicial Magistrate can visit the Jail. According to Rule 55 of the Jail Code the Magistrate is one of the ex-officio Visitors of the Jail. Now again a question may arise who is Magistrate?

The answer i.e. the definition of the term Magistrate has been provided in section 3(31) of the General Clauses Act 1897 which provides that "Magistrate" shall include every person exercising all or any of the powers of a Magistrate under the Code of Criminal Procedure for the time being in force. But unfortunately the Magistrates i.e. the Judicial Magistrates are not inclined to perform their duties in respect of the inspection of the respective police station as well as the Jail. Simply a matter can be stated here that is to say, there is punishment register in the Jail where the Jail authority time to time imposes the jurisdictional punishment upon the accused and this can only be checked by the Judicial Magistrate or the Sessions Judge as the other visitors are not concerned for the same. Regarding these, the High Court Division of the Supreme Court of Bangladesh has a supervisory great role which ought to be exercised also frequently.

1.8 **Criminal law and peace**

The criminal law of any country is generally exercised for establishing the peace in the society as well as State because the term 'peace' is a quality describing a society or a relationship that is operating harmoniously. This is commonly understood as the absence of hostility, or the existence of healthy or newly-healed *interpersonal* or *international relationships*, safety in matters of social or economic welfare, the acknowledgment of equality and fairness in political relationships and, in world matters, *peacetime;* a state of being absent of any *war* or conflict.[24] This is why we need to rethink the necessity of the exercise of the criminal law in our country. The way is exercising is correct as there exists the anti-peace state in the State. Without blaming

[24] *http://en.wikipedia.org/wiki/Peace*

the structure of the law in British Regime, we need to exercise after deep study which is absolutely required for establishing the peace.

1.9 Difference between Civil and Criminal administration of justice and the role of people

Though as per the Rule 667 and Appendix II of the "Criminal Rules and Orders (Practice and Procedure of Subordinate Courts), 2009" Judges are not encouraged and authorised to be associated with the people and Judicial Magistrates are included within the definitional orbit of Judge but the function and the nature of the Magistracy or the Magistrates are quite different and distinct according to the procedural origin i.e. the Code of Criminal Procedure, 1898. Sections 9, 22, 44, 45 and 190 of the Code of Criminal Procedure, 1898 and Rule 12 and 637 of the "Criminal Rules and Orders (Practice and Procedure of Subordinate Courts), 2009" deal with the different and distinct nature and function of the Magistrates than that of the Judges for the civil administration of justice in the country. Though the court of sessions is for the administration of criminal justice but the sitting place or the places of the said court of sessions according to section 9(2) of the code of criminal procedure, 1898 is or are determinable by the government but the place or the places of the Magistrates are not determinable by the government. In accordance with the Rule 12 of the 'Criminal Rules and Orders (Practice and Procedure of Subordinate Courts), 2009' and section 190(1)(c) of the Code of Criminal Procedure, 1898 the Magistrates are not limited to hold their sittings in respect of administering the criminal justice. Sections 22, 44 and 45 of the Code of Criminal Procedure, 1898 and Rule 637 of the "Criminal Rules and Orders (Practice and Procedure of Subordinate Courts), 2009" deal with the role of the people in respect of administering the justice with the Magistrates. The government should have steps in respect of these matters in complying with the section 45(3) of the said code and appointing the village headman in every District. According to Rule 637 of the "Criminal Rules and Orders (Practice and Procedure of Subordinate Courts), 2009" Cognisance courts of the Magistrates should keep lists of competent and neutral persons, who are capable of holding such enquiry or investigation within the given time frame. Now the question is how a Magistrate will know lists of competent and neutral persons. For knowing the same it is necessary at least to be associated either directly or indirectly with the people of the society.

The aforesaid Appendix II was formulated and published in 1988, when there was no the present Magistracy and hence, due to the differentiation between civil and criminal administration of justice, the

equality based applicability of the said Appendix II is of course, questionable and contradictory. In fact, the role of the people in administering the criminal justice should be understood from the positioning of the Magistracy but not from that of the Civil Judgeship and by realising the different and distinct position of the Magistracy and creating different and distinct structure the Criminal administration of Justice ought to be administered for the interest of the country. The distinct positioning of the Magistracy can be understood from the etymological and historical positioning of the Magistracy. The word 'Magistrate' is a judicial officer; in ancient Rome, the word *magistratus* denoted one of the highest government officers with judicial and executive powers. Today, in common law systems, a magistrate has limited law enforcement and administration authority. In civil law systems, a magistrate might be a judge in a superior court; the magistrate's court might have jurisdiction over civil cases and criminal cases.[25] According to Online Etymology Dictionary, © 2001 Douglas Harper the tern Magistrate means a "civil officer in charge of administering laws," from O.Fr. magistrat, from L. magistratus "a magistrate," originally "magisterial rank or office," from magistrare "serve as a magistrate," from magister "chief, director" (see master). Magisterial (1632) is from L. magisterialis "of or pertaining to the office of magistrate, director, or teacher," from magisterius "having authority of a magistrate," from magister**.**[26] and in accordance with the Easton's 1897 Bible Dictionary magistrate means a public civil officer invested with authority. The Hebrew shophetim, or judges, were magistrates having authority in the land (Deut. 1:16, 17). In Judg. 18:7 the word "magistrate" (A.V.) is rendered in the Revised Version "possessing authority", i.e., having power to do them harm by invasion. In the time of Ezra (9:2) and Nehemiah (2:16; 4:14; 13:11) the Jewish magistrates were called_seganim_, properly meaning "nobles." In the New Testament the Greek word _archon_, rendered "magistrate" (Luke 12:58; Titus 3:1), means one first in power, and hence a prince, as in Matt. 20:25, 1 Cor. 2:6, 8. This term is used of the Messiah, "Prince of the kings of the earth" (Rev. 1:5). In Acts 16:20, 22, 35, 36, 38, the Greek term _strategos_, rendered "magistrate," properly signifies the leader of an army, a general, one having military authority. The _strategoi_ were the duumviri, the two praetors appointed to preside over the administration of justice in the colonies of the Romans. They were attended by the sergeants (properly lictors or "rod bearers").[27] The

[25] *Extracted: http://en.wikipedia.org/wiki/Magistrate*
[26] *Extracted: http://dictionary.reference.com/browse/magistrate*
[27] *Extracted: http://dictionary.reference.com/browse/magistrate*

origin of the history of the magistrate is that the part played by lay magistrates in the judicial system of England and Wales can be traced back to the year 1195. In that year Richard I commissioned certain knights to preserve the peace in unruly areas. They were responsible to the King for ensuring that the law was upheld; they preserved the 'King's Peace' and were known as Keepers of the Peace. The title Justices of the Peace derives from 1361, in the reign of Edward III.

An Act in 1327 had referred to 'good and lawful' men to be appointed in every county to 'guard the peace'. Justices of the Peace still retain the power to bind over unruly persons to be of good behaviour. The bind over is not a punishment but a preventive measure, intended to ensure that people thought likely to offend will not do so. Before 1835, justices in towns were appointed in accordance with rights granted by charter.

The Municipal Corporations Act 1835 provided for them to be nominated by the Lord Chancellor for the boroughs in consultation with local advisers, while, for the county benches, he continued to confirm the nomination of the Lord Lieutenants, who had their own methods for finding suitable candidates. The appointment of both was vested in the Crown acting on the Lord Chancellor's advice. The exception to the rule was Lancashire, where both county and borough magistrates were nominated by the Chancellor of the Duchy.[28]

For these, it is absolutely necessary to provide the trainings, by the efficient former or present Magistrates or any person having the efficiency and experience but not by the judges who have no experience of Magistracy, among the judges who are and shall be appointed as the Magistrates and have proper steps in this arena of justice and otherwise the there shall be no basic difference between the magistrates and civil judges' function and the people of the society may be deprived of getting the justice.

1.10 **Role of Police and the Judge**

The role of police in accordance with the existing law of this country is not satisfactory and for this many people blames the police. It may be partially true. But the question arises who are the proper authorities to see and protect the dissatisfied function of the police? I think two authorities of the state are responsible for this situation for which we see the repetition of the offence and of no justice. Before going to narrate the way how the aforesaid authorities are responsible, I would like to give a fact which is sufficient me seems for understanding this situation.

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[28] *Extracted: http://www.magistrates.freeuk.com/history.htm*

The fact of hurt of Shahin Sultana Santa i.e. Santa was assaulted in front of television cameras and mercilessly tortured by the police in Dhaka during March 2006. She was pregnant at the time, but lost her child shortly afterwards. In any sane and properly functioning society, such an incident recorded for the whole world to see would lead to swift and severe punishment of the perpetrators, and probably high level inquiries to determine what went wrong and make legal and structural changes to prevent similar atrocities in the future. But the police, judiciary and administration of Bangladesh are neither sane nor properly functioning. What happened when Santa went to lodge a complaint?

The Mohammadpur police refused to record it: not once but repeatedly. Her husband, a lawyer, lodged two cases directly in the court.[29] Here one of the vital fact is the police of Mohammadpur police station did not record the First Information (FI) given by the informant Santa. Think not only the husband of the informant Santa was and is an advocate of the Supreme Court of Bangladesh but also the father of the informant Santa was at that time a former Judge of the Supreme Court of Bangladesh (He is now again a Judge of the said Court). Despite these, how did an officer-in-charge of Mohammadpur police station refuse to lodge the First Information (FI) in B.P Form 27 under regulation 243 and 244 of Police Regulations 1943 as First Information Report (FIR)? The clear answer is the failure of the then two authorities concerned. Now I would like to state how the said authorities were responsible.

One authority is the political authority which was responsible to the extent of not lodging the First Information (FI). Another authority is the judiciary particularly the concerned Magistrate did not take the cognisance of the offence of not lodging the First Information (FI) preferred by the failed informant Santa and largely the Higher Judiciary did not have the supervisory step in respect of not lodging the First Information (FI). Like this, every day how many facts are happening and constituting the offences is quite unknown to me. However, it is my duty to state how the fact of not lodging the First Information (FI) is an offence. Though I have written this matter in my book titled as "Thanai Apnar Odhikar" but for the understanding of this matter here let me narrate the same.

Whether the police are bound in law to lodge the First Information (FI) preferred by any citizen of this state and the fact of not lodging the same is an offence. The answer lies in Regulation 244 of Police

[29] *article 2 August 2006 Vol. 5 No. 4 page 21 published by Asian Legal Resource Centre, Hong Kong*

Regulations 1943 which provides that "@ A first information shall be recorded in respect of every cognizable complaint preferred before the police, whether prima facie, false or true, whether serious or petty, whether relative to an offence punishable under the Indian penal Code or any special or local law..." Now it is absolutely clear that the police are bound to lodge the First Information (FI) preferred by any citizen of this State. For another part, the answer lies in section 29 of the Police Act 1861 which provides that "*every police officer who shall be guilty of any violation of duty or willful breach or neglect of any rule or regulation or lawful order made by competent authority***,** or who shall withdraw from the duties of his office without permission, or without having given previous notice for the period of two months, or who, being absent on leave, shall fail, without reasonable cause, to report himself for duty on the expiration of such leave , or who shall engage without authority in any employment other than his police duty, or who shall be guilty of cowardice, who shall offer any unwarrantable personal violence to any person in his custody, shall be liable, on conviction before a Magistrate, or to imprisonment with or without hard labour, for a period not exceeding three months, or to both."

Here the police are bound to lodge the First Information (FI) preferred by any citizen of the State and any police refuses to lodge the same, he shall be guilty of violation of regulation 244 of Police Regulations 1943 and accordingly he may be convicted by the Magistrate. Now think simply, if the said police officer of Mohammadpur police station was convicted, what would be the scenario. Police officer of Bangladesh would be alert for not committing the same offence. Unfortunately the role of the judiciary in respect of this kind of fact is violently dissatisfactory. In fact, the role of police to some extent is nothing but the outcome of the judicial activism to the extent of ensuring the justice and keeping this notion in judicial mind the judiciary ought to work effectively.

1.11 Dignity of Judges

The dignity of judges has been described in the judgment of Masder Hossain case reported in 52 DLD (AD) Page-98, Para 44 which provides that

"The judicial service is not service in the sense of 'employment'. The judges are not employees. As members of the judiciary, they exercise the sovereign judicial power of the State. They are holders of the public offices in the same way as the members of the council of the ministers and the members of the legislature. When it is said that in a democracy such ours, the executive, the legislature and the judiciary constitute the

three pillars of the State, what is intended to be conveyed is that the three essential functions of the State are entrusted to the three organs of the State and each one of them is turn represents the authority of the State. *However, those who exercise the State power are the Ministers, the legislators and the Judges, and not the members of their staff who implement or assist in implementing their decisions.* The council of Ministers on the political executive is different from the secretarial staff or the administrative executive which carries out the decisions of the political executive. Similarly, the Legislators are different from the legislative staff. So also the Judges from the judicial staff. The parity between the Political executive, the Legislators and the Judges and not between the Judges and the administrative executive. The Judges, at whatever level they may be, represent the State and its authority unlike the administrative executive or the members of the other services. *The members of the other services, therefore, can not be placed on a par with the members of the judiciary, either constitutionally or functionally.* Therefore, while determining the service conditions of the members of the judiciary, a distinction can be made between them and the members of the other services." This is enough to understand the dignity of the Judges and understanding the same, the Judges should function either at the time of doing the judicial function or the other day to day functions.

1.12 Security of the Judges

The dignity of the Judges as aforesaid necessitates the security of them. The term '*security*' is the degree of protection against danger, loss, and criminals. Security has to be compared and contrasted with other related concepts: *Safety, continuity, reliability.* The key difference between security and reliability is that security must take into account the actions of people attempting to cause destruction. From an objective perspective, it is a structure's actual (conceptual and never fully knowable) degree of resistance to harm. That condition derives from the structure's relationship (vulnerability, distance, insulation, protection) to threats in its environment. From a subjective perspective, security is the perception or belief that a valued structure has sufficient objective security. The subjective meaning of security as "freedom from anxiety or fear" resonates in the origins of the word. Latin "Se-Cura," means literally "without care" as in "carefree."[30]

Now it is better to cite the Paragraphs from 57 to 64 of the judgment declared by the Appellate Division of the Supreme Court of Bangladesh in the case of Secretary, Ministry of Finance Vs Masdar Hossain for

[30] *http://en.wikipedia.org/wiki/Security*

understanding the necessity of the Judges. Paragraphs from 57 to 64 of the said judgment are as follows:

Para: 57

The independence of the judiciary, as affirmed and declared by Articles 94(4) and 116A, is one of the basic pillars of the Constitution and cannot be demolished, whittled down, curtailed or diminished in any manner whatsoever, except under the existing provisions of the Constitution. It is true that this independence, as emphasised by the learned Attorney-General, is subject to the provisions of the Constitution, but we find no provision in the Constitution which curtails, diminishes or otherwise abridges this independence. Article 115, Article 133 or Article 136 does not give either the parliament or the president the authority to curtail diminishes the independence of the subordinate judiciary recourse to subordinate legislation or rules. What cannot be done directly cannot be done indirectly.

Para: 58

Reverting back to the case of Walter Valente vs Her Majestry the Queen, (1985) 2 RCS 673, we find that the Supreme Court of Canada listed three essential conditions of judicial independence. To cite from said case," ...Security of tenure because of the importance traditionally attached to it, is the first of the essential conditions of judicial independence for purposes of section 11(d) of the Charter. The essentials of such security are that a judge be removed only for cause, and that cause is subject to independent review and determination by a process at which the judge affected is afforded a full opportunity to be heard. The essence of security of tenure purposes of section 11(d) is a tenure, whether until an age of retirement, for a fixed term, or for a specific adjudicative task, that is secure against interference by the Executive or other appointing authority in a discretionary or arbitrary manner," (P.675).

Para: 59

Such security of tenure is already assured by Article 135 of the Constitution in the case of permanent appointments notwithstanding the fact that the subordinate judiciary holds office during the pleasure of the president under Article 134. So long as the protection under Article 135 remains, the doctrine of pleasure, this was described as an anathema to judicial independence by Mr. Amirul Islam. Cannot impair or impair or destroy the security of tenure of the subordinate judiciary. We are not impressed by the submission of Mr. Amir-ul Islam that the protection of

Article 135 is redundant for the subordinate judiciary, because a part of the protection may be covered by the principle of natural justice, but the provision for a second show cause notice cannot be covered without the protection of Article 135. The fundamental right of equality of opportunity and non-discrimination in respect to employment or office in the service of the Republic Article 29 will not be available to the judicial service if it is taken out of part IX altogether.

Para: 60

The second essential condition of judicial independence is security of salary or other remuneration and, where appropriate, security of pension. Again to quote from the cited Canadian case, ‘‘the essence of such security is that the right to salary and pension should be established by law or rules and not be subject to arbitrary interference by the Executive in a manner affect judicial independence. In the case of pension, the essential distinction is between a right to pension and a pension that depends on the grace or favour of the Executive.” (Ibid. p-676) The Supreme Court of Canada held and we agree with the view that although it may be theoretically preferable that judicial salary should be fixed by the legislature rather than executive Government and should be made a charge on the consolidated fund rather than requiring annual appropriation, neither of these features should be regarded as essential to the financial security that may be reasonably perceived as sufficient for independence under Article 116A. It is desirable that the right to salary and pension of the subordinate judiciary be established by law and there should be no way in which the executive could interfere with that right in a manner to affect the independence of the subordinate court judges.

Para: 61

The third essential condition of judicial independence is institutional independence of the subordinate judiciary, especially from the parliament and the Executive. It must be free to decide on its own matters of administration bearing directly on the exercise of its judicial functions. The Supreme Court Canada held and we respectfully agree with the view that judicial control over such matters as assignment of judges, sittings of Courts and Court list is an essential or minimum requirement for institutional Independence. The judiciary must be free from actual or apparent interference or dependence upon especially the executive arm of Government. It must be free from powerful non-governmental interference like pressure from corporate giants, business or corporate bodies, pressure groups, media, political pressure, etc.

Para: 62

There are two other essential conditions of judicial independence in the special context of Bangladesh the first of which – judicial appointment – has already been touched upon by us. Judicial appointments should normally be permanent. When contract appointment is inevitable it should be subject to appropriate security of tenure free from arbitrary interference by the executive. Recruitment to the judicial service shall be made by a separate judicial services commission with a majority of members from the senior judiciary and with the objective of achieving equality between men and women. Judicial vacancies should be advertised. Recommendations for appointment on merit should come from the commission.

Para: 63

The next essential condition of judicial independence in the special context of Bangladesh is administrative and financial independence. The dependent of the Supreme Court (a Division of which supervises and controls the courts and tribunals subordinate to it) on the executive branch for resources is another factor which impairs its independence including its functions under Article 109.”The judiciary has no power to the purse at best it has to act within the allocation of funds made to it in the annual budget… it the judiciary wants to introduce modern science and technology in the functions of the court system, to expedite the facilities” or appoint more judges to expedite the disposal of cases, it has to depend on funds to be made available by the executive. Thus, the executive can twist the arm of the judiciary if it does not behave to its liking. This absence of financial autonomy has adverse impact on the independence of the judiciary as an institution “(Paper on the Independence of the Judiciary by Chief Justice Anthony Gubbay of Zimbabwe” published in “Parliamentary Supremacy and Judicial Indepen-dence A Commonwealth Ltd, London & Sydney, P 50).

Para: 64

The financial independence of the Supreme Court is inextricably connected with the functioning of the subordinate judiciary as the High Court Division has a controlling role and a supervisory role and the Supreme Court has a consultative role connected with the subordinate judiciary.

Financial independence of the Supreme Court can be secured if the funds allocated to the Supreme Court in the annual budgets are allowed to be disbursed within the limits of the sanctioned budgets by the Chief

Justice without any interference by the Executive i.e. without seeking the approval of the Ministry of Finance or any other Ministry.

The Chief Justice will be competent to make expropriation of the amounts from one head to another, create new posts, abolish old posts or change their nomenclature, to upgrade or downgrade, etc as per requirements, provided the expenditure incurred falls within the limits of the budget allocation. To ensure financial discipline an Accounts Officer of the Accountant General may sit in the Supreme Court premises for Pre-audit and issue of cheques. The executive control over the financial independence of the Supreme Court will thus be eliminated.

1.13: Dignity and role of Legal Practitioners

Though according to the Bangladesh Legal Practitioners and Bar Council Order 1972 the member of a bar is called an advocate but as per article 33(1) of the Constitution of the People's Republic of Bangladesh the same is called as a legal practitioner and dignity of a legal practitioner is to some extent that of a Judge because of the settled fact i.e. the bench and the bar are the integral part of the judiciary. Both of them are like two sides of a single coin. For understanding the dignity of a legal practitioner, let me cite article 136 of constitution of the East Timor which provides that

"1. The State shall, in accordance with the law, guarantee the inviolability of documents related to legal proceedings. No search, seizure, listing or other judicial measures shall be permitted without the presence of the competent magistrate and, whenever possible, of the lawyer concerned.

2. Lawyers have the right to contact their clients personally with guarantees of confidentiality, especially where the clients are under detention or arrest in military or civil prison centres."

The role of the a lawyer has also been described in article 135 (2) of the said constitution which provides that

"3. The primary role of lawyers and defenders is to contribute to the good administration of justice and the safeguard of the rights and legitimate interests of the citizens." In fact, the legal practitioners of this country should rethink as to their dignity and work accordingly.

1.14 The Role of Media and the Judiciary

The role of media and the judiciary is not seen still now in our country like in international arena. The judiciary of our country has not adopted the *Madrid principles* on the relationship between the media and judicial independence.

Before stating the said principles, I would like to say the importance of media in a democratic country in respect of judicial independence i.e. "freedom of media is indeed an integral part of the freedom of expression and essential requisite of a democratic set up... The media is the Fourth limb of a democratic system, the legislature, executive and judiciary being the other three. While legislature prepares the law for the society and the executive takes steps for implementing them, the third stepping-stone is the judiciary, which has to ensure legality of all actions and decisions. The Fourth Estate i.e. the press has to operate within the framework of these statutes and constitutional provision to act in public and national interest. This is indicative of the fact that nobody is above law.[31]

The judiciary or government of our country has not formulated the guidelines in respect of disseminating the information of judicial proceedings particularly relating to the administration of justice by the judges for which the people as well as the judges can get the disseminated information for the ends of justice. For example, having no system of exchanging the judicial views between and among the judges of different districts in our country, pertinent information for judicial proceeding can be disseminated by media for providing common relief for common offence under the common law system. This can be done under the umbrella of JATI and for which let me state the international efforts and the following *Madrid principles;*

International Efforts

In 1994, a group of 39 distinguished legal experts and media representatives, convened by the International Commission of Jurists, its Centre for the Independence of Judges and Lawyers, and the Spanish Committee of UNICEF, met for three days in Madrid, Spain.

The objectives of the meeting were –

1. to examine the relationship between the media and judicial independence,

2 to formulate principles to help the media and the judiciary develop a relationship that serves both freedom of the expression and the judicial independence.

The participants came from Brazil, Sri Lanka, United Kingdom, Sweden, Jordan, Australia, Ghana, France, India, Spain, Germany, Austria, Netherlands, Norway, Poland, Portugal, Switzerland, Senegal,

[31] *G N Ray's Address at University Law College, Vidhi Bhawan, University of Rajasthan on 27th May 2006 at 11.00 a.m. on the inauguration of a two days' Seminar on "Media and the Law" Extracted from: http://presscouncil.nic.in/speech6.htm*

Palestine, Bulgaria, Croatia, and Slovakia. The following are the principles drawn up at the meet.

The Madrid Principles on the Relationship between the Media and Judicial Independence;

Freedom of the media, which is an integral part of freedom of expression, is essential in a democratic society. It is the responsibility of judges to recognise and give effect to freedom of the media by applying a basic presumption in their favour and by permitting only such restrictions on freedom of the media as are authorised by the International Covenant in Civil and Political Rights ("International Covenant") and are specified in precise laws.

The media have an obligation to respect the rights of individuals, protected by the International Covenant, and the independence of the judiciary.

These principles are drafted as minimum standards and may not be used to detract from existing higher standards of protection of the freedom of expression.

The Basic Principle

1. Freedom of expression (including freedom of the media) constitutes one of the essential foundations of every society which claims to be democratic. It is the function and right of the media to gather and convey information to the public and to comment on the administration of justice, including cases before, during and after trial, without violating the presumption of innocence.
2. This principle can only be departed from in the circumstances envisaged in the International Covenant in Civil and Political Rights, as interpreted by the 1984 Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, (UN Document E/CN.4/1984/4).
3. The right to comment on the administration of justice shall not be subject to any special restrictions.

Scope of the Basic Principle

1. The basic principle does not exclude the preservation by law of secrecy during the investigation of crime even where investigation forms part of the judicial process. Secrecy in such circumstances must be regarded as being mainly for the benefit of persons who are suspected or accused and to preserve the presumption of innocence. It shall not restrict the right of any such person to communicate to the

Press information about the investigation of the circumstances being investigated.

2. The basic principle does not exclude the holding in camera of proceedings intended to achieve conciliation or settlement of private cause.
3. The basic principle does not require a right to broadcast live or recorded court proceedings. Where this is permitted, the basic principle shall remain applicable.

Restrictions

1. Any restriction of the basic principle must be strictly prescribed by law. Where any such law confers a discretion or power, that discretion or power must be exercised only by a judge.
2. Where a judge has a power to restrict the basic principle and is contemplating the exercise of that power, the media (as well as any other person affected) shall have the right to be heard for the purpose of objecting to the exercise of that power and, if exercised, a right of appeal.
3. Laws may authorise restrictions of the basic principle to that extent necessary in a democratic society for the protection of the minors and of members of other groups in need of special protection.
4. Laws may restrict the basic principle in relation to criminal proceedings in the interest of the administration of justice to the extent necessary in a democratic society.
   a. for the prevention of serious prejudice to a defendant
   b. for the prevention of serious harm to or improper pressure being placed upon a witness, a member of a jury, or a victim.
5. Where a restriction of the basic principle is sought on the ground of national security, this should not jeopardise the right of the parties, including the rights of the defence. The defence and the media shall have the right, to the greatest extent possible, to know the grounds on which the restriction is sought (subject, if necessary, to a duty of confidentiality if the restriction is imposed) and shall have the right to contest this restriction.
6. In civil proceedings, restrictions of the basic principle may be imposed if authorised by law to the extent necessary in a democratic society to prevent serious harm to the legitimate interest of a private party.

7. No restriction shall be imposed in any arbitrary or discriminatory manner.

8. No restriction shall be imposed except strictly to the minimum extent and for the minimum time necessary to achieve its purpose, and no restriction shall be imposed if a more limited restriction would be likely to achieve that purpose. The burden of proof shall rest on the party requesting the restriction.

Annex I

Strategies of Implementation

1 Judges should receive guidance in dealing with the Press. Judges should be encouraged to assist the press by providing summaries of long or complex judgments of matters of public interest and by other appropriate measures.

2 Judges shall not be forbidden to answer questions from the Press relating to the administration of justice, though reasonable guidelines as to dealing with such questions may be formulated by the judiciary, which may regulate discussion of identifiable proceedings.

3 The balance between independence of the judiciary, freedom of the press and respect of the rights of the individual- particularly of minors and other persons in need of special protection-is difficult to achieve. Consequently, it is indispensable that one or more of the following measures are placed at the disposal of affected persons or groups: legal recourse, Press Council, Ombudsman for the press, with the understanding that such circumstances can be avoided to a large extent by establishing a Code of Ethics for the media which should be elaborated by the profession itself."[32]

1.15 Ignorant judges are calamitous for people

Ignorance is the state in which one lacks knowledge, is unaware of something or chooses to subjectively *ignore* information. This should not be confused with being unintelligent, as one's level of intelligence and level of education or general awareness are not the same? The word "Ignorant" is an adjective describing a person in the state of being unaware**.**[33] This is why, the ignorant judges are calamitious for people

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[32] *G N Ray's Address at University Law College, Vidhi Bhawan, University of Rajasthan on 27th May 2006 at 11.00 a.m. on the inauguration of a two days' Seminar on "Media and the Law" Extracted from: http://presscouncil.nic.in/ speech6.htm*

[33] *http://en.wikipedia.org/wiki/ignorance*

for any society of any country and the authority should have such steps and decisions by which ignorant judges are not seen and the calamity of the people is also removed from the society in respect of any country of the world.

This book, I hope, necessarily will make the understanding of the aforesaid notion. 'Ignorant judges are calamitous for people' is not my conception but a saying of a Greek philosopher.[34] I would not like to say that the aforesaid conception is prevailing in our country to all extents but to some extents which should be removed by the proper authoritative steps because 'there are a small number of competent judges and very few of them take pride in their work. Their integrity and honesty is being questioned. The confidence in the administration of justice that the people have had is in the wane. The output of a judge has severely come down. The members of the bar are no longer well equipped with the law and particularly the relevant laws bearing on the case and precision in their submission is lacking. The honesty and integrity amongst the lawyers is in the lowest level.'[35] I am not intended to hurt any body but to present, to my mind, the legal information so that the judges and others relating to criminal justice delivery system may have the scope of removing the ignorance in part.

[34] *Md. Jamal Uddin Shikdar, Chakurir Bidhanaboli O Prasangik 625 Mamlas, revised edition, September 2007, p. 1*

[35] *Mahmudul Islam of Probir Neagi, The land of civil Procedure, Vol. 1, Preface, Page-II and 12.*

Chapter–2

Constitution and Criminal Law of Bangladesh

2.1 **History of criminal of law of Bangladesh**

In general, the criminal codes and procedures in effect in Bangladesh derive from the period of British rule, as amended by Pakistan and Bangladesh. These basic documents include the Penal Code, first promulgated in 1860 as the Indian Penal Code; the Police Act of 1861; the Evidence Act of 1872; the Code of Criminal Procedure of 1898; the Criminal Law Amendment Act of 1908; and the Official Secrets Act of 1911.

The major classes of crimes are listed in the Penal Code, the country's most important and comprehensive penal statute. Among the listed categories of more serious crimes are activities called "offenses against the state." The Penal Code authorizes the government to prosecute any person or group of persons conspiring or abetting in a conspiracy to overthrow the government by force. An offense of this nature is also defined as "war against the state." Whether or not an offense constitutes a conspiracy is determined by the "intent" of the participant, rather than by the number of the participants involved, so as to distinguish it from a riot or any other form of disturbance not regarded as antinational. Section 121 of the Penal Code makes antinational offenses punishable by death or imprisonment for twenty years.

The incitement of hatred, contempt, or disaffection toward a lawfully constituted authority is also a criminal offense punishable by a maximum sentence of life imprisonment. Among other categories of felonies are offenses against the public tranquillity (meaning unlawful assembly), rioting, and public disturbances; offenses relating to religion; and offenses against property, such as theft, robbery, and dacoity (robbery by a group of five or more persons).

Punishment is divided into five categories: death; banishment, ranging from seven years to life; imprisonment; forfeiture of property; and fines. The imprisonment may be "simple" or "rigorous" (hard labor), ranging from the minimum of twenty-four hours for drunken or disorderly conduct to a maximum of fourteen years at hard labor for more serious offenses. Juvenile offenders may be sentenced to detention

in reform schools for a period of three to seven years. For minor infractions whipping, not exceeding fifteen lashes, may be prescribed as an alternative to detention.

Preventive detention may be ordered under the amended Security of Pakistan Act of 1952 and under Section 107 of the Code of Criminal Procedure when, in the opinion of the authorities, there is a strong likelihood of public disorder. Bangladeshi regimes have made extensive use of this provision. Similarly, Section 144 of the Code of Criminal Procedure, frequently invoked by magistrates for periods up to two months, prohibits assembly of five or more persons, holding of public meetings, and carrying of firearms. In addition, the Disturbed Areas (Special Powers) Ordinance of 1962 empowers a magistrate or an officer in charge of a police contingent to open fire or use force against any persons breaching the peace in the disturbed areas and to arrest and search without a warrant. The assembly of five or more persons and the carrying of firearms may also be prohibited under this ordinance.

Persons charged with espionage are punishable under the Official Secrets Act of 1911, as amended in 1923 and 1968. As revised in May 1968, this statute prescribes death as the maximum penalty for a person convicted of espionage. In 1966, in an effort to prevent information leaks, the central government passed a regulation prohibiting former government officials from working for foreign diplomatic missions. In general, all persons seeking employment with foreign embassies or any foreign government agencies were also required to obtain prior permission from Bangladeshi authorities.

The custody and correction of persons sentenced to imprisonment is regulated under the Penal Code of 1860, the Prisons Act of 1894, and the Prisoners Act of 1900, as amended. The prison system has expanded but in 1988 was basically little changed from the later days of the 2 British Raj.[1] In fact, In November 2007, Bangladesh has successfully separated the Judiciary from the Executive but several black laws still influence the rulers in creating Special Tribunals in using several black laws including the Special Powers Act.[2]

2.2 **Constitutional obligation for criminal justice**

The constitution of the People's Republic of Bangladesh contains many articles in respect of establishing the criminal justice and among them

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[1] *ttp://www.photius.com/countries/bangladesh/national_security/bangladesh_national_security_criminal_justice.html*

[2] *http://en.wikipedia.org/wiki/Law_of_Bangladesh*

article 35 is one by which it expresses the constitutional obligation for criminal justice. For this, according to the other constitutional provisions the Supreme Court of Bangladesh comprising two Divisions and other sub-ordinate criminal courts are administering the justice. Besides, On October 5 1998, the government of Bangladesh, under the leadership of Sheikh Hasina, ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Ratification to any international treaty by a nation-state automatically imposes an international obligation to make domestic legislation that is in conformity with the treaty that the State is party to. Eleven years has now passed since the ratification of CAT into domestic law in Bangladesh. However, Bangladesh has not yet criminalised torture in compliance with the CAT.

Moreover, apart from Bangladesh's international obligation as a party to CAT, the state has a mandatory constitutional obligation to protect the people from torture since the Constitution was adopted by the Parliament after independence. The Constitution of Bangladesh enshrines the citizens' right to be protected from torture as a fundamental right in Article 35 (5).[3]

In order to establish the proper criminal justice, all the officers of the criminal court ought to have the proper conception as neither a lawyer, nor a member of the public can successfully start and prosecute or defend a criminal case, nor a magistrate can properly try and decide the same without thoroughly knowing the provisions of the Code of Criminal Procedure[4] and the said code necessitates the proper study and realisation of other criminal laws particularly Penal Code 1860, the Police Act 1861, Police Regulations 1943, the Evidence Act 1872, the Criminal Rules and Orders (Practice and Procedure of Subordinate Courts), 2009 and the laws declared by the Supreme Court of Bangladesh. If all the criminal courts of Bangladesh do not function properly the constitutional obligation for this shall be theory of constitutional law of Bangladesh only.

2.3 **Feature of criminal law of Bangladesh**

Crime control has an important place among the major concerns of government of every country, and criminal justice is at times thought by almost everyone to be part of a large public enterprise that is carried on to reduce crime- to the vanishing point if possible. Law enforcement

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[3] *http://www.ahrchk.net/statements/mainfile.php/2009statements/2253/function.mysql-pconnect visited on 30.01.2010*

[4] *http://www.banglapedia.org/httpdocs/HT/C_0373.HTM visited on 30.01.2010*

appears to play the most important part in this larger enterprise since it involves apprehending and taking out of circulation people who have shown themselves to be socially dangerous, both those who are already known to be criminals and those who have revealed their criminal tendencies for the first time. Seizing and removing dangerous people makes the social environment that much safer, at least for the time of their removal; and there is then opportunity to change those people who are dangerous so that when they are once again free their presence will not longer constitute a danger. After the police apprehend criminals, those administering the law in courtrooms (and courthouse corridors) try to make sure that only those persons who really have shown themselves to be dangerous by committing a crime are deprived of their liberty.

These officials also distinguish the more dangerous from the less dangerous among those who break the law, and exercise the discretion that they possess under the law to prosecute more readily and charge more heavily those who are more dangerous, and to pass heavier sentences upon those whose absence will benefit the community most.

When a dangerous person is convicted he is sentenced to a custodial institution designed to prevent him from doing further harm, and he is supposed to be subjected there to a regime of correction intended to change him so that he is no longer a criminal danger. In all of this, criminal justice plays only an ancillary role- that of making sure that only the criminally dangerous are deprived of their liberty, and of measuring the deprivation imposed upon such people according to how criminally dangerous they have shown themselves to be.

This picture of removal and correction has one other crime-prevention feature. The enterprise is designed not only to correct those who have committed crimes, but also to correct inclinations to crime before a crime is committed, by holding up as a standing threat to everyone the unpleasant consequences that a criminal may accept.[5] In fact, the main features of criminal of Bangladesh retribution, deterrence, incapacitation, rehabilitation, restitution, admonition, parole, probation, and the prerogative of mercy of the President which are briefly discussed in the following way:

I. **Retribution**: Criminals ought to *suffer* in some way. This is the most widely seen goal. Criminals have taken improper advantage, or inflicted unfair detriment, upon others and consequently, the criminal law will put criminals at some unpleasant disadvantage to "balance the scales." People submit to the law to receive the right

[5] *www.cairn.info/load_pdf.php?ID_ARTICLE=RIDP_741_0469*

not to be murdered and if people contravene these laws, they surrender the rights granted to them by the law. Thus, one who murders may be murdered himself. A related theory includes the idea of "righting the balance."

II. **Deterrence**: *Individual* deterrence is aimed toward the specific offender. The aim is to impose a sufficient penalty to discourage the offender from criminal behavior. *General* deterrence aims at society at large. By imposing a penalty on those who commit offenses, other individuals are discouraged from committing those offenses

III. **Incapacitation**: Designed simply to keep criminals *away* from society so that the public is protected from their misconduct. This is often achieved through prison sentences today. The death penalty or banishment has served the same purpose.

IV. **Rehabilitation**: Aims at transforming an offender into a valuable member of society. Its primary goal is to prevent further offense by convincing the offender that their conduct was wrong.

V**. Restitution**: This is a victim-oriented theory of punishment. The goal is to repair, through state authority, any hurt inflicted on the victim by the offender. For example, one who embezzles will be required to repay the amount improperly acquired. Restitution is commonly combined with other main goals of criminal justice and is closely related to concepts in the civil law.[6]

VI. **Admonition** (or "being admonished") is a punishment under Scots law when an offender has been found guilty but is neither imprisoned nor fined but receives a verbal warning and is afterwards set free; the conviction is still recorded. This can be compared to an absolute discharge where a conviction is not recorded.

It is usually the result of either the strict application of law where no real wrong has been caused or where other circumstances (e.g. time already spent in custody or attending court) makes further punishment unjust in the circumstances specific to the case involved.[7] Section 4 of the Probation of Offenders Ordinance, 1960 deals with admonition in the arena of criminal of Bangladesh

VII. **Parole:** Alexander Maconochie, a Scottish geographer and captain in the British Royal Navy, introduced the modern idea of parole

[6] *http://en.wikipedia.org/wiki/Criminal_law visited on 31.01.2010*
[7] *http://en.wikipedia.org/wiki/Admonition visited on 31.01.2010*

when, in 1840, he was appointed superintendent of the English penal colonies in Norfolk Island, Australia. He developed a plan to prepare them for eventual return to society that involved three grades. The first two consisted of promotions earned through good behavior, labor, and study. The third grade in the system involved conditional liberty outside of prison while obeying rules. A violation would return them to prison and starting all over again through the ranks of the three grade process.[8] In the case of Sheikh Hasina vs. Government of Peoples Republic of Bangladesh the Supreme Court of Bangladesh has declared the following conception in respect of the term 'parole': Held: Parole is a form of supervised conditional liberty from prison granted prior to the expiration of the sentence. Corpus Juris Secundum (volume-67 P53) defines parole as under:-

"A parole is the conditional release of a convict before the expiration of his term, to remain subject, during the reminder thereof, to supervision by the public authority and to return to imprisonment on violation of the parole.

In such view of the matter we are not inclined to construe the release order under section 401(4A) of the code of criminal procedure as parole in the absence of adjudicative facts about nature of the order. Besides, in the instant case the petitioner is not undergoing any sentence. Our code of criminal procedure has not provided for parole. Whether any order of release under section 401(4A) of the code of criminal procedure is in the nature of parole depends upon whether the parolee is a convict undergoing any sentence and whether the release order has been given on any condition of good behaviour and whether such good behaviour is under the supervision of any authority like parole officer or parole Board as in other countries (Bangladesh Supreme Court Digest-2008 page 47).

VIII. **Probation**: Probation is a sentence which may be imposed by a court in lieu of incarceration. A criminal who is "on probation" has been convicted of a crime but has served only part of the sentence in jail, or has not served time at all. In most jurisdictions, probation is a sentencing option for misdemeanors and many felonies (these are commonly called "probationable" offenses), but not for higher-order felonies, such as capital crimes, forcible rape, and many others.

[8] *http://en.wikipedia.org/wiki/Parole visited on 31.01.2010*

An offender on probation is ordered to follow certain conditions set forth by the court, under the supervision of a probation officer He or she is ordinarily required to refrain from subsequent possession of firearms, and may be ordered to remain employed, abide to a curfew live at a directed place, obey the orders of the probation officer, or not leave the jurisdiction[9] and the Probation of Offenders Ordinance 1960 deals with this matter.

2.4 **Lack of uniformity for justice**

The purpose of common law for giving the common remedy from the common fact varies depending on the different consideration. In our judiciary there is no system of exchanging the views between and among the Judges of this country except the way of traditional training conducted by JATI which me seems not sufficient. There is no uniformity in respect of delivering the justice. It is true that there shall be differentiation due to different consideration but at least the proper attempt should be taken in order to deliver the uniformity based justice. This scenario is available even in the same District between and among Judges. I am not talking about the different language and thoughts based Judgments. An example can be given here for stating my view that is, a person being arrested under section 34 of the Police Act 1861 in the existing system may not get the common remedy from all the Court of Magistrates. In reality in an NGR case being No. 388 of 2008 of Gaibandha police station accused Ariful Islam was arrested and produced on 23.08.2008 before a Magistrate who sent him to jail hajat and fixed the next date for production was fixed on 09.09.2008. Here the accused shall be produced after 16 days as per the order if no lawyer seeks his bail. In this case on 08.09.2008 the accused was enlarged on for moving the bail petition by the lawyer after 15 days.

The fact is the punishment under section 34 of the Police Act 1861 provides either a fine of 50 taka or a simple imprisonment of not exceeding 8 (eight) days. It is noted that, this punishment (either 50 taka fine or 8 days imprisonment) shall be imposed only when the allegation shall be proved beyond all reasonable doubt The very general question are (i) who shall return the seven days of the said accused? and (ii) whether the said order dated 23.08.2008 passed by the concerned Magistrate was justified? (iii) What was justifiable order? What step should be taken for avoiding this type of mistake?

The answer of the first question is nobody. The answer for the 2nd question is the said order for sending the accused in jail hajat for more

[9] *http://en.wikipedia.org/wiki/Probation visited on 01.02.2010*

than 8 days was absolutely wrong order in law as the said offence does not provide the punishment of more than 8 (eight) days. For third, the justifiable order to my mind (what I do pass generally in a case like this where even no lawyer moves) is as follows:

"Seen the record of the offence and the arrestee brought before me and heard the Court sub-inspector for the State. After perusal of the record, it appears to this court that the alleged offence for which the person has been arrested and brought before this court is a bailable offence and if the charge of said offence after trial is proved beyond all reasonable doubt, the accused shall be sentenced either to pay a fine of taka 50 or to simple imprisonment for a period of not exceeding 8 days.

In view of the aforementioned reasons, enlarge the accused on bail subject to furnishing an own bond of taka 1000.00 under section 499 of the Code of Criminal Procedure. Next date... is fixed for the police report as well as the appearance of the accused person.The office is directed accordingly."

Like this, there are so many uncommon orders based paradigms within the common law offences which are going on in our judiciary repeatedly and my suggestion and also the answer for the 4th question is to organise the inter District Judges Conference with the presence of at least one Judge of the Supreme Court of Bangladesh and to establish Sub-ordinate Judges Care Centre composed of the retired competent Judges who shall provide the information for justice through different means of communication including e-mail and mobile like the Customer Care Centre of the mobile company under the structure of JATI and etc.

2.5 **Equality and equity for justice**

The equality and equity are two important terms in the arena of law in administering justice. The term 'equality' means 'the condition of being equal, esp. of having the same political, social, and economic rights'[10] and the word 'equity' means fairness; impartiality; justice or anything that is fair or equitable.[11]

Article 14(1) of the 31 *International Covenant on Civil and Political Rights* provides that "*All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded*

[10] *www.yourdictionary.com/equality*
[11] *Ibid*

from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children."[12]

For these reasons, it is necessary to have steps to provide justice among the people without making any discrimination. The bench and the bar have a great role in respect of this matter. The role of the most of members of the bar is not equitable and in thinking this fact, the bench of our country ought to administer its function with the combination of both equality and equity.

2.6 **Geo and Eco-factor for justice**

Generally all the people of our country due to different geo-graphical and economical factors are not in an equal position of having equal opportunity of access to justice. The persons who have better footing in respect of geo-graphical and economical factors in a society can go to the good lawyers and try to get the justice by investing the maximum money but the same is not possible in case of others who are not like them. As for example, I have realised one thing in my short bar and bench experience i.e. a moneyed man generally engages the influential lawyers of the District to move on behalf of him and the other moneyless people without doing so can not hope to get justice. The law enforcing agency may be influenced by them as it is not possible by others and hence the bench of the sub-ordinate courts and the Supreme Court of Bangladesh should do their judicial activism so that the common people can think at least that the court is blind to administer justice.

2.7 **Police system of Bangladesh**

Ancient Period

Bangladesh Police has an ancient history and heritage. The history of Bangladesh Police may be found in the components of the history of the ancient period. The civilization of Bangladesh is older than that of the west. Bramhalipi was found at Mahastangar much earlier than the birth of Jesus Christ. Manushanghita, the hieroglyphics of Emperor Ashoka,

[12] *http://www.claiminghumanrights.org.equality-before-law-defination.html*

and the stories of renowned travelers are the main sources of composing our history. These sources also give clues to compose the fragmented history of Bangladesh Police. In Orthoshastra by Koutilla, nine types of spies are mentioned. During that period policing was confined in the efforts of collecting intelligence in order to curb anti-governmental activities and to maintain law and order in the society. The duties of under cover spies were extended such a way that they used to conduct surveillance over the activities of ministers, civil and military officials. All means of temptations and instigations were used; though Koutilla thought that the king should n't have made the queen an object of character test of his councilors. Information about investigating techniques and investigating authorities may be found in Orthoshastra. The procedures of punishing the accused are also found in this book.

It is mentioned in Horshocharito, written by Huen Shang about thousand years later than the time of Orhoshastra, that crimes of heinous nature were very rare in those days. However, highways and river routes were not very safe in those days. The author himself had been a victim of robbery on several occasions.

Hence it maybe assumed that there was one kind of police under the local autonomous system in the rural and urban areas. Two designations namely- Sthanik and Nagorik were there to conduct trials, to solve disputes of minor nature, to sanction monetary punishments and to impose social regulations and restrictions. In remote rural areas, heads of villages were responsible for maintaining law and order and for collecting information regarding the movements and activities of strangers. In the ancient period there was actually no organized and independent policing system in our country. Some of the activities of police were carried out by few assigned personnel.

Medieval Period

Details of policing activities during the middle age cannot be found as well. However, during the periods of the great sultans, an official holding the position of Muhtasib used to perform the duties of policing. This person happened to be the chief of police and the in charge of public works and the inspector of public ethics simultaneously. In urban areas, Kotwals were responsible for performing police duties. Information regarding police systems during the Mughal period can be found in the book Aain-E-Akbori. The policing system introduced by Shershah Shuri, was further organized during the period of Emperor Akber, the great. The Emperor organized his administrative structure introducing Fouzdari (the principal representative of the Emperor), Mir

Adal and Kazi (the head of judicial department) and Kotwal (the chief police official of larger cities). This system was very effective in maintaining the law and order in cities. The Kotwal police system was implemented in Dhaka City. Many district sadar police stations are still called Kotwali police stations. In Mughal period Kotwal emerged as an institution. According to the historians the Kotwal was minor luminary under the Muhtasib. The wide powers of the latter and the nature of his duties required him to keep his eyes and ears always open. He used spies and the regular police for this purpose. The routine duty of the police was to patrol throughout the day and night to guard vantage points. Leading men were appointed wardens in every quarter of the city; and thus public co-operation was enlisted. The Kotwal maintained a register of inhabitants within his limits, noting down their address and his instructions, so that the particulars of the people without jobs and those living on other people's stupidity or gullibility came to his notice without any delay. It was therefore, easy for him to note the arrival and departure of strangers and keep track of them. He was also a committing magistrate. The force under him was entirely civil in character."

A Fouzdar was appointed to every administrative unit of the government (district). There were some artillery and cavalry forces under the Fouzdar. Thanadars was appointed dividing the parganas into small localities. There was a disciplined police system during the Mughal period though there was no professional police force like that of the British period. In general, it may be opined that there was a remarkable development in the maintenance of law and order and criminal administration during the reign of the Muslim rulers. "To maintain law and order and to suppress criminals in a vast empire with medieval means of communication and transport was a Herculean task. To achieve that goal, the means adopted by the Muslim Rulers were - benevolence, justice, personal supervision of criminal administration, speedy remedy, emphasis on prevention and punishments - drastic enough to cause awe and sustain public confidence." (Quoted in Our Police Heritage, by N.A. Razvi, Lahore 161, page-20).

BritishPeriod

The police system inherited by the jamindars continued during the initial period of the British rule. In 1765 the standards of the barniks turned into the standards of the kings. The British Raj had taken initiative to reform the police administration in order to realize their objectives of increasing revenue collection. There had hardly been any changes in the police system before the event of turning the supervisors into collectors in 1770. As per the Regulation of 15th August of 1772, two types of

courts namely- Civil Court and Criminal Court were established. The Collectors used to supervise the proceedings of Civil Courts. As the President of the Council, Warren Hastings appointed fourteen Fouzdars in Bengal for the first time. Mohammed Reza Khan, who used to reside in Murshidabad, was appointed as Nayeb Suba and Nayeb Nazim in order to conduct the criminal court and to run administration on 15 October 1775.

On 7 December 1792 Lord Cornowalice imposed the Police Regulations in Bangla, Bihar and Urissha collectorate areas. As a result, the era of keeping police forces by the Jamindars came to an end. The entire country was divided into several police areas and one daroga was appointed for each area under the supervision of District Magistrate. Each district was divided into several police areas, each comprising of 400 square miles, and one daroga was in charge of each police area. Darogas could not be removed without the approval of the government. Ten percent commission on the value of recovered stolen property and ten taka for arresting dacoits used to be awarded. This Regulation re-introduced as Regulation XXII of 1793. This police system introduced by Cornowalice was well-known as thanadari system and this system marked the beginning of the hierarchy in the police department. However, Lord Moira remarked about this system as follows "This police system was introduced not so much for the protection of the people or prevention of crime, but was devised exclusively for strengthening the arms of the Magistrate and exercising an efficient control over the police of the interior."

According to Regulation X of 1808, the officers of the rank of the Superintendent of Police were given the responsibility of Dhaka and other cities. This post was abolished in 1829 and the responsibilities of the Superintendent of Police were handed over to the Commissioner of Revenue and Circuit. In 1837 the former post was re-introduced and later in 1854 the same post was again abolished by Dalhoushi. However, in 1861 the post of the Superintendent of Police was re-established through The Police Act, 1861 and it was given enhanced status and authority. Acts and regulations regarding police administration were brought under single umbrella by implementing Regulation XX of 1817 and The Police Manual in Bengal was introduced for the first time. The duties of all officials from the rank of Sub- Inspector to above were stated in 34 sections. In 1838 a committee headed by Mr. Bard was formed. The Bard Committee recommended strengthening chaukidari system and to enhance the pay of Sub-Inspectors and also to provide the latter enough job security.

One of the members of the Committee named Mr. Haliday recommended an overall reform of the police appointing a Superintendent General in the province, 23 Superintendents in the districts, 32 Assistant Superintendents, 888 Sub-Inspectors, 8880 Jamadars and 66600 Barkondazs. This reform, however, could not bring the desired result.

The effort of finding a solution based on the colonial concepts, to enhance law and order situation finds headway all on a sudden. Sir Charles Napier occupied Sindh for East India Company. There was neither any village police nor revenue management system in Sindh. As a result there was a scope of introducing a new administrative system in Sindh. He wanted to establish a police system like the Irish Constabulary and to man it by his own officers. However, it could be mentioned that the philosophy of the Irish Constabulary introduced by Sir Robert Peel, was of different nature. All functions of the Irish Constabulary used to be run as per the directives of the Inspector General. However, unlike the British Chief Constable he did n't have the authority over his own force. The former had different relationships with the appointing authority and with other components of the government. The British Chief Constable was not accountable to any elected person or authority or to the state secretary or to bar council or to any watch committee. Only the judicial department had limited control over him. This is why it is said "... that in operational matters a Chief Constable is answerable to God, his Queen, his conscience, and to no one else." (E. St. Johonston, One Policeman's Story, Page-153).

While differentiating between the two police forces of two countries, John Tobais remarked- "English policemen were, from the earliest days of the Metropolitan Police, thought of their force as separate from the rest of the apparatus of the state, and would have hotly denied any responsibility to the government; an English policeman today will still distinguish between the government and the law, and will declare that he obeys the latter and not the former. To an Irish policeman these distinctions did not exit. His force was part of the apparatus of the state, and he was not really in any different position from any other public servant."

Royal Irish Constabulary used to work as a weapon of the directives of the politicians though it was a part of the administration. With the patronization of the Under Secretary Tomas Durumond, this force became the most powerful police in entire Europe. It is said- "It became under his hands an almost perfect machine, which, like a delicate musical instrument, responded at once from the remotest part of Ireland,

to his touch in Dublin Castle." Historian Charlok Zefris truly stated that a government was required to have an organized force to impose its own law and regulations in a different country. It would not have been possible to establish its rule and maintain law and order without having such a force.

It was inevitable to reform the police after the great revolution of 1857. In August 1860 a police commission was formed after the great revolution with a view to tackling temporary armed units, addressing ever increasing financial liabilities, improving the image of police to the public, curbing and preventing crime and enhancing the quality of investigation. Lord Canning appointed H M Court as the Chairman of this Commission directing the latter to submit recommendations to form a complete and financially viable police force. The report of the Commission had been approved with few changes and was passed as The Police Act 1861 (Act no. V of 1861)

This Act was immediately implemented in Bengal, Bihar and Urrisshah. This Act was implemented phase by phase in other parts of the country except Kolkata, Mumbai, Madras and Sindh. The Police Act, 1861 enabled to form a well-organized and well-structured police force. This Act passed the challenges of time and provided a strong foundation to the policing activities in this country.

The Police Act, 1861 is considered a milestone in the history of police in the subcontinent. Some of the main features of this Act are as follows-

1 *To organize the force into district, circle and police station levels. To appoint an officer of the rank of Superintendent to take responsibility of a district.*

2 The practical activities of the police force lacked independence and originality though it had to accept all responsibilities regarding the criminal administration

3 This force did not have any objective, mission or vision.

4 The force had been divided into armed and unarmed branches.

5 The force had actually been organized for rural areas.

6 This Act enabled the Inspector General to formulate regulations with the approval of the government.

7 Emphasis was given to maintain status-que but nothing was included to enhance professional efficiency.

8 A Special Armed Force was created to tackle emergency situation and to maintain law and order.

9 Provision was kept to appoint European citizens to higher ranks and to appoint local citizens to provincial cadres.

10 Inspectors and Sub-Inspectors were brought under higher sub-ordinate service while Head Constables and Constables were brought under lower sub-ordinate service. Although in each police station one Head Constable had been appointed to maintain files and records and another had been appointed to assist the Sub-Inspector in general administrative works. They were not given the authority to investigate cases by any means.

11 Constables were given the responsibilities of escort, patrol and guard duties.

12 Importance was given on training. According to the recommendation of the Commission, a Police Training College for officers was established. As per the recommendation of the Commission of 1902, a training college had been founded at Mount Abu, India. Provincial cadre DSPs and Indian Police Cadre officers used to be trained in this college. In 1903 two training schools were established in Rajshahi and at Mill Barrack in Dhaka. Bengali cadets and constables had been trained in these two colleges till 1912. Police Academy, Sardah, Rajshahi district was the only higher-level training institution in Bangladesh. The first principal of this institution was Major H. Chamney (1912-1919).

Fresher Commission (1902-1903) elaborately described police-magistracy relationship. The Commission remarked on the failure of The Police Act, 1861 and on the dual control over police, "It will be a sufficient safeguard of the interests which are committed to his (District Magistrate) charge if he is empowered to direct the superintendent to make an inquiry into the conduct of any subordinate police officer...To go further than that will be to weaken the authority of the superintendent and to lessen his sense of responsibility.

There is no necessity for the dual control and the undue interference of the District Magistrate. Besides being unsound in principle, this has led to practical elimination of the Deputy Inspector General and the reduction of his position to that of an inspecting and reporting office, which has greatly impaired his usefulness" (para 115-124).

In 1902 another committee was formed by Lord Carzon. According to the recommendations of this Committee, the colonial police was further organized. The main recommendations were as follows-

1. Appointing a Deputy Inspector General as the administrative head, a department of criminal investigation was formed in each Province. A

special branch was also opened under his control in order to collect intelligence regarding crime and political matters.

2. Each Province was divided in to several ranges for administrative benefits and a Deputy Inspector General was given the charge of each range.
3. A position of Deputy Superintendent of Police to assist the Superintendent was created.
4. In some Provinces independent railway police forces were created and the charges of these ranges were given to officers of the rank of Deputy Inspector General.
5. Each district was divided into several circles. The area of each circle was 150 square miles and a Sub-Inspector was to be in charge of each circle. As a result, a cadre of Sub-Inspectors was created for the first time in the country and this brought the end of darogas, thanadars and kotwals.
6. Salaries and other benefits of all members of the police from the ranks of constables to IGP were enhanced. At the same time, recruitment rules were created and standards of rules were formulated.
7. Departmental and judicial punitive measures were introduced for police officers.
8. Police was organized as force rather than a service organization

Arrangements were made to bring the police department under the control of Inspector General. He was the chief inspector and ultimate controlling authority of the police department. Thus the executive authorities of Divisional Commissioners were curtailed. To assist the Inspector General, the post of Deputy Inspector General had been created. At district level a Superintendent was responsible for the internal financial matters, proper management and efficiency matters of the police force. The Superintendent would work under the control of the IGP.

Sub-ordinate force was created comprising of Inspectors, Head Constables, Sergeants and Constables. Head Constables would command police stations and several police stations were under the control of an Inspector. Village chaukidars were designed to assist the police department at the grass root level.

According to the recommendations of the Committee all officers would be Europeans. It was clearly stated that Divisional Commissioners would not have responsibilities regarding police matters. Any Magistrate below the designation of District Magistrate would not interfere into the affairs of police. However, District Magistrate had been given authority over the district police since he was responsible for the overall affairs of the district including law and order situation.

As a result of India Rule Act of 1919 and 1935, reforms in administrative management of the country became inevitable. In 1937 Blandy Gordon Committee submitted some recommendations and some reforms initiatives were taken though much could not be done due to the World War II.

Pre-LiberationPeriod (1947to1971)

After the emergence of Pakistan in 1947, the Police force of this country was named, at first, as East Bengal Police and later as East Pakistan Police. In East Pakistan, this police force started working as provincial police force. In this period East Pakistan police force experienced various organizational, financial and other problems. Reforms in the organizational structure became essential. In 1953 Shahabuddin Report and in 1956 Hatch Burnwell report recommended enhancement of the organizational structures of Dhaka Police and Narayangonj Police.

These reports also recommended increasing the number of police forces of Dhaka and Narayangonj districts. However, no constructive efforts were taken of the overall development of the police force. In 1960-1961 a Police Commission headed by Justice B.G. Constantine and in 1969 another Police Commission headed by Major General A.O. Mitha had been formed. However, no recommendations submitted by these two committees were implemented.

The then DIG of Dhaka Range became the IGP of British India. The first Bengali IGP was Mr. Zakir Hossain. However, the police force of Pakistan continued the system of British period. Police were compelled to carry out unpopular orders. The act of shooting on the participants of language movement demonstration in 1952 was a perfect example of colonial rule and suppression. The philosophy of police of the British regime had never been complementary to democratic values and political development- "The philosophy which we have inherited from the British rule is a peculiar blend of colonial practices and magnanimous heritage of the British regime. It involves subordination to the rule of law and popular accountability, on the one hand, and passive relations between police and public except in times of emergency, both

personal and public, on the other hand." (Police and Political Development in India, D.H. Bailey) Although Police is considered the main driving force of law, it is never allowed to play the central role of traditional criminal justice procedure.

The basic truth is that police is made to revolve around the principles of imperial power in the sub-continent. There were a lot of changes in police structure but no qualitative changes in the function of police- "Indian police history can be seen as the expansion and contraction of an imperial power-always set upon an impermeable stratum of village institutions. Structure came and went, but there was no qualitative evolution from one imperial high-point to another. In terms of ensuring the security of life and property, the imperial agents of law and order played the more important role. Village policing was essentially a self-regulatory mechanism closely tied to the internal power structure of village society." (Police and Political Development in India, D.H. Bailey) Therefore, this fact has to be considered while explaining the relationship between police and public in Bangladesh. There had not been any changes of this philosophy during the Pakistan Period.[13]

Now the Bangladesh Police is a national organization with headquarters based in Dhaka and a number of branches and units, including a special branch, a criminal investigation department (CID), an armed police battalion, training institutions, and range and metropolitan police (including railway police). The range and metropolitan police are structured into districts, circles, police stations (*thanas*) and outposts. The Inspector General of Police (IGP) is the highest ranking officer.

The IGP is not independent and can be transferred and removed by the Government any time. At the district level, the police superintendents oversee the field operations of the police force and liaise with the deputy commissioner. The Ministry of Home Affairs (MoHA) controls police administration, and appointments and transfers of all police officers above the rank of superintendent. In charge of each *thana* is an inspector who coordinates all kinds of work in the *thana* area. The Bangladesh Police is mainly governed by the Police Act (1861), the Code of Criminal Procedure (1898), the Police Regulation, Bengal (1943), the Armed Police Battalions Ordinance (1979), and relevant Metropolitan Police Acts.[14]

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[13] *Extracted from:http://www.police.gov.bd/index5.php?category=18*

[14] *http://www.adb.org/Documents/Books/Strengthening-Criminal-Justice-system/chap03.pdf visited on 7.2.2010*

2.8 **Necessity of Police Act 1861**

The Police Act 1861 was enacted to re-organise the police and to make it more efficient instrument for the prevention and detection of crime. The said Police Act 1861, as already mentioned, was enacted to provide a uniform structure on a statutory basis, for police forces of different provinces (now states) of British India. This Act continues to be in force in most of sates and union territories, including UT Chandigarh. Some state governments have enacted their own legislations for administration of their police forces. For instance, the Bombay Police Act of 1951 governs police forces of Maharasta and Gujrat. The Kerala Police Act of 1960 governs the police of kerala. Karnataka has enacted the Karnataka Police Act of 1963. In Delhi the Delhi Police Act of 1978 is in force. The State Police Acts enacted after independence have been structured according to the Police Act 186. These new Acts are more retrograde than the Police Act, 1861.[15] The reason behind this, is **"**one of fatal shortcoming of legal reform in developing countries, including Nigeria, is the inability of legal drafters to methodologically and scientifically justify the laws they want to introduce. There are two basic rational processes to law making. The first is technical and the second is political. The technical process begins right from the decision to review existing law or enact a new law.

Once appropriate political authority decides to enact or reform the law, the drafter should begin serious research on the proposed law. The research includes analysis of the social, economic and political problems which makes the law necessary, social science based analysis of the social behaviors that creates the problems which the proposed law would deal with, and a report about the most efficient and ethical ways of dealing with the problems. The pre-drafting research should results in both a concept paper and a legislative plan. A concept paper sets out the purpose of the amendment, the issues to be dealt with in the proposed legislation; the result of research on the overarching social and political issues that affect the proposed law and determine its efficiency; and how the proposed law aligns with other existing institutions and legal regimes. A concept paper is the first serious intellectual work towards the drafting of laws. After the concept paper, then the legislative plan

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[15] *http://books.google.com.bd/books?id=fk9vvromG_YC&pg=PA125&lpg=PA125&dq=the+necessity+of+police+act+1861&source=bl&ots=yOwwiHp20F&sig=KkOvB4NlURuHADjr6prn8PjVZjU&hl=en&ei=FUl4S7DUH8_f4gaep_zGCg&sa=X&oi=book_result&ct=result&resnum=1&ved=0CAYQ6AEwADge#v=onepage&q=&f=false*

based on a legislative policy follows."[16] Like in India, for the said same reasons, in Bangladesh some retro-graded enactments than the Police Act of 1861, have been enacted. The enactments have been started with the journey of Dhaka Metropolitan Ordinance of 1976 and the said ordinance was promulgated on 20 January 1976 to provide for the constitution of a separate police force for Dhaka metropolitan area. The establishment of a separate police for Dhaka had major implications: (a) The Police Act, 1861 was made inapplicable for the Dhaka metropolitan area; (b) Jurisdiction of the district magistrate was barred in certain cases; (c) Superintendence of metropolitan police was vested in the government while the administration of the force was left to the police commissioner. In a similar way separate metropolitan police was established in Chittagong (1978), Khulna (1984) and in Rajshahi (1992).[17] The most vital point is the inapplicability of the Police Act 1861 in the Metropolitan area. The demerits of the said inapplicability can be answered in answering the following questions which are as follows:

1. Whether the Police Act of 1861 is more useful and effective than any other enactments in this behalf?
2. Is there any example to the extent of useful application of the Police Act of 1861?
3. What is the problem of not holding this view in the entire judiciary?
4. Is there any conflicting legal positioning in the arena of administration of justice?
5. What are the recommendations for the purpose of effective and useful application of the same?

Answer of question No. 01

The answer is of course, the Police Act of 1861 is effective and useful. The answer of why lies in section 29 of the said Act of 1861 which provides that

29. "Every police-officer who shall be guilty of any violation of duty or willful breach or neglect of any rule or regulation or lawful order made by competent authority, or who shall withdraw from the duties of his office without permission, or without having given previous notice for the period of two months, or who, being absent on leave,

[16] *http://www.cleen.org/Legal%20Diagnostic%20on%20Police%20Act.pdf visited on 14.02.2010*

[17] *http://www.banglapedia.org/httpdocs/HT/M_0227.HTM visited on 14.02.2010*

> shall fail, without reasonable cause, to report himself for duty on the expiration of such leave, or who shall engage without authority in any employment other than his police-duty, or who shall be guilty of cowardice, or who shall offer any m unwarrantable personal violence to any person in his custody shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay or to imprisonment, with or without hard labour, for a period not exceeding three month, or to both." Here the important part is that "*every police-officer who shall be guilty of any violation of duty or willful breach or neglect of any rule or regulation or lawful order made by competent authority,... shall be liable, on conviction before a Magistrate, to a penalty not exceeding three months' pay or to imprisonment, with or without hard labour, for a period not exceeding three month, or to both."*

This absolutely indicates the authority to impose the punishment for the violation of duty which has been provided in section 23 of the said Act of 1861 or for willful breach or neglect of 'any rule' like any rules of "Criminal Rules and Orders (Practice and Procedure of Subordinate Courts), 2009" or for willful breach or neglect of 'any regulation' like any regulation of Police Regulations Bangladesh (PR)-1943 or for willful breach or neglect of 'any lawful order made by competent authority' like any lawful order made by the court. The court particularly the Judicial Magistrate court having the power of cognisance at the time of administering the criminal justice can exercise the aforesaid lawful authority. But unfortunately the absence of this authoritative exercise section 29 of the said Act of 1861, has grown a wrong conception among the members of the entire judiciary and for this wrong conception, rule 66 of the "Criminal Rules and Orders (Practice and Procedure of Subordinate Courts), 2009" has been provided for the for the violation of duty or willful default of the police officers in respect of obeying the lawful order of the court.

Having the scope of taking cognisance directly for any of the aforementioned matters in section 29 of the Police Act of 1861, the authority has enacted the said unnecessary rule 66 and also indicates the enactment of a provision without serious research. Even at the time of discussing the proposed Police Ordinance 2007, some persons in the country ignored this conception of law without which the present benefit of the judiciary would become more retro-graded. In fact, the police administration can be controlled only for section 29 of the said Act of 1861. This is also necessary to discuss the demerits of the inapplicability

of section 29 of the said Act in a Metropolitan area. In the Dhaka Metropolitan area, in lieu of section 29 of the said Act of 1861, there is no any effective and useful section in the Dhaka Metropolitan Ordinance of 1976 and moreover, by enacting section 99 for the purpose of exercising the authority provided in section 48 of the said ordinance of 1976 has weakened the power of the court to control the police administration for ensuring justice. The drawback of section 99 of the said ordinance of 1976 is the requirement of having a report in writing made by a police-officer. Though the word 'report' has not been defined in the said ordinance but the same indicates something like sanction provided in section 197 of the code of criminal procedure. In a sense the said report is more rigid for taking action in respect of the violation of any duty of the police officer as the report does not exclude the matter of not discharging the official duty. The aforesaid section 99 is absolutely a wrong or vague section in the said ordinance in understanding the following equation i.e. 'any police officer' as mentioned in section 48 of the said ordinance means any police officer including any sub-ordinate and superior officer of Police Department and if the Inspector-General of Police being the superior officer commits a cognisable offence who will be 'a police officer' in respect of giving a report in writing? There is no answer as there is no Superior police officer of the Inspector-General of Police. However, the balanced hope is that, a law has been examined by the Appellate Division of the Supreme Court of Bangladesh that no sanction under section 197 of the code of criminal procedure is required in respect of taking cognisance against any police officer up to the Inspector. The said important and examined law has been reported in 58 DLR (AD) page 13

Answer of question No. 02

There is an example to the extent of useful application of the Police Act of 1861 which can make confidence upon you to exercise the said authority. For building the said confidence, let me state the example which was in fact done by me during the administration of justice as Judicial Magistrate in Gaibandha. That is, I being the judicial Magistrate passed an order for recording a complaint as FIR to a police station and the officer in charge of the said police station recorded the same without following the order totally.

There was an omission of section 326 of penal code to record the complaint as FIR and for this omission or violation of the order of this court what order was passed against the said officer in charge of the police station is as follows:

"DISTRICT: GAIBANDHA

BEFORE THE COURT OF JUDICAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Judicial Magistrate, Gaibandha.
Suo Moto cognisance order No. 01
Criminal Miscellaneous Case No. 01 of 2009
Under section 29 of the Police Act 1861
Date of passing order: 11th January, 2009
Arising out of
General Register Case Number 304 of 2008
Sadullapur Police Station case number 22 dated 26.10.2008
The State ... Prosecution
-Versus-
SI Gmg ... Accused

Order No. 01 dated 11.01.2009

In pursuant to the order dated 15.12.2008 the officer in charge or the inspector of Sadullapur police station was under the responsibility to lodge and send the FIR in complying with the said order on the next working day. But the order dated 15.12.2008 has been violated wilfully. For better understanding I am mentioning the said order below:

"O/C Sadullapur police station, Gaibandha treats this complaint as first information (FI) directly.After lodging according to Regulation 243 of PR-1943 in B.P. Form -27 send the first information report (FIR) to the concerned court on the next working day in getting this order. Maintaining all procedural formalities any special messenger is permitted to ommunicate this to the concerned officer in charge. Next date 22.01.2009"

The complaint along with the order dated 15.12.2008 was received on 18.12.2008 in the police station as it appears from the concerned record of the court. But the sub-inspector of police SI *Gmg* assuming the charge of the police station on 26.12.2008 lodged the FIR in avoiding the charge of section 326 of the penal code which was the main charge of the case.

The aforementioned sub-inspector of Sadullapur police station lodged the FI after the delay of 7 (seven) days and avoiding the main allegation of section of 326 of the penal code. According to section 23 of the Police Act 1861, it was the duty of concerned police officer of Sadullapur police station, Gaibandha to obey and execute the said order promptly. But that duty has not been performed duly and in making the wilful violation of the same the right to protection of law in respect of the complainant cum informant has been infringed absolutely.

It was the fundamental right of the informant to get the protection of law under article 31 of the constitution of the People's Republic of Bangladesh and hence this court lawfully passed the order dated 15.12.2008 in accordance with law.

Seven days delay of lodging the FI after getting the lawful order and avoiding the main charge of section 326 of the penal code is clearly wilful violation and neglect of the lawful order dated 15.12.2008 passed by this court. For this all the accused have had the bail on 05.01.2009 on the ground of bailable sections of offence.

According to Regulation 21(a) of Police Regulations 1943 which is law under article 152 of the constitution of the People's Republic of Bangladesh, this court having jurisdiction and empowered to take cognisance of police cases is under the responsibility for watching the course of police investigations in the manner laid down in chapter XIV of the code of criminal procedure. Here section 154 of chapter XIV of the code of criminal procedure in respect of the information of cognisable cases is very much pertinent for treating complaint as FI directly through the order dated 15.12.2008

In view of the aforementioned reasons particularly for the delay of 7 (seven) days to lodge the FI and the avoidance of the main charge of section 326 of penal code, the recording officer Sub-inspector of police *SI Gmg* assuming the charge of Sadullapur police station has committed the willful violation and neglect of the lawful order dated 15.12.2008 and deprived the informant of having the protection of law and accordingly the cognisance is acceptable.

Before taking the cognizance, it is necessary to see whether *SI Gmg* can get the protection of section 197 of the code of criminal procedure. In respect of this the Appellate Division of Supreme Court of Bangladesh has examined section 197 of the said code clearly in the case of *ASI MD. AYUB ALI SARDAR vs. STATE reported in 58 DLR (AD) (2006) page 13 Para 16-21* and for clear understanding I am mentioning the said examination of section 197 of the code of criminal procedure of the Appellate Division of Supreme Court of Bangladesh i.e.

"16. ...let us examine section 197 of the Code of Criminal Procedure which runs as follows:

'197. 1. When any person who is a Judge within the meaning of section 19 of he Penal Code, or when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of the Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge

of his official duty, no Court shall take cognisance of such offence except with the previous sanction of the Government.

.....

2. The Government... may determine the person by whom, the manner in which, the offence or offences for which, the prosecution of such judge, magistrate or public servant is to be conducted and may specify the court before which the trial is to be held.'

17. On perusal of the aforesaid provision of law, it appears that in case of any judge or magistrate or a public servant, not removable from his office save by order or with the sanction of the Government, being an accused of any offence, while action in the discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction of he Government.

18. In this connection the provision of the Police Officers (Special Provisions) Ordinance 1976 (Ordinance No. LXXXIV of 1976) may be referred to. Section 2, 4 and 5 of the Ordinance run as follows:

'**2. Definitions**-In this Ordinance unless there is anything repugnant in the subject or context,

"Authority" means an authority specified in column 2 of the schedule;

"police-officer" means a police officer of, and below, the rank of Inspector mentioned in column 1 of the schedule.'

'**4. Offences**- Where a police-officer is guilty of-

misconduct,

dereliction of duty;

act of cowardice and moral turpitude;

corruption or having persistent reputation of being corrupt;

subversive activity or association with persosn or organisations engaged in subversive activities;

desertion from service or unauthorised absence from duty without reasonable excuse; or

inefficiency

The authority concerned may impose on such police-officer any of the penalties mentioned in section 5.'

"**5. Penalties**- The following shall be the penalties which may be imposed under this Ordinance, namely,

dismissal from service;

removal from service;

discharge from service;

compulsory retirement; and

reduction to lower rank

19. It, therefore, appears from the aforesaid provisions of law that the accused petitioner No. 1 Ayub Ali Sarder being an Assistant Sub-Inspector of Police and petitioner No. 2 Sagir Ahmed being a constable, their services are removable by the authority as mentioned in the schedule of the Ordinance which is as follows:

Police-officer	**Authority**	**Appellate Authority**
1	2	3
1. Inspector	Inspector-General of Police	Government
2. Sub-Inspector, Assistant Sub-Inspector, Sergeant, Head Constable	Deputy Inspector-General of Police	Inspector-General of Police
3. Naiks, Constables	Superintendent of Police	Deputy Inspector-General of Police

20. In such view of the matter, it clearly shows that in order to remove the two accused petitioners from service sanction of the Government is not required and hence question of application of section 197 of the Code does not arise.

21. The two petitioners, being Assistant Sub-Inspector of Police and constable respectively cannot claim that they are public servants not removable from their office except with the previous sanction of the Government. So section 197 of the Code has got no application."

For the aforementioned examination of section 197 of the code of criminal procedure it is absolutely clear that *SI Gmg* being sub-inspector of police, his service is removable by the authority as mentioned in the schedule of the Ordinance and in such view of the matter, it clearly shows that in order to remove *SI Gmg* from service sanction of the Government is not required hence question of application of section 197 of the code of criminal procedure does not arise and he can not claim that he is a public servant not removable from his office except with the previous sanction of the Government and accordingly cognisance is taken against him under section 29 of the Police Act 1861.

Issue summons along with the copy of the complaint upon accused SI Gmg of Sadullapur Police station, Gaibandha. Next date 29th January,

2009 is fixed for the appearance of the accused *SI Gmg*. Let a copy of this order be forwarded to Deputy Inspector General of Police, Rajshahi Range, Rajshahi, Superintendent of police, Gaibandha immediately.

Name…
Judicial Magistrate
Gaibandha

Memo Number Dated: 11th January 2009

Copy of the order is sent for necessary steps
1. Deputy Inspector General of Police, Rajshahi Range, Rajshahi
2. District Superintendent of police, Gaibandha."

Answer of question No. 03

Having no discussion in the Criminal Rules and Orders 2009 as to section 29 of the police Act 1861, it appears to me that our judiciary is not well awakened in respect of the effectiveness of section 29 of the said Act of 1861. The problem lies in the matter of ignorance. The section 29 of the said Act of 1861 deals with the guilty of any violation of duty or willful breach or neglect of any rule or regulation or lawful order made by competent authority for no enactment is necessary for controlling police.

Rule 66 of the 'Criminal Rules and Orders (Practice and Procedure of Subordinate Courts), 2009' deals with the matter of informing default or gross negligence of the police to its controlling authority for taking necessary disciplinary action. This is regarding disciplinary action and my question what the general action for his default or negligence is? Why the relevant provision of law has not been discussed in the law of 2009? Simple answer to my mind is ignorance. After having a good and effective provision of law i.e. section 29 of the police Act of 1861, there is no necessity of enacting the Rule 66 of the "Criminal Rules and Orders (Practice and Procedure of Subordinate Courts), 2009". This indicates the deviation from control the police i.e. the deviation from ensuring the justice. Only by the proper of exercise of section 29 of the Act of 1861 throughout Bangladesh can change the scenario of the criminal administration of justice. Besides these, we need to re-think as to the separation of Judges for civil and criminal administration of justice to the extent of ensuring the maximum justice by developing professionalism.

Answer of question No. 04

There is a conflicting legal position which is going on in our country without drawing the attention of the Members of Parliament. Bangladesh as per the Eighth Amendment Case Judgment declared by the Supreme Court of Bangladesh within the scheme of the Constitution of Bangladesh is a unitary state based on common law. No law should be passed in our country which affects the Unitarian character of the Legal system of Bangladesh. In a Metropolitan Area the deferent Ordinances are still effective in our country which indicates that we are not concerned as to the conflicting legal position of law. Every Ordinance contains a provision in respect of taking cognisance when the superior police officer gives the permission in writing. But in other parts of the same is not necessary at the time of taking the action against the police officer.

Answer of question No. 05

For the unification of legal position and execution, the aforesaid Ordinances either ought to be repealed or the police Act of 1861 should be equally made applicable.

2.9 Some defects of criminal law of Bangladesh

There are some defects of criminal law of Bangladesh which are arisen mainly due to the laws enacted during Bangladesh period which are discussed here in the following ways:

2.10 Section 7 of the Government and Local Authority Lands and Buildings (Recovery of possession) Ordinance 1970

Schedule II of the code of criminal procedure provides that if the offence against other laws is punishable with imprisonment for less than two years the same shall be bailable offence. Section 7 of the Government and Local Authority Lands and Buildings (Recovery of possession) Ordinance 1970 provides that the offence is punishable with imprisonment for not exceeding two years and accordingly this is as per the said schedule is bailable but unfortunately this offence has been declared in subsection 2 of the said section 7 as non-bailable.

2.11 Exercise of all Metropolitan Ordinances

Exercise of all Metropolitan Ordinances means here the offences relating to the police officers. This point has already been discussed in the answer of the question of whether the Police Act of 1861 is more useful and effective than any other enactments in this behalf.

2.12 Section 14 of the Medical Practice and private Clinics and Laboratories (Regulation) Ordinance 1982

The main defect of Section 14 of the Medical Practice and private Clinics and Laboratories (Regulation) Ordinance 1982 is to prevent the way of taking step against the malpractice of the medical practitioners of this land which is one of the basic necessities enshrined in our constitution.

Section 6 of the said law provides that

"1. every registered medical practitioner carrying on private medical practice and every private clinic and private laboratory shall maintain a register showing the names and addresses of the patients.

2. Every registered medical practitioner carrying on private medical practice and every private clinic and private laboratory shall issue

receipts in printed form for the charges and fees realised from the patients and preserve the counterfoils of such receipts for inspection."

Section 7 of the said law provides that

"Every registered medical practitioner carrying on private medical practice and every private clinic and private laboratory shall display in the chamber, clinic or laboratory, as the case may be, a list of charges and fees that may be demanded by him or it."

These two sections are good in reading and telling to others but the very unfortunate and defects of the same is section 14 of the said law which provides that

"No court shall take cognisance of an offence under this Ordinance except on a complaint in writing made by the Director- General or an officer authorised by him in this behalf."

This kind of law is of course bad law which ought to be repealed. For this lacuna, the doctors i.e. registered medical practitioners are not displaying the list of charges in their chambers and issuing the receipts in printed form and the court of this land are not taking cognisance as the Director- General or an officer authorised by him in this behalf are not making the complaint in writing. This is not fair law and there is no check and balance. 'Law should be here to empower the court to take cognisance without the complaint of the Director- General or an officer authorised by him in this behalf but that of any person.

2.13 **Double fining under Motor Vehicles Ordinance, 1983**

Section 159 of the Motor Vehicles Ordinance of 1983 deals with the matter of imposing the punishment of fine on the spot. Sub-section 1 of section 159 of the said Ordinance of 1983 deals with some sections in respect of which the authorised police officer can impose fine under sub-section 2 of the same. The deviation to the extent of proper use of sub-section 2 of the said section is going on in our country. What thesaid sub-section 2 has stated is to be understood for the first time. That is, the said sub-section provides that

"The authorised police officer or other authority shall impose a fine as provided for in the section, in the charge and if the fine so specified is paid at the specified place on or before the specified date either in cash or by money-order, no further proceedings shall be taken against the offender in respect of that offence."

But in our country the authorised police officer does not impose the fine and the place i.e. the account number to which the offender shall deposit the said imposed fine and the court is not paying attention to this kind of matter. Even without doing this the authorised police officer gives a date to appear before the traffic office which is absolutely illegal. At the time working in Gaibandha as the Judicial Magistrate and Senior Judicial Magistrate I have observed the same thing and passed two orders and the consequence are to be stated here.

The order which I passed is as follows:

"DISTRICT: GAIBANDHA

IN THE COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing order 03.08.2009
Non General Register Case No. 75 of 2009
Arising out of Gaibandha Town Vehicles prosecution No. 117/09 dated 24.05.2009
Under sections 137,149,155,138, and 159 of the Motor Vehicles Ordinance, 1983
State... Prosecution
-Versus-
Md. Jahangir Accused

Order No...03

Dated...03.08.2009

ধার্য্য তারিখে নথি পেশ করা হলো। মামলার আসামীর প্রতি সমন জারির প্রতিবেদন পাওয়া যায় নাই। অত্র মামলার আসামী (১) মোঃ জাহাঙ্গীর বিজ্ঞ কৌশুলীর মাধ্যমে আদালতে হাজির হইয়া দোষ স্বীকার-এর আবেদন করিয়াছেন। Seen the aforementioned note and heard the Learned advocate who thereafter submits another application for bail of the accused.

After perusal of the record it appears that the alleged transgression is-as follows– "...চালকের হেলমেট, DL, IC নাই।" But the case paper bearing Serial No. 2762 Contains the marks in respect of Section 137, 149 and 155 of the Motor Vehicles Ordinance, 1983 In fact, section 138 of the said Ordinance deals with the offence of driving without license which has not been marked by the concerned police officer. It has also been marked the section 149 of the said Act but the offence of that section is not evinced in the fact of the alleged offence. More over, the concerned police officer has given a date of 28.02.2009 for appearing before Traffic office, Gaibandha in the said case paper. He has not mentioned anything else in respect of the appearance of the accused.

In view of the aforementioned reasons, the accused as the offence is bail able, is enlarged on bail subject to furnishing a bond of TK. 3000/= with two conventional sureties.

The concerned police officer Bikorna Kumer Chawdhury, Police Inspector, Traffic officer, Gaibandha is directed to show cause on the next date being present as to why he has marked section 149 and not marked section 138 of the said Ordinance 1983. He is also directed to

show cause being Present physically on the next date as to why without complying with section 159 of the said Ordinance 1983 has given a date to appear before the traffic office of Gaibandha.

The case is ready for trial and hence the same is transferred to the trial file of this Court and the next date 30/08/2009 is fixed for trial and response.

The officer is directed to send a copy of this order to the concerned show -caused police officer and the office is directed accordingly.

Name…
Senior judicial Magistrate
Gaibandha

Thereafter on 13.09.2009 I passed the following order:

"DISTRICT: GAIBANDHA
IN THE COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing order 13.09.2009
Non General Register (NGR) Case No. 75 of 2009
Arising out of Gaibandha Town Vehicles prosecution No. 117/09 dated 24.05.2009
Under sections 137,149,155,138 and 159 of the Motor Vehicles Ordinance, 1983
The State ... Prosecution
-Versus-
Md. Jahangir Accused

Order No...05

অদ্য চার্জ বিবেচনার জন্য আছে। মোট আসামী ০১ জন জামিনে আছেন। জামিনে মুক্ত আসামী হাজিরা দিয়াছেন। আসামী পক্ষে দোষ স্বীকারের প্রার্থনা নথিভূক্ত আছে। Seen the aforementioned note and the physical appearance of the show caused police officer. Heard the oral apology and perused the same in writing also.

After perusal of the record, it appears that though the accused at the time of driving the motorcycle, had no the driving licence with him but he got the same from BRTA Gaibandha and he showed before this Court the original driving licence which was also verified by CSI Md. Kamrul Islam. The necessity of a driving license relates to have a skill by which the licencee can drive vehicle safely.

Infact, in this case, the accused duly got the licence but the same was not with him at the time of driving the motorcycle on that day and hence the accused is discharged from the allegation of section 138 of the motor vehicles ordinance 1983.There is no information in respect of the defect of the said motor cycle for which this court can not make the presumption as to the unsafe condition of the said vehicle and hence the accused is also discharged from the allegation of section 149 of the said ordinance 1983.

The accused had no insurance certificate with him and even he has not shown the same before this court and accordingly there is the necessity of framing the charge of section 155 of the said ordinance 1983.

In addition to this, though the concerned police officer has not inserted section 154 of the said ordinance 1983 but for the voluntary admission of the accused in driving the said vehicle exceeding

permissible weight through carrying three persons, there is also the necessity of framing charge of this section.

However, for the existence of the ingredients of sections 154 and 155, of the said ordinance 1983, the charges are framed against the accused and the framed charges were read over and explained to the accused and who there after admitted his aforementioned guilty orally and in writing.

In view of the aforementioned reasons the accused is convicted and sentenced to pay a fine of TK. 200/- (two hundred) and 500 (five hundred) only for the offence of section 154 and 155 of the said ordinance 1983 respectively within two weeks from this date and in default to under go simple imprisonment for 3 (three) days.

In respect of avoiding the mistake in future which is done by the concerned police officer, Bikorna Kumar chowdhury, police inspector (traffic office) Gaibandha, the present traffic officer of Gaibandha is directed to mention in the case slip the amount of fine and the concerned account number of depositing the money of fine to which any accused being fined can deposit the same.

He is further directed to submit a copy of the from of case slip in complying with aforementioned directions and making the addition of the same within two month from this date to this court. Next date 13.11.2009 is fixed for the same.

Name…
Senior Judicial Magistrate
Gaibandha

Memo Number Date: .....
Copy of the order is sent for necessary steps
1 District Superintendent of police, Gaibandha.
2 Traffic Inspector of Gaibandha District

Name…
Senior Judicial Magistrate
Gaibandha

Thereafter on 15.11.2009 the District Superintendent of Police had submitted the case slip as per the order dated 13.09.2009.A report of this has been published in the" daily Jai Jai din" on 22.12.2009. In fact; this kind of scope of abuse of law would not be happened if the law makers at the time making the said Ordinance made the case slip or form in the schedule of the law. Police after imposing the fine, the court is imposing the same when the said fine is not paid and thus it creates double fining system which ought to be stopped and the authority of imposing fine in the hands of police should be handed over absolutely in the jurisdiction of court only. Another point is also necessary i.e. the authorised police officer or the other authority should check the matters in the vehicle stand and otherwise to check on any where of the road means the violation or hindrance of the fundamental rights of the passengers.

2.14 **Sections 497 and 375 of penal code**

The punishment upon only the male person except the woman is absolutely anti-punishment to our belief and the woman is equally responsible according to the belief of our oriental and religious law. Section 497 provides that the wife shall not be punishable as an abettor. Here there are two points of this section i.e. (i) the term 'abettor' has been defined in section 108 of the said penal code of 1860 and this section 497 has contradicted section 108 of the said code. Even in section 108 of the said code there is no exception of abettor for which section 497 can be justified. (ii) Section 497 has given unilateral act done by the male person. But there is no hard and fast truth that the woman can not act of the offence of section 497 of the said code. If the act of adultery is caused by the woman what would be the legal position has not been directly stated in the said section. If it is proved in a case that the wife has caused the offence of adultery as an actor and the punishment is imposed by a competent Court the law may be clarified by the Supreme Court of Bangladesh. Section 375 of the said code for the definition of rape has the same defect to the extent of unilateral act of offence. It may be correct saying that at the time of enacting this penal code the societal state was like this. But the conception of committing the offence of rape and adultery by the male person only is presumptive and the position of presumption in the Evidence Act is well known to everybody who knows the minimum conception of law. This section has not covered the extra-marital sexual offence like our religious belief. Extra-marital sexual offence should not be legalised in name of consent. However, these should be amended as early as possible.

2.15 Some sections of Nari o Shishu Nirjatan Ain 2000 (amended in 2003)

There are many defects in many sections of Nari o Shishu Nirjatan Ain 2000 (amended in 2003) which are stated below:

Section 5: The terms prostitution, prostitute and brothel of this section 5 of the aforesaid Ain 2000 have not been defined. In spite of this, there is a law regarding this offence where the aforesaid terms are defined and the punishment provided in that law i.e. in the Suppression of Immoral Traffic Act, 1933 is conflicting to the abovementioned law. Nari o Shishu Nirjatan Ain 2000 (amended in 2003) is of course a harsh law in comparing with the Suppression of Immoral Traffic Act, 1933. Recently the High Court Division of the Supreme Court of Bangladesh has declared the following law i.e. "Principle of natural justice speaks that when there are two parallel laws, harsh law should not be applied to an accused as the accused has a right for fair trial which can not be possible under harsh law." [61 DLR (HCD) 738 Para-23] Though the aforesaid law of the High Court Division of the Supreme Court of Bangladesh was declared in comparing with the penal code of 1860 but the same is applicable in the same way in respect of other same laws existing in our country.

However, two defects of at least two sections of the said Nari o Shishu Nirjatan Ain 2000 (amended in 2003) ought to be discussed otherwise my mind will get pain in realising the defects. Sub-sections 8 and 9 of section 18 of of Nari o Shishu Nirjatan Ain 2000 (amended in 2003) are completely the provisions of law having no reasonable drafting sense of proportion in the arena of law. Sub-section 8 of section 18 of the said Ain provides that if it appears before the Tribunal that the police report has been submitted by the investigating officer in order to screen the offenders from legal punishment or without seizing the usable alamot properly for proving the case or in showing the accused as witness or without examining the important witness the said Tribunal in considering any of the said acts of him shall direct the controlling officer of the said investigating officer for taking legal action. But my simple question is that if the direction given by the Tribunal is not complied by the concerned authority what will be the next step has not been provided in the said provision of law. Moreover, having no consequence this kind of provision of law is mere directory.

Sub-section 9 of section of the said Ain contains the same defect.

The most peculiar and unreasonable conception of law has been embodied in section 27 (1ka) of Nari o Shishu Nirjatan Ain 2000

(amended in 2003) i.e. in this section it has been provided that the Tribunal after getting the complaint along with an affidavit of failure to record the allegation to the concerned police officer or the empowered person and examining the complainant being satisfied shall direct any Magistrate for inquiry or any other person in order to have an inquiry report within seven days. Here the term 'empowered person' has not been defined clearly and even till today after the enactment of this Ain the said term along with other terms has not been clarified by making Rules under section 33 of the said Ain. As per section 27(1ka) of Nari o Shishu Nirjatan Ain 2000 (amended in 2003) every complaint contains an offence committed by the concerned police officer in refusing to record the lodged information to him in respect of the allegation for which the complaint is brought before the Tribunal along with an affidavit of failure to record the allegation. The question is whether the fact of not recording an allegation by a police officer is an offence? The simple answer of this question lies in Regulation 244(a) of Police Regulation 1943 which provides that

"A first information shall be recorded in respect of every cognizable complaint preferred before the police, whether prima facie, false or true, whether serious or petty, whether relative to an offence punishable under the Indian penal Code or any special or local law. This does not apply to cases under section 34 of the police Act, 1861, or to offence against Municipal, Railway and Telegram bye – laws for which see regulation 254."

That is, the concerned police officer is under the responsibility to record every cognisable complaint preferred before him whether prima-facie false or true and non recording the same is the violation of this Regulation. For the violation of this Regulation the concerned police officer committing an offence is to be punished under section 29 of the Police Act of 1861. How a law can legalise the fact of non recording of a complaint preferred before police officer as a general fact which is absolutely an offence under the said section 29 of the Police Act of 1861.

2.16 Section 247 of CrPC

The section 247 of the Code of Criminal Procedure is a defective section as under the same the complainant of a case can not get the opportunity of establishing his rights when he does not appear before the Court concerned. Though a development has been done in enacting a Rule i.e. as per Rule 638 of CrRO-2009 if arrest warrant is issued there shall be no application of section 247 of the code of criminal procedure. But if arrest warrant is not issued the condition is vulnerable i.e. section 247 of

the said code is applied randomly. What is the demerit of the application of the said section is to be discussed here. The first demerit is to weaken the Court i.e. if you be a busy businessman or professional for your work and it is difficult for you to go the Court on every date fixed by the same and if you somehow can not attend the Court one or two days your complaint case shall be disposed of under the aforesaid section as per the common trait of our sub-ordinate judiciary and the accused will be acquitted. On the other hand, you will think as the way out of not attending the Court regularly before trial. The easy way is to lodge the case (information) with the police station because if you lodge your case with the said station you will not be required to attend the Court before trial. For this, the people generally prefer to institute the case through the police station and they also think that the Court is weakened to provide the opportunity. Another demerit is to encourage the people to lodge the case with the police station by any means including bribe and hence the aforesaid section either should be repealed or amended for which the equality can be maintained. Before doing the same, the presiding officer of the Court in issuing arrest warrant at least against one accused can make the equality. Of course there must have the ground to proceed with the complaint.

2.17 Some wrong terms (High Court, Police Super, Jail Super, Police court, First Information Report (FIR), Acceptance of Charge Sheet.

i. High Court

Most of the people particularly the journalists of our country use the term ‘High Court’ which is absolutely wrong. According to our present constitution there is no existence of any High Court in our country. The correct term is ‘High Court Division’ of the Supreme Court of Bangladesh [article 94 of the Constitution of the People’s Republic of Bangladesh]

ii. Police Super

No law of Bangladesh provides the term ‘police super’ but the term is widely used in our country. The concerned law i.e. the Police Act of 1861 provides the correct term the ‘District Superintendent of Police’ [sections 1 and 30A of the police Act 1861and section 86 of CrPC 1898]

The very unfortunate use of the wrong term of police super is also seen in the orders or anything like these passed or published from the Ministry in the name of the President or from the office of the Supreme Court of Bangladesh. As for example, on 12th January 2009 Ministry of Home Affairs of the Government published a circular and did the said

mistake and on 26th May 2010 the office of the Supreme Court of Bangladesh did the same mistake.

iii. **Jail Super**

No law of Bangladesh provides the term 'jail super' but the term is widely used in our country like the term police super.

iv. **Police Court**

There is another wrong term 'police court' is using by the police administration, legal practitioners of the sub-ordinate courts of Bangladesh and even by the staff of the presiding officers of said court. When I joined in Gaibandha as Judicial Magistrate and at the time presiding the court I heard the term from the lawyers and I asked them what is the source of the term 'police court'. They could not give the answer sans the tradition and thereafter I told them to read PR-1943 and clarified the matter that according to our constitution there are mainly two types of courts i.e. (i) The Supreme Court of Bangladesh and (ii) Subordinate Courts. Chapter VII of PR -1943 deals with the term 'court police' i.e. the police officers who are appointed as prosecution staff, General Register Officer (GRO) and Court Inspector (CI) or Court sub-inspector (CSI). In Gaibandha police administration there is a card in the name of GAIBANDHA ZILA POLICE in which the wrong term 'police court' has been written and my recommendation is not to use this kind wrong term which indicates another court.

v. **First Information Report**

The common sentence in respect of the First Information Report (FIR) is that "...one Md. Mojiruddin as informant lodged a first information report with Haripur police station... [53 DLR (HCD) 226 para-2]" My contention is only to think whether the tradition of writing the term "one informant... lodged a first information report with..." is correct. According to Oxford dictionary the term 'lodge with' means to make a formal statement about something to a public organisation or authority. Section 154 of the code of criminal procedure provides that

"Everyinformation relating to the commission of a cognisable offence if given orally to an officer in charge of a police station shall be reduced to writing by him or under his discretion..." Again regulation 243 of PR-1943 provides that

"a. The first information of cognizable crime mentioned in section 154, Code of Criminal procedure shall be drawn up by the Officer- in-charge of the police – in B. P. From No. 27 in accordance with the instruction printed with it.

b. The first information report shall be written by the officer taking the information in his own hand writing and shall be signed and sealed by him.

c. The information of the commission of a cognizable crime that shall first reach the police, whether oral or written, shall be treated as the first information. It may by a person acquainted with the facts directly or on hearsay, but in either case it constitutes the first information required by law, upon which the enquiry under section 157, Code of Criminal procedure, shall be taken up. When here say information of a crime is given, the station officer shall not wait to record, as the first information, the statement, of the actual complainant or an eye – witness."

From the aforementioned reasons it is absolutely clear to my mind that an informant what ever the information is given or lodged to the concerned officer of the police station is the First Information (FI) only. After writing the said information duly in BP Form No. 27 is called First Information Report (FIR).

vi. **Whether acceptance of charge sheet is correct.**

Generally the concerned Magistrates and Judges of our subordinate judiciary accept the charge sheet (police report). The same thing is continued even in some cases in the judgment passed by the apex court. As for example 53 DLR (HCD) 534 para-2 contains that "The learned Magistrate also considered that the case was a completed one and further investigation was necessary. On such a finding, he did not accept the charge sheet." Another matter is known to us generally that after the acceptance of the charge sheet the process is issued. My contention is only to think whether the tradition of writing the term 'acceptance of charge sheet' is correct. Section 190(1) of the Code of Criminal Procedure provides that

"Cognisance of offences by Magistrates: Except as hereinafter provided, any Chief Metropolitan Magistrate, Metropolitan Magistrate, Chief Judicial Magistrate, Magistrate of the first class, and any other Magistrate specially empowered in this behalf under sub-section 2 or 3 may take cognisance of any offence

1 upon receiving a complaint of facts which constitute such offence;

2 upon a report in writing of such facts made by any police officer;

3 upon information received from any person other a police officer, upon his own knowledge or suspicion that such offence has been committed." Here this section has provided the authority to take

cognisance of any offence only but not accept the police report or charge sheet. The conception of accepting the charge sheet is a wrong conception as the law does not provide the authority of doing the same. For this wrong conception, in 1982 sub-section (2B) of section 190 of the code of criminal procedure has been added by Ordinance XXIV of 1982, S. 12(b) and accordingly the said sub-section has made a partial wrong which provides that "Where the police submits the final report, the Magistrate shall be competent to accept such report and discharge the accused." Regulation 276(a) of PR-1943 provides that "on receipt of the final report, the Magistrate may accept the police finding and declare the case accordingly or may, under section 173(3B) of Code of Criminal procedure, order further investigation on specified points or may take cognizance under section 190 (b) of that Code, and if the persons accused have not already been arrested issue process against them under section 204 of the Code and require the investigating officer to furnish the names and address of the witnesses." Here the correct conception is to accept 'the police finding' of the final report and as per regulation 275(c) of PR-1943 the accused, if arrested shall be released from custody and if on bail, shall be discharged from the bond and for this the Supreme Court of Bangladesh has correctly declared the following law in the case of ABDUR RAHMAN vs. STATE reported in 29 DLR (SC) 256 para-10

"The order of discharge passed by the Magistrate in the instant case merely amounted to discharge of the accused from custody and not from the case..." Even sections 68 and 133 of the original code of criminal procedure of 1861 dealt with the cognisance of offence but not the acceptance of the police report.

Chapter– 3

Necessity of Criminal Law

3.1 Offence defined

Offence according to WHARTON'S LAW LEXICON fourteenth edition, page 711 means "crime, act of wickedness. It is used as a *genus*, comprehending every crime and misdemeanour, or a *species,* signifying a crime not indictable but punishable summarily, or by the forfeiture of a penalty" As per BLACK'S LAW DICTIONARY seventh edition page 1108 'offence' means "a violation of the law; a crime." In accordance with section 3(37) of the General Clauses Act of 1897 "offence" shall mean any act or omission made punishable by any law for the time being in force" and section 4(o) of the code of criminal procedure provides that "offence means any act or omission made punishable by any law for the time being in force: it also includes any act in respect of which a complaint may be made under section 20 of the Cattle tress pass Act 1871." Besides these, section 40 of Penal Code of 1860 has given the similar definition of the term 'offence.'

Whether every violation of law is offence:

Though as per the definition aforementioned of the term 'offence' it seems generally to say that every violation of law is an offence but exceptionally the same is not an offence. Our Penal Code has provided the same things or acts which are not offences in General Exceptions Chapter (section 76 to 106 of penal code)

Whether the violation of the constitution of the People's Republic of Bangladesh is an offence:

There is no specefic law in force in our country for which we can say specifically that violation of the constitution itself is an offence. But this is a matter of question, if any violation of the constitution creates criminal liability what will be consequence? For the definition of offence according to section 3(37) of the General Clauses Act of 1897, if the violation is punishable under any law (particularly under penal code) for the time being in force the concerned person shall be prosecuted. Section 166 of penal code to my mind is that kind of section. Though article 7A of our constitution now a day provides the offence of abrogation, suspension, etc. of the constitution but it has not claried whether violation of the constitution is offence as the insertion of this article is to prevent the army in fact from taking state power.

3.2 Necessity of punishment

Punishment in its very conception is now acknowledged to be an inherently retributive practice, whatever may be the further role of

retribution as a (or the) justification or goal of punishment.[1] *Punishment* is the practice of imposing something negative or unpleasant on a person or animal or property, usually in response to disobedience, defiance, or behavior deemed morally wrong by individual, governmental, or religious principles[2] The necessity of punishment is nothing but the state demand as "It is the responsibility of the state to protect the citizenry from the depredations of individuals who have demonstrated an unwillingness to respect others and to obey the law. Such individuals are criminals and must be separated from the community to prevent undue harm to the innocent and the law-abiding.[3]

Possible reasons for punishments

There are many possible reasons that might be given to justify or explain why someone ought to be punished; here follows a broad outline of typical, possibly contradictory, justifications.

Rehabilitation

Some punishment includes work to reform and *rehabilitate* the wrongdoer so that they will not commit the offense again. This is distinguished from deterrence, in that the goal here is to change the offender's attitude to what they have done, and make them come to see that their behavior was wrong.

Incapacitation/societal protection

Incapacitation is a justification of punishment that refers to when the offender's ability to commit further offenses is removed. This is a forward-looking justification of punishment that views the future reductions in re-offending as sufficient justification for the punishment. This can occur in one of two ways; the offender's ability to commit crime can be physically removed, or the offender can be geographically removed.

The offender's ability to commit crime can be physically removed in several ways. This can include cutting the hands off a thief, as well as other crude punishments. The castration of offenders is another punishment that can be justified by incapacitation, furthered by recent media coverage in Britain of the proposed chemical castration of sexual offenders. Incapacitation, in this sense, can include any number of punishments including taking away the driving license of a dangerous driver but can also include capital punishment.

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[1] *http://plato.stanford.edu/entries/punishment/ (visited on 01.07.2010)*
[2] *http://en.wikipedia.org/wiki/punishment (visited on 01.07.2010)*
[3] *http://www.compleatheretic.com/pubs/essays/execute.html (visited on 01.07.2010)*

Despite this, incapacitation is predominately thought of as incarceration. Imprisonment has the effect of confining prisoners, physically preventing them from committing crimes against those outside, i.e. protecting the community. Before the widespread use of imprisonment, banishment was used as a form of incapacitation. Nowadays courts have a flexible array of sentence options available to them that can restrict offender's movements, and subsequently their ability to commit crime. Football hooligans can, for example, be required to attend centres during football matches.

Selective incapacitation is a modified form of incapacitation that rationalises the practice of giving only dangerous and persistent offenders long, and in some case indefinite, prison sentences. The approach adopts a utilitarian viewpoint that regards the protection, and subsequent happiness, of the majority as justification of giving excessive and indefinite prison sentences. There is, however, strong moral opposition to this concept.

Deterrence/prevention

To act as a measure of prevention to those who are contemplating criminal activity. This deterrence is intended to prevent a re-offence by the offender by imposing a punishment that he/she wouldn't want to experience again. The aim is also to deter others in the community from committing the same or a similar offence by making an example of the offender. If this is the chief reason for punishment, the sentence may appear over-harsh when assessed against some of the other reasons.

Restoration

For minor offences, punishment may take the form of the offender "righting the wrong"; for example, a vandal might be made to clean up the mess he/she has made. In more serious cases, punishment in the form of fines and compensation payments may also be considered a sort of "restoration".Some libertarians argue that full restoration or restitution on an individualistic basis is all that is ever just, and that this is compatible with both retributivism and a utilitarian degree of deterrence.

Retribution

Retribution is the practice of "getting even" with a wrongdoer— the suffering of the wrongdoer is seen as good in itself, even if it has no other benefits. One reason for modern centrally-organized societies to include this judicial element is to diminish the perceived need for "street justice", blood feud and vigilantism. However, some argue that this is a "zero-sum game", that such acts of street justice and blood revenge are

not removed from society, but responsibility for carrying them out is merely transferred to the state.

Retribution sets an important standard on punishment— the transgressor must get what he deserves, but no more. Therefore, a thief put to death is not retribution; a murderer put to death is. Adam Smith, who is credited as the father of Capitalism, wrote extensively about punishment. In his view, an important reason for punishment is not only deterrence, but also satisfying the resentment of the victim. Moreover, in the case of the death penalty, the retribution goes to the dead victim, not his family. (So, to extend Smith's views, a murderer can be spared the death penalty only by the victim's express wish, made when he was alive.) One great difficulty of this approach is that of judging exactly what it is that the transgressor "deserves". For instance, it may be retribution to put a thief to death if he steals a family's only means of livelihood; conversely, mitigating circumstances may lead to the conclusion that the execution of a murderer is not retribution.

A specific way to elaborate this concept in the very punishment is the *mirror punishment* (the more literal applications of "an eye for an eye"), a penal form of 'poetic justice' which reflects the nature or means of the crime in the means of (mainly corporal) punishment

Education

From German Criminal Law, Punishment can be explained by positive prevention theory to use criminal justice system to teach people what are the social norms for what is correct and acts as reinforcement. It teaches people to obey the law and eliminates the free-rider principle of people not obeying the law getting away with it.

Denunciation/Condemnation

Punishment can serve as a means for society to publicly express condemnation of a crime. This serves the dual function of curbing public anger away from vigilante justice, while concurrently stigmatizing the condemned in an effort to deter future criminal activity. This is also known as the "Expressive Theory. Punishment, viewed in this way, helps to give society a sense of moral uprightness, tending to confirm its moral right to have a justice system that exacts punishment on those who do not confirm to society's norms. Such a purpose can be readily accused of being hypocritical.[4]

[4] *http://en.wikipedia.org/wiki/Punishment (visited on 01.07.2010)*

According to our Penal Code punishments are of six kinds which as per section 53 of the code said are;

Firstly : Death

Secondly : Imprisonment for life

Thirdly : Omitted by Act of 1950

Fourthly : Imprisonment, which is of two descriptions, namely

1. Rigorous, that is with hard labour; and 2. Simple

Fifthly : Forfeiture of property

Sixthly : Fine

3.3 Theory of punishment

The prevailing features in the modern theory of punishment were developed by analytic philosophers half a century ago. The theory in the Anglo-American philosophical world was and still is governed by a small handful of basic conceptual distinctions, self-consciously deployed by virtually all theorists no matter what substantive views they also hold about punishment. The terminus a quo of these ideas is the influential writings of H.L.A. Hart (1959) in England and John Rawls (1955) in the United States. Though both Hart and Rawls pass muster as centrist liberals, they believed these analytic distinctions to be ideologically neutral.

1. *Defining* the concept of punishment must be kept distinct from *justifying* punishment. A definition of punishment is, or ought to be, value-neutral, at least to the extent of not incorporating any norms or principles that surreptitiously tend to justify whatever falls under the definition itself. To put this way, punishment is not supposed to be justified, or even partly justified, by packing its definition in a manner that virtually guarantees that whatever counts as punishment is automatically justified. (Conversely, its definition ought not to preclude its justification.)

2. Justifying the *practice* or institution of punishment must be kept distinct from justifying any given *act* of punishment. For one thing, it is possible to have a practice of punishment— an authorized and legitimate threat system— ready and waiting without having any occasion to inflict its threatened punishment on anyone (because, for example, there are no crimes or no convicted and sentenced criminals). For another, allowance must be made for the possibility that the practice of punishment might be justified even though a given act of punishment— an application of the practice— is not.

3. Justification of any act of punishment is to be done by reference to the *norms* (rules, standards, principles) defining the institutional practice— such as the classic norms of Roman law, *nulla poena sine leges* and *nulla poena sine crimen* (no punishments outside the law, no punishments except for a crime). Justification of the practice itself, however, necessarily has reference to very different considerations— social purposes, values, or goals of the community in which the practice is rooted. The values and considerations appropriate to justifying acts are often assimilated to those that define judicial responsibility, whereas the values that bear on justifying the punitive institution are akin to those that govern statutory enactments by a legislature.

4. The practice of punishment must be justified by reference either to forward-looking or to backward-looking considerations. If the former prevail, then the theory is *consequentialist* and probably some version of utilitarianism, according to which the point of the practice of punishment is to increase overall net social welfare by reducing (ideally, preventing) crime. If the latter prevail, the theory is *deontological*; on this approach, punishment is seen either as a good in itself or as a practice required by justice, thus making a direct claim on our allegiance. A deontological justification of punishment is likely to be a retributive justification. Or, as a third alternative, the justification of the practice may be found in some hybrid combination of these two independent alternatives. Recent attempts to avoid this duality in favor of a completely different approach have yet to meet with much success (Goldman 1982, Hoekema 1986, Hampton 1984, Ten 1987, von Hirsch 1993).

Acknowledgment of these distinctions seems to be essential to anything that might be regarded as a tolerably adequate theory of punishment.

Two substantive conclusions have been reached by most philosophers based in part on these considerations. First, although it is possible to criticize the legitimacy or appropriateness of various individual punitive acts— many are no doubt excessive, brutal, and undeserved— the practice of punishment itself is clearly justified, and in particular justified by the norms of a liberal constitutional democracy. Second, this justification requires some accommodation to consequentialist as well as to deontological considera-tions. A strait-laced purely retributive theory of punishment is as unsatisfactory as a purely consequentialist theory with its counter-intuitive conclusions (especially as regards punishing

the innocent). The practice of punishment, to put the point another way, rests on a plurality of values, not on some one value to the exclusion of all others.

So much by way of review of the recent past as a stage setting for what follows— a sketch of what I take to be the best general approach to the problem of defining and justifying punishment.

Justifications of Punishment As a first step we need a definition of punishment in light of the considerations mentioned above. Can a definition be proposed that meets the test of neutrality (that is, does not prejudge any policy question)? Consider this: Punishment under law (punishment of children in the home, of students in schools, etc., being marginal rather than paradigmatic) is *the authorized imposition of deprivations— of freedom or privacy or other goods to which the person otherwise has a right, or the imposition of special burdens— because the person has been found guilty of some criminal violation, typically (though not invariably) involving harm to the innocent.* (The classical formulation, conspicuous in Hobbes, for example, defines punishment by reference to imposing pain rather than to deprivations.) This definition, although imperfect because of its brevity, does allow us to bring out several essential points. First, punishment is an authorized act, not an incidental or accidental harm. It is an act of the political authority having jurisdiction in the community where the harmful wrong occurred.

Second, punishment is constituted by imposing some burden or by some form of deprivation or by withholding some benefit. Specifying the deprivation as a deprivation of *rights* (which rights is controversial but that controversy does not affect the main point) is a helpful reminder that a crime is (among other things) a violation of the victim's rights, and the harm thus done is akin to the kind of harm a punishment does. Deprivation has no covert or subjective reference; punishment is an objectively judged loss or burden imposed on a convicted offender.

Third, punishment is a human institution, not a natural event outside human purposes, intentions, and acts. Its practice requires persons to be cast in various socially defined roles according to public rules. Harms of various sorts may befall a wrong-doer, but they do not count as punishment except in an extended sense unless they are inflicted by personal agency.

Fourth, punishment is imposed on persons who are believed to have acted wrongly (the basis and adequacy of such belief in any given case may be open to dispute). Being *found* guilty by persons authorized to make such a finding, and based on their belief in the person's guilt, is a necessary condition of justified punishment. Actually *being* guilty is not.

(For this reason it is possible to punish the innocent and undeserving without being unjust.)

Fifth, no single explicit purpose or aim is built by definition into the practice of punishment. The practice, as Nietzsche was the first to notice, is consistent with several functions or purposes (it is not consistent with having no purposes or functions whatever).

Sixth, not all socially authorized deprivations count as punishments; the only deprivations inflicted on a person that count are those imposed in consequence of a finding of criminal guilt (rather than guilt only of a tort or a contract violation, or being subject to a licensing charge or to a tax). What marks out nonpunitive deprivations from the punitive ones is that they do not express social condemnation (Feinberg 1965, Bedau 2001). This expression is internal, not external, to the practice of punishment.

Finally, although the practice of punishment under law may be the very perfection of punishment in human experience, most of us learn about punishment well before any encounters with the law. Thus, "authorized deprivation" must not be so narrowly interpreted as to rule out parental or other forms of "punishment" familiar to children, even though those deprivations are often ambiguous in ways that punishment under law is not.

It is helpful in assessing various candidate justifications of punishment to keep in mind the reasons why punishment needs to be justified.

i. Punishment— especially punishment under law, by officers of the government— is (as noted above) a human institution, not a natural fact. It is deliberately and intentionally organized and practiced. Yet it is not a basic social institution that every conceivable society must have. It is a testimony to human frailty, not to the conditions necessary to implement human social cooperation. It also has no more than an historical or biological affinity with retaliatory harm or other aggressive acts to be found among nonhuman animals or (despite thinkers from Bishop Joseph Butler (1723) to Sir Peter Strawson (1962) to the contrary) with the natural resentment that unprovoked aggression characteristically elicits.

ii. The practice or institution of punishment is not necessary, conceptually or empirically, to human society. It is conceivable even if impracticable that society should not have the practice of punishment, and it is possible— given the pains of punishment— that we might even rationally decide to do without it. Not

surprisingly, some radical social thinkers from time to time (and even today) have advocated its abolition (Skinner 1948, Bedau 1991, A. Davis, 2003).

iii. Punishment under law, and especially in a liberal constitutional democracy, incurs considerable costs for everyone involved in carrying it out, whatever the benefits may be. Some rationale must be provided by any society that deliberately chooses to continue to incur these costs. The matter is aggravated to the extent that society prefers to incur these costs rather than those of alternative social interventions with personal liberty that might result in preventing crime in the first place and healing the wounds of its victims (Currie 1985).

By way of expansion on some of the considerations alluded to above, we must not forget or obscure the importance of the fact that punishment by its very nature involves some persons (those who carry out punitive acts) having dominant coercive power over others (those being punished). To seek to be punished because one likes it, is pathological, a perversion of the normal response, which is to shun or endure one's punishment as one might other pains, burdens, deprivations, and discomforts. (Only among the Raskolnikovs of the world is one's deserved punishment welcomed as a penance.) To try to punish another without first establishing control over the would-be punishee is doomed to failure. But the power to punish— as distinct from merely inflicting harm on others— cannot be adventitious; it must be authoritative and institutionalized under the prevailing political regime.

Finally, because the infliction of punishment is normally intended to cause, and usually does cause, some form of deprivation for the person being punished, the infliction of punishment provides unparalleled opportunity for abuse of power. To distinguish such abuses both from the legitimate deprivations that are essential to punishment and from the excesses of punitive sentences that embody cruel and inhumane punishments, one must rely on the way the former are connected to (and the latter disconnected from) whatever constitutes the sentence as such and whatever justifies it (Bedau 1972). This is especially true where punishment through the legal system is concerned, since the punishments at the system's disposal — as well as the abuses— are typically so severe.

The general form of any possible justification of punishment involves several steps. They start with realizing that punishing people is not intelligibly done entirely or solely for its own sake, as are, say, playing

cards or music, writing poetry or philosophy, or other acts of intrinsic worth to their participants. Nietzsche and Foucault are among those who would dispute this claim, and they may have history on their side. They think that human nature is such that we do get intrinsic even if disguised satisfactions out of inflicting authorized harm on others, as punishment necessarily does. Others will regard this satisfaction, such as it is, as a perversity of human nature, and will say that we retain the practice of punishment because it enables us to achieve certain goals or results.

Although punishment can be defined without reference to any purposes, it cannot be justified without such reference. Accordingly, to justify punishment we must specify, first, what our goals are in establishing (or perpetuating) the practice itself. Second, we must show that when we punish we actually achieve these goals. Third, we must show that we cannot achieve these goals unless we punish (and punish in certain ways and not in others) and that we cannot achieve them with comparable or superior efficiency and fairness by non-punitive interventions. Fourth, we must show that striving to achieve these goals by way of the imposition of deprivations is itself justified. Justification is thus closed over these four steps; roughly, to justify a practice of punishment-if not everywhere then at least in a liberal constitutional democracy-it is necessary and sufficient to carry out these four tasks.

Unsurprisingly, no matter what actual society we find ourselves in, we can contest each of these four steps, especially the last. Just as there is no theoretical limit to the demands that can be made in the name of any or all of these tasks, there is also no bedrock on which to stand as one undertakes either a critique of existing systems of punishment or the design of an ideal system. As a result, the foundations of punishment imitate the topology of a Moebius strip-if any path is pursued far enough, it will return to itself and one loses one's grip on what is inside and what outside the justification. Metaphor apart, the inescapable forensic quality of justification defeats all forms of what might be called linear-whether top-down or bottom-up-foundationalism.[5]

3.4 Objectives of punishment

The fundamental objective of giving punishment to establish peace in the society or state and hence punishments are applied for various purposes, most generally, to encourage and enforce proper behavior as defined by society or family. Criminals are punished judicially, by fines, corporal punishment or custodial sentences such as prison; detainees risk further punishments for breaches of internal rules. Children, pupils and

[5] *http://plato.stanford.edu/entries/punishment/ (visited on 02.07.2010)*

other trainees may be punished by their educators or instructors (mainly parents, guardians, or teachers, tutors and coaches)- see Child discipline.

Slaves, domestic and other servants used to be punishable by their masters. Employees can still be subject to a contractual form of fine or demotion. Most hierarchical organizations, such as military and police forces, or even churches, still apply quite rigid internal discipline, even with a judicial system of their own (court martial, canonical courts).

Punishment may also be applied on moral, especially religious, grounds, as in penance (which is voluntary) or imposed in a theocracy with a religious police (as in a strict Islamic state like Iran or under the Taliban) or (though not a true theocracy) by Inquisition.[6]

According to Salmond the objective of punishment are of four following kinds:

1. Deterrent punishment
2. Preventive punishment
3. Reformative punishment
4. Retributive punishment

3.5 **Basis of punishment**

Every punitive section of penal law provides the basis of punishment. In determining the degree of punishment within the orbit of the concerned punitive section, the judge has to deeply realise the nature, the character of the offender and the circumstance of the transgression. That is, the judge is to see whether offence is covered under the probation of offenders Ordinance 1960(XLV of 1960) so that he may grant probation if the same is sought by the accused or his lawyer. According to section 5 of the said Ordinance of 1960 the court can pass a probation order in certain cases. The court is to see the custody period, the admission of guilty, the age of the accused etc.

3.6 **Pre-trial imprisonment**

Like extra-judicial killing or confession, extra- trial punishment is an unfamiliar but a serious matter in administering the criminal justice. Many Judges of the sub-ordinate courts without considering the matter seriously and looking into its merit or demerit doing their business just as a flock of ship blindly follows suit behind the bell-wether.

On example of the reality can be given here for substantiating the aforementioned notion. In Gaibandha when I was working as the

[6] *http://en.wikipedia.org/wiki/punishment (visited on 02.07.2010)*

Judicial Magistrate and the Senior Judicial Magistrate, one of my colleague Judicial Magistrates in an Non-General Register (NGR) case being No. 388 of 208 (Gaibandha) for the offence under section 34 of the Police Act of 1861 on 23.08.2008 passed the following common but defective order;

"দেখিলাম। আসামীকে জেল হাজতে পাঠানো হোক। পরবর্তী তারিখ ০৯.০৯.২০০৮। I would like to state why do I say this is a very defective order which is also very much common in our sub-ordinate courts of Bangladesh. Some points should be pointed out here;

First point: The period of custody as per the aforesaid order between the sending date of the accused to jail hajat i.e. 23.08.2008 and the next date 09.09.2008 is in total 17 (seventeen) days.

Second point: Section 34 of the Police Act of 1861 under which the accused has been arrested and sent to jail hajat on 23.08.2008 provides the punishment of either to a fine of not exceeding 50 (fifty) taka or to imprisonment with or without hard labour not exceeding 8 (eight) days.

Think simply the maximum punishment is either 50 taka or eight days imprisonment which is to be imposed only after proof beyond all reasonable doubt. If no relative of the accused moves through the advocate before the court for his bail, the accused generally shall be produced on 09.09.2008 before court.

Result/Consequence: The result is without being tried, the accused will have to pass 17 days of imprisonment (In this case the said accused passed 16 days and thereafter got bail). Think again, if the alleged offence of section 34 of the Police Act of 1861 is proved, the maximum punishment will be either 50 taka or 8 days imprisonment. The question, how will the accused get the additional 8 days in his life? I find no answer except the careful and proper order of the concerned Judicial Magistrate. It is to be noted in reality that in the aforementioned case the accused Md. Ariful Islam was enlarged on bail on 08.09.2008 on the application of bail moved by the legal practitioner. Here this accused has served out imprisonment without trial and proof of 16 days. In respect of this after knowing the fact when I questioned my colleague that is will you be able to restore 8 or 16 days of the accused Md. Ariful Islam in his life if the allegation is proved or not proved. The said question was put not to embarrass my colleague but to understand the reality and thereafter he did not make this kind of inadvertent mistake.

However, what type of order was passed by me in respect of this and this kind of case is as follows when even no lawyer is present for bail of the accused.

"The presented record is taken up for passing the necessary order. Heard the court sub-inspector on be half of the state. No lawyer is Lawyer is found for moving the bail of the accused. After perusal of the record it appears to this court that the alleged offence is bailable and the maximum punishment of the said offence is either not exceeding 50 taka or not exceeding 8 days imprisonment. The appreciation of evidence is absolutely necessary sans the admission of guilty for proving the said offence.

In view of the aforementioned reasons, this court of Senior Judial Magistrate Md. Azizur Rahman is inclined to release the accused on his own bond of taka 2000.00 only.

The office is directed to release the accused after taking the bond of the accused himself of taka 2000.00 as per the structure provided in schedule V under sections 496 and 499 of the code of criminal procedure. Next date... (Reasonable date) is fixed for police report/trial."

If on the date of arrest, any relative of the arrestee is available before the court (this can be ascertained by questioning the arrestee) the language "and his relative uncle/brother name and full address shall be added just after the words on his own bond. However the extra-trial or pre-trial unnecessary imprisonment is avoidable only by cautious and proper order of the concerned Judicial Magistrate and which ought to be done for ensuring the criminal justice.

3.7 **Sentence and Fine:**

Most of the punitive sections of the penal laws contain the punishment of sentence and fine together or separately. The term 'sentence' relates to a punishment of imprisonment of time. On the contrary, the word 'fine' relates to a financial punishment for the commission of minor crimes. A fine is money paid usually to the superior authority, usually governmental authority as punishment for a crime or other offence. Our common example of a fine is money paid for violations of traffic laws.

3.8 **Model order**:

From the above facts and circumstances and evidence on record this court of Senior Judicial Magistrate, Md. Azizur Rahman is of the opinion that the prosecution has been able to prove charge against the accused and as a result the accused petitioners are to be convicted and sentenced

Hence it is ordered

that the accused Shahidul Islam is convicted under section 379 of the penal code and sentenced to suffer rigorous imprisonment for a period of

2 years and also sentenced to pay a fine of taka 5,000 (five) thousand and in default to Pay the same he shall suffer a simple imprisonment 3 (three) months more. The accused Ferdous is convicted under section 379/34 of penal Code and sentenced to suffer rigorous imprisonment for a period of 2 years. He is also convicted and sentenced under section, 411 of penal Code to suffer rigorous imprisonment of another 2 years. The sentences shall run concurrently. Sureties are discharged. Send the accused to jail through warrant of commitment. Period of jail shall be counted from today subject to the benefit of section 35A if any, of the code of criminal procedure. The office is directed to keep this record as disposal record.

3.9 **Fine only**:

There are some minor offences for which the legislature has enacted the laws of imposing fine only. It has been already stated that the word ‘fine’ relates to a financial punishment for the commission of minor crimes or as the settlement of a claim.

Fines are considered to be a cost-efficient and fair way of punishment for those who commit a non-violent offense. Lengthy prison sentences for minor offenses such as drug possession cost taxpayers more, remove otherwise productive citizens from society, and impose a fear on society as a whole because of over-policing and excessive prosecution.

Some fines are small, such as loitering which can run about $25–$100. In some areas of the United States (most specifically California, New York, Texas, and Washington D.C.) there are petty crimes, such as criminal mischief (shouting in public places, projecting an object at a police car) that run between $2500–$5000.

Fines are counter-productive if the offender commits more offences to get the money to pay the fine. The effect of a fine is lessened if the money to pay the fine is raised by contributions by the offender's assoociates, or if his family rather than himself go short to save back the lost money.

In England now there is a system whereby the court gives the offender a "fine card" which is somewhat like a credit card; at any shop that has a paying-in machine he pays the value of the fine to the shop, which then uses the fine card to pass that money on to the court's bank account.

Early examples of fines include the Weregild or blood money payable under Anglo-Saxon common law for causing a death. The

murderer would be expected to pay a sum of money or goods dependent on the social status of the victim.[7]

In our country, in respect of imposing 'fine' only to the accused, many Judges or Judicial Magistrate Court order in the language of পঞ্চাশ টাকা জরিমানা অনাদায়ে তিন দিনের বিনাশ্রম জেল প্রদান করা হল।

Let me give an example. In a case of NGR being No. 99 of 2009 (Gaibandha) one of my colleague Judicial Magistrate passed the following order;

"Seen.Police report is accepted. Later accused confess their guilt. They also do not show any sufficient grounds against their crime. Hence they are fined taka 50.00 in default of payment of the same; they have to suffer 8 days simple imprisonment"

Now I would like to express the defective point of the aforementioned order. The said order has not provided the opportunity of giving the fine money required under section 388 of the code of criminal procedure.

Whether the 'may' of section 388 of CrPC is mandatory?

Though the word 'may' indicates a provision to be directory, sometimes, the expression is understood in the imperative sense as 'shall'[8] when the object of a provision is to clothe public officers with power to be exercised for the benefit of third persons or for the public at large that is where the public interest or a private right requires that the thing be done, then the language though permissive in the form is peremtory.[9] Martial Law Order No. 9 gave to the persons removed from service under that Order a right to apply for review and provided that the Chief Martial Law Administrator 'may' review the order of removal from service. The court held that the word 'may' ought to be read as 'shall.'[10] The word 'may' would become mandatory when the object was to effectuate a legal right.[11] Here the object of section 388 of the code of

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[7] http://en.wikipedia.org/wiki/Fine_(penalty)

[8] *Sub-committee on judicial accountability v. India, AIR 1992 SC 320; Official Liquidator v. Dharti Dhan, AIR SC 740; U.P. v. Jogendra Singh, AIR 1963 SC 1618 See also Mahmudul Islam, Interpretation of statutes and documents 1st edition, Dhaka Bangladesh, page 244*

[9] *16 Am Juris 2d. Constitutional law, Para 138; See also Mahmudul Islam, Interpretation of statutes and documents 1st edition, Dhaka Bangladesh, page 244*

[10] *Principal Secretary to the President v. Mahtabuddin, 42 DLR (AD) 214(approving the decision reported in 42 DLR 1); Dinkar v. Maharasta, AIR 1999 SC 152("May" read as 'shall' to prevent arbitrary exercise of power by the authority) also ibid*

[11] *Mohammad Sadiq v. University of Sindh, PLD 1996 SC 419 also ibid*

criminal procedure is to effectuate a legal right for the public at large and hence the word 'may' of this section is mandatory.

3.10 Model Order:

DISTRICT: GAIBANDHA
IN THE COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: - Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing order 13.09.2009
Non General Register (NGR) Case No. 75 of 2009
Arising out of Gaibandha Town Vehicles prosecution No. 117/09 dated 24.05.2009
Under sections 137,149,155,138 and 159 of the Motor Vehicles Ordinance, 1983
The State ... Prosecution
-Versus-
... Accused

Order No...05

অদ্য চার্জ বিবেচনার জন্য আছে। মোট আসামী ০১ জন জামিনে আছেন। জামিনে মুক্ত আসামী হাজিরা দিয়াছেন। আসামী পক্ষে দোষ স্বীকারের প্রার্থনা নথিভূক্ত আছে। Seen the aforementioned note and the physical appearance of the show caused police officer. Heard the oral apology and perused the same in writing also.

After perusal of the record, it appears that though the accused at the time of driving the motorcycle, had no the driving licence with him but he got the same from BRTA Gaibandha and he showed before this Court the original driving licence which was also verified by C S I Md. Kamrul Islam. The necessity of a driving license relates to have a skill by which the licencee can drive vehicle safely.

In fact, in this case, the accused duly got the licence but the same was not with him at the time of driving the motorcycle on that day and hence the accused is discharged from the allegation of section 138 of the motor vehicles ordinance 1983.

There is no information in respect of the defect of the said motor cycle for which this court can not make the presumption as to the unsafe condition of the said vehicle and hence the accused is also discharged from the allegation of section 149 of the said ordinance 1983.

The accused had no insurance certificate with him and even he has not shown the same before this court and accordingly there is the necessity of framing the charge of section 155 of the said ordinance 1983.

In addition to this, though the concerned police officer has not inserted section 154 of the said ordinance 1983 but for the voluntary admission of the accused in driving the said vehicle exceeding permissible weight through carrying three persons, there is also the necessity of framing charge of this section.

However, for the existence of the ingredients of sections 154 and 155, of the said ordinance 1983, the charges are framed against the accused and the framed charges were read over and explained to the accused and who there after admitted his aforementioned guilty orally and in writing.

In view of the aforementioned reasons the accused is convicted and sentenced to pay a fine of TK. 200/- (two hundred) and 500 (five hundred) only for the offence of section 154 and 155 of the said ordinance 1983 respectively within two weeks from this date and in default to under go simple imprisonment for 3 (three) days.

In respect of avoiding the mistake in future which is done by the concerned police officer, Bikorna Kumar chowdhury, police inspector (traffic office) Gaibandha, the present traffic officer of Gaibandha is directed to mention in the case slip the amount of fine and the concerned account number of depositing the money of fine to which any accused being fined can deposit the same.

He is further directed to submit a copy of the from of case slip in complying with aforementioned directions and making the addition of the same within two month from this date to this court. Next date 13.11.2009 is fixed for the same.

Name…
Senior Judicial Magistrate
Gaibandha

Memo No… Date: …
Copy of the order is sent for necessary steps
1 District Superintendent of police, Gaibandha.
2 Traffic Inspector of Gaibandha District

Name…
Senior Judicial Magistrate
Gaibandha

Reference of the model order: *57 DLR (HCD) 359 Para 360*

3.11 **Sentence in default of fine**:

The offence for which only financial punishment, that is, fine only is imposed in giving the time opportunity provided in section 388 of the code of criminal procedure and with the given time, if the accused does not pay the fine, he will suffer the simple imprisonment mentioned in the order. After the expiration of the opportunity for the payment of the said fine, the court is to send or issue a warrant for arrest and committing the imprisonment. At the time of imposing the punishment in default of payment of the fine, the court is to see relevant sections 63, 64,65,67,68 and 69 of the penal code and etc.

3.12 **Recovery of fine**:

Sections 386 and 389 of the code of criminal procedure and section 70 of the penal code and regulation 382 of Police Regulations Bangladesh-1943 deal with the necessity of recovery of fine. One thing which is very necessary but uncommon in our sub-ordinate courts ought to be done under regulation 382(2) of PR-1943 that is, the Magistrate should call for the Fine Warrant Register of every police station at least after three months and see the parity with the same of the court.

Principles of imposition of fine: While imposing the sentence of fine the basic principles to be kept in view shall be as hereunder:

a. Whether the accused has derived pecuniary gain from the crime; or

b. Whether the fine is specially needed to deter or correct the offender;

Or

c. Whether the victim requires pecuniary help from the offender.

Reference: 53 DLR (AD) 113 Para- 11

3.13 **Model Order:**

The accused is under section 34 of the Police Act of 1861 convicted and sentenced to pay taka of 50.00 within 20 days from the date of this order in view of section 388 of the code of criminal procedure and in default to undergo simple imprisonment for a period 3 days.

Or

The accused is under section 34 of the Police Act of 1861 convicted and sentenced to pay taka of 50.00 within 20 days from the date of this order in view of section 388 of the code of criminal procedure and in default to pay the same issue a warrant under section 386 of the code of criminal

procedure by which the Collector of this District is authorised and directed to realise the aforesaid amount of fine execution according to civil process against the movable and immovable property, or both of the defaulter.

Or

The accused is under section 34 of the Police Act of 1861 convicted and sentenced to pay taka of 50.00 within 20 days from the date of this order in view of section 388 of the code of criminal procedure and in default to pay the same, issue a warrant for levy of the amount under section 386 of the code of criminal procedure by attachment and sale of the movable property belonging to the offender as mentioned in the police report. [Here is it is necessary to see before passing this third typed of order whether the police report contains the list of the properties.]

Reference: *37 DLR (AD) 91*

3.14 **Order of compensation**:

Sections 545 and 546A of the code of criminal procedure deal with the order of compensation. The court can pass the order to pay compensation or expenses out of fine. This has been stated in sections 15 and 16 of the Nari o shishu Nirjatan Daman Ain 2000 (amended in 2003) and sections 9 and 10 Acid Aporad Ain 2002.

3.15 **Model Order**:

After giving relevant discussion and findings…

"Hence

It is ordered,

that the accused Subhashis Kumar Sarker, Son of Sreema Chandra Sarker is found guilty under section 427 of the Penal Code as the offence has been committed under the charge leveled against him beyond any reasonable doubts and he is convicted and sentenced to pay a fine of Taka 1000 (one) only. The accused person is hereby directed to submit the aforesaid fine amount within 7 (seven) days from this date under the opportunity of section 388 of the code of criminal procedure before the Court in default to undergo simple imprisonment for a period of 10 (ten) days only. It is also ordered that the whole amount of fine is given to the complainant as expenses or compensation for the repairing of the loss of the said vehicle under section 545 of the said code. This shall be done whenever the said fine will be given by the accused. The complainant is also directed to submit a voucher for the repairing of the loss of the said vehicle before this court."

3.16 **Change of Sentence**:

Section 401 and 402 of the code of criminal procedure deal with the power of the government to suspend, remit or commute punishment of the offender. Section 402A of the code of criminal procedure deals with the power of the President of this Republic to do the same. Article 57 of the Constitution of the People's Republic of Bangladesh and sections 54, 55 and 55A of the Penal code are also related to this subject-matter.

3.17 **Double Jeopardy and Ex post facto-Legislation**:

Article 35 of the Constitution of the People's Republic of Bangladesh guarantees the protection against double jeopardy and the ex post facto legislation. Section 403 of the code of criminal procedure also deals with the term of double jeopardy. This section may be read along with sections 417, 423 and 439 etc. of the said code.

Section 403 of Code of Criminal Procedure at a glance:

There are mainly two phases of sections 403 of Code of Criminal Procedure which are as follows;

Phase one: Trial and its consequences:

What are the ingredients?

The word 'trial' in section 403 of Code of Criminal Procedure clearly means the matter of trial and its consequences for the first phase of this section. For the applicability of this section three ingredients have to be satisfied namely (a) there must have been a trial of the accused of the offence charged against him. (b) the trial must have been by a court of competent jurisdiction and (c) there must have been a judgment of conviction or order of acquittal [PLD 1970 Kar. 386]

What is the definition of the word 'trial'?

The word 'trial' begins with the framing of charge and ends with the passing of the judgment. [**35 DLR (HCD) 422 Para-10**] This definition is defective as section 366(1)(a) of CrPC has provided that the judgment shall be pronounced in open court either immediately after the termination of the trial or... This absolutely indicates that judgment and trial are different things and the judgment is not induded with the term trial. The word 'trial' according to stroud's Judicial Dictionary means the conclusion, by a competent tribunal, of questions in issue in legal proceedings, whether civil or criminal; [Stroud's Judicial Dictionary, 3rd edition, Vol. 4, Page- 3092] For this definition, it is necessary to mention Indian Supreme Court's view i.e.

The words 'tried' and 'trial' appear to have no fixed or universal meaning. No doubt, in a number of sections in the code of criminal procedure the words 'tried' and 'trial' have been used in the sense of

reference to a stage after the inquiry, they are words which must be considered with regard to the scheme of the provision under consideration [State of Bihar v. Ram Naresh Pandey AIR 1957 SC 589, (1957) SCC 282, (1957) ILR 36 Pat 513]

For this, when a complaint is dismissed under section 203 of CrPC, that is also a kind of trial as in accordance with the provision, the order of dismissal is the conclusion from the decision of that Court and that's why the word 'judgment' has been used in that section. Again the word 'trial' includes the appeal also [State of Modhya Prodesh v. Mohandas (1992) Cr LJ 101, pp. 104-105, [1992] 1 CCR 789 (MP)].

Phase two: Liability:

Whether the accused being tried has the liability?

The accused shall not be liable to be tried again for the offence on the same facts for any other offence for which a different charge from the one made against him might have been made under section 236 of CrPC or for which he might have been convicted under section 237 of CrPC.

References: **47 DLR (HCD) 313, 15 BLD 277, 6 MLR (AD) 297**

3.18 **Sentence of whipping**:

Sections from 390 to 395 deal with sentence of whipping only or in addition to imprisonment, mode of inflicting punishment, exceptions and the procedure if the punishment can not be inflicted under section 394 of the code of criminal procedure.

3.19 **Solitary confinement**

Solitary confinement is a punishment or special form of imprisonment in which a prisoner is denied contact with any other persons, excluding members of prison staff. It is considered by some as a form of psychological torture. It is usually cited as an additional measure of protection (of society) from the criminal. It is also used as a form of protective custody. Solitary confinement is colloquially referred to in American English as the '**hole**', '**lockdown**', the '**SHU**' (pronounced 'shoe') or the '**pound**', and in British English as the '**block**' or the '**cooler**'.[11]

In Bangladesh sections 73 and 74 of the penal code and Rule 251 of Jail Code deal with solitary confinement. Under Rule 251 of the Jail Code if a prisoner is sentenced to solitary confinement, he shall see that the prisoner is placed in a cell at proper intervals for the prescribed periods.

[11] http://en.wikipedia.org/wiki/Solitary_confinement visited on 15.08.2010

3.20 **Forfeiture**

After repealing sections 61 and 62 of the penal code by the Indian Penal Code (amendment) Act 1921 (xvi of 1921) S.4, sections 126,127 and 169 of the penal code deal with forfeiture. Besides this, regulation 1044 and 1045 Bangladesh Police Regulations 1943 deal with the forfeiture of police Medal.

3.21 **Probation and its procedure**

Sections 562, 563 and 564 of the code of criminal procedure with the power of the court to release certain convicted offenders on probation of good conduct in stead of sentencing to punishment, conviction and release with admonition and provision in case of offender failing to observe conditions of recognisance's conditions as to abode of offender respectively. Sections 380, 562, 563 and 564 of the code of criminal procedure are repealed by section 16 of the probation of offenders Ordinance 1960.

Which courts are empowered for probation?

According to section 3(1) of the probation of offenders Ordinance 1960 the following courts are empowered to exercise the powers under this Ordinance, namely:

(a) The High Court Division (b) A Court of Sessions (C) A District Magistrate (now Chief Judicial Magistrate) (d) A Magistrate of the First Class and (e) any Magistrate especially empowered in this behalf.

When do the courts may exercise such power?

A court under section 3(2) of the said Ordinance 1960 may exercise such powers whether the case comes before it for original hearing or on appeal or in revision.

What procedure is to be followed by an underpowered court?

As per section 3(3) of the said Ordinance of 1960 where any offender is convicted by a Magistrate not empowered to exercise powers under this Ordinance and such Magistrate is of the opinion that the powers conferred by section 4 or section 5 should be exercised, he shall record his opinion to that effect and submit the proceedings to a Magistrate of the First Class forwarding the offender to him or taking bail for appearance before him.

Whether the court passing probation orders discharge the accused?

According to section 4(1) of the said Ordinance of 1960, the court may after recording its reasons in writing, make an order discharging him after its admonition.

Whether the court may pass the conditional discharge order?

Yes and if the court thinks fit, it may likewise make an order discharging him subject to condition that he enters into a bond, with nor without sureties, for committing no offence and being of good behaviour during such period not exceeding one year from the date of the order as may be specified therein.

What is the procedure before passing the conditional discharge order?

In accordance with section 4(3) of the probation of offenders Ordinance of 1960before making an order for conditional discharge, the court shall explain to the offender in ordinary language that if he commits any offence or does not remain of good behaviour during the period of conditional discharge he will be liable to be sentenced for the original offence.

What is the authority for the court to pass a probation order?

Section 5 of the said Ordinance of 1960 is the authority of the court to make a probation order in certain cases.

3.22 **Model Orders**

Discharge order with admonition:

The record is taken up for consideration of the subject-matter whether an order under section 4 of the Probation of Offenders Ordinance, 1960 can be passed. After perusal of the order of imprisonment dated 12.08.2010 passed by this court of Senior Judicial Magistrate, it appears to this court that the accused Anisur Rahman is a current student of **xyz** College and he has not been previously convicted for any offence and convicted in this case for an offence punishable with imprisonment for not exceeding two years and his imprisonment in this case is only 1(one) month. The age of the convicted accused is 17 years only. His character and antecedents are nil as per the police report dated 12.05.2009 to the extent of committing the offence. As per the record the offence was committed at the time of making altercation between two friends. It is inexpedient to inflict punishment having his future educational life and the probation order is not appropriate here. In view of the aforementioned reasons, the convicted accused is discharged as he is a man of hot headed and immature personality.

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Gaibandha

Conditional Discharge order:

The record is taken up for consideration of the subject-matter whether an order under section 4 of the Probation of Offenders Ordinance, 1960 can be passed. After perusal of the order of imprisonment dated 12.08.2010 passed by this court of Senior Judicial Magistrate, it appears to this court that the accused Anisur Rahman is a current student of **xyz** College and he has not been previously convicted for any offence and convicted in this case for an offence punishable with imprisonment for not exceeding two years and his imprisonment in this case is only 1(one) year. The age of the convicted accused is 17 years only. His character and antecedents are nil as per the police report dated 12.05.2009 to the extent of committing the offence. As per the record the offence was committed at the time of making altercation between two friends. It is inexpedient to inflict punishment having his future educational life and the probation order is not appropriate here. In view of the aforementioned reasons, the conditional discharge order can be passed and before passing the same, this court of Senior Judicial Magistrate has explained in ordinary Bengali language to the offender that if he commits any offence or does not remain of good behaviour during the period of conditional discharge he will be liable to be sentenced for the original offence.

In view of the aforementioned reasons, the accused is conditionally discharged for the period of one year subject to submitting a bond of taka 50,000.00 (fifty thousand) with two sureties of whom one must be local Upazila Social Welfare Officer who will submit a report in writing as to the compliance with the condition of committing no offence or remaining good behaviour before this court. The office is directed accordingly.

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A probation order:

The record is taken up for consideration of the subject-matter whether an order under section 5 of the Probation of Offenders Ordinance, 1960 can be passed for convicted accused Hafizur Rahman. After perusal of the order of imprisonment dated 12.08.2010 passed by this court of Senior Judicial Magistrate, it appears to this court that the accused Anisur Rahman is a current Chairman of **xyz** Union Parishad and he has not been previously convicted for any offence and convicted in this case for an offence not being an offence under Chapter VI or Chapter VII of the Penal Code or under the sections 216A, 328, 382, 386, 387, 388, 389, 392, 397, 398, 399, 401, 402, 455 or 458 of that Code, or an offence punishable with death or imprisonment for life. His character and antecedents are nil as per the police report dated 12.05.2009 to the extent of committing the offence. It is inexpedient to inflict punishment having his future public related function and the probation order is appropriate here. The offender Anisur Rahman being the current chairman of XYZ Union Parishad has a fixed place of abode within the local limits of this court and it also appears that he is likely to continue in such place of abode during the period of the bond and hence The offender Anisur Rahman is ordered to go on probation subject to entering into a bond of taka 50,000.00 (fifty thousand) with two sureties of whom one must be local Upazila Social Welfare Officer who will submit a report in writing as to the compliance with the condition of committing of no offence or remaining good behaviour before this court also subject to performing the duties under section 13 of the Probation of Offenders Ordinance, 1960. The bond shall also contain the condition of not taking any intoxicating thing and not changing his residence without informing this court so that the offender may rehabilitate him as an honest, industrious and law-abiding citizen. The offender shall be under supervision of the probation officer for a period of two years and within this period the local Upazila Social Welfare Officer being the probation officer shall visit or receive visits from the offender every after three months and he will submit a report as to the same.

In addition to this, the offender being ordered to go on probation is directed under section 6 of the Probation of Offenders Ordinance, 1960 to pay taka 10,000.00 (ten thousand) as compensation or damages for the loss or injury caused to the victims of this case. The office is directed accordingly.

Name…
Senior Judicial Magistrate
Gaibandha

Bond for probation of good behaviour

According to earlier repealed conception of section 562 of the code of criminal procedure the model bond for probation of good behaviour is given below:

In the Court of the Magistrate of First class, Gaibandha

General Register Case No. 190 of 2010

Whereas I, Zakir Hossain son of Late Kamal Hossain resident of Sundergonj Pourashava, Sundergonj Police Station, Gaibandha have been convicted of the offence of simple hurt under section 323 of the penal code;

And whereas I, being the first offender, have been ordered to be released on probation of good conduct on entering into a bond with surety/sureties during the period of 6 months under section 5 of the Probation of Offenders Ordinance of 1960, I hereby bind myself to appear and receive sentence when called upon in the meantime to keep the peace and be of good behaviour to Government and all the citizens of Bangladesh during the said term of 6 months and in case of my making default therein, I bind myself to forfeit to Government the sum of taka 20,000.00.

Dated 1st day of November, 2010

Executed before me,
Md. Azizur Rahman
Senior Judicial Magistrate

I/We hereby declare myself surety/ourselves sureties for the above named that he will appear and receive sentence when called upon and in the meantime will keep the peace and be of good behaviour to Government and all the citizens of Bangladesh during the said term; and in case of his making default therein I/We hereby bind myself/ourselves jointly and severally to forfeit to Government the sum of taka

Dated 1st day of November, 2010

Executed before me

Name…
Senior Judicial Magistrate
Gaibandha

Chapter– 4

Different Criminal Courts and Jurisdictions

4.1 Supreme Court of Bangladesh

The territorial area of Bangladesh originally being a part and parcel of the then Indian Sub-continent, the history of its legal system may be traced back from the year of 1726, when King George-I issued a Charter changing the judicial administration of the Presidency towns of Calcutta, Bombay and Madras, through which the Civil and Criminal Courts, as established, started deriving their authority from the King. It is to be noted that during Mughal Empire the East India Company by taking settlement and with permission from Mughal Badshah created the three presidency towns namely Madras, Bombay and Calcutta and said East India Company introduced the English legal system for administration of the presidency towns and thus the English Judicial system got entry into the territory of Indian Sub-continent. The filing of the appeals from the then India in the Privy-Council in England was introduced by the said Charter of 1726 and thereafter to bring about change in the management of the then East India Company, the East India Company Regulating Act, 1773 was introduced to place the East India Company under the control of the British Government and provision was made for establishment of a Supreme Court of judicature at Fort William, Calcutta, through Charter or Letters Patent. The Supreme Court of Judicature at Fort William in Bangal was established by Letters Patent issued on March 26, 1774, which as a Court of Record had power and authority to dispose of all complaints against the Majesty's subjects in respect of any crime, suit or action arisen within the territory of Bengal, Bihar and Orissa. By an Act passed in 1833 the Privy-Council was transformed into an Imperial Court of unimpeachable authority, which played a great role as a unifying force for establishment of rule of law in the Indian Sub-continent.

The judicial system of the then India was reorganized by introducing the Indian High Court's Act 1861 by which High Courts were established, abolishing the Supreme Courts at Fort William (Calcutta), Madras and Bombay, and the High Courts established were conferred with Civil, Criminal, Admiralty, Testamentary, Matrimonial jurisdictions with Original and Appellate Jurisdiction.

With the transfer of power from the British Parliament to the people on division of the then India, the High Court of Bengal (order) 1947 was promulgated under the Indian Independence Act, 1947, and the High Court of judicature for East Bengal at Dhaka was established as a separate High Court for the then East Pakistan and the said High Court was commonly known as the Dhaka High Court and the same was vested with all Appellate, Civil and Original jurisdictions. With the enforcement of the Constitution of Islamic Republic of Pakistan in 1956, the Supreme Court of Pakistan was established as the apex Court of the country, consisting of East Pakistan and West Pakistan, in place of Federal Court, with the appellate jurisdiction to hear the decisions of the High Courts established in the provinces of the Pakistan. The Dhaka High Court had the jurisdiction to issue writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-warranto and Certiorari, with further authority to declare any law promulgated violating the provisions of the Constitution as bad and void.[1]

The **Supreme Court of Bangladesh** is the highest court of law in Bangladesh. It is composed of the High Court Division and the Appellate division, and was created by Part VI Chapter I of the Constitution of Bangladesh adopted in 1972. The High Court Division hears appeals from lower courts and tribunals; it also has original jurisdiction in certain limited cases, such as writ applications under article 102 of the Constitution of Bangladesh, and company and admiralty matters. The Appellate division has jurisdiction to hear appeals from the High Court Division. The Supreme Court is independent of the executive branch, and is able to rule against the government in politically controversial cases.[2]

4.2 Court of Sessions

According to section 9(1) of the code of criminal procedure the Government shall establish a Court of Session for every session's division and appoint a Judge of such Court. The Court of Session for a Metropolitan area shall be called the Metropolitan Court of Session. The place or places of sitting of the Court of Session shall be fixed by the Government in accordance with the provision of section 9(2) of the code of criminal procedure.

The members of the Bangladesh Judicial Service shall be appointed as Sessions Judge under section 9(3A) of the code of criminal procedure.

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[1] http://www.supremecourt.gov.bd/?visit=history/history visited on 31.08.2010

[2] http://en.wikipedia.org/wiki/Supreme_Court_of_Bangladesh visited on 31.08.2010

A Sessions Judge of one session's division may be appointed by the Government to be also an Additional Sessions Judge of another division and in such case he may sit for the disposal of cases at such place or places in either division as the Government may direct. According to section 31(2) of the code of criminal procedure A Sessions Judge may pass any sentence athorised by law but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court Division. The Court of Sessions has the appellate, revision, power to call for records, power to order inquiry and miscellaneous authorities. All Magistrates whether Executive (including the District Magistrate) or Judicial (Chief Judicial Magistrate) shall be under section 435 of the code of criminal procedure deemed to be inferior to the Sessions Judge for the purposes of this sub-section. In accordance with the section 7(4) of the code of criminal procedure a Metropolitan Area shall, for the purpose of this code be deemed a sessions division.

4.3 Court Additional of Sessions Judge

All the authorities exercisable by the Court of Sessions are also exercisable by the Court of Additional Sessions Judge. The members of the Bangladesh Judicial Service shall be appointed as Additional Sessions Judge under section 9(3A) of the code of criminal procedure. According to section 31(2) of the code of criminal procedure an Additional Sessions Judge may pass any sentence athorised by law but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court Division.

4.4 Court of Joint Sessions Judge

In accordance with the provision of section 9(3) of the code of criminal procedure Joint Sessions Judges to exercise jurisdiction in one or more such courts may also be appointed by the Government. According to section 31(2) of the code of criminal procedure, an Additional Sessions Judge may pass any sentence athorised by law except a sentence of death or of imprisonment for life or imprisonment for a term exceeding ten years.

Judicial Magistrate Court

4.5 Chief Judicial Magistrate

Chief Judicial Magistrate in every district outside a Metropolitan Area shall be appointed under section 11 of the code of criminal procedure from the persons employed in the Bangladesh Judicial Service in

accordance with the rules framed by the President under the proviso to article 133 of the Constitution. The Chief Judicial Magistrate subject to the general or special orders issued by the Government in consultation with the High Court Division may from time to time define local areas within which the Judicial Magistrates may exercise all or any of the powers with which they may be invested under this code and except as otherwise provided by such definition the jurisdiction and powers of every such Magistrate shall extend throughout the district. According to section 17 of the code of criminal procedure all Judicial Magistrates appointed under sections 11 and 12(3) and all Benches constituted under section 15 shall be subordinate to the Chief Judicial Magistrate who may time to time give special orders consistent with this code and rules made by the Government under section 16 as to the distribution of business among such Magistrates and Benches. The Chief Judicial Magistrate under section 41 of the code of criminal procedure may withdraw any powers conferred by him. He can give the sentence of seven years generally but he may be invested under section 29C (a) of the code of criminal procedure to try as a Magistrate all offences not punishable with death and thus being authorised he in view of section 33A of the code of criminal procedure may pass any sentence athorised by law except a sentence of death or of transportation or imprisonment for a term exceeding seven years. According to section 29B of the said code any offence, other than one punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before a Court is under the age of fifteen years, may be tried by a Chief Judicial Magistrate.

4.6 Court of Additional Chief Judicial Magistrate

All the authorities exercisable by the Court of Chief Judicial Magistrate are also exercisable by the Court of Additional Chief Judicial Magistrate. Additional Chief Judicial Magistrate in every district outside a Metropolitan Area shall be appointed under section 11 of the code of criminal procedure from the persons employed in the Bangladesh Judicial Service in accordance with the rules framed by the President under the proviso to article 133 of the Constitution. He can give the sentence of seven years generally but he may be invested under section 29C (a) of the code of criminal procedure to try as a Magistrate all offences not punishable with death and thus being authorised he in view of section 33A of the code of criminal procedure may pass any sentence athorised by law except a sentence of death or of transportation or imprisonment for a term exceeding seven years.

4.7 Court of Senior Judicial Magistrate

Senior Judicial Magistrate (Magistrate of the 1st Class) in every district outside a Metropolitan area shall be appointed under section 11 of the code of criminal procedure from the persons employed in the Bangladesh Judicial Service in accordance with the rules framed by the President under the proviso to article 133 of the Constitution. He under section 32 of the code of criminal procedure can give the sentence of five years and ten thousand taka fine generally but he may be invested under section 29C (a) of the code of criminal procedure to try as a Magistrate all offences not punishable with death or imprisonment for life or with imprisonment for a term exceeding ten years and thus being authorised he in view of section 33A of the code of criminal procedure may pass any sentence athorised by law except a sentence of death or of transportation or imprisonment for a term exceeding seven years. He may also impose the punishment of whipping.

4.8 Court of Judicial Magistrate

Judicial Magistrate (Magistrate of the 2nd Class) in every district outside a Metropolitan area shall be appointed under section 11 of the code of criminal procedure from the persons employed in the Bangladesh Judicial Service in accordance with the rules framed by the President under the proviso to article 133 of the Constitution. He under section 32 of the code of criminal procedure can give the sentence of three years and five thousand taka fine or with both.

4.9 Court of Judicial Magistrate, Third class

Judicial Magistrate (Magistrate of the 3rd Class) in every district outside a Metropolitan area shall be appointed under section 11 of the code of criminal procedure from the persons employed in the Bangladesh Judicial Service in accordance with the rules framed by the President under the proviso to article 133 of the Constitution. He under section 32 of the code of criminal procedure can give the sentence of two years and two thousand taka fine or with both. But at present there is no Magistrate of the 3rd Class as Judicial Magistrate itself is second class.

Metropolitan Magistrate Court

4.10 Court of Chief Metropolitan Magistrate

Chief Metropolitan Magistrate in every Metropolitan Area shall be appointed under section 11 of the code of criminal procedure from the

persons employed in the Bangladesh Judicial Service in accordance with the rules framed by the President under the proviso to article 133 of the Constitution. The Chief Metropolitan Magistrate subject to the general or special orders issued by the Government in consultation with the High Court Division may from time to time define local areas within which the Metropolitan Magistrates may exercise all or any of the powers with which they may be invested under this code and except as otherwise provided by such definition the jurisdiction and powers of every such Magistrate shall extend throughout the area. According to section 17 of the code of criminal procedure all Metropolitan Magistrate appointed under sections 12(3) and all Benches constituted under section 19 shall be subordinate to the Chief Metropolitan Magistrate who may time to time give special orders consistent with this code and rules made by the Government under section 21 as to the distribution of business among such Magistrates and Benches. The Chief Metropolitan Magistrate under section 21(a) of the code of criminal procedure like the Chief Judicial Magistrate may exercise the powers which are also invested with the Chief Judicial Magistrate under section 41 of the code of criminal procedure. He can give the sentence of seven years generally but he may be invested under section 29C (a) of the code of criminal procedure to try as a Magistrate all offences not punishable with death and thus being authorised he in view of section 33A of the code of criminal procedure may pass any sentence athorised by law except a sentence of death or of transportation or imprisonment for a term exceeding seven years. According to section 29B of the said code any offence, other than one punishable with death or imprisonment for life, committed by any person who at the date when he appears or is brought before a Court is under the age of fifteen years, may be tried by a Chief Metropolitan Magistrate.

4.11 Court of Additional Chief Metropolitan Magistrate

All the authorities exercisable by the Court of Chief Metropolitan Magistrate are also exercisable by the Court of Additional Chief Metropolitan Magistrate. Additional Chief Metropolitan Magistrate in every Metropolitan Area shall be appointed under section 12(5) of the code of criminal procedure from the persons employed in the Bangladesh Judicial Service in accordance with the rules framed by the President under the proviso to article 133 of the Constitution. He can give the sentence of seven years generally but he may be invested under section 29C (a) of the code of criminal procedure to try as a Magistrate all offences not punishable with death and thus being authorised he in view of section 33A of the code of criminal procedure may pass any

sentence athorised by law except a sentence of death or of transportation or imprisonment for a term exceeding seven years.

4.12 Court of Metropolitan Magistrate

Metropolitan Magistrate (Magistrate of the 1st Class) in every Metropolitan Area shall be appointed under section 12(5) of the code of criminal procedure from the persons employed in the Bangladesh Judicial Service in accordance with the rules framed by the President under the proviso to article 133 of the Constitution. He under section 32 of the code of criminal procedure can give the sentence of five years and ten thousand taka fine generally but he may be invested under section 29C (a) of the code of criminal procedure to try as a Magistrate all offences not punishable with death or imprisonment for life or with imprisonment for a term exceeding ten years and thus being authorised he in view of section 33A of the code of criminal procedure may pass any sentence athorised by law except a sentence of death or of transportation or imprisonment for a term exceeding seven years. He may also impose the punishment of whipping.

4.13 Tribunal under the International Crimes (Tribunals) Act 1973

This is a Tribunal set up under the International Crimes (Tribunals) Act 1973 and the jurisdiction of the Tribunal has been provided in section 3 of the said Act. According to section 6(1) of the said Act the Government may, by notification in the *official Gazette* set up one or more Tribunals, each consisting of a Chairman and not less than two and not more than four other members. In accordance with section 23 of the said Act having bar of the application of the code of criminal procedure, 1898 and the Evidence Act 1872 the Tribunal ought to regulate its own procedure in making the summons, confession or statement recording forms and even the arrest warrant form in respect of avoiding any difficulties provided that the Tribunal under section 19 of the said Act may act considering them as technical procedures.

4.14 Court of Divisional Special Judge

This is a Court presided by a Special Judge appointed under sub-section (1) of section 3 of the Criminal Law Amendment Act, 1958. A Special Judge is appointed according to section 3 of the said Act from among the Sessions Judge, Additional Sessions Judge and the Joint Sessions Judge. Only scheduled offences are trible under this Act by a Special Judge. According to section 13 of the said Act, nothing shall affect the jurisdiction exercised by or the procedure applicable to any Court or other authority under any military, naval, or air force law.

4.15 Special Tribunal

According to section 26 of the Special Powers Act 1974 every Sessions Judge, Addional Sessions Judge and Joint Sessions shall for the areas within his sessions division be a Special Tribunal for the trial of the offences triable under this Act. The government may constitute one or more additional Special Tribunal appointing a person who is Metropolitan Magistrate or a Magistrate of the first class.

4.16 Nari-o- Shishu Nirjatan Daman Tribunal

Section 26 of the Nari-o-Shishu Nirjatan Daman Ain 2000 (amended in 2003) relates to with the formation of Nari-o- Shishu Nirjatan Daman Tribunal.

4.17 Acid Aporad Damon Tribunal

Section 23 of Acid Aporad Damon Ain 2002 relates to with the formation of Acid Aporad Damon Tribunal.

4.18 Administrative Tribunal

Section 3 of Administrative Tribunal Act 1980 relates to with the formation of Administrative Tribunal.

4.19 Administrative Appellate Tribunal

Section 5 of Administrative Appellate Tribunal Act 1980 relates to with the formation of Administrative Tribunal.

4.20 Labour Court

Section 35 of the Industrial Relations Ordinance 1969 relates to with the formation of the Labour Court.

4.21 Appellate Tribunal; under the customs Act 1969

Section 196 of the Customs Act 1969 relates to with the formation of Appellate Tribunal which shall be called as Customs, Excise and Mulla Sangjojan Kar Appellate Tribunal.

4.22 Tribunal under Bangladesh Bar Council Order 1972

Section 33 of the Bangladesh Bar Council Order 1972 relates to with the formation of the Tribunal

4.23 Juvenile Court

Section 3 of the Children Act 1974 relates to with the Juvenile Court.

4.24 Electricity Court

The Court presided by a Magistarte of the First Class under the Electricity Act 1910 is called Electricity Court.

4.25 Paribesh Adalat

Section 4 of the Paribesh Adalat Ain 2000 relates to the establishment of the Paribesh Adalat.

4.26 Druto Bichar Adalat

Section 8 of the Ain Shrinkhala Bighnakari Aporad (druto bichar) Ain 2002 relates to the formation of the Druto Bichar Adalat.

4.27 Artho Rin Adalat

Section 4 of the Artha Rin Adalat Ain 2003 relates to the establishment of the Artho Rin Adalat.

4.28 Marine Court

Section 47 of the Inland Shipping Ordinance 1976 relates to the establishment of the Marine Court.

4.29 Court Martial under the Army Act 1952

Sections from 80 to 118 relates to the constitution, jurisdiction and powers of Courts Martial under the Army Act 1952.

4.30 Court Martial under the Navy Ordinance 1961

Section 99 of the Navy Ordinance 1961 relates to the composition of the Court Martial.

4.31 Court Martial under the Air Force Act 1953

Sections from 108 to 1124 relates to the constitution, jurisdiction and powers of Courts Martial under the Air Force Act 1953.

4.32 The Special Court under the Bangladesh Rifles Order 1972

Section 2(j) of the Bangladesh Rifles Order 1972 relates to the Special Court. Besides, section 2(k) of the said Order 1972 relates to the Special Summary Court.

4.33 Court of Special Magistrate

The Court of Magistrate appointed under section 12(4) of the code of criminal procedure is called the Court of Special Magistrate.

4.34 Court of Special Metropolitan Magistrate

The Court of Mertropolitan Magistrate appointed under section 12(4) of the code of criminal procedure is called the Court of Special Metroplitan Magistrate.

4.35 Taxes Appellate Tribunal under the Income Tax Ordinance 1984

Section 11 of the Income Tax Ordinance 1984 relates to the ormation of the Taxes Appellate Tribunal.

4.36 Gram Adalat

Section 5 of the Gram Adalat Ain 2000 relates to the formation and etc. of the Gram Adalat.

4.37 Model order for sending the case to Gram Addalat

Seen the aforementioned note and after perusal of the record it appears to this court that this is a case which is under the jurisdiction of the Gram Adalat and having so and due to the law declared by the High Court Division of the Supreme Court of Bangladesh reported in 44 DLR (HCD) 77 this case is to be transferred to the concerned Gram Adalat and hence this case is transferred to the concerned Gram Adalat.Next date…

Send the record of this case in keeping a photocopy of the same to the concerned Gram Adalat immediately.

The office is directed accordingly.

4.38 Birod Mimangsa Board

Section 7 of the Birod Mimangsa (poura elaka) Board Ain 2004 relates to the formation and etc. of the Birod Mimangsa Board.

4.39 Model order for sending the case to Birod Mimangsa Board

Seen the aforementioned note and after perusal of the record it appears to this court that this is a case which is under the jurisdiction of the Birod Mimangsa Board and having so and due to the law declared by the High Court Division of the Supreme Court of Bangladesh reported in 44 DLR (HCD) 77 this case is to be transferred to the concerned Birod Mimangsa Board and hence this case is transferred to the concerned Birod Mimangsa Board.Next date…

Send the record of this case in keeping a photocopy of the same to the concerned Birod Mimangsa Board immediately.

The office is directed accordingly.

4.40 **Salishi Tribunal**

Sections from 11 to 16 relates to the formation of the Salishi Tribunal under the Salish Ain 2001.

4.41 **Orpito Sompotti Prottorpon Tribunal and etc**

This kind of Tribunal deals with the orpito sompotti under the Orpito Sompotti Ain 2013 (amended) and other tribunals if any will try the subject matters under the concerned law.

Extra Judicial Court

4.2 Not Police Court but Court Police

There is an extra judicial court which is known to the advocates, staff of the courts and even the Judges of different the sub-ordinate Courts is police court. A chapter in the Police Regulations 1943 relates to the matter of court police who is liable to peroform the court duty. Unfortunately the office of the superintendent of police of Gaibandha has made a card containing contact numbers of police officers which also contain the very wrong term police court.

Chapter– 5

General and Non General Register Case

(Procedure, difficulties and ways of Police Cases)

5.1 General Register Case defined

The term ‘General Register Case’ in short GR Case is nothing but a conception of identifying the cases which are entried in the General Register. After lodging a First Information (FI) with the police station by an informant is entried and numbered in the General Register prescribed by the Govternment.

5.2 Necessity of enforcement of Regulation 244 of PR 1943

Many times we read the news in the different dailies that the police has not recorded the First Information (FI) lodged by the informant. This picture is common when the complaint is filed before the cognisance taking Mgaistrate. Regarding this point, a peculiar and very unfortunate and ignorance based privision of law has been set up in the Nari o shishu Nirjatan Daman Ain 2000 (amended in 2003) in section 27(1ka) of the said Ain which provides that the affidavit of failure of lodging the First Information (FI) with the police station. Every Tribunal of this country after getting this fact of affidavit is performing its judicial duty. The vital question whether the non record of any First Information (FI) lodged by any informant is an offence. The answer can be got clearly from section 29 of the Police Act 1861 and regulation 244 of the Police Regulations 1943 and the answer is yes i.e. the non record of any First Information (FI) lodged by any informant is an offence.

5.3 Violation of Regulation 244 of PR 1943

The violation of regulation 244 of PR 1943 is completely an offence and for which the cognisance can be taken against the officer in charge of the police station concerned under section 29 of the Police Act 1861 with the consent of the Chief Judicial Magistrate by following regulation 434 of PR 1943. It is reminded that if the complaint is not filed by the Court Officer by petition in writing containing the endorsement of the Chief Judicicial Magistrate, the Magistrate concerned having the cognisance taking power can take the cognisance suo moto as the regulation 434 (c) is a directory in nature and the PR 1943 is subservient to the Police Act 1861.

5.4 Proof of violation of Regulation 244 of PR 1943

The proof of violation of Regulation 244 of PR 1943 is very easy that is, firstly: at the time of entering into the police station particularly to the duty officer one should note the time either in mind or in the paper, secondly one should know the name of the duty officer from his name plate, thirdly one should note again the time of deparure from the said duty officer. After knowing this one can file a complaint for not recording any first information and if any step under section 29 of the Police Act 1861 is taken against the said duty officer including the officer in charge of police station no violation of regulation 244 of PR 1943 shall be happened and for this the Magistrates should be well trained.

5.5 Punishment of violation of Regulation 244 of PR 1943

The punishment of violation of Regulation 244 of PR 1943 has been provided in section 29 of the Police Act 1861.

5.6 Role of Judicial Magistrate

The role of Judicial Magistrate is undeniable. The Judicial Magistrates having the power of taking cognisance of police cases as per regulation 21 of PR 1943 are under the responsiblity for watching the course of police investigations in the manner laid down in Chapter XIV of the code of criminal procedure. Chapter XIV of CrPC has been started with section 154 and ended with 176 of the said code. This indicates that the Judicial Magistrates having the power of taking cognisance of police cases under the authority of regulation 21 of PR 1943 can watch all the functions of the police officers in respect of the information to police and their powers to investigate. In watching the same, if something is found violative of any regulation or law the concerned police shall be liable under section 29 of the Police Act 1861. As for example, the police wilfully sometimes make delay of submitting the report under section 173 of the code of criminal procedure and the concerned Judicial Magistrate can, calling the Case Diary, watch the stage of investigation. According to regulation 261 (c) of PR 1943 a time frame has been provided for completion of the investigation which is not strictly followed by the police officers. One thing is very clear that the watching of the investigation does not amount to interfere with the investigation as the regulation 21 of PR 1943 has enacted that kind of watching authority.

5.7 People and media awareness

In our country, due to the lacuna of legal education and other necessary education some laws particularly the Police Act 1861 and the PR 1943

are not taught to the law students nad hence the people and the media are not in a good position of awareness. The people specially the advocate, Judges and the journalists should know the aforesaid important laws.

5.8 Different authorities' awareness

Different authorities of the State ought to know the laws regarding the criminal administration of justice. Law should not be the subject matter of the advocates and the judges of the country. But the laws should be taught to every citizen of the State so that under article 21 of the Constitution he can safeguard the same from his scope and position.

5.9 Court's jurisdiction to give recommendation to different authorities

Every court has the jurisdiction to give recommendation for the interest of the people and ends of justice to concerned authorities so that the authorities can remove their errors. This authority has been provided in policy number 12 of the Apendix II of the CrRO – 2009.

5.10 What is First Information (FI)?

The term 'First Information (FI)' means the information within the purview of section 154 of the code of criminal procedure which reaches for the first time to the police as to the commission of a cognisable crime. No section of the code of criminal procedure contains the term of 'First Information' (FI).But regulation 243 (c) of PR 1943 deals clearly with the term 'First Information' (FI). This first information is of two types which are (i) oral first information and the written first information. The best example in this regard is section 18(1) (kha) of Nari o Shishu Nirjatan Daman Ain 2000.

5.11 What is First Information Report (FIR)?

The most used wrong term in our criminal administartion of justice is the 'First Information Report' (FIR). The Judges even of the apex court of our country had frequently used and are using till now commonly. This indicates the reality of the view which has been expressed by Mahmudul Islam in the preface of the book 'the Law of Civil Procedure Vol. 1 page ii in the following language:

'There are a small number of competent judges and very few of them take pride in their work. Their integrity and honesty is being questioned. The confidence in the administartion of justice that the people have had is in the wane. The output of a judge has severely comedown.' Most of the reported judgments particularly during Bangladesh regime in diffrent law journals contain the term 'the informant xyz lodged the first

information report' [Ref. 58 DLR (2006) 373 para 7, 58 DLR (AD) 63 para 2 etc.] But the questions are (i) what is 'First Information Report' (FIR)? and (ii) whether an informant can lodge the 'First Information Report' (FIR)? The answer of the first question is that the 'First Information Report' (FIR) is a prescribed form based information or report. The prescribed form is as per regulation 243 (a) of PR 1943 a B. P Form No. 27 and the the answer for the second question is that an informant can not lodge the 'First Information Report' (FIR) at all rather can lodge the 'First Information' (FI) only.

It is the duty of the officer in charge of the concerned police station to draw up the 'First Information Report' (FIR) in B.P. Form No. 27 after receiving any information as to the commission of a cognisable crime.

5.12 Difference between FI and FIR

The differences between between FI and FIR are as follows:

1. The First Information (FI) is an information given by any person for the first time to the police as to the the commission of a cognisable crime. On the other hand, the 'First Information Report' (FIR) is a prescribed form based on first information.
2. The First Information (FI) is always reached by a person but the 'First Information Report' (FIR) is always written by the officer taking the information in his own hand writing and shall be signed and sealed by him.
3. There is no precribed instruction for writing the First Information (FI) but according to regulation 243 of PR 1943 there are nine instructions for drawing up the 'First Information Report' (FIR).
4. etc.

5.13 Delayed FI and its effect

The First Information (FI) being not substantive evidence is important for realising the foundation of the alleged allegation or the prosecution case. The following things should be considered:

1. The FIR is a very important document for being considered in connection with the occurrence. So the dealy of lodging FIR by 12 hours the prosection case becomes doubtful. [15 DLR (WP) 135]
2. Delay in lodging FIR un-explained effect. When the delay in lodging the FIR unexplained effect, held such delay throws considerable doubt as regards genuineness of prosection case. [PLD 1968 Lah P-869 9DB)]

3. Delay in lodging FIR does not in all cases, give adverse presumption against prosecution. It is delay perse in all cases which would give rise to an adverse presumption against the prosecution but delay in particular circumstances of a case coupled with conference and consultation would tend to milate against the prosection. [1968 P.Cr. Lj 597 Lah]

5.14 Instructions for FIR

Within the purview of regulation 243 of PR-1943, at the time of writing the first information (FI) given by any person in the B.P.Form 27 the concerned police officer is under the responsibility of following 9 (nine) instructions which are as follows:

1. If the information be given orally it shall be recorded in plain and simple language as nearly as possible in the informants own words technical or legal expressions of high-flown language or lengthy or involved sentences shall not be used.
2. The police officer shall not administer an oath to the complaint.
3. If a particular person be charged or suspected, the facts on which the suspicion is based should be clearly set forth. The informant should be required to distinguish what he professes to know personally from matters of which he has heard only second hand.
4. Persons charged shall be distinguished from persons suspected. The informant shall be asked to state distinctly whether he charges the person or persons he names and only when he does charge them shall the name or names be entered in column 2 of the form. The names of suspected persons shall not be entered in column 2. They shall be shown in the complainant s statement at the foot of the return. It the informant says that certain persons were recognised , their names shall be clearly stated or it he is unable to say that any one was recongised, this shall be distinctly recorded at this stage.
5. In cases of delay in bringing report of an offence, explanation of such delay shall always be demanded.
6. The informant’s statement when complete shall be read over to him and he shall sign it. Thumb – impressions shall be taken when necessary. The report shall show that this has been done.
7. The upper and form portion of the first information report shall be filled in and signed by the officer in – charge. The statement at foot shall be signed both by the informant and by the police officer.

8. Each report shall bear a consecutive number in the order of its arrival at the police station .The report received at the police station no matter when the crime occurred, after midnight on the morning of the first day of the morning of the first day of the month shall bear the last number.
9. If the accused is a servant of the Crown, it shall be so stated and intimation sent to his official superior by the Superintendent of Police.

5.15 Confessional statement in FI

It is a common phenomenon that the first information (FI) contains the confessional statements of the accused. What is the position of that confessional statement in law is very much important as the prosecution shows that thing against the accused particularly at the time of the hearing of the remand or the application for bail of the accusd. But the correct view is that ‘a cofessional statement in the first information (FI) can not be used against the accused. Where an accused person himself makes a confessional statement which is taken down as a FIR the statement is inadmissible against the accused as it amounts to a confession to police officer. PLD 1960 Pesh P-137 (DB)’

5.16 Evidentiary value of FI

The First Information (FI) is nothing but a collection of information as the commission of a cognisable crime upon which the investigation is run and a report finally is made. FIR (correct FI) is not a substantive piece of evidence. It is wrong to treat the FIR (correct FI) in any case as a piece of substatntive evidence. PLD 1960 Lah P I, PLD 1964 Kar p-264, PLD P- 1965 (SC) III, 14 DLR (SC) P- 251, 35 DLR P- 243.

NON-GENERAL REGISTER CASE
(Procedure, difficulties and ways of NGR Cases)

5.17 Information and permission in non-cognisable case

Section 155 of the code of criminal procedure provides the scope of giving the information to officer in charge of a police station of the commission within the limits of such station of a non cognisable offence and the said police officer after recording the substance of the said information shall refer the informant to the Magistrate. No police officer shall investigate a non cognisable case without the order of a Magistrate of the first class or second class having power to try such case or send the same for trial.

5.18 Necessity of referring the informant to the Magistrate

After joining in Gaibandha as Judicial Magistarte on 22nd May 2008, I found the lacuna that the police did not refer the informant to the Magistrate at the time of sending the substance of the information of non cognisable offence. Every year more than 3000 (three thousand) cases were instituted as NGR cases. Thereafter an order was passed as to the necessity of referring the informant to the Magistrate and the number of institution of NGR cases comes below 300 (three hundred) only.

5.19 Examination of the informant

This is question as to refer the informant to the Magiatrate i.e. what step should be done by the Magistrate in getting the informant. Though there is no clear provision of law in the code of criminal procedure but for giving the permission of investiogation, the Magistrate should examine the the informant for the ends of justice.

5.20 Police report

According to section 155 (3) of the code of criminal procedure any police officer may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognisable case as to a non cognisable case after getting the permission from the Magistrate. For this reason, the police report should also contain the same particulars as for example search list, sketch map, the staements of the witnesses, documents and etc.

5.21 Model order under section 155 of CrPC

I. DISTRICT: GAIBANDHA
IN THE COURT OF JUDICAL MAGISTRATE, GAIBANDHA
Present:- Md Azizur Rahman, Judicial Magistrate, Gaibandha
Date of passing order:-30th September, 2008
Gaibandha PS General Diary Numbered 1262 Dated 27.07.2008
The State ... Prosecution

-Versus-

Amsar Ali and another ... Accused

Seen the aforementioned note and after perusal of the record it appears to me that an application has been submitted conventionally under section 155(2) of the Code of Criminal Procedure without referring the informant to the Magistrate.

In respect of the aforementioned conventional way of submitting the application for passing the order for permitting the investigation into a non cognizable case, I do feel the necessity of clarifying the legal position. Section 155 of Criminal Procedure Code provides that-

"1. When information is given to an officer in charge of a police station of the commission within the limits of such station of a non cognizable offence, he shall enter in a book to be kept as aforesaid the substance of such information and refer the informant to the Magistrate.

2. *Investigation into non-cognizable cases. No police officer shall investigate a non cognizable case without the order of a Magistrate of the first or second class having power to try such case or send the same for trial*."

Here the term 'refer the informant to the magistrate' means to send the informant to the Magistrate. The term 'refer to' means according to Oxford Dictionary to send somebody or something to somebody or something for help, advice or a decision.

In respect of this view a decision of the Supreme Court of Bangladesh reported in 41 DLR (HCD) 306 Para-20 can be cited here for better understanding which is as follows- "*A police officer is not to investigate into a non cognizable case under section 155 of Code of criminal procedure without the order of a Magistrate of the first or second class. Under the law when the police has a report of a non cognizable offence, he is bound to refer the informant to the magistrate for initiating the process of investigation*."

But for this non cognizable case i.e. Gaibandha Police Station GD No. 1262 dated 27.07.2008 and other same non cognizable cases in this district the police officer either without understanding the legal position or intentionally violating the provision are seeking the order of permission for investigation and accordingly they are getting the same.

In fact, in view of the above mentioned legal position the police officers are bound to send the informant to the magistrate and after examining the informant, being satisfied, the magistrate can pass the order for investigation.

In view of the above mentioned legal position in respect of section 155 of CrPC. I am inclined to pass the order that the application submitted for permission to investigate into a non congnizable offence is hereby rejected. This order is applicable for all same non cognizable cases unless the contrary is proved and accordingly

Let the copy of this order be communicated to the officer in charge of Gaibandha police station, Gaibandha as well as other police stations for the same. It shall also be sent to the office of the Superintendent of police, Gaibandha

Name…
Acting Chief Judicial Magistrate
Gaibandha

II. **DISTRICT: GAIBANDHA**

IN THE COURT OF JUDICAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Judicial Magistrate, Gaibandha.
Date of passing order:-30th Octoberber, 2008
Gaibandha PS General Diary Numbered 1263 Dated 28.08.2008
The State ... Prosecution

-Versus-

Amsar Ali and another ... Accused

...Seen the aforementioned note and the referred informant to me. The term 'refer to' of section 155 of the code of criminal procedure means according to Oxford Dictionary 6th edition page 1156 that to send somebody or something to somebody or something for help,advice or a decision. The Supreme of Court of Bangladesh has declared the following law reported in 41 DLR (HCD) 306 para 20

"In ordering investigation a Magistrate in turn has to be satisfied that reasonable grounds exist for believing that an offence had been committed. If he does not find so in ordering investigation then it would again be an illegality."

Generally in a complaint register case after examining the complainant under section 200 of the code of criminal procedure and as such of the witness present, if any, as the Magistrate may consider necessary, the Magistrate may pass the order for the investigation by a police officer. Accordingly for the satisfaction to the extent of existence of reasonable grounds it is necessary to scrutinise the substance of the information mentioned in the presented copy of the General Diary Entry concerned and to examine the referred informant and hence the subtance of the examination of the referred informant has been recorded duly. After perusal of the same and the presented copy of the General Diary Entry concerned, it appears to this court that there is no reasonable grounds having glarious disparity and realising the matter of civil liability.

In view of the aforementioned reasons, the perimissiom is not given and thus the same is disposed of. The office is directed accordingly.

Name…
Judge
Senior Judicial Magistrate
Gaibandha

III. **DISTRICT: GAIBANDHA**

IN THE COURT OF JUDICAL MAGISTRATE, GAIBANDHA
Present:- Md Azizur Rahman, Judicial Magistrate, Gaibandha.
Date of passing order:-31st Octoberber, 2008
Gaibandha PS General Diary Numbered 1269 Dated 30.08.2008
The State ... Prosecution

-Versus-

Amsar Ali and another ... Accused

...Seen the aforementioned note and the referred informant to me. The term 'refer to' of section 155 of the code of criminal procedure means according to Oxford Dictionary 6th edition page 1156 that to send somebody or something to somebody or something for help,advice or a decision. The Supreme of Court of Bangladesh has declared the following law reported in 41 DLR (HCD) 306 para 20

"In ordering investigation a Magistrate in turn has to be satisfied that reasonable grounds exist for believing that an offence had been committed. If he does not find so in ordering investigation then it would again be an illegality."

Generally in a complaint register case after examining the complainant under section 200 of the code of criminal procedure and as such of the witness present, if any, as the Magistrate may consider necessary, the Magistrate may pass the order for the investigation by a police officer. Accordingly for the satisfaction to the extent of existence of reasonable grounds it is necessary to scrutinise the substance of the information mentioned in the presented copy of the General Diary Entry concerned and to examine the referred informant and hence the subtance of the examination of the referred informant has been recorded duly. After perusal of the same and the presented copy of the General Diary Entry concerned, it appears to this court that there are reasonable to proceed with this information. In view of the aforementioned reasons, the perimissiom is given. The office is directed accordingly.

Name…
Senior Judicial Magistrate
Gaibandha

5.22 Reasonable duty of the Judicial Magistare:

Generally the Judicial Magistrates of our country after receiving the first information (ejahar) and the first information report (B.P. Form No. 27), by the General Register Officer (GRO) give their signatures where the the said the General Register Officer (GRO) mentions the next date. But this should be changed as the Magistrate at the time of sending any complaint under section 156 (6) of the code of criminal procedure under regulation 245 of police regulations 1943 can give a date and the said date shall be next date for submitting the police report. For another reason i.e. if the date is given by the Magistarte, he can exercise his authority of watching the investigation by calling the case diary as according to rule 34 (2) of the Crimiunal Rules and Orders-2009, no adjournment should be given in any case without a proper application by the prosecution or the defence and except on sufficient grounds and a short date should be given. Moreover, regulation 261(c) of the police regulations 1943 does not require the matter of giving long period. Besides these, if the Judicial Magistrate, pass the following model order in getting the aforesaid the first information (ejahar) and the first information report (B.P. Form No. 27) in a case of allegation of sections 326/307 of the penal code, two essential benefits shall be done i.e. the injury certificate shall come and at the time of hearing of any application for bail of any voluntarily surrendred person or arrestee shall be more easy and no person shall be deprived of having any bail which is due for him.

Model Order in this behalf:

…Seen the aforementioned note and after perusal of the record, it appears to this court that the First Information (FI) and the First Information Report (FIR) contain the allegation of sections 326/307 of the Penal Code along with some other sections of the same Code which definitely requires the injury certificate to consider the hurt and hence under the authority of regulation 21(a) of PR-1943, the investigating officer of this case is directed to submit the injury certificate of the victim/(s) of this case within... and failing which he will have to submit the photocopy of the documents of the steps taken by him along with the proper intelligence of the victim's/ victims' admission and treatment within the same date.

Let a copy of this order be communicated to the investigating officer of this case immediately.

Name…
Judge of
Senior Judicial Magistrate 2nd Court
Gaibandha

Chapter– 6

Complaint Register Case

Procedure, difficulties and ways of Complaint Cases

6.1 Complaint defined

Before stating the Code of Criminal Proceure of 1898 based definition of the term "Complaint" it is necessary to conceptualise the general conception of the said term. **Complaint means "**An expression of grief, pain, or dissatisfaction or a formal allegation against a party" which originated from Middle English *compleynte,* from Anglo-French *compleint,* from *compleindre* and first known use was in 14th century.[1] Here the term 'complaint' indicates the 'criminal complaint' which means "a criminal complaint must state the facts that constitute the offense and must be supported by probable cause. It may be initiated by the victim, a police officer, the district attorney, or another interested party. After the complaint is filed, it is presented to a magistrate, who reviews it to determine whether sufficient cause exists to issue an arrest warrant. If the magistrate determines that the complaint does not state sufficient probable cause, the complaint is rejected and a warrant is not issued.[2] According to section 4(1) (h) of the code of criminal procedure "Complaint" means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person whether known or unknown, has committed an offence, but it does not include the report of a police officer. From this definition of complaint, it is clear that the First Information (FI) lodged with any police station by any person is also a complaint as the same is not a report of police officer though strictly the same does not satisfy the requirement of examination of the complainant upon oath. In India the word 'complaint' has been set and defined after Law Commission's Report in section 2 (d) of the Code of Criminal Procedure an explanation which runs follows:

"Complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown has committed an offence, but does not include a police report

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[1] *http://www.merriam-webster.com/dictionary/complaint visited on 12.11.2010*

[2] *http://legal-dictionary.thefreedictionary.com/Criminal+Complaint visited on 12.112010*

"*Explanation*- A report made by a police officer in a case which discloses, after investgation, the commission of a non-cognisable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant."

In our country, it is well settled general conception that no Magistrate issues any processes after getting any First Information (FI). Generally after recording the First Information (FI) in B.P. Form 27 as First Information Report (FIR) is forwarded to the concerned Magistrate and the Magistrate passes the first order in writing only 'seen' or if the accused is forwarded at the same time, in that case the order is like "seen and send the accused to jail hajat by CW and the next date 19th November 2010/..." My thinking in this point of law here is that a Magistrate should after receiving and seeing the First Information (FI) either issue process or processes for the appearance or the arrest of the accused who have not been forwarded already as arrestee or not to issue any processes if he thinks fit based on the nature of the offence. The reason is that in a case of cognisable offence all the accused has no overt acts of non bailable offence and in that case some accused being alleged on bailable offence are arrested by the police on the holiday so that they may be imprisoned. The rival party of the society by any means can take this chance of imprisioning others as there is no strict principle of using the discretionary power of arresting the person by the police. This conception may hit the established conception of the persons who do not think reversely and deeply. Now I am telling the reasons of advocating the aforesaid conception.

1. Thre is no bar to consider the First Information (FI) as the 'complaint' in accoradnce with section 4(h) of the code of criminal procedure i.e. the First Information (FI) is not a report of a plice officer though strictly the same does not satisfy the requirement of examination of the complainant upon oath.
2. A Magistrate generally after getting the First Information (FI) passes the first order in writing only 'seen' or if the accused is forwarded at the same time, in that case the order is like "seen and send the accused to jail hajat by CW and the next date 19th November 2010 which is done in fact after 'taking cognisance'.
3. As the word 'cognisance' means 'knowledge; acknowledgment or knowledge of certain facts upon which the court must act without requiring proof'[3] or 'knowledge upon which a Judge is bound to act without having it proved in evidence' [4]

[3] *http://www.thefreedictionary.com/taking+cognisance visited on 12.11.2010*
[4] *WHARTON'S LAW LEXICON, 14 edition, page 209*

4. As the term '**take cognizance of' means** 'to take notice of; acknowledge espicially officially'.[5]
5. Section 204 of the code of criminal procedure contains the necessity of issuing process, if in the opinion of a Magistrate taking cognisance of an offence there is sufficient ground for proceeding.

6.2 Complaint Register Case defined

Generally the register maitaining the cases based on complaint in accordance with the procedure of code is called complaint register case. This is in short form known as CR CASE. In our country the common feature in respect of the complant register case is after issuing process the complaint is registered as CR CASE. Before that stage it is known as PETITION CASE. The conception of petition case is not supported by the existing Code of Criminal Procedure and the other laws. The complaint whether it should be proceeded or not should be registered as complant register case in short CR CASE.

6.3 Meaning of taking cognisance of

Section 200 of the code of criminal procedure contains a term 'taking cognisance of' which has not been defined in our said Code. But the term 'cognisance' means

'1. knowledge, acknowledgment, *take cognizance of* to take notice of; acknowledge, esp officially
2. The range or scope of knowledge or perception
3. (Law) *Law*
   a. the right of a court to hear and determine a cause or matter
   b. knowledge of certain facts upon which the court must act without requiring proof" [6]

According to WHARTON'S LAW LEXICON the term cognisance means 'knowledge upon which a judge is bound to act without having it proved in evidence'[7]

Cognisance does not mean necessarily to issue process which is common error thinking in the mind of the legal personalities sans some uncommoners. Mr.Justice Mohammad Hamidul Haque in his book 'Trial of Civil Suits and Criminal Cases' 2nd edition, Dhaka, Bangladesh, Page 258 has written that "…the Magistrate is required to examine the

[5] *http://www.thefreedictionary.com/taking+cognisance visited on 12.11.2010*
[6] *http://www.thefreedictionary.com/taking+cognisance visited on 21.02.2012*
[7] *WHARTON'S LAW LEXICON, fourteenth edition, Indian Economy Reprint 2007, page 209*

complainant on oath before taking cognizance…" but the section 200 of the code of criminal procedure has started in the following way;

"A Magistrate taking cognizance of an offence on complaint shall at once examine on oath the complainant…" Both expressions are contradictory and one in knowing the personality of Mr. Justice Mohammad Hamidul Haque will believe him generally. But my humble request is to rethink whether section 200 of the code of criminal procedure as its existing form is correct.

For information 'A Two-member Viceroy's Executive Council (composed of **Sir Henry James Sumner Maine** and **Sir James Fitzjames Stephen**) also worked on the side-lines of the Law Commissions and ensured many laws during the British regime along with four Law Comisions of India before its independence;[8]

Sir Henry James Sumner Maine, KCSI (15 August 1822 – 3 February 1888), was an English comparative jurist and historian and a professor of Oxford University and ***Sir James Fitzjames Stephen, 1st Baronet*** (3 March 1829 – 11 March 1894) was an English lawyer, judge of the High Court of England and writer and the author of the unchanged long standing 'the Evidence Act of 1872.'

Now I would like to give the brief information as the following persons who were in the four Law Comisions of India before its independence i.e.

First Pre-Independence Law Commission (1834)

Chairman ***Lord Macaulay*** and othe members were (1) J.M. Macleod, (2) G.W. Anderson, and (3) F. Millet

Second Pre-Independence Law Commission (1853)

Chairman ***Sir John Romilly*** and other members were (1) Sir Lord Jervis, (2) Sir Edward Ryan, (3) R. Lowe, (4) J.M. Macleod, (5) C.H. Cameron, and (6) T.E. Ellis

Third Pre-Independence Law Commission (1861)

Chairman ***Sir John Romilly*** and other members were initially (1) Sir Edward Ryan, (2) R. Lowe, (3) J.M. Macleod, (4) Sir W. Erle, and (5) Justice Wills. Subsequently Sir W. Erle and Justice Wills succeed by Sir. W.M.James and J.Henderson, Later J. Henderson replaced by Justice Lush

[8] *http://en.wikipedia.org/wiki/Law_Commission_of_India visited on 21.02.2012*

Fourth Pre-Independence Law Commission (1879)

Chairman ***Dr. Whitney Stokes*** and othe members were (1) Sir Charles Turner, and (2) Raymond West

Thomas Babington Macaulay, 1st Baron Macaulay PC (25 October 1800 – 28 December 1859) was a British poet, historian and Whig politician and a Member of Parliament, ***John Romilly, 1st Baron Romilly PC, QC*** (20 January 1802 – 23 December 1874), known as Sir John Romilly between 1848 and 1866, was an English Whig politician, attorney-General and judge of the High Court of England and however I don't like to increase the volume of my writings as to this point and any body can read from the online sources about the personalities of the aforementioned persons. I have mentioned this only to rethink as to the aforesaid expression set in section 200 of the code of criminal procedure by the Chairman of Second and Third Pre-Independence Law Commission of India Sir John Romilly and others whether may be incorrect or we are not a position of understanding the expression very correctly as has been correctly set.

Before giving my opinion I whould like to see and examine the defitions of the term 'cognisance' which are available in our domain. Wthout the abovementioned defitions I do like to prefer a book of KJ AIYER'S Judicial Dictionary, Fourteenth edition and in that dictionary at page 232 it has been mentioned that

"The word 'cognisance' indicates the point when a Magistrate or a judge first takes judicial notice of an offence" ***State of West Bengal v. Mohammad Khalid (1995) SCC 684, p 696*** "… At the stage of taking cognizance, the Magistrate has simply to be satisfied whether the allegations against the accused prima facie make out a case for trial or not and nothing beyond that" ***SK Siraj V. State of Orissa (1994) CrLJ 2410, p 2415 (Ori)*** and the author has ended in fact in giving the following definition of the term 'cognisance'i.e.

'Taking cognizance does not involve any formal action, or indeed action of any kind; it occurs as soon as a Magistrate, as such, applies his mind to the suspected commission of the offence.***'J P Verma v. Emperor (1946) ILR Nag 780***

From these defitions it is clear that 'to **take cognizance of' means** to take notice of and it also means that an order passed under section 203 of the code of criminal procedure is also passed after taking cognizance as the aforesaid last definition speaks that Taking cognizance does not involve any formal action and this is supported by section 204 of the said code and the said section provides that

"If in the opinion of a Magistarte taking cognizance of an offence there is sufficient ground for proceeding and…" which means clearly that (1) 'to **take cognizance (**take notice of) then (2) opinion of sufficient ground for proceeding and then (3) issuance of process (summons or arrest warrant). This definitely also means that if the opinion is of not suuficient ground for preceding the complaint must be dismissed and ultimate opinion as the expression set in section 200 of the copde of criminal procedure by by the Chairman of Second and Third Pre-Independence Law Commission of India Sir John Romilly certainly correct and accordingly the view expressed by Justice Mohammad Hamidul Haque is opposite. For holding this view of the word 'cognisance' section 192(1) of the code of criminal procedure has provided that "The Chief Metropolitan Magistrate , or any Chief Judicial Magistrate may transfer any case, of which he has taken cognizance, for inquiry or trial to any Magistrate sub-ordinate it him."

Here it arise a question very generally that if cognizance means to issue process under section 204 of the said code, why the case may be transferred to any other sub-ordinate Magistrate for ***inquiry***? Again the question is arisesn that why the Magistrate can direct for the said transferred case under section 192(1) of the code of criminal procedure, an inquiry or investigation? The water like answer is that Sir John Romilly was certainly correct in setting the expression in the said section 200 of the code of criminal procedure. That is, after taking a cognizance for inquiry by the Chief Metropolitan Magistrate, or any Chief Judicial Magistrate and transferring the said case again a cognizance can be made in that case by any sub-ordinate Magistrate to whom the same is transferred.

That's why in a criminal proceeding a Judge or a Magistarte concerned is taking cognisance for more than once either knowingly or unknowingly. This has been clarified by the Indian High Court and Supreme Court in giving the following three declarations in three different cases which are;

1. The Magistrate takes cognizance of the complaint when it is received, he is required to hold preliminininary inquiry into the matter or direct such inquiry through the police and thereafter dispose of the complaint or takes steps for securing the appearance of accused and proceed with the case. **[Ref. Anand R. Nerkar v. Rahimbi Shaikh, 1991 CrLJ 557, 562 (Bom)]**
2. 'Cognisance' indicates the point when a Magistrate or a Judge takes judicial notice of of an offence. It is entirely different thing from

initiation of proceedings; rather it is the condition to the initiation of the proceedings by the Magistrate or the Judge**.[Ref. State of West Bengal v. Mohammed Khalid, AIR 1995 SC 786: (1995) 1 SCC 684]**

3. The word 'cognisance' was used in the Code to indicate the point when Magistrate or Judge takes judicial notice of an offence and that it was a word of indefinite import, and is not perhaps always used in exactly the same sense**.[Ref. Ajit Kumer v. State W.B. AIR 1963 SC 765]**

6.4 Examination of Complainant

After taking cognisance of an offence in view of the aforesaid conception of cognisance, the concerned Magistrate under section 200 of the code of criminal procedure shall examine at one upon oath the complainant and as such of the witness present, if any, as may, he may consider necessary and the substance of the examination shall be reduced to writing and shall be signed by the complainant or witness so examined, and also by the Magistrate. Threafter the Magistrate concerned shall pass the one of the following orders:

1. to take cognisance under section 190(1) (a) of the code of criminal procedure if the facts of the complaint constitutes offence and there is no necessity of making any inquiry or investigation under section 202 of the said code and issue of process under section 204 of the code of criminal procedure and at the same time he can dispense with the personal attendance of the accused, and permit him to appear by his pleader.
2. to record the reasons in writnig and postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or, if he is a Magistrate other than a Magistrate of the third class, direct an inquiry or investigation to be made by any Magistrate sub-ordinate to him, or by a police officer or such other person as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint.
3. to return the complaint under section 201 of the code of criminal procedure for presentation to the proper Court with an endorsement to that effect that he is not competent to take cognisance of the case based on the complaint. If the complaint has been made in writing, such Magistrate shall direct the complainant to the proper Court.
4. to dismiss the complaint under section 203 of the code of criminal procedure if after considering the satement on oath (if any) of the

complainant and the result of the investigation or inquiry (if any) under section 202 of the said code and there is in his judgment no sufficient ground for proceeding.

It is noted that there are three exceptions which should be kept in mind at the time of taking the cognizance of the offence upon the complaint made by any person within the purview of section 4(1)(h) of the code of criminal procedure which are as follows;

1. When the complaint is made in writing , nothing herein contained shall be deemed to require such examination before transferring the case under section 192;
2. When the complaint is made in writing , nothing herein contained shall be deemed to require such examination in any case in which the complaint has been made by a Court or by a public servant or purporting to act in the discharge of his official duties;
3. When the case has been transferred under section 192 and the Magistrate so transferring it has already examined the complainant and witness if any, the Magistrate to whom it is transferred shallnot be bound to reexamine them.

6.5 Cognisance of offence upon complaint

Section 190 (1) (a) of the code of criminal procedure deals with the matter of cognisance of any offence upon receving a complaint of facts which constitute such offence and in that case the Magistrate concerned may take cognizance. He has to think and consider the procedural bars mentioned insections from 195 to 199A of the said code.

6.6 Model Order for cognisance of offence upon complaint.

DISTRICT: GAIBANDHA

IN THE COURT OF SENIOR JUDICAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing order...
xyz ...Complainant
-Versus-
Pqr ...Accused

Seen the complainant and examined him under section 200 of the Code of Criminal Procedure upon oath. The substance of the said examination has been recorded duly and there after the same has been signed by the complainant and also by this court. After perusal of the same as well as this complaint in writing it evinces that there are sufficient grounds for proceeding. It also appears to this court that the facts of the complaint in writing and the said substance of the examination constitute the cognisable offences and hence cognisance is taken against accused... under section 4 of the Dowry Prohibition Act of 1980 and issue summons upon him. Let the summons be accompanied by a copy of such complaint under section 204(1B) of the code of criminal procedure. Next date... is fixed for the appearance of the accused.

Name…
Senior Judicial Magistrate Court
Gaibandha

6.7 Cognisance upon police report

Section 190 (1) (b) of the code of criminal procedure deals with the matter of cognisance of any offence upon a report in writing of such facts made by any police officer which constitute such offence and in that case the Magistrate concerned may take cognisance.

6.8 Model Order for Cognisance upon police report

DISTRICT: GAIBANDHA
IN THE COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: - Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing Judgment: 3rd November 2010
General Register Case No 118 of 2010 (Sadullapur)
Arising out of Sadullapur Police Station Case Number 23 dated 23.04.2010
The State ... Prosecution
-Versus-
Mezbaul Islam and others ... Accused
Under sections 302/34 of the Penal Code of 1860

Seen the aforementioned note and after perusal of the record it appears that the date of occurrence was 23.04.2010 at 8.30 pm at night and the First Information (FI) was lodged with Sadullapur Police Station on 23.04.2010 by the informant Md. Samsul Haque against Mezbaul Islam and some unknown persons. Thereafter the lodged First Information (FI) being No. 23 dated 23.04.2010 of Sadullapur police station which was then numbered as General Register (GR) case being No. 118 of 2010. The informant being aggrieved with the investigating officer of this case at the investigation stage on 15.07.2010 through a legal practitioner submitted an application for recording the statements of the witnesses which are important in the case but the investigating officer is not inclined and having no bar in section 164 of the code criminal procedure the said application was allowed and next date 22.07.2010 was fixed for recording the same. Meanwhile the investigating officer of this case in understanding the same also submits an application for recording the statements of the witnesses and accordingly the statements of the witnesses on 22.07.2010 and 09.08.2010 were taken and recorded duly. Then the investigating officer after investigating into the matter submitted a report dated 07.10.2010 against accused Mezbaul and Ghutu only and recommended them to be prosecuted for the allegation. But the police report dated 24.11.2008 does not provide sufficient intelligence in respect of other persons whose names have been mentioned in the statements given by the witnesses which are recorded under section 164 of the code of criminal procedure and hence it is necessary to consider

about their position in the allegation. There after the informant Md. Samsul Haque being aggrieved with the said police report dated 07.10.2010 filed a narajee petition of complaint today (03.11.2010) and the informant cum complainant is examined under section 200 of the code of criminal procedure and the substance of the said examination is recorded duly.

The inquest report dated 23.04.2010 and the post-mortem report dated 24.04.2010 contain the sufficient intelligence in respect of the alleged allegation. Now the matter of consideration is that as per police report dated 07.10.2010 contains that...

Moreover, the statements of the other witnesses who have not been produced before this court, recorded by the investigating officer in respect of the intelligence of escaping the responsibility within the purview of section 106 of the Evidence Act of 1872 is not determinable without appreciating the evidence before the trial of this case. Another legal point is that the investigating officer at the time of recording the statements of the witnesses has not followed section 162 of the code of criminal procedure. He has not mentioned that the statements of the witnesses have been recorded as reduced into writing.

According to section 162(1) of the code of criminal procedure if the statement of any witnesses is recorded as reduced into writing there is no necessity of taking signature of the person making the statement and the said section 162 (1) of the said Code provides that

"No statement made by any person to a police officer in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it; ..."

In view of this section 162(1) of the code of criminal procedure, reversely, if the statement of any witnesses is not recorded as reduced into writing, the same shall be signed by the person making the statement.

In this case, as the investigating officer has not recorded the statement of the witnesses as reduced into writing, he was under responsibility under the said provision of law to take signature duly and hence the non-compliance with this section gives a scope excluding some one or some persons from the alleged allegation.

According to the statements of the witnesses recorded by this court within the purview of section 164 of the code of criminal procedure and the substance of the examination recorded today on the basis of the narajee petition of complaint, accused Mahmud Miah, Shain, Rana

Miah, Md. Khalil Miah and Ful Miah in total five, taken the deceased Serajul Islam from the house of the informant Md. Samsul Haque and thereafter he was killed in the place of occurrence. Here is clear that responsibility of giving the explanation as to the death of the deceased goes to these five persons as the fact of the death of the deceased is especially within the knowledge of them. In this connection, the law declared by the Supreme Court of Bangladesh reported in 43 DLR 336 para- 25(a) is as follows:

"Section 106 (of the Evidence Act) fixes the liability of proving the facts on the accused when the same is especially within his knowledge."

In view of the aforementioned reasons and the law declared by the Supreme Court of Bangladesh reported in 31 DLR (AD) 70 Para-14, cognisance is taken against sent up 2(two) accused namely (1) Mezbaul Islam (2) Bazlul Hoq Sarker @ Ghutu and (3) Mahmud Miah, (4) Shain, (5) Rana Miah, (6) Md. Khalil Miah and (7) Ful Miah under section 302/34 of the penal code and hence issue arrest warrant (WA) against the aforesaid seven accused only and in respect of other accused 7, 8, 9 and 10, the narajee petion of complaint as well as other documents of this case do not provide sufficient grounds for proceeding against them and accordingly the cognisance against them is not taken. Next date 19.12.2010 is fixed for report of issued warrant. The office is directed accordingly.

Name…
Senior Judicial Magistrate Court
Gaibandha

6.9 Suo-moto cognisance

Section 190 (1) (c) of the code of criminal procedure deals with the matter of cognisance of any offence upon information received from any person other than a police officer, or upon his own knowledge or suspicion that such offence has been committed and in that case the Magistrate concerned may take cognisance.

6.10 Model order for suo-moto cognisance

Here is model order for offence of suo moto cognisance along with the offence of suo moto information for clear understanding.

DISTRICT: GAIBANDHA

IN THE COURT OF SENIOR JUDICAL MAGISTRATE, GAIBANDHA
Present: - Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Criminal Miscellaneous Case No. 15 of 2010
Offence of *suo moto* information
Date of knowledge: 30th December, 2009
Arising out of
General Register Case Number 442 of 2010
Gobindagonj Police Station case number 01 dated 01.08.2010
The State ... Prosecution
-Versus-

1. Mithu Miah,
2. Sheikh Humayun Hokkani
3. Milon Khandaker all of reporters of the daily Janosangket,
   V Aid Road, Gaibandha
4. Dipak Kumer Pal, Editor and Publisher of the daily Janosangket,
   V Aid Road, Gaibandha ...accused

In pursuant to the report dated 30.12.2010 published in the daily Janosangket dated 30.12.2010 the aforesaid accused under the responsibility to publish the correct or true report has published the following report... The aforementioned accused without knowing the chemical test report which is available in the record of GR Case No. 442 of 2010 of the sale of MOP fertiliser of 154 bags in an open auction held in the court premises, has published a false report and thus the offence punishable under sections 500/501/34 of the penal code has been occurred. Documentary evidence is: (i) Record of GR case No. 442 of

2010 (ii) the copy of the daily Janosangket dated 30.12.2010 and (iii) SI ASM Abdun Nur and Bench Assistant Abul Kalam Azad and Court GRO Mizanur Rahman are concerned persons as witnesses in respect of the same.

Name…
Senior Judicial Magistrate
Gaibandha

IN THE COURT OF SENIOR JUDICAL MAGISTRATE, GAIBANDHA

Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha
Criminal Miscellaneous Case No. 15 of 2010
Offence of *suo moto* cgnizance
Date of knowledge: 30th December, 2009
Arising out of
General Register Case Number 442 of 2010
Gobindagonj Police Station case number 01 dated 01.08.2010
The State ... Prosecution

-Versus-

1. Mithu Miah,
2. Sheikh Humayun Hokkani
3. Milon Khandaker all of reporters of the daily Janosangket, V Aid Road, Gaibandha
4. Dipak Kumer Pal, Editor and Publisher of the daily Janosangket, V Aid Road, Gaibandha ...accused

Order No. 01

Date 30.12.2010

In pursuant to the facts mentioned in the complaint of suo moto cognisance dated 30.12.2010 the aforesaid accused under the responsibility to publish the correct or true report has published a false report.

After perusal of the facts mentioned in the complaint of suo moto cognisance dated 30.12.2010 it appears to this court that the aforesaid accused without knowing as to the chemical test report which is available in the record of GR Case No. 442 of 2010 has stated the sold MOP fertiliser as... (The news concerned) and thus committed the offence of punishable under sections 500/501/34 of the penal code. In view of the facts and the law reported in 19 DLR (SC) 198 there are sufficient grounds to proceed with this complaint of suo moto cognisance and accordingly cognisance is taken against them under sections 500/501/34 of the penal code. Issue summonses along with the copy of the complaint upon accused. Next date 13th January, 2011 is fixed for the appearance of the accused. The office is directed accordingly.

Name…
Senior Judicial Magistrate
Gaibandha

6.11 Necessity of sending a copy of complaint

According to section 204(1B) of the code of criminal procedure it is the duty of the Court that every summons or warrant issued under section 204(1) of the said code shall be accompanied by a copy of such complaint by which the accused can know the complaint.

6.12 Issue of Process

Section 204 of the code of criminal procedure deals with the matter of issuing the process that is to say, if in the opinion of a Magistrate taking cognisance of an offence is that there is sufficient ground for proceeding, and the case appears to be one in which, according to the fourth column of the second schedule, a summons should issue in the first instance, shall issue his summons for the attendance of the accused. If the case appears to be one in which, according to that column, a warrant should issue in the first intance, he may issue a warrant, or if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has not jurisdiction himself) some other Magistrate having jurisdiction. The Magistarte at the time of issuing the process under the said section may under section 205 of the said code dispense with personal attendance of the accused, and permit him to appear by his pleader. Though our code of criminal procedure does not contain the definition of the term 'pleader' but section 2(q) of the Indian code of criminal procedure provides that "pleader" when used with reference to any proceeding in any criminal court, means a person authorised by or under any law for the time being in force, to practise in such court, and includes any other person appointed with the permission of the court to act in such proceeding. It is necessary to know that Rule 648 of CrRO-2009 provides that no fee shall be charged for the issuance of a process in a case of cognisable offence, whether the case be instituted on complaint or not.

6.13 Model order for issue of process

Complaint Register Case No.... of 2009

অদ্য দাখিলকৃত দরখাস্তটি রেজিস্ট্রিভুক্ত করা হউক। নালিশকারী আব্দুল কাদের, আসামী মোঃ রফিকুল ইসলামসহ ২০ জন-এর বিরুদ্ধে পেনালকোড ৪০৬/৪৩০/ ৩২৩/৩৫৪/৩৪ ধারায় অপরাধের অভিযোগ আনায়ন করতঃ বিচার প্রার্থনা করেন। Seen the complainant and examined him under section 200 of the Code of criminal procedure upon oath. The substance of the said examination has been recorded duly. After perusal of the same as well as the complaint it appears that the complaint of facts in writing constitutes the alleged offences and accordingly this Court is inclined to have

cognisance**.** But this is a matter of consideration that whether the accuesd persons being the eomployee under a Palli Bidyut Samity as par Rural Electrification Board Ordinance 1977 not public servants. In respect of this, in accordance with section 2(f) of the Rural Electrification Board Ordinance-1977, Samity means a Palli Bidyut Samity. There fore an employee under Samity, whatever it may be, shall not be treated as public Servant provided in section 21 of the penal Code. According to section 2 (b) of the Criminal law amendment Act 1958, an employee under a Samity is not a public Servant. More over, the accused are not paid from the Government exchequer and hence there is no question of removing them from their office save by or with the sanction of the Government and accordingly the persons against whom this complaint has been brought shall not get the protection under section 197 of the code of criminal procedure.

In view of the aforementioned reasons, the cognisance under sections 430/406/ 418/323/34 of penal code against all the accused is taken. Issue arrest warrants (WA) against them. At the time of sending the arrest warrants, let a copy of the complaint be sent to the accused under section 204(1B) of CrPC. Submit process fees within a week under section 204 (3) of CrPC. and otherwise this Complaint may be dismissed. Next date 05.11.2009 is fixed for the appearance of the accused.

Name…
Senior Judicial Magistrate
Gaibandha

6.14 Inquiry of complaint

Section 202 of the code of criminal procedure deals with the matter of inquiring into case himself or if he is a Magistrate other than a Magistrate of the third class, direct an inquiry or investigation to be made by any Magistrate subordinate to him, or by a police officer or by such other person as he thinks fit for the purpose of ascertaining the truth or falsehood of the complaint in taking the consideration of regulation 21(b) and 268 of PR-1943 and Rule 90 and 637 of CrRO-2009.

6.15 Model order for inquiry of complaint

Complaint Register Case No.... of 2009

অদ্য দাখিলকৃত ফাইলটি রেজিষ্ট্রিভুক্ত করা হলো। ফরিয়াদি...আসামী... -এর বিরুদ্ধে দন্ড বিধির... ধারায় নালিশ আনায়ন করতঃ বিচার প্রার্থনা করেন। Seen the complainant and examined him under section 200 of the Code of Criminal Procedure upon oath. The substance of the said examination has been recorded duly and there after the same has been signed by the complainant and also by this court. After perusal of the same as well as this complaint in writing it evinces that for the purpose of ascertaining the truth or falsehood of this complaint it is indispensable to have an inquiry report. For this reason, the issue of process for compelling the attendance of the persons complained against is postponed and accordingly under section 202 of the Code of Criminal Procedure in connection with the ambit of section 10 of the said code Mr. Abul Kashem Muhammad Shaheen, Assistant Commissioner, Gaibandha is directed, after making an inquiry for the purpose of ascertaining for the truth or falsehood of this complaint, to submit the inquiry report including the statements of the witnesses and the documents (if any) upon which the report shall be based on or before the next date. Next date 23rd February 2010 is fixed for the same. The office is directed accordingly.

Name…
Senior Judicial Magistrate
Gaibandha

6.16 Magisterial inquiry (Judicial inquiry)

Section 202 of the code of criminal procedure deals with the matter of inquiring into case himself or if he is a Magistrate other than a Magistrate of the third class, direct an inquiry or investigation to be made by any Magistrate subordinate to him. This is infact judicial inquiry. Regulation 29 of PR-1943 deals with the term 'Mgisterial inquiry' in respect of the allegations against the police officer. However, though the term 'judicial inquiry' is not got in the code of criminal procedure but got in regulation 435 of PR-1943.

6.17 Model order for Magisterial inquiry i.e. inquiry report

To

The Learned Chief Judicial Magistrate's Court, Gaibandha

Subject: *Submission of Judicial Inquiry Report.*
Ref: Petition (Complaint) Case No. 1175 of 2006
Connected with GR Case No. 156 of 2006 and
Petition (Complaint) Case No. 1174 of 2006
xyz ... Complainant
Versus
pqr and others

Sir,

In pursuance to the order of your learned court in respect of Petition (Complaint) Case No. 1175 of 2006, connected with GR Case No. 156 of 2006 and Petition (Complaint) Case No. 1174 of 2006 about the "inquiry" I have completed the inquiry and submit the following report.

In response to the notice to the informant, he produces 4 witnesses including himself.

On 01.04.2010 at 2.30 pm I went to the place of occurrence due to Regulation 29 of PR- 1943 in respect of the inquiry and the deputed concerned police officer did not produce the ordered General Diary Entry Book of 200 pages in B.P. Form 65 under Regulation 377 of PR-1943.

JW-1 Md. Abdul Majed Sarker is the complainant of this complaint being numbered 1175 of 2006 stated that "ঘটনার তারিখ অর্থাৎ ২১.০৫.২০০৬ইং তারিখ দুপুর অনুঃ ২.০০ টার সময় আমি গাইবান্ধা থানাতে যাই আমার ছোট ভাই মোঃ সাজিদুর রহমান @ সাজিদকে খাওয়ার দেওয়ার জন্য। দুই দিন আগে অর্থাৎ গত ১৯.০৫.২০০৬ইং তারিখে আমার ভাইকে পুলিশ রিম্যান্ডে নেয়। আমি থানাতে গিয়ে ফাহিমা অফিসারকে ডিউটি একজন পুলিশ অফিসারকে ডিউটি অফিসার

হিসাবে পাই। আমি খাওয়ার দেয়ার জন্য উক্ত ডিউটি অফিসার (নেমপ্লেট পরিহিত)-এর সামনে আমি বসি। আমি ওখানে বসার কিছুক্ষণের মধ্যেই এস.আই. আবু ইউসুফ আমাকে ডেকে নিয়ে আমাকে বলেন আমি হচ্ছি আপনার ভাই-এর মামলার তদন্তকারী কর্মকর্তা। আপনি কার সাথে যোগাযোগ করতেছেন। উনি টাকা চাওয়ার ইঙ্গিত দিয়ে একথা আমাকে বলেন। আমি তাকে বলিলাম সন্ধার দিকে যোগাযোগ করব। সেই সময় আমার ভাই ডিসিজত মোঃ সাজিদুর রহমান @ সাজিদ ওখানে আমাদের কথাবার্তার পাশে বসেছিল। তারপর এস.আই. আবু (সম্ভবত তার নাম মিজান) এবং তাকে বললেন তাকে (আমার ভাই সাজিদকে) গোসল করান। সেই সেন্ট্রি উত্তরে বলেন স্যার তারতো কাপড় নাই। তখন এস.আই. আবু ইউসুফ বলেন তাকে ল্যাংটা করে গোসল করাও। তখন আমি বলি তাহলে আমি একটা লুঙ্গি নিয়ে আসি। এরপর আমি আমাদের কাপড়ের দোকানের কর্মচারীর একটি পুকুর পাড়ে সেই সেন্ট্রি পুলিশ। তারপর আমি পুকুরপাড়ে আমার ভাইয়ের জন্য নিয়ে যাওয়ার লুঙ্গি তাকে দেই এবং সে গোসল করে লুঙ্গি পড়ে এবং ভিজা কাপড়গুলো আমি চেপে নাড়ি (ছড়াইয়া) দেই এবং এই সময়ে তাকে থানা হাজতখানায় নিয়ে যায়। তারপর পুকুর পাড় হতে আমি থানা হাজতে আসি এবং তখন সে (আমার ভাই) আমাকে বলে যে, রাত্রে আমার জন্য ভাত আনিও না। ভাত খেতে ইচ্ছা করে না। রুটি ও দুধ নিয়ে আসি। তারপর আমি প্রায় ৩.০০ টার দিকে ওখান থেকে চলে আসি। বাড়িতে আমি আমার বাবাকে বললাম যে, আইও সাহেব এভাবে বলেছে অর্থ্যাৎ তাকে টাকা দিতে হবে। এর ফলে বাবা হাটে যায় টাকার জন্য। (আমাদের দোকানে যে সকল পাইকার মাল নেয় তাদের কাছ হতে)।

আমি ঐদিন বিকাল ৫/৬ টার দিকে এস.আই. আবু ইউসুফকে ট্রাফিক মোড় হতে মোবাইলে রিং দিতেছিলাম। কিন্তু তিনি ধরেননি। আমি তারপর ঘাবড়িয়ে গিয়ে বাসায় চলে আসি। সন্ধ্যার দিকে বাবা বাহির হতে কান্না কান্না অবস্থায় বাসায় এসে বলে সাজিদকে নাকি হাসপাতালে নিয়ে গেছে। অনেকে বলেছে সে মারা গেছে। লোকজন হাসপাতালে ঢুকতে দিচ্ছে না। (তারপর সাক্ষী কান্নায় ভেঙ্গে পড়েন) তারপর আমি হাসপাতালে এসে দেখি ছোট একটি রুমে একটি হাসপাতালের ট্রেতে শোয় অবস্থায় এবং কাপড় দ্বারা ঢাকা অবস্থায়। ঐ রুমটি তালা বদ্ধ অবস্থায় ছিল। ওখানে আমি জানালার কাচ দিয়ে দেখেছিলাম। আমি দেখতে চেয়েছিলাম কিন্তু লোকজন বলেছিল রুমের তালার চাবি থানায় নিয়ে গেছে। বাহিরে অনেক পুলিশ ছিল। সেই সময় আমার অবস্থা ভাল ছিল না মানসিকভাবে। আমার আসার কিছুক্ষণ পর আমার পিতা মাতা ও আত্মীয়-স্বজনরাও এসেছিল। পুলিশের লোকজন চেষ্টা করেছিল আমার পিতার স্বাক্ষীর সাদা কাগজে নেয়ার জন্য। ওখানকার উপস্থিত লোকদের মধ্য হতে কে যেন বলেছিল তোমার বাবাকে কোন কাগজে স্বাক্ষর না করতে এবং তাকে বাড়িতে পাঠিয়ে দেয়ার জন্য। তারপর আমি আমার বাবা-মাকে বাড়িতে পাঠিয়ে দেই। তারপর আমি ওখানে বেশ অর্থাৎ প্রায় রাত ১২-০০ টা পর্যন্ত থাকি কিন্তু আমার ভাইকে দেখতে দেয়নি। লোকজন ছিল। আমি যখন রাত ১২.০০ টার দিকে বাড়িতে যাই তখনও অনেক লোক, সাংবাদিক ছিল। (পরের দিন খবরের কাগজে সংবাদ দেখতে পাই)। আমি সারারাত

প্রায় কেঁদে কেঁদে কাটাচ্ছি। ভালো করে ঘুমাতেও পারিনি। পরের দিন সকাল ৮.০০ টার দিকে লোকজন মাইকিং করে জানাজার জন্য জমায়েত হতে বলেছিল। পুলিশ কিছু বখাটে ছেলে ঘোর রাজনীতির সাথে জড়িত ও পুলিশের দালাল) দ্বারা মাইকিং করতে নিষেধ করে। পরে আসরের নামাজের আগে অনেক পুলিশ পরিবেস্টিত অবস্থায় লাশ আমাদেরকে দেয়। লাশ দেখে আমি বললাম যে, ময়না তদন্ত হয়েছে। তারপর জানাজা করে দাফন করা হলো। তারপর গত ২৩.৫.২০০৬ইং তারিখ বাবা ময়না তদন্ত রিপোর্ট নেয়ার জন্য হাসপাতালে যায়। হাসপাতালে থেকে আমার বাবাকে বলা হয় যে, এটা আপনি এখানে পাবেন না। থানা থেকে পাবেন। তারপর ২৪.৫.২০০৬ইং তারিখ কিছু লোক জানতে পারে যে, তাকে থানায় শ্বাষরুদ্ধ করে হত্যা করা হয়েছে। তারপর আমরা পাড়া প্রতিবেশী মিলে গাইবান্ধার গণ্যমান্য, সাংবাদিক অনেক লোক মিলে এস.পি. অফিসে আসি এবং তখন এস.পি. ভানুলাল-এর সামনে আমার বাবা একটি লিখিত অভিযোগ দেয় যা ওসি নুর আলম নেয়। ওসি পরে একটা কপি আমার বাবাকে থানা থেতে দেয়। (ওখান থেকে নয়) ওই কপিতে সিল মোহর ছিল। বাবা ভেবে ছিল মামলা তো হয়েগেছে। কিন্তু পরের দিন কোর্টে এসে মামলার নকল উঠাতে চেয়ে দেখে আমার বাবা বাদী নেই। বাদি হয়েছে ওসি নুর আলম। আসামী করেছে আইও এস.আই. আবু ইউসুফকে। ইতোমধ্যে গাইবান্ধা শহরে এই ঘটনা নিয়ে মিটিং মিছিল হয়েছে। বিভিন্ন পত্রিকায় এসেছিল সংবাদ। পত্রিকাগুলো এখনো আমাদের কাছে আছে। পরে আমি আদালতে মামলা করি। পরে জানতে পারি বিভিন্ন পত্রিকার সংবাদের মাধ্যমে যে, তখনকার গাইবান্ধা জেলা বিএনপি-এর নেতা (প্রভাবশালী) দেলোয়ার হোসেন ছিল-এর এক মেয়ের (ডানা)-এর সাথে আমার ভাই-এর সম্পর্ক ছিল। এই আমার জবানবন্দি।"

JW-2 Mihir Ghosh stated that "গত ২১.০৫.২০০৬ইং আমি আমার দাড়িয়াপুর এলাকার রাজনৈতিক কারণে গিয়েছিলাম বিকালের দিকে। ওখানে থেকে রাত অনুমান ১০.০০ টার দিকে আমি আমার গাইবান্ধার বাসায় ফিরে আসি। খাওয়া দাওয়া শেষে ঘুমানোর প্রস্তুতি নিচ্চিলাম এবং সেই সময় আমিনুল ইসলাম গোলাপ, যিনি নাগরিক কমিটি গাইবান্ধা এর আহবায়ক ও ওয়ার্কার্স পার্টি-এর জেলা সম্পাদক যে, আজ সন্ধ্যার দিকে যে ছেলেটিকে গত ১৮.০৫.২০০৬ইং তারিখে শহরের কাঠপট্টি থেকে পুলিশ গ্রেফতার করেছিল সেই ছেলেটি আজ সন্ধ্যায় থানা হেফাজতে মৃত্যুবরণ করেছে। তিনি এও বলেন যে, ছেলেটির আত্মীয় ও পাড়া প্রতিবেশী আমাকে বলেন যে, ইহা একটি হত্যাকান্ড তখন আমি তাকে টেলিফোনেই উত্তরে বলি যে, রাত অনেক হয়েছে কালসকালে সকলে মিলে ঘটনাস্থলে ও ছেলেটির বাড়িতে যাব। পরের দিন ২২.০৫.২০০৬ইং তারিখ সকাল ৭.০০ টার দিকে তিনি (আমিনুল ইসলাম গোলাপ) আবার আমাকে ফোন দিয়ে আমাকে জানায় যে, মৃত ছেলেটি (সাজিদ)-এর বাড়ির সন্নিকটে পালস ক্লিনিকের পাশে লোকজন জমায়েত হয়েছে। ওসি আসে। আমি তারপর সংগে সংগে যাই। গিয়ে দেখি আমিনুল গোলাপসহ জেলা আওয়ামী লীগের সাধারণ সম্পাদক আবু বকর সিদ্দিক জেলা- জাসদের সভাপতি শাহ শরিফুল ইসলাম বাবলু, নাগরিক কমিটির সদস্য সচিব ফরহাদ আব্দুলা হারুনসহ শহরের অনেকে গণ্যমান্য

ব্যক্তিগনসহ এলাকাবাসী অনেকেই উপস্থিত রয়েছেন। সেখানে আমি রিক্সার সাথে একটি মাইক ও দেখি। ওখানে গিয়ে এও দেখি তৎকালীন শাসকদল বিএনপি-এর অনেক নেতাকর্মী সেখানে উপস্থিত রয়েছেন। তাদের অনেকে (যেমন দেলোয়ার হোসেন দিলু, মিজান প্রমুখ) আমাদেরকে বোঝানোর চেষ্টা করেন যে, ছেলেটি থানা হেফাজতে আত্মহত্যা করেছে। তখন আমরা সিদ্ধান্ত নেই যে, আমাদেরকে ময়না তদন্ত রিপোর্ট পাওয়া পর্যন্ত অপেক্ষা করতে হবে। সেমতে আমাদের পক্ষ হতে আমিনুল ইসলাম এলাকাবাসীকে ময়নাতদন্ত রিপোর্ট পাওয়া পর্যন্ত আমাদেরকে অপেক্ষা করতে এবং আপনারা তা পাওয়া পর্যন্ত শান্ত থাকেন। তারপর আমরা অনুমান সকাল ৯.০০টার দিকে ওখান হতে চলে আসি। আমরা চলে আসার পর এলাকার কিছু বিক্ষুদ্ধ তরুণ ছেলে ও এলাকাবাসী থানা হেফাজতে মৃত্যুর রহস্য উদঘাটনের নিমিত্তে মিছিলসহকারে শহরের দিকে অগ্রসর হলে পুলিশ বাধা দেয় এবং মিছিল করতে বাধা দেয় এবং পুলিশ সহযোগিতায় তৎকালীন শাসকের লোকজন বিশেষ করে দেলোয়ার হোসেন দিলু পিতাঃ মৃত আঃ মজিদ (প্রভাবশালী নেতা বিএনপির)।

JW-3 Abdur Rouf Sarker states that "ঘটনার তারিখ ২১.০৫.২০০৬ টার দিকে সময় রাত অনুমান ৮.০০ টার দিকে আমি এলাকার একলোক আঃ কুদ্দুস-এর মাধ্যমে জানতে পারি যে, আমার ছোট ছেলে সাজিদুর রহমান @ সাজিদ হাসপাতালে। আমি তখন কুদ্দুস-কে বললাম থানাতে হয়ত বেশিমারপিট করেছে তাই তাকে হাসপাতলে নিয়ে গেছে। কিন্তু সে তখন বলল যে, না সাজিদ মারাই গেছে। আমি ইহা শুনে হঠাৎকরে অসুস্থ-এর মতো হয়ে গেলাম। তারপর আমি একটু শান্ত হয়ে আমার বাসার পাশে বিএনপি-এর নেতা দেলোয়ার হোসেন দিলুকে বলি থানাতে মারপিট করে আমার ছোট সাজিদকে মেরে ফেলেছে। এই বলে তার হাত ধরে আমি কান্না কাটি করি। তখন বি.এন.পি.- এর সভাপতির নিকট মোবাইল করে। কিছুক্ষণের মধ্যেই মাইক্রো থেকে সভাপতি হামিদুল হক আসে আমার বাসার পাশে রাস্তার মোড়ে এসে গাড়ি রেখে। তখন আমি আমার স্ত্রী রাণী ও বড় ছেলে আঃ মাজেদ স্ত্রী লুৎফুন্নাহার ও আমার মাকে সংগে করে ঐ গাড়িতে হাসপাতালে আসি। উক্ত গাড়িতে দেলোয়ার হোসেন দিলু ও সানাও ছিল। হাসপাতালে এসেই দেখি প্রায় ৫০/৬০ জন পুলিশ মোতায়েন করা আছে। আমরা গাড়ি হতে নেমে আমার ছেলে সাজিদের খোজ করি। কিন্তু কোন খোঁজ না পেয়ে উপস্থিত পুলিশদেরকে জিজ্ঞাসা করি আসি যে, আমার ছোট ছেলে কোথায়। তখন দেলোয়ার হোসেন দিলু ও হামিদুল হক সানা ইমারজেন্সি কক্ষের পাশে কাগজ পত্র দেখি করতে ছিল। আমি তখন ডিউটিরত হাসপাতালের একজন ছেলেকে জিজ্ঞাসা করলাম যে, থানা হতে যে, একজন ছেলেকে নিয়ে এসেছে সেই ছেলেটা কোথায়। তখন সে একটা বন্দ তালাযুক্ত কক্ষ দেখিয়ে দেয়। তখন জানালার কাচ দিয়ে দেখতে পাই যে একটা ডেডবডি হাসপাতারে ট্রেতে কাপড় মোড়ানো অবস্থায় শোয়ানো। তাকে ঐ কক্ষের চাবি বা খুলে দেয়ার কথা বললে তখন জানায় যে ঐ কক্ষের তালার চাবি পুলিশের হাতে। তখন আমি কান্না কাটি করে পুলিশদের নিকট ঐ লাশটি দেখতে চাই। ফলে পুলিশেরা বলে ঐ কক্ষের চাবি ওসি নুর আলম-এর হাতে

আছে। আমরা দেখাতে পারবো না। আমরা কান্নাকাটি করতেছিলাম ছেলেকে না দেখতে পেয়ে সেই সময় দেলোয়ার হোসেন দিলু পিতাঃ মৃত- আবুল হোসেন আমার বাড়ির পাশেই ঠিকানা) আমাকে ডাক দেয় এবং বলে যে এখনই ম্যাজিস্ট্রেট সাহেব আসবেন এবং উনি আসলে আপনারা লাশ দেখতে পাবেন এবং তিন/চারটি কাগজে সই (আমি পড়িনি বা ভালো করে দেখেনি) করতে বলে। আমি সই করার জন্য যাইতেছিলাম এমন সময়ই কে বা কারা আমাকে টেনে এনে বলে ওখানে কোন কাগজে সই করবেন না। তখন আমি লাশ দেখতে না পেয়ে কান্নাকাটি করতে করতে বাসায় চলে আসি...।

JW-4 Ahsanul Habib Stated that "ছেলেটা মানে সাজিদুর রহমান সাজিদ আমার প্রতিবেশী। আমার বাড়ি মধ্যপাড়া ও সাজিদ ঔষধ কোম্পানিতে চাকুরী করত। হঠাৎ গত ১৮.০৫.২০০৬ইং তারিখে অনুমান সন্ধ্যার দিকে শুনি যে তাকে পুলিশ গ্রেফতার করেছে। এই সংবাদ-এর আগে তার সম্পর্কে আর কোন খারাপ সংবাদ শুনিনি। সে ভাল ছিল। আবার পরের দিন শুনি যে, ওকে পুলিশ রিম্যান্ডে নিয়েছে। তারপর আবার ২১.০৫.২০০৬ইং তারিখে সন্ধ্যায় শুনি যে, গাইবান্ধা সদর থানায় পুলিশ হেফাজতে থাকাকালীন সময়ে সে মারা যায়। প্রথমে পুলিশ তাকে আত্মহত্যা বলে চালাতে চায়। কিন্তু হাসপাতালের ময়নাতদন্ত রিপোর্ট এ তাকে হত্যা করা হয়েছে বলে ডাক্তার মতামতকে তারপর ২৪.০৫.২০০৬ইং তারিখ এ বিষয়ে সাজিদের বাবা হত্যা মামলা দিতে গেলে সে মামলাটি ওরা (থানা পুলিশ) কৌশলে রেকর্ড না করে ওসি তদন্তকারী কর্মকর্তাকে না আসামী করে মামলা করে সাজিদের বাবার দায়েরকৃত মামলার নম্বর বসিয়ে দেই। আমি সেই কাগজ অর্থাৎ সাজিদের বাবাকে যে কাগজ দেয়া হয়েছিল তা দেখেছিলাম। তারপর গাইবান্ধার অনেকমানুষ সোচ্চার হয়েছিল। আমিও তাতে যুক্ত হয়েছিলাম। মিছিল, সমাবেশ, হরতাল, ঘেরাও হয়েছিল। আমরা নাগরিক কমিটির উদ্যোগে সভা আহবান করেছিলাম গাইবান্ধা নাট্য সংস্থা নাট্য সংস্থার হলরুম নেই সেখানেও তৎকালীন সরকারী নেতৃত্ববৃন্দ (যেমন দেলোয়ার হোসেন দিলু বিএনপি-এর সভাপতি সানা মিয়া)সহ পুলিশ মিলে তা বন্ধ করে দেয়...

By reviewing the statements of the witnesses it is observed that there are consistencies among their statements. One fact has been evinced i.e. as per JW 1 there was a relationship between the deceased and the daughter 'Dana' of the then BNP leader Delwar Hosen Dilu and the said the then BNP leader Delwar Hosen Dilu as per JW-2 in using his political power given false information to understand others that the fact is not homicidal in nature and misled the father of the deceased Sajid and others time to time in doing different unusual acts in order to screen the offenders from legal punishment and hence he should be prosecuted in this case under section 201 of penal code along with other accused.

The police report dated 18.08.2007 of the same fact of this complaint submitted by Mirza Md. Srafat Ali, Police Inspector, CID Bangladesh in General Register Case No. 156 of 2006 arising out of Gaibandha police

station case No. 27 dated 24.05.2006 contains that "আমি ঘটনাস্থল গাইবান্ধায় থানার পুরুষ হাজত খানা হইতে লোহার নেটের অংশও সহকারী পুলিশ সুপার- এর সার্কেল গাইবান্ধা অফিস হইতে গাইবান্ধায় থানার Index বই হেফাজতে লই। রিমেন্ডের আসামী সাজেদুর রহমান সাজিদ থানায় হাজতে থাকা খাওয়ার আগেই জি.ডি নং ৮১২ তাং ২১.৫.০৬ সময় ১৭.৪৫ ঘটিকায় ও.সি নুর আলম, এস.আই আরজু, মোঃ সাজ্জাদ হোসেনে'র উপর চার্জ অর্পণ করেন। গাইবান্ধা থানার মামলা নং ১৪(৪) ০৬ ও ৩(৬) ধারায় দন্ডবিধি আাসামীদের খোজ খবর লওয়ার জন্য রওনা হন। পিটি- জি.ডি নং ৮১৬ তাং ২১.৫.০৬ সময় ১৯.৪৫ ঘটিকায় থানার দায়িত্ব গ্রহণ করেন। ডিউটি অফিসার PSI ফাহিমা হায়দার ও.এস.আই আরজু, মোঃ সাজ্জাদ হোসেনকে আমি জিজ্ঞাসাবাদ করি। এস.আই আরজু, মোঃ সাজ্জাদ হোসেন, ও.সি. নুর আলম কোন সময় থানার চার্জ দিয়াছেন সে কোন কিছুই জানেনা। ডিউটি অফিসারকে জিজ্ঞাসাবাদ করা হইলে সে কোন সন্তোষ জনক জবাব দিতে পারে নাই। ও.সি. নুর আলম সে দু'টি মামলায় Out দেখান তার একটি মামলা ১৫.০৫.২০০৬ইং তারিখে দাখিল হয়। অপর মামলাটির পর্যালোচনা করিয়া দেখা যায় ২১.০৫.২০০৬ইং তারিখে তিনি (ও.সি. নুর আলম) যান নাই... এই ঘটনা তদন্তকে প্রতিয়মান হয় যে, গাইবান্ধা থানার প্রাক্তন ও.সি. নুর আলম থানার পুরুষ হাজতে রাখা রিমান্ডের আসামী সাজেদুর রহমান সাজিদ। থানা হাজতে মৃত্যুর দায়িত্ব/অপরাধ অতি সুকৌশলে এড়াইয়া যাওয়ার জন্য জি ডিতে Out ও In দেখান। ভিকটিম সাজেদুর রহমান সাজিদ থানার পুরুষ হাজতে জানালার রডের সংগে পরনের লুঙ্গি ছিড়িয়ে রডের সংগে বাধিয়া অপর প্রাপ্ত ভিকটিমের গলায় বাধ অবস্থায়। নিতম্ব মেঝে হইতে ৬" উচুতে পা ২টি সামনের দিকে ছড়ানো এবং পিঠ দেওয়ালের দিকে ঠেকানো ছিল। জিজ্ঞাসা বাদে জানা যায় ভিকটিমের উচ্চতা প্রায় ৬৫/৬৬ ইঞ্চি। থানা হাজত খানার সে রডের সংগে আত্মহত্যা) করার কথা বলা হয়। থানা হাজত খানার মেঝে হইতে প্রায় ৪৫"। একজন সুঠামো দেহের অধিকারী যুবক এত কম উচ্চতায় আত্মহত্যার ঘটনায় অবিশ্বাস্য মনে হয়। ভিকটিমের বড় ভাই ২১.০৫.০৬ইং তারিখ দুপুর অনুমান ১৪.৩০ ঘটিকা বাড়ী হইতে থানায় খাবার লইয়া যায়। তিনি সাজিদুর রহমান সাজিদকে দন্ডবিধি হাফিজার এস.আই. মোঃ ইউসুফ এর কক্ষে ও.সি. সাহেবসহ জিজ্ঞাসাবাদ করিতে দেখেন। সেন্ট্রি ২০৫ মিজানুর রহমান (১৪.০০-১৬.০০) সাজিদকে থানার পুকুরে গোসল করান। তিনি ১টি গোসল করা সাবান ও ১টি নুতন লংগি আনিয়া সাজিদকে দেন। সাজিদ তার বড় ভাইকে রাত্রীতে খাওয়ার জন্য পাউরুটি ও দুধ আনিতে বলেন। বিকাল ১৫.৩০ ঘটিকায় সাজিদ থানা হইতে বাড়ীতে যায়। কং ৬২০ দুলাল চন্দ্র (১৬.০০-১৮.০০) পরবর্তি সেন্ট্রি ডিউটি ছিল। তাহার ডিউটি চলাকালীন সময়ে থানা হাজতে রাখা আসামীদের তিনি খোজ-খবর লন নাই বলিয়া জানান... তদন্তকালে আমার নিকট প্রতিয়মান হয় যে, সাজিদুর রহমান সাজিদকে হাসাপতালে চিকিৎসার অজুহাতে তড়িত গাড়িতে থানা হাজত হইতে লাশ বাহির করিয়া হাসপাতালে প্রেরণ করিয়া হত্যার আলামত নষ্ট করিয়াছেন এবং হত্যা অপরাধটি ধামাচাপা দেওয়ার জন্য সাজিদুর রহমান সাজিদকে লুংগি হাজত খানার

জানালার রডের সংগে পেচাইয়া আত্মহত্যা করিয়াছে বলিয়া থানা পুলিশ প্রকাশ করে। যাহা ছিল সম্পূর্ণ পূর্ব পরিকল্পিত। তদন্তে ধারনা হয় যে, সাজিদুর রহমান সাজিদের আত্মহত্যার ঘটনাটি সম্পূর্ণ সাজানো। কেননা এই মামলার ১ম তদন্তকারী হাফিজার এস.আই. অনিল চন্দ্র দাস ডি.বি. গাইবান্ধাকে জিজ্ঞাসাবাদ করিয়া জানা যায় যে, তিনি ঘটনাস্থল পরিদর্শনকালে দেখিতে যান সে থানা হাজতের জানালার লোহার নেট সামনে লোহার নেট কাটা কাচি বা সেনী দিয়ে নেটটি কাটা হইয়াছে। নেটটি সদ্য কাটা বলিয়া তাহার নিকট প্রতিয়মান হইয়াছে। মোঃ নুর আলম ওসি গাইবান্ধা থানা তাহার এজাহারে উল্লেখ করেন যে "এই নরহত্যার ঘটনার পূর্বপর ও পারিপার্শ্বিক অবস্থায় বিবেচনায় সন্দেহ হয় যে, রিমেন্ডের আসামী সাজেদুর রহমান সাজিদকে মামলার তদন্তকারী অফিসার এস.আই. মোঃ আবু ইউসুফ জিজ্ঞাসাবাদ করে শারীরিকভাবে আঘাত করিয়া করিয়াছেন এবং এর মানেই তাহার মৃত্যু ঘটিয়াছে। হত্যাকান্ড ধামাচাপা দেওয়ার জন্য আসামীর পরনের লুংগি দ্বারা হাজতের জায়গার গ্রীলে সকলের অজান্তে তাহাকে ঝুলিয়া রাখিয়া থানা হইতে চলিয়া যায়। এস.আই. আবু ইউসুফ পেনালকোড ৩০২ ধারার অপরাধ লংঘন করিয়াছেন। ইহা ছাড়াও ভানলাল দাস পুলিশ সুপার গাইবান্ধা তাহার তদন্ত তদারকী প্রতিবেদন উল্লেখ করেন যে, ঘটনা তদন্ত শেষে মেডিকেল বোর্ড মতামত দিয়াছেন যে, আসামী সাজিদুর রহমান সাজিদকে গলায় হাতে ও পায়ে আঘাতের চিহ্ন আছে এবং শ্বাষরুদ্ধ হইয়া তার মৃত্যু হইয়াছে। পোষ্ট-মর্টেম রিপোর্ট ও পারিপার্শ্বিক সাক্ষ্য দ্বারা প্রতিয়মান হয় যে, এটি একটি অপরাধমূলক নরহত্যা।... পূর্বাপর ও পারিপার্শ্বিক অবস্থা বিবেচনা করিয়া প্রতিয়মান হয় যে, এই মামলার বাদী মোঃ নুর আলম প্রাক্তন ও.সি. গাইবান্ধা থানা (২) এস.আই. মোঃ আবু ইউসুফ (অংশ মামলার তদন্তকারী কর্মকর্তা) (৩) ডিউটি অফিসার PSI ফাহিমা হায়দার (৪) সেন্ট্রি কং ২০৫ মিজানুর রহমান (৫) সেন্ট্রি কং ৬২০ দুলাল চন্দ্র দাস থানা গাইবান্ধা জেলা গাইবান্ধাগণ ধারা ৩৩০/৩০২/২০১ পেনালকোড অপরাধ করিয়াছেন।

Post-mortem report signed on 22.05.2006 by Dr. Aminul Islam, RMO of Sadar Hospital and Gaibandha and signed on 23.05.2006 Civil Surgeon, Gaibandha contains that

"*In our opinion, Death was due to Asphyxia as a result of strangulation which was anti-mortem and homicidal in nature*"

So it is the prima-facie presumption that the crime was committed by accused (1) Md. Nur Alom, Officer-in-charge of Gaibandha police station, (2) Md. Abu Yusuf, SI of Gaibandha police station, (3) Fahima Haider, PSI of Gaibandha police station, (4) Sentry Constable No. 620 Dulal Chandra of Gaibandha police station (5) Sentry Constable No. 205 Mizanur Rahman of Gaibandha police station and the offence of false information was given in misleading the father of the deceased Sajid in doing different unusual acts in order to screen the offenders from legal

punishment by accused (6) Delwar Hosen Dilu, son of Late Abul Hosen of village Munshi Para, Gaibandha police station, Gaibanda which constituted the crime of sections 302/34 and 201 of the Penal Code.

Name…
Senior Judicial Magistrate
Gaibandha

OR

To

The Learned Chief Judicial Magistrate's Court, Gaibandha

Subject: *Submission of Judicial Inquiry Report.*

Ref: Petition (Complaint) Case No. 1924 of 2006

Sapna Rani Mahanta Complainant

Versus

Md. Sona Miah and others

Sir,

In pursuance to the order of your learned court in respect of Petition (Complaint) Case No. 1924 of 2006 about the "inquiry" I have completed the inquiry and submit the following report.

JW-1 Sapna Rani is the complainant of this complaint being numbered 1924 of 2006 stated that ঘটনার তারিখ ৬ই শ্রাবণ ১৪১৩ সাল, রোজ শুক্রবার অনুমান ১১.০০টার সময় আমি ১০/১২ বিঘা জমি দূরে খোলা একটি চরে আমার ২টি গরু ও ২টি বকরি ও ১টি বাছুর বেঁধে (ঘাস খাওয়ানোর জন্য) আসতেই দেখি আমার দক্ষিণ দুয়ারী ঘরের একটি পালা অল্প একটু ফাঁক ও আর একটি বন্ধ করা অবস্থা। (কান্নায় ভেঙ্গে পড়েন) তারপর ঘরের দরজায় দাঁড়িয়ে না ঢুকতেই দেখি ২ জন। এক জন আনোয়ার স্বামীকে উচু করে ধরেছিল এবং আরো ২ জন এক জন সোনা মিয়া ও আর একজন ঈমান আলী ঘরের বাঁশের ধরনায় দড়ি পেচাইতেছিল। আমার স্বামীর গলায় পেচানো দড়ি যা ওরনাতে পেচাইতে দেখতে পাই। আমার স্বামী হাত-পা ঝাকাঝাকি করতেছিল এবং সেই অবস্থা দেখে আমি চীৎকার দেই এবং আমার চীৎকার শুনে মেলা লোকজন জড়ো হয়। ইতোমধ্যে আমার স্বামীকে ওরা (ঐ চারজান) দড়ি পেচিয়ে দিয়ে মেরে ফেলে। লোকজন এসে তাকে ওখান থেকে নিয়ে সাদুল্যাপুর হাসপাতালে আনলে ডাক্তার তাকে মৃত হিসাবে ঘোষণা দেয়। আমি চীৎকার দেয়ার কিছুক্ষণের মধ্যেই আমাকে ধাক্কা মেরে ফেলে দেয় ঘরের বেড়ার সাথে এবং তারা পালিয়ে যায়। হাসপাতালে আমার স্বামীকে নিয়ে যায় আমার ভাশুর শ্বশ্বীচন্দ্র, মহন্ত তার ছেলেসহ অন্য লোকজন। গাইবান্ধা হাসপাতালে আমার স্বামীকে কাটাকাটি করেছিল। আমার স্বামীর সাথে ঐ চারজনের বিরোধ হয়েছিল ঘটনার ২ দিন আগে রোজ বুধবার অনুমান রাত ৮.০০টার সময় (আমার স্বামী তার পূর্বে বাজারে ছিল) আমার ঘরে হঠাৎ ঢুকে আসামী সোনা মিয়া পিছন দিক হতে আমার মুখ গামছা দিয়ে চেপে ধরে বিছানায় ধর্ষণের চেষ্টা করতেছিল। এমন সময় আমার স্বামী বাজার হতে এসে ঘরে ঢুকে এই অবস্থা দেখলে সে পালিয়ে যায় এবং আমার স্বামী তাকে ধরতে পারেনি। পরের দিন রোজ বৃহস্পতিবার গ্রামের লোকদেরকে সালিশ দেয় আমার স্বামী। সেই সালিশে আসামীগণ (ঐ চার জন) উপস্থিত হয় নাই। সালিশে প্রাক্তন চেয়ারম্যান মোহাম্মদ আলী, এন্তাজ আলী, ফুলমিয়া, ও নতুন। সেই সময় থেকে আজ পর্যন্ত মেম্বার জয়নাল

উপস্থিত ছিল। সালিশে তারা উপস্থিত ছিলনা কিন্তু আশে- পাশে ছিল। সালিশ ভেঙ্গে যাওয়ার পথে আমার বাড়ীর একপাশে হুমকি দিয়ে যায়। সালিশে লোকজন বলেছিল মামলা করতে। এজন্য হুমকি দিয়েছিল সালিশ ও মামলা মিটিয়ে দেয়ার জন্য। সেই বিষয়ে আমি তিন বছর আগে হত্যা মামলা করেছিলাম। সেই মামলার কাগজপত্র কোর্ট হতে বেরিয়ে যায়। মামলা কোর্টে করেছিলাম পিটিশন মামলা আকারে। এই আমার জবানবন্দি।"

JW-2 Md. Abdul Baki states that মোঃ আব্দুল বাকী তার জবানবন্দিতে উল্লেখ করেন যে, "ঘটনার তারিখ ১৪১৩ সালের শ্রাবণ মাসের ৬ তারিখ রোজ শুক্রবার অনুমান সকাল ১১.০০ টার সময় আমি নলডাংগা থেকে আমার বাড়ীতে আসিতেছিলাম। রাস্তায় শ্বশ্বও বাড়ীতে অনেক চিলাচিলি লোকজন দেখিতে পাই। তারপর তার ঘরে শ্বশ্বচন্দ্র মহন্ত ঝুলিতেছে এবং লোকজন সোনা মিয়া, লোকজন হেকিম, আনারুল, আনোয়ার মিয়া ও ঈমান আলী পশ্চিম দিকে দৌড়ইতেছে। এই দেখে আমি তাড়াতাড়ি বাড়ী চলে আসি। আমি ঐ অবস্থা দেখে আমার ভয়ে খারাপ লেগেছিল। এই আমার জবানবন্দি।"

JW-3 Hasen Ali that, "ঘটনার তারিখ শ্রাবণ ১৪১৩ সাল, রোজ শুক্রবার অনুমান ১১.০০ টার দিকের ঘটনা। আমি গ্রামে পান, সুপারি ও তেলসহ মালামালের দোকান করি। আমি নলডাংগা হতে দোকানের মাল করে হেটে ব্যাগে করে আসার পথে দেখি স্বপ্না রানী গরু বেধে আমার আগে আগে আসতেছে। ২০/২৫ হাত ফাঁক। আমি পিছনে সে আগে। স্বপ্না বাড়ীতে ঢুকেই চীৎকার দিলে আমি সেই চীৎকার শুনে তার বাড়ীতে যাইতে দৌড় দেই (কেন চীৎকার দিল তা জানার জন্য) তার বাড়ীতে ঢোকার পথে বাঁশের চেকারের গেট যা বাড়ীর পূর্বদিকে ছিল। এ ঢোকার সময়ই দেখি সোনা মিয়া, ঈমান আলী, লোকজন হেকিম ও আনোয়ার (লুঙ্গি খেঁচা অবস্থায় ও গায়ে কোন কাপড় ছিলনা) পশ্চিম দিকে আমার সামন দিয়ে দৌড়াইতেছে। তখন আমি স্বপ্নার বাড়ীতে গিয়ে দক্ষিণ দুয়ারী ঘরে ভুলকি (এক নজর) দিয়ে দেখি শ্বশ্ব ফুলানো অবস্থায় (গলায় দড়ি ও বাঁশের ধরনার সাথে। পরে অনেক লোক আসে। তাকে হাসপাতালে নিয়ে যায় পচা মহন্তসহ অনেকে। ঘটনার একদিন আগে সালিশ হয়েছিল স্বপ্নাকে ধর্ষণ করার চেষ্টার বিষয়ে সোনার বিরুদ্ধে। এই আমার জবানবন্দি।"

JW-4 Sabuta Rani Stated that "ঘটনার তারিখ ৬ই ১৪১৩ সাল, রোজ শুক্রবার অনুমান ১১.০০ টার সময় আমি পাশের জেঠা শ্বশীচন্দ্র ও পচা-এর বাড়ীতে যাই বেড়াতে (এমনি)। তখন হঠাৎ আমার মায়ের চীৎকার শুনি। চীৎকার শুনে আমি দৌড়ে আসি এবং দেখি ৪ জন আমাদের ঘর থেকে দৌড়ে বাহির হয়ে পশ্চিম দিকের রাস্তা দিয়ে পালিয়ে যায়। আমি ঐ লোকগুলোকে দেখে চীৎকার করি। এই ঘটনার আগে অর্থাৎ তাদের দৌড়ানোর আগে দেখি আমার বাবাকে ঘরে রেখে বাহির হয়েছে। ঘরে ঢুকে দেখি আমার বাবা লটকানো অবস্থায়। তাকে পরে আমার জেঠা শ্বশীচন্দ্র ও ভাই গউর চন্দ্র তাকে নামায়। পরে তাড়াতাড়ি তাকে সাদুল্যাপুর হাসপাতালে নিয়ে যায়।

হাসপাতালে নিয়ে গেলে ডাক্তার তাকে মৃত ঘোষণা করে। আমি ও অন্যদের সাথে হাসপাতালে গিয়েছিলাম। এই ঘটনার দুইদিন রোজ বুধবার আসামী সোনা মিয়া আমার মায়ের ঘরে ঢুকেছিল খারাপ কাজের জন্য এবং আমার বাবা এসে আমার মায়ের চীৎকার ও ধাস্তাধাস্তি দেখে। পরের দিন বৃহস্পতিবার সালিশ। সালিশে বর্তমান জয়নাল মেম্বার, আগে মোহাম্মদ আলী মেম্বার, এন্তাজ মেম্বার, ফুলমিয়া মেম্বার ছিল। সালিশে সোনামিয়া আসেনি বরং তারা হুমকি ও গালি-গালাজ দিয়েছিল। তারা বড় লোক। সালিশে রাতের বিচার করতে তেমন পারেনি। এই আমার জবানবন্দি।"

JW 5 Md. Joinal Abedin the present member of the local union parishad states that "গত ২০০৬ সালের ঘটনা। ঘটনার তারিখটা সঠিক মনে নাই। তবে ঘটনার আগের দিন শ্রী কীর্তনচন্দ্র সরকার-এর বাড়ীর খুলিতে একটি সালিশ, বৈঠক হয়েছিল। সেই সালিশের বিষয় ছিল স্বপ্না রাণী মহন্তের ঘরে আসামী সোনামিয়া ঢুকেছিল খারাপ কাজের জন্য। সেই সালিশে সভাপতি ছিল প্রাক্তন ইউ.পি. সদস্য মোঃ এন্তাজ আলী সরকার, পিতা মৃতঃ একরাম উদ্দিন কবিরাজ ঠিকানাঃ গ্রামঃ মাদুয়া পাড়া, থানাঃ সাদুল্যাপুর ও জেলা গাইবান্ধা। উক্ত সালিশে আসামী সোনা মিয়া ও তার পক্ষের লোকজন হাজির হয়েছিলনা। আমরা দশজনের পক্ষে মোহাম্মদ আলী, শাহীন ও আঃ মন্নাফসহ ৫/৬ জনকে আনার জন্য। কিন্তু তারা আসেনা। পরের দিন আমি রংপুরে গিয়েছিলাম। আমাকে আমার একজন জেঠাতো ভাই আঃ মান্নান আমাকে মোবাইলে জানায় যে, স্বপ্নার স্বামী মারা গেছে। আমাকে সে আরও জানায় যে, কেবা কারা গলায় রশি দিয়ে তাকে মেরেছে। সেই আঃ মন্নাফ পিতার নাম মৃতঃ আব্বাস আলী, ঠিকানা-একই। লাশ সাদুল্যাপুর হাসপাতালে নিয়ে গেলে মারা যায়। এই আমার জবানবন্দি।"

JW 6 Abdul Monnaf states that "আমি ফরিয়াদি স্বপ্নারানীকে চিনি। তার বাড়ী আমার বাড়ীর উত্তর দিকে অবস্থিত মাঝখানে ৫/৭ বিঘা জমির দূরত্ব আছে। জয়নাল আবেদিন মেম্বার আমার চাচাত ভাই। তারিখ স্মরণ নাই। তবে ঘটনা স্মরণ আছে। ২০০৬ সালের ঘটনা। সোনামিয়া জোড়পূর্বক স্বপ্নারানীর ঘরে ঢুকেছিল। ইহার উপর ভিত্তি করে স্বপ্নারানীর স্বামী মারা যাওয়ার আগের দিন নবানু ও কের্তন ভাইদ্বয়ের বাড়ীর উঠানে মিটিং বা সালিশ হয়েছিল সকাল ৯/১০ টার দিকে। সালিশে প্রাক্তন মেম্বার এন্তাজ আলীকে (এখন তার বয়স ৮০ বছরের উপরে এবং ভাল চলতে পারেনা)। সভাপতি করা হয়েছিল সেই সালিশে স্বপ্না রাণীর পক্ষের ও গ্রামবাসী প্রায় ১০০ জনের উপরে সালিশে এসেছিল। সোনা মিয়া ও তার পক্ষের লোক সালিশে আসেনা। তখন সভাপতি আমাকে প্রাক্তন মেম্বার মোহাম্মদ আলী, পিতাঃ মৃতঃ মতিয়ার রহমান , গ্রামঃ দশলিয়া , থানা সাদুল্যাপুর ও জেলাঃ গাইবান্ধা ও আলম পিতাঃ ছামদুল হক (ঠিকানা ঃ আমার মত)-কে সোনামিয়া ও তার পক্ষের লোকজনকে ডাকতে যাই। আমরা গিয়ে তাদেও বাড়ীতে বলি সালিশে আপনাদেরকে ডাকতেছে। তারা না এসে উল্টা বকাঝোকা করেছে আমাদেরকে। আমরা এসে তারপর মিটিং এ জানাই এবং তখন মিটিং না হয়ে সবাই বাড়ীতে বলে যায়। পরের দিন স্বপ্নারানী বর্তমান মেম্বারের বাড়ীতে (আমার বাড়ীর পাশেই জয়নাল মেম্বারের বাড়ী) গিয়ে তাকে না পেয়ে আমার কাছে যায় এবং

আমাকে বলে যে, আমার স্বামীকে সোনামিয়া, হেকিম, আনোয়ার ও ঈমান আমার স্বামীকে মেরে ফেলে ফাঁসে ঝুলাইয়া রেখে গেছে। তারপর আমি মেম্বারকে ফোন দিলে মেম্বার জানায় সে রংপুরে। তারপর আমি সাদুল্যাপুর হাসপাতালে নিয়ে যাইতেছে। এই আমার জবানবন্দি।"

JW 7 Mohammad Ali the former member of the local Union Parishad deposed that, "ঘটনা ২০০৬ সালের। স্বপ্না রাণীর বাড়ী তিন রাস্তার মোড়ে অবস্থিত। তার পাশেই সোনা মিয়ার মনোহরি দোকান। পাশে আমারও বাড়ী সেও ১০০ গজ দূরে। হঠাৎ করে হৈ-চৈ শুনি এবং জানতে পারলাম যে সোনা মিয়া স্বপ্না রানীর ঘরে ঢুকেছে। সেদিনের বার সম্ভবত ছিল বুধবার। সেই স্বপ্না রাণীর ঘরে ঢোকাকে কেন্দ্র করে সালিশ বসে রোজ বৃহস্পতিবার (পরের দিন) সকাল ০৯/১০ টার দিকে। মিটিং এ সাবেক মেম্বার এমদাদ আলীকে সভাপতি করি। তখনকার বর্তমান মেম্বার জয়নাল আবেদিন দায়িত্ব দেয়া হলো সোনা মিয়াকে ডাকার জন্য। সে মতে আমি, আলম মিয়া, মোন্নাফসহ ৪/৫ জন সোনা মিয়ার বাড়ীতে যাই। গিয়ে তাকে ডাকি সালিশে আসার জন্য যেহেতু অনেক লোক এসেছে। তখন সোনা মিয়া ও তার মামা হেকিম আলী বলেছিল সালিশে না এসে আমাদের সামনেই বকা ঝকা করে বলে যে, আমাদের না জানিয়ে যখন মিটিং ডেকেছো, তোর মিটিং-এর সাধ মিটিয়ে দিব। এই হুমকীর কথা বলেছিল স্বপ্নারানীর স্বামী শ্বশ্বকে। সে অনুযায়ী আমরা ফিরে সালিশে বললাম এবং সালিশ আর হলো না। পরের দিন ১০/১১.০০ টার দিকে শুনতে পাই যে, শ্বশ্ব মারা গেছে। আরও শুনতে পাই যে, শ্বশ্বকে সোনা মিয়ারা মেরে ফাঁসে ঝুলাইয়া দিয়েছে। শ্বশ্ব-এর বড় ভাই পচা পরে তাকে সাদুল্যাপুর হাসপাতালে নিয়ে যায়। হাসপাতালে পৌঁছামাত্র শুনতে পাই যে, সে মারা গেছে। একটা কথা সোনা মিয়া আমার দূর সম্পর্কে ভাগনা। এই আমার জবানবন্দি।"

JW 8 Md. Alaom Miah affirmed that "ঘটনা ২০০৬ সালের। সঠিক তারিখ মনে নাই। কিন্তু বার ছিল রোজ বৃহস্পতিবার সকাল ৭.০০ টার দিকে স্বপ্নার স্বামী শ্বশ্ব এসে আমাকে বলেছিল যে, শ্রী ভাবেশ-এর বাড়ীতে সালিশ ডেকেছে চেয়ারম্যান, মেম্বার আসবে। আপনি ও আসবেন। সালিশের বিষয় শুনলাম তার কাছে যে, আসামী সোনা মিয়া স্বপ্নার ঘরে ঢুকেছিল। ঐ দিনই ৯.০০ টার দিকে সালিশে যাই। সালিশে অনেক জন ছিল। সালিশে সভাপতি সাবেক মেম্বার মোহাম্মদ এন্তাজ আলী সরকার। (এখন বার্ধক্য জনিত কারনে কানে শুনে না)। সালিশ থেকে আমাদের ৫/৬ জনকে দায়িত্ব দেয় সোনা মিয়াকে ডাকার জন্য। সেই ৫/৬ জন-এর মধ্যে ছিলাম, আমি, মোহাম্মদ আলী, মোন্নাফ ও জয়নাল আমরা গিয়ে সোনা মিয়ার বাড়ীতে গিয়ে দেখি, সোনা মিয়া তার মামা, লোকজন হেকিম, ঈমান আলী ও আনোয়ার সবাই বসে আছে। আমরা সোনা মিয়াকে বললাম যে, সোনা মিয়া তোমাকে সালিশে ডাকছে। এ কথা বাকি ৩ জনই উত্তেজিত হয়ে বলল আমরা কেন সালিশে যাব। তারা আমাদেরকেও বকা ঝকা করে। শ্বশ্বকে হুমকি দেয় যে, তাকে দেখে নিব। আমরা এসে সালিশে এসে তা বলি ও শ্বশ্বকে হুমকি দিয়েছে তাহাও বলি। সালিশে এ কথা বলার পর সবাই বলে যায়। পরের দিন

শুনি যে, শ্বশ্ব মারা গেছে। শুনে অবাক হয়ে যাই এবং আগাইয়া শুনি যে, শ্বশ্বকে মেরে ফাঁসি দিয়ে রেখে গেছে। তাকে মেরেছে সোনা মিয়া, ঈমান, হেকিম ও আনোয়ার। ইহা আমি শুনেছি। পরে তাকে হাসপাতালে নিয়ে যায়। এই আমার জবানবন্দি।"

Post-mortem report signed on 23.07.2006 by Dr. Amal Chandra Saha, RMO of Sadar Hospital, Gaibandha and signed on 25.07.2006 by Civil Surgeon, Gaibandha contains that

"Death in my opinion, was due to Asphyxia as a result of hanging which was anti-mortem and suicidal in nature"

By reviewing the statements of the witnesses it is observed that there are consistencies among their statements. One fact has been evinced i.e. a Salish was prepared to be held due to the attempt of committing rape against the accused Sona Miah. But the said Salish was not thereafter held due to the absence of the accused Sona Miah and others who are closely related to his part. The fact of this case leads to think the fact of homicidal hanging masquerading as suicide. In respect of this kind of fact it is necessary to get the forensic report and the careful investigating report and this is a question whether the said two things have been done perfectly.

The investigating officer has not made the careful investigating report. He in his submitted report dated 06.08.2006 has mentioned that the relative of the deceased has no allegation inrespect of the death but the complaint itself gives the opposit view. Moreover, the complainant has stated in her testimony that someone on behalf of the accused took her signature and she could not understood what was written in the paper thereof.

Homicides by hanging and the simulation of suicide by hanging a victim previously killed or made unable to resist by other means are regarded as extremely rare events, although especially in German forensic literature cases of this kind were repeatedly reported. [http://www.ncbi.nlm.nih.gov/pubmed/9757351] and Although mechanisms of constricting forces acting around the neck of the deceased are different in both hanging and strangulation, still the ligature marks found around the necks appear almost similar. Associated bodily injuries resulting from resistance or violence may not be present in all cases of ligature strangulation. In those cases, it is only the ligature mark that helps us to differentiate hanging from strangulation [http://www.geradts.com/anil/ij/vol_007_no_001/papers/paper005.html]

In this case the investigating officer has not mentioned the intelligence as to the legature marks around the neck of the deceased and

what was used in respect of the ligature marks. This non mention of the legature marks indicates the careless investigation. He has not mentioned the geo-circumtances i.e. condition of the place of occurrence regarding the resitance etc though the inquest report dated 22.07.2006 contains a mark on the right side of the neck of the deceased.

This is correct that the forensic and circumstancial intelligence are not sufficient in the report submitted by the police officer concerned. The question now is that despite this, what will be fate of the ocular evidence is necessary to consider in this allegation or complaint. In view of sections 7 and 134 of the Evidence Act of 1872 it is necessary to give an opportunity to the complainant to testify before the trial court so that she could not be deprived of testifying the evidence in support of her complant as the investigating police officer has not given the detail intelligence in support of his submitted report.

According to the JWs particularly JW 7 Mohammad Ali former UP Member being the uncle of the accused Sona Miah testified that the character of the accused Sona Miah is not good at all.

In view of the aforementioned reasons and the following laws declared by the Supreme Court of Bangladesh i.e.

> "When the ocular evidence of PWs 1 to 7 speakes of head injury of deceased Rezaul Karim inflicted by accused khalil and this finds corroboration from the inquest report, the learned Sessions Judge was not justified in aquitting accused Khalil..." [7 BLC 586] and
>
> the accused-husband was not a docile person but a very arrogant and assertive person. This part of his character and conduct is relevant to be consudred as to who is capable of doing what" [45 DLR 306], this court finds the grounds to proceed with this complaint and hence it is the prima-facie presumption that the crime was committed by accused (1) Md. Sona Miah, (2) Md. Imam Ali (3) Md. Lokman Hekim and (4) Md. Anwar Miah which constituted the offence under sections 448/302/34 of the penal code.

Name…
Senior Judicial Magistrate
Gaibandha

6.18 Model order for treating FI to police station

Seen the aforementioned note and the officer in charge of... police station, District... is directed to treat this complaint petition as First Information (FI) directly. After lodging in B.P. Form No. 27 in connection with Regulation 243 and 244 of PR-1943, send the said First Information Report (FIR) to the concerned learned court on the next working day in getting this order. Maintaining all procedural formalities any special

Messenger is permitted to communicate this to the concerned officer-incharge. Next date... is under regulation 245 of PR-1943 fixed for police report.

6.19 Vague order, difficulties and ways out

There are so many vague orders are given or passed by the cognisance taking courts. That is to say, sometimes the court or the Magistrate concerned passes an order to OC to take legal action with or wthout investigation and this kind of order sans the aforesaid model order is definitely vague order. An order must be based on the statute i.e. the section or rule or regulation must be mentioned so that the the police or any person directed can comply with the order accurately and within the time frame given by the court.

6.20 Action under section 29 of the Police Act 1861

Section 29 of the Police Act 1861 itself provides the fact upon which the punishment can be imposed.

6.21 Model order

DISTRICT: GAIBANDHA

BEFORE THE COURT OF JUDICAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Judicial Magistrate, Gaibandha.
Suo Moto cognisance order No. 01
Criminal Miscellaneous Case No. 01 of 2009
Under section 29 of the Police Act 1861
Date of passing order: 11th January, 2009
Arising out of
General Register Case Number 304 of 2008
Sadullapur Police Station case number 22 dated 26.10.2008
The State ... Prosecution
-Versus-
SI xyz ... Accused

Order No. 01

Date 11.01.2009

In pursuant to the order dated 15.12.2008 the officer in charge or the inspector of Sadullapur police station was under the responsibility to lodge and send the First Information (FI) in complying with the said order on the next working day. But the order dated 15.12.2008 has been violated wilfully. For better understanding I am mentioning the said order below:

"OC Sadullapur police station, Gaibandha treats this complaint as FI directly. After lodging according to Regulation 243 of PR-1943 in B.P. Form-27, send the FI to the concerned court on the next working day in getting this order. Maintaining all procedural formalities any special messenger is permitted to communicate this to the concerned officer in charge. Next date 22.01.2009 is under regulation 245 of PR-1943 fixed for police report"

The complaint along with the order dated 15.12.2008 was received on 18.12.2008 in the police station as it appears from the concerned record of the court. But the sub-inspector of police SI xyz assuming the charge of the police station on 26.12.2008 lodged the FI in avoiding the charge of section 326 of the penal code which was the main charge of the case.

The aforementioned sub-inspector of Sadullapur police station lodged the FI after the delay of 7 (seven) days and avoiding the main allegation of section of 326 of the penal code. According to section 23 of the Police Act 1861, it was the duty of concerned police officer of Sadullapur police station, Gaibandha to obey and execute the said order

promptly. But that duty has not been performed duly and in making the wilful violation of the same the right to protection of law in respect of the complainant cum informant has been infringed absolutely.

It was the fundamental right of the informant to get the protection of law under article 31 of the constitution of the People's Republic of Bangladesh and hence this court lawfully passed the order dated 15.12.2008 in accordance with law. Seven days delay of lodging the FI after getting the lawful order and avoiding the main charge of section 326 of the penal code is clearly wilful violation and neglect of the lawful order dated 15.12.2008 passed by this court. For this all the accused have had the bail on 05.01.2009 on the ground of bailable sections of offence.

According to Regulation 21(a) of Police Regulations 1943 which is law under article 152 of the constitution of the People's Republic of Bangladesh, this court having jurisdiction and empowered to take cognisance of police cases is under the responsibility for watching the course of police investigations in the manner laid down in chapter XIV of the code of criminal procedure. Here section 154 of chapter XIV of the code of criminal procedure in respect of the information of cognisable cases is very much pertinent for treating complaint as FI directly through the order dated 15.12.2008

In view of the aforementioned reasons particularly for the delay of 7(seven) days to lodge the FI and the avoidance of the main charge of section 326 of penal code, the recording officer Sub-inspector of police SI xyz assuming the charge of Sadullapur police station has committed the willful violation and neglect of the lawful order dated 15.12.2008 and deprived the informant of having the protection of law and accordingly the cognisance is acceptable. Moreover, the court sub inspector being directed under regulation 434 of PR-1943 has submitted an application for the same.

Before taking the cognizance, it is necessary to see whether SI xyz can get the protection of section 197 of the code of criminal procedure. In respect of this the Appellate Division of Supreme Court of Bangladesh has examined section 197 of the said code clearly in the case of ***ASI MD. AYUB ALI SARDAR vs. STATE reported in 58 DLR (AD) (2006) page 13 Para 16-21*** and for clear understanding I am mentioning the said examination of section 197 of the code of criminal procedure of the Appellate Division of Supreme Court of Bangladesh i.e.

"16. ...let us examine section 197 of the Code of Criminal Procedure which runs as follows:

'197. 1. When any person who is a Judge within the meaning of section 19 of he Penal Code, or when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of the Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognisance of such offence except with the previous sanction of the Government.

.....

2. The Government... may determine the person by whom, the manner in which, the offence or offences for which, the prosecution of such judge, magistrate or public servant is to be conducted and may specify the court before which the trial is to be held.'

17. On perusal of the aforesaid provision of law, it appears that in case of any judge or magistrate or a public servant, not removable from his office save by order or with the sanction of the Government, being an accused of any offence, while action in the discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction of he Government.

18. In this connection the provision of the Police Officers (Special Provisions) Ordinance 1976 (Ordinance No. LXXXIV of 1976) may be referred to. Section 2, 4 and 5 of the Ordinance run as follows:

'**2. Definitions**-In this Ordinance unless there is anything repugnant in the subject or context,

4. "authority" means an authority specified in column 2 of the schedule;

.....

5. "police-officer" means a police officer of, and below, the rank of Inspector mentioned in column 1 of the schedule.'

'**4. Offences**- Where a police-officer is guilty of-

1. misconduct,
2. dereliction of duty;
3. act of cowardice and moral turpitude;
4. corruption or having persistent reputation of being corrupt;
5. subversive activity or association with persosn or organisations engaged in subversive activities;
6. desertion from service or unauthorised absence from duty without reasonable excuse; or
7. Inefficiency.

The authority concerned may impose on such police-officer any of the penalties mentioned in section 5.'

"**5. Penalties :** The following shall be the penalties which may be imposed under this Ordinance, namely,

1. dismissal from service;
2. removal from service;
3. discharge from service;
4. compulsory retirement; and
5. Reduction to lower rank.'

19. It, therefore, appears from the aforesaid provisions of law that the accused petitioner No. 1 Ayub Ali Sarder being an Assistant Sub-Inspector of Police and petitioner No. 2 Sagir Ahmed being a constable, their services are removable by the authority as mentioned in the schedule of the Ordinance which is as follows:

Police-officer	**Authority**	**Appellate Authority**
1	2	3
1. Inspector	Inspector-General of Police	Government
2. Sub-Inspector, Assistant Sub-Inspector, Sergeant, Head Constable	Deputy Inspector-General of Police	Inspector-General of Police
3. Naiks, Constables	Superintendent of Police	Deputy Inspector-General of Police

20. In such view of the matter, it clearly shows that in order to remove the two accused petitioners from service sanction of the Government is not required and hence question of application of section 197 of the Code does not arise.

21. The tow petitioners, being Assistant Sub-Inspector of Police and constable respectively cannot claim that they are public servants not removable from their office except with the previous sanction of the Government. So section 197 of the Code has got no application."

For the aforementioned examination of section 197 of the code of criminal procedure it is absolutely clear that SI xyz being sub-inspector of police, his service is removable by the authority as mentioned in the schedule of the Ordinance and in such view of the matter, it clearly shows that in order to remove SI xyz from service sanction of the Government is not required hence question of application of section 197 of the code of criminal procedure does not arise and he can not claim that he is a public servant not removable from his office except with the

previous sanction of the Government and accordingly cognisance is taken against him under section 29 of the Police Act 1861. Issue summons along with the copy of the complaint upon accused SI xyz of Sadullapur Police station, Gaibandha. Next date 29th January, 2009 is fixed for the appearance of the accused SI G.M. Mizanur Rahman.

Let a copy of this order be forwarded to Deputy Inspector General of Police, Rajshahi Range, Rajshahi, Superintendent of police, Gaibandha immediately.

Name…
Senior Judicial Magistrate
Gaibandha

Memo No... Date...

Copy of the order is sent for necessary steps
1. Deputy Inspector General of Police, Rajshahi Range, Rajshahi
2. Superintendent of police, Gaibandha.

6.22 Bar of application of section 29 of Police Act 1861 in Metropolitan Area

Section 3 of the Dhaka Metropolitan Police Ordinance, 1976 provides that the Police Act of 1861 shall not apply to the Dhaka Metropolitan Area and this is a bar in respect of using the section 29 of the said Police Act. But every Ordinance contains some provisions for imposing punishment upon the police officer concerned. This kind of bar is definitely unconstitutional as our country is a unitary sovereign country. In a single territory, as per our constitution the bar of exercising the same law for the same offence can not be maintainable at all and the very unfortunate thing is that there is no effective internal mechanism for introducing the matter before the apex Court sans the usual writ petition form.

6.23 Procedure when Magistrate not competent to take cognisance

If the complaint has been made in writing to a Magistrate who is not competent to take cognisance of the case, he shall return the the complaint under section 201 of the code of criminal procedure for presentation to the proper Court with an endorsement to that effect. If the complaint has not been made in writing, such Magistrate shall direct the complainant to the proper Court.

6.24 Model order

Complaint Register Case No.... of 2009

অদ্য দাখিলকৃত নালিশটি রেজিষ্ট্রিভুক্ত করা হলো। ফরিয়াদি...আসামী...-এর বিরুদ্ধে পেনালকোড... ধারায় নালিশ আনায়ন করতঃ বিচার প্রার্থনা করেন। Seen the complainant and examined him under section 200 of the Code of Criminal Procedure upon oath. The substance of the said examination has been recorded duly and there after the same has been signed by the complainant and also by this court. After perusal of the same as well as this complaint in writing it evince that this court has no jurisdiction to take cognisance of the offence of the complaint due to the place of occurrence of the cimplaint is beyond this Distrct of Gaibandha and this complaint is returned to the complainant for presentation to the Court of Chief Judicial Magistrate, Rangpur so that he can get the remedy.

Name…
Senior Judicial Magistrate
Gaibandha

6.25 Postponement for issue of process

Section 202 of the code of criminal procedure deals with the matter of postponement for issue of process when the Magistrate concerned thinks fit to get an inquiry or investigation report for the purpose of ascertaining the truth or falsehood of the complaint.

It is noted that there are broadly two exceptions which should be kept in mind at the time of passing the order under the authority of section 202 of the code of criminal procedure upon the complaint made by any person within the purview of section 4(1)(h) of the code of criminal procedure which are as follows;

1. Where the complaint has been made by a Court, no such direction shall be made unless the provisionsof section 200 have been complied;
2. Where it appears to the Magistrate that the offence complained of is triable exclusively by a Court of Session, shall call upon the complainant to produce all his witnesses and examine them on oath.

Defects of section 202 of Code of Criminal Procedure:

Sub-section (2B) of section 202 provides that;

"Where the police submit the final report, the magistrate shall be competent to accept such report and discharge the accused."

Herce it is noted that the addition of subsection 2B of section 202 of the code of criminal procedure is a clear mistaken addition due to two aspects;

First aspect: Though this sub-section was added by Ordinance XXIV of 1982 but at the time of setting the words the drafters did not consider, whether in respect of final report there is a regulation in PR-1943 as numbered 276 which provides that

Regulation 276- Magisterial orders on final reports.-

a. On receipt of the final report, the Magistrate may accept the police finding and declare the case accordingly or may, under section 156 (3) of the Code of Criminal Procedure, order further enquiry on specified points or may take cognizance under section 190 (b) of that Code, and, if the persons accused have not already been arrested issue process against them under section 204 of the code and require the investigating officer to furnish the names and addresses of the witnesses.
b. When further enquiry is ordered, it shall be entered and completed as soon as possible. If, on the completion of such enquiry, the

investigating officer considers the charge proved, he shall submit a charge sheet form; if not, he shall submit a final report in the usual way.

From the plain reading of the aforementioned regulation, it is clear that the correct expression is "**the Magistrate shall be competent to accept the police findings of the final report."** The very longstanding culture is to accept the charge sheet or final report is definitely incorrect or misnomer. The proper section 190 of the Code of Criminal Procedure does not authorise to accept the charge sheet as the said section has enunciated certainly that the magistrate concerned may take the cognisance of any offence. **Second aspect:** The term 'police report' as includes either the charge sheet or the 'final report' and having a regulation as numbered 276, there is no necessity of addition of sub-section 2B of section 202 of the Code of Criminal Procedure. We ought to think for the first time in case of any amendment of law, whether any law is there and if there is any law, the terms and expressions of that law either should be continued or replaced symultaneously.

6.26 Model order

Complaint Register Case No.... of 2009

অদ্য দাখিলকৃত নালিশটি রেজিষ্ট্রিভুক্ত করা হলো। ফরিয়াদি...আসামী...-এর বিরুদ্ধে দন্ড বিধির... ধারায় নালিশ আনায়ন করতঃ বিচার প্রার্থনা করেন। Seen the complainant and examined him under section 200 of the Code of Criminal Procedure upon oath. The substance of the said examination has been recorded duly and there after the same has been signed by the complainant and also by this court. After perusal of the same and this complaint in writing it evinces that for the purpose of ascertaining the truth or falsehood of this complaint it is indispensable to have an inquiry report. For this reason, the issue of process for compelling the attendance of the persons complained against is postponed and accordingly under section 202 of the Code of Criminal Procedure in connection with the ambit of section 10 of the said code, Upazila Nirbahi Officer of Gobindagonj, Gaibandha is directed, after making an inquiry for the purpose of ascertaining for the truth or falsehood of this complaint, to submit the inquiry report including the statements of the witnesses and the documents (if any) upon which the report shall be based on or before the next date. Next date 23rd February 2010 is fixed for the same. The office is directed accordingly.

Name…
Senior Judicial Magistrate
Gaibandha

6.27 Dismissal of complaint

Section 203 of the code of criminal procedure of 1898 and the Rule 90 of CrRO-2009 deal with this matter of dismissal of complaint when the Magistrate concerned after considering the statement on oath of the complainant and the result of the investigation or inquiry if any under section 202 of the code of criminal procedure thinks fit in his judgment that there is no sufficient ground for proceeding, the Magistrate concerned then may dismiss the complaint which is made or transferred to him. But the Magistrate ought to briefly record the reasons for passing the order of dismissal of complaint. He ought to think that against the order of dismissal of complaint, the complainant can go to the Court of sessions under section 436 of the code of criminal procedure so that the said Court can understand that the reasons briefly recorded are reasonable or sufficient to pass the order of dismissal of complaint. According to this section a Magistrate concerned can pass the order of dismissal of complaint even without any result of the investigation or inquiry if any under section 202 of the code of criminal procedure as the same is not mandatory. Again in section 203 of of the code of criminal procedure, it has been stated that when the Magistrate thinks in his judgment that there is no sufficient grounds for proceeding, he can dismiss the complaint. Here two thinks are very important i.e. (i) judgment and (ii) sufficient ground. It is necessary to understand the meaning of the word ‘judgment’ used in this section otherwise one may think to say that putting the word judgment is wrong or mistake by the then legislator. Judgment means a final order i.e. judgment is genus and order is species. The term ‘sufficient grounds’ indicate that if there is a minimum ground for proceeding the complaint should not be dismissed.

6.28 Two model orders in respect of dismissal of complaint

DISTRICT: GAIBANDHA

IN THE COURT OF SENIOR JUDICAL MAGISTRATE, GAIBANDHA

Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing order:-30th Octoberber, 2011
Complaint Register Case No. 119 of 2011
Rahmat Ali ... Complainant

-Versus-

Amsar Ali and another ... Accused

Seen the complainant and examined him under section 200 of the Code of Criminal Procedure upon oath. The substance of the said examination has been recorded duly and there after the same has been signed by the complainant and also by this court. After perusal of the same and this complaint in writing it evinces that for the purpose of ascertaining the truth or falsehood of this complaint it is not indispensable to have an inquiry report. On the contrary it appears to this Court that the facts of the complaint in writing and the recorded substance of the said examination show clearly that this complaint is a purely civil nature. If this complaint is lodged with the police station, no investigation under section 157(b) of the code of criminal procedure and regulation 257(b) (II) of PR-1943 would be made due to the same reasons. In view of the aforementioned reasons, this complaint is dismissed under section 203 of the code of criminal procedure and thus this complaint register case is disposed of.

Name…
Senior Judicial Magistrate
Gaibandha

DISTRICT: GAIBANDHA

IN THE COURT OF SENIOR JUDICAL MAGISTRATE, GAIBANDHA

Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing order:-30th Octoberber, 2011
Complaint Register Case No. 119 of 2011
Rahmat Ali ... Complainant

-Versus-

Amsar Ali and another ... Accused

...Seen the aforementioned note and examined the complainant upon oath unders ection 200 of the code of criminal procedure of 1898 and the substance of the said examianation is reduced to writing duly. After hearing the recorded substance the complainant gives his signature and thereafter the same is signed by me as Magistrate.

After considerasion of the same and the presented photocopy of the documents concerned, it appears to this court that there is no sufficient ground for proceeding and there is glarious disparity and the existance of the matter of civil liability, in my judgment in the instant complaint.

In view of the aforementioned reasons, this complaint is dismissed under section 203 of the code of criminal procedure and thus the same is disposed of. The office is directed accordingly.

Name…
Senior Judicial Magistrate
Gaibandha

6.29: Complaint and cognisance against police officer;

Generally when a complaint is brought against a police officer before a court of magistrate, it is also seen and disposed of by the same way as a complaint made against any ordinary citizen of the state, The mind of exercising the matter equally is of course good. But when a provision is enacted in any statute, that is required to be complied and for the same the very essential regulation is 29 of PR-1943 which provides that:

Regulation29-Magisterial inquiries into allegations against police officer: When an order is passed for a magisterial inquiry into an allegation against a police officer-

1. it should be held at the place of occurrence
2. the Magistrate deputed to hold it should, if possible, proceed there not later than the following day.
3. such Magistrate should be an Assistant Magistrate or a Deputy Magistrate of the first class if the officer concerned is of or above the rank of sub-Inspector and is accused of committing a cognizable offence or of having demanded or accepted a bribe.
4. No concurrent departmental inquiry should be made but the Superintendent shall depute a police officer to attend and to arrange for the production before the Magistrate of any police witnesses and of such other evidence as may be available.
5. No police officer connected with an investigation in the course of which there is alleged to have been ill-treatment by the police should have any concern with the conduct of the inquiry into such allegation.

The magistrates of our country all most in getting a complaint and passing an order for a magisterial inquiry which is commonly known as judicial inquiry do not follow the aforesaid regulation. Let me give a practical example occasioned in Gaibandha. I, after joining in Gaibandha and getting an order of judicial inquiry in a case of murder of a person in the police custody in 2006, got an opportunity of doing this kind of inquiry and for that experience I am telling you that I was the third magistrate as two magistrates who were senior to me held judicial inquiry and submitted an inquiry report without getting a truth of the complaint and the fact in relevant here is that the said two magistrates did not comply with the said regulation 29 of PR-1943 and both of them were advised by me when they sought opinion, to comply the said regulation but I examined all the relevant documents before and post occurrence of the complaint in going to Gaibandha police station but they did not do at all. I realised that the said magistrate did not possess

the judicial courage without which a judge can not be regarded as an enlightened judge. However a magistrate should follow any of the following three ways;

1. to take cognisance directly;
2. to pass an order for treating complaint as first information and fix a date under regulation 245 of PR-1943 for getting police report and
3. to pass an order for a magisterial inquiry and comply with regulation 29 of PR-1943.

One think should be kept in mind that at the time of conducting the judicial inquiry no concurrent departmental inquiry should be made and as per the law explained in details and reported in 58 DLR (AD) 13 no sanction of section 197 of the code of criminal procedure of 1898 is required for a police officer up to the inspector of polic.

6.30 Model order

DISTRICT: GAIBANDHA

IN THE COURT OF SENIORJUDICIAL JUDICAL MAGISTRATE, GAIBANDHA

Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing order: 03.05.2010
Petition (Complaint) Register Case Number 1175 of 2006
Arising out of: Ref: Petition (Complaint) Case No. 1175 of 2006 and
Connected with Petition (Complaint) Case No. 1174 of 2006
The State ... Prosecution

-Versus-

Md. Nur Alam and others ... Accused
Under sections: 330,302,201 and 34 of the Penal Code

Order Number:

…Seen the aforementioned note and after perusal of the case record it appears to this court that there are sufficient grounds to proceed with this complaint and the facts as per the inquiry report dated 18.04.2010 submitted by Mr. Md. Azizur Rahman Senior Judicial Magistrate , Gaibandha constitute the offences and accordingly the cognisance is acceptable against the accused (1) Md. Nur Alom, Officer-in-charge of Gaibandha police station, (2) Md. Abu Yusuf, SI of Gaibandha police station, (3) Fahima Haider, PSI of Gaibandha police station, (4) Sentry Constable No. 620 Dulal Chandra of Gaibandha police station (5) Sentry Constable No. 205 Mizanur Rahman of Gaibandha police station and (6) Delwar Hosen Dilu, son of Late Abul Hosen of village Munshi Para, Gaibandha police station, Gaibanda

Before taking the cognizance, it is necessary to see accused (1) Md. Nur Alom, Officer-in-charge of Gaibandha police station, (2) Md. Abu Yusuf, SI of Gaibandha police station, (3) Fahima Haider, PSI of Gaibandha police station, (4) Sentry Constable No. 620 Dulal Chandra of Gaibandha police station (5) Sentry Constable No. 205 Mizanur Rahman of Gaibandha police station can get the protection of section 197 of the code of criminal procedure. In respect of this the Appellate Division of Supreme Court of Bangladesh has examined section 197 of the said code clearly in the case of ***ASI MD. AYUB ALI SARDAR vs. STATE reported in 58 DLR (AD) (2006) page 13 Para 16-21*** and for clear understanding I am mentioning the said examination of section 197 of the code of criminal procedure of the Appellate Division of Supreme Court of Bangladesh i.e.

"16. ...let us examine section 197 of the Code of Criminal Procedure which runs as follows:

'197. 1. When any person who is a Judge within the meaning of section 19 of the Penal Code, or when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of the Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognisance of such offence except with the previous sanction of the Government.

.....

2. The Government... may determine the person by whom, the manner in which, the offence or offences for which, the prosecution of such judge, magistrate or public servant is to be conducted and may specify the court before which the trial is to be held.'

17. On perusal of the aforesaid provision of law, it appears that in case of any judge or magistrate or a public servant, not removable from his office save by order or with the sanction of the Government, being an accused of any offence, while action in the discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction of the Government.

18. In this connection the provision of the Police Officers (Special Provisions) Ordinance 1976 (Ordinance No. LXXXIV of 1976) may be referred to. Section 2, 4 and 5 of the Ordinance run as follows:

'**2. Definitions**-In this Ordinance unless there is anything repugnant in the subject or context,

4. "authority" means an authority specified in column 2 of the schedule;

.....

5. "police-officer" means a police officer of, and below, the rank of Inspector mentioned in column 1 of the schedule.'

'**4. Offences**- Where a police-officer is guilty of-

1. misconduct,
2. dereliction of duty;
3. act of cowardice and moral turpitude;
4. corruption or having persistent reputation of being corrupt;
5. subversive activity or association with persosn or organisations engaged in subversive activities;

6. desertion from service or unauthorised absence from duty without reasonable excuse; or
7. Inefficiency.

The authority concerned may impose on such police-officer any of the penalties mentioned in section 5.'

"**5. Penalties-** The following shall be the penalties which may be imposed under this Ordinance, namely,

1. dismissal from service;
2. removal from service;
3. discharge from service;
4. compulsory retirement; and
5. Reduction to lower rank.'

19. It, therefore, appears from the aforesaid provisions of law that the accused petitioner No. 1 Ayub Ali Sarder being an Assistant Sub-Inspector of Police and petitioner No. 2 Sagir Ahmed being a constable, their services are removable by the authority as mentioned in the schedule of the Ordinance which is as follows:

Police-officer	Authority	Appellate Authority
1	2	3
1. Inspector	Inspector-General of Police	Government
2. Sub-Inspector, Assistant Sub-Inspector, Sergeant, Head Constable	Deputy Inspector-General of Police	Inspector-General of Police
3. Naiks, Constables	Superintendent of Police	Deputy Inspector-General of Police

20. In such view of the matter, it clearly shows that in order to remove the two accused petitioners from service sanction of the Government is not required and hence question of application of section 197 of the Code does not arise.

21. The two petitioners, being Assistant Sub-Inspector of Police and constable respectively cannot claim that they are public servants not removable from their office except with the previous sanction of the Government. So section 197 of the Code has got no application."

For the aforementioned examination of section 197 of the code of criminal procedure it is absolutely clear that accused (1) Md. Nur Alom, Officer-in-charge of Gaibandha police station, (2) Md. Abu Yusuf, SI of Gaibandha police station, (3) Fahima Haider, PSI of Gaibandha police

station, (4) Sentry Constable No. 620 Dulal Chandra of Gaibandha police station (5) Sentry Constable No. 205 Mizanur Rahman of Gaibandha police station being the officers below Inspector of police their service is removable by the authority as mentioned in the schedule of the Ordinance and in such view of the matter, it clearly shows that in order to remove them from their service, sanction of the Government is not required and hence question of application of section 197 of the code of criminal procedure does not arise and they can not claim that they are the public servant not removable from their office except with the previous sanction of the Government and accordingly cognisance is taken against them along with accused (6) Delwar Hosen Dilu, son of Late Abul Hosen of village Munshi Para, Gaibandha police station, Gaibanda under sections 330/302/201/34 of the Penal Code. Issue arrest warrant (WA) along with the copy of the complaint against accused (1) Md. Nur Alom, former Officer-in-charge of Gaibandha police station, (2) Md. Abu Yusuf, former SI of Gaibandha police station, (3) Fahima Haider, former PSI of Gaibandha police station, (4) former Sentry Constable No. 620 Dulal Chandra of Gaibandha police station (5) former Sentry Constable No. 205 Mizanur Rahman all of were under Gaibandha police station and (6) Delwar Hosen Dilu, son of Late Abul Hosen of village Munshi Para, Gaibandha police station, Gaibandha in accordance with the provision of law.Keep the entire record of connected Petition (Complaint) Case No. 1174 of 2006 with this record. Next date 30.06.2010 is fixed for the report as to the issued arrest warrant.

Let a copy of this order be forwarded to Deputy Inspector General of Police, Rajshahi Range, Rajshahi and Superintendent of police of Gaibandha immediately for necessary steps.

6.31 Naraji petition and cognisance

This is now a settled principle that a naraji petition is a fresh complaint and hence all the procedures shall be same for like a complaint and the term ‘naraji’ or ‘naraji petition’ is not found in the entire Code of Criminal Procedure and this is of course not a misnomer in law as the said term is found in Regulation No. 435 of Police Regulation 1943.

The term ‘complaint’ has been defined in section 4(1) (a) of the code of Criminal Procedure which provides that-

“Complaint” means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person whether known or unknown, has committed an offence, but it does not include the report the report of a police officer.”

The authority for taking cognisance of offence is provided in section 190 of the Code of Criminal Procedure. On the basis of a complaint if a Magistrate passes an order under section 202 of the Code of Criminal Procedure for inquiry or investigation and if the inquiry or investigation report is not truth, there shall be no bar to make another inquiry or investigation as 'an inquiry or investigation' of section 202 of the Code of Criminal Procedure which means more than one inquiry according to the law reported in 34 DLR (HCD) 434.

Now, it is necessary to think as to this matter and in this regard section 436 of the code of Criminal Procedure can help us. The said section 436 provides that-

"**436. Power to order inquiry**- On examining any record under section 435 or otherwise, the [High Court Division] or the Sessions Judge may direct the [Chief Metropolitan Magistrate or [Chief Judicial Magistrate] by himself or by any of the Magistrate sub-ordinate to him to make, and the [Chief metropolitan Magistrate or [Chief Judicial Magistrate]] may himself, or direct any subordinate Magistrate to make, **further inquiry** into any complaint which has been dismissed under section 203 or sub-section (3) of section 204, or into the case of any [person accused of an offence] who has been discharged:

Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.

In a nutshell, the High Court Division or the Sessions Judge may direct concerned Magistrate as it thinks fit for further inquiry into any complaint which has been dismissed under section 203 or sub-section (3) of section 204, or into the case of any person accused of an offence that has been discharged. We find from the conception of this section as to 'further inquiry' in case of a complaint and 'further investigation' in case of a case instituted through police station is also found in section 173(3B) of the code of criminal procedure and after an inquiry or investigation report which is not either in support of the complaint or the case instituted through police station, the Magistrate concerned can pass an order for the same.

According to section 203 of the Code of Criminal Procedure a complaint may be dismissed after considering the statement on oath (if any) of the complainant and the result of the investigation or inquiry (if any) under section 202 of the said code. This clearly indicates that after an inquiry, another inquiry may be done and if it is done by the direction

of the authority of section 436 of the Code of Criminal Procedure, must be regarded as ‘further inquiry’ and for the same reasons, the term ‘naraji petition’ should be filed.

After an inquiry, if the Magistrate thinks that there are grounds to proceed with the case against the not recommended or not sent up accused, he shall pass any required order in considering the same as a fresh complaint. In true legal sense within the purview of Regulation435 of Police Regulation-1943 and the Code of Criminal Procedures one should use the term ‘naraji’ only.

6.32 Model order

DISTRICT: GAIBANDHA

IN THE COURT OF SENIOR JUDICAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing order: 03.03.2010
General Register Case Number 137 of 2005
The State ... Prosecution
-Versus-
Thanda and others ... Accused

Under sections: 302/ 34 of the Penal Code

…Seen the aforementioned note and after perusal of the record it appears that the date of occurrence was 16.05.2005 at any time from 5.00 pm on that night and the First Information (FI) was lodged with Gobindagonj Police Station on 17.05.2005 by the informant Md. Monsur Ali against some unknown persons. Then the said informant on 09.08.2005 filed a complaint before the court against 7 (seven) accused and stated the reasons in the said complaint:

Thereafter on 27.11.2005 an order was passed to investigate the alleged complaint along with the previous lodged First Information (FI) being No. 16 dated 16.05.2005 of Gobindagonj police station which was then numbered as General Register (GR) case being No. 137 of 2005. The investigation officer after investigating into the matter submitted a report dated 09.12.2006 against no accused person i.e. Final Report and recommended 4 (four) accused to be discharged from the allegation who were suspected arrestee. Then the informant Md. Monsur Ali being aggrieved with the said police report (FRT) dated 09.12.2006 filed a naraji dated 28.01.2007 for further inquiry or investigation or others and thereafter by the Order being No. 89 dated 16.03.2008 it was ordered that Criminal Investigation Department (CID) after making further investigation shall submit the report of this case and accordingly the Police Inspector, CID Camp, Gaibandha submitted a police report dated 24.11.2008 in recommending prosecution against 4 (four) sent up accused. But the police report dated 24.11.2008 does not provide sufficient intelligence in respect of other 3 (three) accused whose names have been mentioned in the complaint dated 09.08.2005 and the narajee dated 28.01.2007 necessitates to consider about their position in the allegation.

The inquest report dated 17.05.2005 and the post-mortem report dated 08.06.005 contain the sufficient intelligence in respect of the alleged allegation. Now the matter of consideration is that as per police

report dated 24.11.2008 accused Yakub admittedly was in the place of occurrence till 11.00 pm on that night along with other accused. The time of occurrence as per the First Information (FI) was at any time from 5.00 pm on that night and hence he ought not to be discharged mere on the basis of the said police report dated 24.11.2008.

Moreover, the statements of the witnesses recorded by the investigation officer in respect of the intelligence of going away of accused Yakub at 11.00 pm from the place of occurrence on that night is not determinable without appreciating the evidence after the trial of this case. Another legal point is that the investigation officer at the time of recording the statements of the witnesses has not followed section 162 of the code of criminal procedure. He has not mentioned that the statements of the witnesses have been recorded as reduced into writing.

According to section 162(1) of the code of criminal procedure if the statement of any witnesses is recorded as reduced into writing there is no necessity of taking signature of the person making the statement and the said section 162 (1) of the said Code provides that

"No statement made by any person to a police officer in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it; ..."

In view of this section 162(1) of the code of criminal procedure, reversely, if the statement of any witnesses is not recorded as reduced into writing, the same shall be signed by the person making the statement.

In this case, as the investigating officer has not recorded the statement of the witnesses as reduced into writing, he was under responsibility under the said provision of law to take signature duly and hence the non-compliance with this section gives a scope excluding some one from the alleged allegation and accordingly accused Yakub is not entitled to be out of cognisance at this stage of this case.

In view of the aforementioned reasons and the law declared by the Supreme Court of Bangladesh reported in 31 DLR (AD) 70 Para-14, cognisance is taken against sent up 4(four) accused namely (1) Thanda (2) Samu (3) Liton (4) Yunus Ali and not sent up accused (5) Yakub @Yakub Ali under section 302/34 of the penal code. Issue arrest warrant (WA) against the accused who are not on bail.

In respect of accused Khoka doctor @ Abdul Jalil though the complaint dated 09.08.2005 contains that witness Sharida saw all the alleged accused in the said club of place of occurrence but the same

complaint contains that the sufficient intelligence as to the presence of the other accused sans accused Sharif and in respect of the said accused Sharif the complaint as well as other documents of this case do not provide sufficient grounds for proceeding against him and accordingly the cognisance against accused Khoka doctor @ Abdul Jalil and Sharif is not taken. Next date 28.03.2010 is fixed for report of issued warrant.

Name…
Senior Judicial Magistrate
Gaibandha

6.33 Cognisance of offences by court of sessions

Section 193 of the Code of Criminal Procedure of 1898 speaks with the matter of taking cognizance of offences by the Court of Sessions. There is a condition of sending the case by the concerned Magistrate under section 205C of the Code of Criminal Procedure to the said Court of sessions. The following model order may be used by the concerned Magistrate at the time of sending the case.

DISTRICT: GAIBANDHA

IN THE COURT OF SENIORJUDICIAL MAGISTRATE, GAIBANDHA
Present:- Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing order: 03.04.2010
General Register Case Number 138 of 2005
The State ... Prosecution

-Versus-

Aminul Islam and others ... Accused

Under sections: 302/ 34 of the Penal Code

…Seen the aforementioned note and perused the record of this case including all the relevant documents and it appears to this Court that all the accused of this case appeared before this court, The police report dated 25.10.2011 of the facts made by the investigation officer of this case discloses the offences of section 302/34 of the penal code and it also appears to this Court that there are sufficient grounds to proceed with this case in respect of determining the guilty of the accused.

In view of the aforementioned facts and circumstances and reasons of this case cognizance under section 302/34 of the penal code against all the sent up accused taken and this case now being ready for trial is under the authority of section of 205C of the code of Criminal Procedure sent to the Court of learned sessions Judge of Gaibandha. Send also all the documents and articles, if any and a copy of the case diary (CD) which are to be produced in evidence.

Notify the Public Prosecutor of the transfer of this case to the Court of Session in from No. (M) 7 mentioned in Rule -92 of the criminal Rules and order-2009. Next date 27/02/2012.

Name…
Senior Judicial Magistrate
Gaibandha

6.34: Prosecution for contempt of lawful authority of public servants:

Section 195 of the code of criminal Procedure of 1898 is one of the exceptional provisions in the entire Code. Sub-section 1(a) of section 195 of the code of Criminal Procedure provides that –

"No Court shall taken cognizance -

(a) of any offence punishable under sections 172 to 188 of the Penal Code, except on the complaint in writing of the public servant concerned or of some other Public servant to whom he is sub-ordinate"

Before expressing my view as to this sub-section, I would like to put some questions for thinking and rethinking and finally to similarise my viewed view here in the light of the laws declared by our apex Court. Questions for the said purpose are:

Why has the provision started by the word or determiner No?

Why has the provision delimited the term 'complaint' in adding in writing?

What is the meaning of the term "except on the complaint in writing of the public servant?

Whether a citizen who is not a public servant can be a complainant?

Whether the violation of section 195 (1) (a) is an offence?

Whether a sub-registrar can make a complaint?

Can a police officer record or lodge a case in the police station?

Let us see the answers of those questions mentioned above-

The adverb or determiner 'no' according to the Oxford Dictionary means 'not any' and the starting provision by the said determiner 'no' indicates the exclusion of any Court from taking cognizance except the complaint in writing of the public servant concerned.

There is a delimitation of the concept of complaint in respect of taking cognisnce i.e receving the complaint as the word 'cognisance' in accordance with the law reported in the case of Anand R. Nerkar v. Rahimbi sheikh, 1991 Cr L J 557,562 (Bom) is started when the complaint is received. Complaint as per section 4(1) (a) of the code of Criminal Procedure of 1898, is of two kinds which are (i) written complaint and by this section there is no scope of making oral complaint in respect of the offences mentioned in the said section 195 of the Code of Criminal Procedure. The purpose of this delimitation as I understand, is to make the restriction so that the public servant can not harass the

public according to their desires, another procedural restriction is imposed in section 487 of the code of criminal procedure of 1898 in respect of conducting or presiding, the trial of those offences. This restriction of the said section 487 is discussed in chapter 15.13 in details.

Section 21 of the penal code deals with the term 'Public Servant' and here two conditions are to be required which is (1) the complaint must be in writing and (2) the said complaint must be made by any public servant. Without these two conditions the Magistrate concerned can not take cognizance in other words can not receive the complaint at all. That's why the Magistrate can not take cognizance on the basis of a charge-sheet generally. Here it is clear that where offences under sections 466 and 471 have been committed as contemplated in the section, cognizance of the can not be taken on a charge sheet filed by the police [Ref. Monoranjan Khattu v. State Orissa, 1990 CrLJ 1583 (Ori)]

Any person without having the authority of public servant has no locus standi to file the complaint.

Section 195 (1) (a) of the code of criminal procedure of 1898 is a procedural law and there is no direct provision in the penal code as to the matter of violation of any procedural law. But section 217 of the Penal Code provides the disobey of direction of law with intent to save person from punisament or property from forfeiture. Of course, section 195 (1)(a) of the code of criminal procedure of 1898 has a direction of law but only a violation of law or direction of law is not sufficient for considering as an offence. This disobey of direction of law must be with intent to save person from punishment or property from forfeiture. Though generally the violation of the said provision is not an offence but the said provision is a mandatory provision. The said section 195(1)(a) of the code of criminal procedure of 1898 has been started with the word 'no' which means 'not any' i.e 'No Court' in other words 'not any Court' shall take cognizance and it is well settled that where the expression 'shall' or must is used it *prima facie* indicates the mandatory nature of a provision [***Ref.*** *Mozibur Rahman –Vs.- Abdul Halim 53 DLR (AD) 93]*

Moreover, the said provision does not contain the enabling words like 'it shall be lawful' or 'shall have power' and hence the said provision is undoubtedly a mandatory provision and thus the Court cas not take cognizance except on a complaint in writing by the public servant or his superior as envisaged by this section. If the Court was not competent to take cognizance, it would be no cognizance in the eyes of law. [*Phool Chand Jan v. state, 1987 (1) crimes 567 (Del), Ramananda sah v. State of Jharkond, 2004, (2) crimes 260 (262) (Jhar)]*

Conviction recorded would be without jurisdiction and would be set a side**.** [*Lakpa Sherpa v. State of sikkim, 2004 Cr LJ 3488 (3490) (sikkim)]* The same exercise of the aforesaid provision of law is found in our jurisdiction by our apex court in the case of abdul Ahad @ Md. Abdul Ahad V. State reported in 5 BLC 598 that is the learned Magistrate *suo moto* initiated a proceeding.

under section 188 of the penal code and took cognizance of the offence violating the provision of section 195 (1) (a) of the code of criminal procedure providing that no Court shall take cognizance of any offence punishable under sections 172 to 188 of the penal Code, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is subordinate and hence there is illegality in initiating the proceeding against the petitioner and other and as such the proceeding are quashed.

It is also necessary to mention another thing that no case for any offences mentioned in the said provision 195 (1) (a) of the Code of Crminal Procedure can be recorded in the police station either as Non FIR case or FIR case and for this reason, it has been declared that the proceeding under section 188 of the penal code was initiated against the petitioner by the learned Magistrate on the basis of a prosecution reported in a Nor FIR case submitted by a sub inspector of police violating the provision of section 195 (1) (a) of the code of criminal procedure which provides that the complaint should be made by public servant whose lawful order was violated. Since the proceeding under section 188 of the penal code was initiated by a sub inspector of Police violating the mandatory of police of section 195 (1) (a) of the code of criminal procedure it is quashed. [Ref. Kaji Golam Ahmed Babul v. abdul khaleque 9 BLC 483]

Model Order in case of a prosecution report submitted by a police officer:

DISTRICT: GAIBANDHA

IN THE COURT OF SENIOR JUDICAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing order: 23.08.2009
Non General Register Case No: 131 of 2009
Sadullapur Police Station Non FIR Prosecution No. 20 of 2009 Dated 29.07.2009
Under section 188 of Penal code
The State … prosecution

-Versus-

Md. Amjad Hosen Monna and others … accused

Order No.01

সাদুল্যাপুর থানার নন,এফ.আই.আর প্রসিকিউশন নং-১৯/২০০৯ইং তারিখ ২৯.০৭.২০০৯ইং ধারা ১৮৮/দঃবিঃ মোতাবেক আসামী (১) মোঃ আমজাদ হোসেন মোন্নাসহ ০৭ (সাত) জনের বিরুদ্ধে প্রসিকিউশন রিপোর্ট পাওয়া গেল. Seen the aforementioned note and after perusal of the record; it appears before this court that the allegation of section 188 of penal Code has been lodged with Sadullapur police station, Gaibandha on the basis of the order dated 22.07.2009 passed by the learned Additional District Magistrate, Gaibandha vide Memo No 461/2009 dated 23.07.2009 and accordingly the a prosecution report is also submitted. But this is a question of law whether the allegation under section 188 of penal code can be lodged as aforesaid.

The answer lies in section 195 (a) of the Code of criminal procedure which runs as:

"No court shall take cognizance of any offence punishable under sections 172 to 188 of penal code except on the complaint in writing of the public servant concerned or of same other public servant to whom he is subordinate"

That is, there must have **the complaint in writing** of the public servant be fore the concerned Court and on the basis of the same the court concerned having the power of cognisance under section 190 of the Code of Criminal procedure can take cognisance in accordance with the provision of the same code.

The filing or forwarding of complaint by Magistrate or Public Servant who promulgated the order disobeyed is a condition precedent

to the jurisdiction of the concerned Judicial Magistrate having the power of cognisance under section 190 of the Code of Criminal procedure and without the same, no competent court of learned Judicial Magistrate concerned shall take cognisance in respect of the offence under sections 172 to 188 of penal Code.

In this case, the complaint for the alleged offence has not been made or filed or forwarded before the competent Court of learned Judicial Magistrate concerned having the power of cognisance under section 190 of the Code Criminal procedure rather the learned Additional District Magistrate, Gaibandha in ordering the officer-in charge concerned has exercised the authority of section 190 of the Code of Criminal procedure without lawful authority under the existing Code of Criminal procedure.

In view of the aforementioned reasons, this case is not inaposition to take cognizance of the offence under section 188 of the penal code in law except the complaint in writing of the public servant concerned and accordingly the learned Additional District Magistrate Mr. Md. Siddiqur Rahman, Gaibandha is directed to comply with section 195(a) of the court of criminal procedure to forward the complaint in writing in respect of the offence 188 of penal code and even for otherr offences mentioned in section195(1)(a) of the code of criminal procedure so that the concerned court having the power of cognisance under section 190 of the Code Criminal Procedure can take cognizance within one week from the date of getting this order and failing which this complaint shall stand dismissed under section 203 of the code of criminal procedure of 1898.

The office is directed to send a copy of this order to the learned Additional District Magistrate, Gaibandha.

Acting Chief Judicial Magistrate
Gaibandha

The Register or Sub-register being a public servant within the preview of section 21 of the penal Code can make a complaint in respect of offences fulling within section 195 (1) (a) of the code of criminal Procedure. But they not being Court can not give sanction in respect of offences falling within section 195 (1) (b) and (c) of the said Code. [Ref. Dr. Abhoy Charan v. Faraq Ahmed. 5 DLR 454 (458)]

A police officer has no Locus standi to lodge a case in a police station in respect of the offences falling within section 195 (1) (a) of the Code of Criminal Procedure. The reason is simple i.e. the Magistrate can not take cognisance except the complaint in writing. This is like a complaint case under the negotiable Instruments Act 1881 or the Dowry Prohibition Act 1980.

In view of the aforesaid discussions, I do opine that no Court or not any Court or Magistrate is empowered to take cognisance in respect of any offences falling within section 195 (1) (a) of the Code of Criminal Procedure except on the complaint in writing of the public servant concerned or of some other public servant to whom he is sub-ordinate.

Now, Subsection 1 (b) of section 195 of the code of criminal Procedure provides that-

"No Court shall take cognizance of any offence punishable under any of the following sections of the same Code, namely, sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate."

All the seven question and the discussions aforementioned is applicable with equitable equality, in respect of this sub section 1 (b) of section 195 of the Code of Criminal Procedure, and the following references and the principles of law are, of course helpful for understanding the above discussed conception of law.

"On, receipt of a complaint under section 195 (1) (b), the Magistrate has no jurisdiction to call upon the persons complained against to show cause against prosecution. He is to try them straightaway. On receipt of tile copy of the order forwarded by the Sessions Judge the Sub-Divisinoal Magistrate instead of taking cognizance on the basis of the order of the learned Judge, observed in the order sheet "lodged complaint, Put up on 22.5.67 and prepared a proceeding naming it "complaint under section 193 PPC" and served a copy of the same upon the accused to show cause against their prosecution. [Ref. Golam Sarwar vs State. 25 DLR 472]

Section 195 (1) (b) "Except on the complaint in writing of such Court Expanded with reference to the facts of the case.

Some witnesses backed out from their testimony as tendered in the committing Court and gave false evidence in the trial in the Sessions Court; on an application by the Public Prosecutor to take necessary steps the Sessions Judge directed prosecution against them under section 173 PPC for giving false evidence. He also observed that his order should be treated as, a "Complaint against those witnesses". A copy of the order was sent to the District Magistrate for taking necessary action against them". [Ref. Golam Sarwar vs State 25 DLR 472]

Section 195 (1) (b)- The petitioner while deposing before a Magistrate-Second Class in course of a judicial inquiry ordred by a Magistrate First Class, made a statement which he contradicted before the magistrate, First Class. A case was started against him under section 193, Indian Penal Code, on the complaint of the Magistrate, First Class. The learned Magistrate, on evidence, found that either the statement which he made before the Magistrate, Second Class or the statement which he made before the Magistrate, First class false. On this finding, the Magistrate convicted and sentenced the petitioner and it was held that under section 195(1)(b) read with section 195(3) the cognizance taken of the offence on the complaint of the Magistrate, First Class, was bad, so that the whole trial was bad in law. [Ref. Bhujanda Bhusan v. State 8 DLR 18]

Section 195– Allegation stated in the complaint petition that the appellants filed a civil suit being OS No. 112 of 1982 and obtained an ex part decree from the court of sub-Judge Rangpur to the effect that a deed of gift executed on 21.06.1980 by the respondent's late husband was forged, collusive and void as it was obtained by giving false evidence, make false statement and false personation. The alleged offences have been committed in relation to a proceeding in the Civil Court and no Court is competent to take cognizance of an offence mentioned in clause (b) of section 195 Cr. P.C except on a written complaint by the court concerned. [Ref. Mir Mahinuddin Meah vs Rokeya Hossain. 7 BCR (AD) 94]

Besides the aforesaid principles of law, it will be more helpful to discuss the declared law reported in the case of ***Serajuddowla v. Abdul Kader 45 DLR (AD) 101*** irespect of this matter in the name of the **'case study'.**

Para-2 of the said judgment provides that-

"2 Facts of the case briefly are that the appellant lodged an FIR with the Panchlaish police station on 10.08.75 alleging that on the day before,

respondent No. 1 Abdul Quader and others forming an unlawfull assembly forcibly tresspassed into his house and assaulted him and other inmates of the house and took away gold ornaments etc. The police started a case under sections 147/448/380 of the penal code and on investigation submitted a final report dated 13.11.75 with a note dated 8.2.76 which read as follows;

"Forwarded PR as false under sections 147/448/380 BPC Sanction for prosecuting the complainant under section 211 BPC may kindly be accorded."

Threafter cognizance was taken and a trial held. I am discussing the aforesaid judgment here as, this is to my mind, a well information based judgment.

With due respect to all, I would like to humbly put some questions here that is-

Whether the seeking sanction by the investigation officer for prosecuting the informant under section 211 of the penal code was completely correct without filing any formal compliant which is mentioned in Regulation 279 of Police Regulation 1943?

Whether the order dated 13.02.1976 passed by the then Sub-Divisional Magistrate Sadar (North) Chittagong was completely without any lacuna?

The answer of this question to my mind should be "not completely correct"

Apparently Regulation Nos. 279 and 435 of Police Regulations-1943 were not brought to the notice of the Court, as had been done in the case of ZULFIKAR ALI V. STATE reported in 47 DLR (HCD) 603 and in the case of ABDUR RAHMAN V. STATE reported in 29 DLR (SC) 1977 page 265 to the extent of law of Police Regulation 1943, which set out the law in regard to procedure in false cases.

Regulation 279 of Police Regulation-1943 provides that- **Procedure in false cases-**

Whenever a case reported to the police is found after investigation to the maliciously false, the investigating officer shall, if evidence is available for prosecution of the complainant under section 182 or 2011, Indian Penal Code, submit to the Magistrate, through the Circle Inspector a formal complaint attached to his final report to enable the Magistrate to take cognizance of the case under section 190, Code of Criminal Procedure [under proviso (aa) to section 200 of the Code, the

magistrate need not examine the complainant]. The investigating officer shall at the same time furnish the Court officer with a brief of the case.

Prosecutions against complainants in false cases shall be instituted only with the charges made are deliberately and maliciously false and not with they are merely exaggerated.

The Circle Inspector shall, after satisfying himself that the complainant is well founded and that all possible enquiries have been made to collect the requisite evidence, forward the complaint to the Magisrtate.

If a complaint case referred to the police for investigation is found to be maliciously false, the investigating officer shall submit, together with the final report, a report to the Magistrate through the Circle Inspector giving the grounds on which the case is held to be false and recommending as to whether the complainant should be prosecuted.

From the plain reading of this Regulation No. 279 of Police Regulation 1943, it is crystal clear that in respect of a false case arising out of a General Register (GR) Case which was not referred to the police for investigation under section 156(3) of the Code of Criminal Procedure by the Magistrate, 'a formal complaint' is necessary and the said required formal complaint must be forwarded by the Circle Inspector at present by the Assistant Superintendent of Police, Circle to the Magistrate Concerned.

In view of the abovementioned law, I do opine that the investigation officer who sought and got the sanction did not comply with the Regulation No. 279 of Police Regulation- 1943.

The answer of question No, II is that, the order dated 13.02.1976 passed by the then Sub-Divisional Magistrate Sadar (North) Chittagong was not without any lacuna. The fundamental lacuna to my understanding was non supervision of the non compliance with Regulation No. 279 and 435 of Police Regulation-1943.

According to Regulation No. 21(a) of Police Regulation 1943, it is the responsibility of the Magisrtate having jurisdiction and empowered to take cognizance of Police cases to **watch** the course of police investigation in the manner laid down in Chapter XIV of the Code of Criminal Procedure.

In accordance with Bangla Academy English Bengali Dictionary, First Edition, Agust 1945 Page 890, the word 'watch' means সতর্কভাবে কাজ করা যাতে ভুল না হয় কিংবা কেউ ঠকিয়ে যেতে অথবা টেক্কা দিতে না পারে।

The very supervisory capacity of the Magistrate concerned in respect of the police investigation in the manner laid down in chapter XIV of the code of Criminal Procedure has also been mentioned in the Judgment reported 45 DLR (AD) 101, Para-12 and that's why the said Sub-Divisional Magistrate's order had the lacuna and the said order was passed without having a formal complaint and the findings as to the charge made deliberately and maliciously false as under Regulation No. 279(b) of Police Regulation-1943, in the absence of these two conditions no prosecution against the informant in the false case shall be instituted.

There was another lacuna in the said order as the same contains the term of "acceptance of final report" But accordinjg to Regulation No. 276 of Police Regulation- 1943 the term must be "the acceptance of the police finding" The term "acceptance of final report" was a longstanding misnomer and in 1982 by Ordinance No. XXIV of 1982, sub-section (2B) of section 202 of the Code of Criminal Procedure was added in putting the said long standing misnomer. At the time of adding the said sub-section the drafters did not consider the Regulation 276 of Police Regulation 1943 where the term is 'the acceptance of police findings' as the Regulation 277 of Police Regulation 1943 speaks as to the revival of investigation after the acceptance of the Police finding mentioned in the final report. This matter has also been mentioned in a case reported in 29 DLR (SC) 1977 Page-256.

In that case, my order in short would be-

"Seen the final report false dated... under section 147/448/380 of the penal code and after perusal of the same, it appears to this Court that the investigation officer of this case has not complied with Regulation No. 279 of Police Regulation 1943 i.e. there is no a formal complaint and the grounds forwhich he has considered that the charges made are deliberately and maliciously false.

In view of the aforementioned reasons, the investigation officer of this case is directed to comply with the Regulation Nos. 279 and 435 of the Police Regulation 1943 within next date of… and failing which this shall stand dismissed.

Let a copy of this order be communicated to District Superintendent of Police/Police commissioner and the investigation officer immediately for necessary steps." Many of us may argue that Police Regulation 1943 should not be considered there and for them, I would like to put my humble request to read two judgments of our apex Court reported in 29 DLR (SC) 1977 Page- 256 and 47 DLR (HCD) 603.

However, I became proud of getting, reading and getting the correct principle of law held by former Mr. Chief Justice ATM Afzal in the instant discussing Judgment reported in 45 DLR (AD) 101 i.e. the offence under section 211 of the penal code was allegedly committed by the appellant in relation to proceeding in Court and as such the bar under section 195 (1) (b) of the code is attracted in the facts and circumstances of the case. Though in the said judgment it has been further held that "the prosecution of the appellant was sanctioned by the Magistrate himself and as such it could not be said that the cognizance has been taken in violation of section 195 (1) (6) of the code.

If Regulation Nos. 279 and 435 of Police Regulation 1943 were brought to the notice of the said Court the lacuna as I have found in the said order of Sub-divisional Magistrate concerned might have been considered and the decision to the extent of sanctioning the prosecution of the appellant only by the Magistrate himself might have been different.

But the reuttered principle of law as to the bar of section 195 of the code of criminal Procedure mentioned in Para 21 of the instant discussing judgment is definitely and undoubtedly correct.

Sub-section 1(c) of section 195 of the code of Criminal Procedure provides that-

No Court shall take cognizance of any offence described in section 463 or punishable under section 471, section 475 or section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate.

All the earlier mentioned seven questions and discussion is also applicable with equitable equality in respect of this subsection except the matter of the alleged forged document which is not produced or given in evidence by a party to any proceeding in any Court without any repeatation, I am mentioning some references and principles of law to understand the aforesaid subsection.

Where a copy of a forged document was produced in evidence earlier in point of time in a different Court at L and original forged document was subsequently Produced in another court at the fat the court at L did not make a complaint under section 195 (1) (c) of Criminal Procedure Code does not bar the prosecution and trial under Penal code on

complaint made by the Court at S under section 195 (1) of CrPC in as much as the Court at L with a mere copy of the forged document was no really in a position to express any opinion upon the genuineness of the original and that section 195 of the Code of Criminal Procedure only refers to document alleged to be forged, not to a copy of it. [*Ref. SAN MUKHSING V. THE KING 3 DLR 91951) PAGE -3 (PC)]*

If a forged document is filed in a civil suit, no party to that suit can approach any criminal Court to initiate a proceeding even if the civil Court refuses to take initiative to file a complaint before a court of Magistrate. If the civil Court does not file complaint, the aggrieved party may more the civil Court where such a forged deed was filed to proceed under section 476 of the code. After having of the application, if the court refuses to make a complaint, the applicant may file an appeal under section 476 B of the code**.** *[Ref.23 BLD (AD) 95]*

Section 195 section 195 (1) (C) It provides that when an offence specified in section 195 (1) (C) of the Code appears to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such a proceeding, no Court is competent to take cognizance of such an offence except on the complaint in writing of the Court concerned or some other Court to which it is subordinate. *[Ref. Idrish Ali V. State 38 DLR 270]*

Section 195 section 195 (1) (C) All the High Courts is unanimous in holding that when a forged document is brought into Court, private complaints subsequent to this are not maintainable. *[Ref. Hrishikesh Dutt VS State, 20 DLR 66]*

Section 195 (C) and 476- Section 195 (C) says that no Court shall take cognizance of an offence under sections 463,471,475, or 476 of the Penal Code –(i) unless such offence is alleged to have been committed by a party in any proceeding in that Court, and (ii) in respect of a document produced in such proceeding by such party-except on a complaint by such a Court made in writing and signed by the said Court-Section 476 provides that when a Court finds that an offence mentioned in section 195 (e) has been committed by a person the Court may after preliminary inquiry record a finding to that effect and make a complaint signed by the Court and forward the accused to a Magistrate of competent jurisdiction. *[Ref. Saleha Khatun VS State 39 DLR 109]*

Section 195 (1) (C) The view taken in AIR 1943 Nagpur 327" all the High Courts are now agreed that once a forged document is brought then private complaints subsequent to this are barred by section 195 even in respect of anterior forgeries- anterior, that is, to the litigation-has been

consistently followed in DLR Dhaka 66 & other cases. *[Ref. Abdul Hai Khan vs State 40 DLR (AD) 226]*

Section 195 (1) (C) Private complaint, when incompetent-Ingredients of offence such as forging of a document and making use of such documents in court by a party to the proceeding if found present in a case then the mandatory provision against filing of private complaint comes into play. The instant proceeding initiated by the complainant opposite party is a bar under Section 195 (1) (C) Cr. P.C and the courts concerned only have sole jurisdiction to make a complaint in the interest of justice. *[Ref. Ajit Kumar Sarkar vs Radha Kanta Sarkar 44 DLR 533]*

Section 195 & 476-When a fraudulent document is not produced in a proceeding before court private complaint is not barred.

It is absolutely clear that unless the document is filed in court, the court cannot make a complaint. In the present case in view of the positive finding of the High Court Division and on the failure of the learned Advocate to show before us that, in fact, the allegedly fraudulent document was produced in Cr Case No. 116 or 1983, the private complaint at the instance of the informant is not barred. *[Shamsuddin Ahmed Chowdhury vs State 49 DLR (AD) 159]*

g) The revenue officer while discharging his function for the purpose of mutation, did not constitute any revenue court and as such filing of the complaint was not considered barred under section 195 (1) © of the code of Criminal Procedure *[Ref. 11 BLT (AD) 2]*

In fact, There are two versions of application of section 195 (1) (C) of CrPC in the light of the aforesaid principles of law declared by our apex Court. One version is that no Court shall take cognizance when a forged document is produced or given in evidence in any proceeding before any Court, except the complaint in writing of such Court or some other Court to which such Court is subordinate. Another version is that if the forged document is not produced or given in evidence in any proceeding before a Court there will be no bar to take cognizance or in otherwords, the private complainant is not barred. These two versions are settled by our apex court and I do not like to say the later version is wrong but I would like to simply put some questions in order to rethink about the later or 2nd version.

Section 195 (1) (C) of CrPC speaks as to the matter of forgery or forged document. In the former version, the concerned Court can identify the forgery or forged document and there after the said Court or its superior Court can make the complaint in writing to the concerned

cognizance taking court without which the said Court has no authority to take cognizance.

The 2nd version has been settled on the logic that there is nothing in section 195 (1) (c) of Cr PC when a forged document is not produced or given in evidence in any proceeding before any Court.

My questions to re-think as to 2nd version are as follows;

When a document is not produced or given in evidence in any proceeding before a court and there is no chance of considering the said document and that case. Can a police officer determine a document as forged document? If the answer is negative, then the question comes why does police officer record a first Information (FI) in the B.P form 27 under regulation No. 243 of Police Regulation-1943?

Is there any authority of a police officer to determine a document as forged document? If the answer again is negative, then the question comes what would be consequence of that case?

Why has section 487 of the code of Criminal Procedure of 1898 prohibited the trial of the offences mentioned in section 195 of CrPC?

To my mind, 2nd version of the settled principle of law under section 195 (1) (C) of CrPC is not correct as I have got the similarity of my thinking in the following Judgment.

No cognizance on police report:

The cognizance of offences under sections 466 and 471 IPC can not be taken by a court except on a complaint in writing of a court or some other court to which that court is sub-ordinate is made in accordance with the section. Where offences under sections 466 and 471 have been committed as contemplated in the section cognisace of the same can not be taken on a charge sheet filed by the police. *[Ref. Monoranjan khattu vs state of Orissa 1990 Cr L T 1583 (Ori)]*

Model Order under section 195 (1) (a) of CrPC

DISTRICT: GAIBANDHA
IN THE COURT OF SENIOR JUDICAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing order: 23.08.2009
Non General Register Case No: 130 of 2009
Sadullapur Police Station Non FIR Prosecution No. 19 of 2009 Dated 29.07.2009
Under section 188 of Penal code
The State …Prosecution

-Versus-

Md. Amjad Hosen Monna and others … Accused

Order No.01

সাদুল্যাপুর থানার নন.এফ.আই.আর প্রসিকিউশন নং-১৯/২০০৯ইং তারিখ ২৯.০৭.২০০৯ইং ধারা ১৮৮/দঃবিঃ মোতাবেক আসামী (১) মোঃ আমজাদ হোসেন মোন্নাসহ ০৭ (সাত) জনের বিরুদ্ধে প্রসিকিউশন রিপোর্ট পাওয়া গেল। Seen the aforementioned note and after perusal of the record; it appears before this court that the allegation of section 188 of penal Code has been lodged with Sadullapur police station, Gaibandha on the basis of the order dated 22.07.2009 passed by the learned Additional District Magistrate, Gaibandha vide Memo No 461/2009 dated 23.07.2009. But this is a question of law whether the allegation under section 188 of penal code can be lodged as aforesaid.

The answer lies in section 195 (a) of the Code of criminal procedure which runs as:

"No court shall take cognizance of any offence punishable under sections 172 to 188 of penal code except on the complaint in writing of the public servant concerned or of same other public servant to whom he is subordinate"

That is, there must have **the complaint in writing** of the public servant be fore the concerned Court and on the basis of the same the court concerned having the power of cognisance under section 190 of the Code of Criminal procedure can take cognisance in accordance with the provision of the same code.

The filing or forwarding of complaint by Magistrate or Public Servant who promulgated the order disobeyed is a condition precedent to the jurisdiction of the concerned Judicial Magistrate having the power of cognisance under section 190 of the Code of Criminal procedure and

without the same, no competent court of learned Judicial Magistrate concerned shall take cognisance in respect of the offence under sections 172 to 188 of penal Code.

In this case, the complaint for the alleged offence has not been made or filed or forwarded before the competent Court of learned Judicial Magistrate concerned having the power of cognisance under section 190 of the Code of Criminal procedure rather the learned Additional District Magistrate, Gaibandha in ordering the officer-in charge concerned has exercised the authority of section 190 of the Code of Criminal procedure without lawful authority under the existing Code of Criminal procedure.

In view of the aforementioned reasons, this case is not maintainable in law and accordingly the learned Additional District Magistrate Mr. Md. Siddiqur Rahman, Gaibandha is directed to comply with section 195(a) of the court of criminal procedure to forward the complaint in writing in respect of the offence from sections 172 to 188 of penal code so that the concerned court having the power of cognisance under section 190 of the Code Criminal Procedure can take cognisance.

The office is directed to send a copy of this order to the learned Additional District Magistrate, Gaibandha.

Acting Chief Judicial Magistrate
Gaibandha

6.35 Prosecution for offences against the State

Section 196 of CrPC provides that

"No Court shall take cognizance of any offence punishable under Chapter VI or IXA of the Penal Code except section 127 or punishable under section 108A, or section 153A, section 294A or section 295A, or section 505 of the same Code, unless upon complaint made by order of, or under authority from, the Government, or some officers empowered in this behalf by the Government." This section is an exception to the General rule that court can be set in motion by person by any person having knowledge of the commission of an offence [Ref. 40 DLR (AD) (1988) 266]

The object of this section is to prevent unauthorized or private persons from intruding in matter of a state by instituting state prosecutions and to secure that such prosecution shall only be instituted under the authority of the Government [Ref. 1978 CrLT 392 AP; also Md. Zahurul Islam the code of criminal Procedure Vol. II Page-1043]

Before saying as to taking cognisance of offence it is necessary to tell as to two fundamental requirements. One is there must have a complaint and another one is, that complaint must be made by order of or under authority from the Government or same officers empowered this behalf by the Government.

What is complaint?

Section 4(1) (a) of the code of criminal procedure speaks as to complaint.

What does it mean by 'Government'?

The word Government used in section 196 of the Code of Criminal Procedure means the president of the People's Republic of Bangladesh.

It has been declared in the case of Md. Saleh Ahmed Khan Govt. of Bangladesh that Government meaning of it means President. In the absence of any delegation of power, the Government means the President and unless provided for in the Rules of Business. A Government's order must be approved or ordered by the President.[Ref. 41 DLR (HCD)210] Rule 5 of the Rules of Business provides that;

Orders, instructions, agreements and contracts

i. All executive actions of the Government shall be expressed to be taken in the name of the President.

ii. All Ministers, Ministers of State, Deputy Ministers and persons holding such status, and the officers named in Schedule 2 to these Rules, may authenticate by signature, all orders and other instruments made and executed in the name of the President:

Provided that an officer not included in the schedule may be authorized by the Prime Minister for a particular occasion to authenticate an order or an instrument on behalf of the President.

The Ministry of Foreign Affairs shall issue necessary instructions regarding the manner of authentication or international agreements and treaties and also of orders and instruments in connection with the representation of Bangladesh in foreign countries or at international conferences, organizations.

i. Instructions for the making of contracts on behalf of the President and execution of such contracts and all assurances of property shall be issued by Ministry of Law, Justice and Parliamentary Affairs.

ii. What does it means by the term "complaint made by order of or under authority?"

The term aforementioned means the filling of a complaint must be made by the President or under the authourity of the President. Rules of Business have provided the names of the authourty who can act under the authority of the President. However a mere sanction for prosecution by the Government is not enough for the validity of the proceedings under this section in the absence of valid complaint based upon such sanction [Ref. AIR 1955 Punj 90 DB]

A letter embodying the sanction may itself be treated as a complaint and at any rate the want of complaint in such circumstances is only an irregularity. Curable under section 537 [Ref. 7 Cr. L T 353, Md.Zahurul Islam's Code of Criminal Procedure, Vol. II Page -1045]

6.36 Prosecution for certain classes of criminal conspiracy

Section 196 of CrPC provides that- No court shall take cognisance of the offence of criminal conspiracy punishable under section 120B of the penal code in a case where the object of the conspiracy is to commit either an illegal act other than an offence, or a legal act by illegal means, or an offence to which the provisions of section 196 apply, unless upon complaint made by order or under authority from the Government or some officer empowered in this behalf by the Government. Or in a case where the object of the conspiracy is to commit any non-cognisable offence, or a cognizance offence not punishable with death, imprison-

ment for life or rigorous imprisonment for a term of two years. or upwards, unless the [Government or a] District magistrate empowered in this behalf by the Government has, by order writing , consented to the initiation of the proceedings :

Provided that where the criminal conspiracy is one to which the provision sub-section of section 195 apply no such consent shall be necessary.

The offences described in this section are in the main offences against the state or the nation and conspiracy to commit such offences. The object is to prevent prosecution by private persons. This is again another example of the exception to the general rule that counts can be set in motion by any person having knowledge of the commission of an offence. [See: *Ratan lal & Dhiraj lal's the code of criminal procedure 18th enlarged edition Reprint 2007. Page-723*]

The reason of prohibiting the private persons for taking initiation is that always the state authority is in a better position than the private persons to understand the necessity and initiation of the proceedings.

The obtaining of sanction of concerned Government is a sine qua non and no Magistrate can take cognisance of an offence under section 295 unless order granting sanction is produced. [*Ref. shalibhadra shah v. swami Krishna Bharati, 1981 CrLJ113 (Guj DB*] sanction constitutes a condition precedent to prosecute and confer jurisdiction and so want of sanction is fatal. where sanction obtained after the initiation of the Proceeding and before conviction the defect is only technical one and in the absence of prejudice to the accused, it does not make the trial illegal [*Ref. AIR 1945 oud.180*] Where a charge of Criminal conspiracy is added or substituted, it is enough it sanction is obtained before such addition or substitution [*Ref. AIR 1955 TC33*] where the prosecution is started for an offence of criminal conspiracy in the absence of sanction and the facts disclose also a different offence, the proceedings can be validated by a lending the charge info one for the latter offence [Ref. *1939 Bom 129 DB*] But no sanction would be required where a non-cognisable offence is committed as a means to the commission of a cognisable offence. [*Ref. PLD 1952, Dhaka 141, 3 DLR 453*]

Model order

It a complaint is made without a sanction or first information (FI) and first information (FIR) are forwarded to a Magistrate concerned, he can pass an order in taking cognisance of this following order.

Seen the aforementioned note in respect of this complaint the first information and after perusal of the facts mentioned there in, it appears to this court that the facts discloses the facts of offences falling under section 196 of the code of criminal Procedure and it requires a sanction in this proceeding for avoiding any procedural lacuna. In view of the order passed by Mr. C.J Cornelius in the case of *S.M.H Rizvi v. Abdu Salam and the State* reported in 12 DLR (SC) 103 para-11, this court can seek the sanction from the Government.

In view of the aforesaid reasons, this Court is of the opinion to seek the sanction and hence let a copy of this order along with an attested copy of this received complaint/first information and first information report be communicated to the concerned authority of the Government by Guaranteed Express Post (GEP) any other means.

Name…
Senior Judicial Magistrate
Gaibandha

6.37 Preliminary inquiry in certain cases:

In the case of any offence respect of which the provisions of section 196 or section 196A apply, a District Magistrate may, notwithstanding anything contained in those sections or in any other part of this Code, order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police- officer shall have the power referred to in section 155, sub-section.

Under the authority of this section a preliminary investigation in respect of any offences for which the provisions of section 196 or section 196A of the code of Criminal procedure applies. After getting a report of the said preliminary investigation, a District Magistrate either himself if he has empowerment by the Government in view of section 196 of the code of criminal procedure in this behalf may make the complaint before the concerned Judicial Magistrate or under the authority of the Government may do the same. It is noted that ex-officio a District Magistrate is not capable of consenting the initiation of the Proceedings as he is not covered within the orbit of Rule-5 of Rule of Business.

3.38 Prosecution of Judges and public servants

Section 197 of the code of Criminal Procedure provides that –

when any person who is a judge within the meaning of section 19 of the penal code, or when any Magistrate, or when any public who is not removable from his officer save by with the section of the [Government] is accused of any offence alleged to have committed by him while acting or purporting to act in the discharge of his official no Court shall take cognisance of such offence except with the previous section of the Government.

Power of Government as to prosecution– The Government may determine the person by whom, the manner in which, the offence or offences for which the prosecution of such Judge, or public servant is to be conducted may specify the court before which the trial is to be held.

The legislative intention of this section is to guard against vexatious proceedings against any Judges, Magistrates or any public servant who is not removable from his office save by or with the sanction of the Government The privilege of immunity from prosecution without sanction only extends to acts or purporting to acts in the discharge of his official duty.

The bar created by section 197 is absolute, in the absence of sanction where section 197 applies; cognisance of the offence is barred. [*Ref. State of Maharashtra v. Budhikota subbarao (Dr.) (1943) 35cc 339*]

What does it mean by ‘when any person is a Judge or a Magistrate or any public servant’?

The term ‘when any person is a public servant’ means the present status based time of a public servant. It does not include the past time of a judge or a Magistrate or a public servant and that’s why in India amendment of this section has been done and the amended said section 197 of the said Code has been started in the following language-

‘When any person who is or was a Judge or Magistrate or a public servant…’

For this view, our apex Court has declared that the question whether any sanction was required for the prosecution of a public servant who was not a public servant who was not a public servant at the time when the prosecution was started against him has been answered by holding that in such a case sanction for prosecution was not necessary [*Ref. KM Zakeer Hossain v. state 28 DLR 452*] and no sanction for prosecution necessary if the public servant concerned ceased to be a public servant when the Court takes cognisance of the offence. [*Ref. Jamadar khan v. state 27 DLR (AD) 35 Para-4*]

What does it mean by not removable from his office save by or with the sanction of the Government?

The answer of this question relates to the position or status of a public servant in respect of his removal authority. The office of a public servant is not removable save by or with the sanction of the Government. It a public servant is removable from his office by any authority sons the Government in other word the president of this Republic he will never be entitled to have the opportunity of the authority of section 197 of the code of Criminal Procedure Code.

As for example, an inspector of Bangladesh Police or any police officer below inspector is not entitled to invoke the opportunity of section 197 of the said Code that is, for taking cognisance against a police officer up to an inspector, there is no necessity of having the sanction of the Government and even there is no necessity of seeking the said sanction as they are removable from their office without any authority of at the Government rather they are removable by different authorities of Bangladesh Police. For understanding this conception of law with accurate clarity, you need to read a judgment passed by Mr. Justice Amirul Kabir Chowdhury in the case of *ASI MD. AYUB ALI SARDAR vs. STATE* reported in *58 (AD) Page-13.*

On the other hand, another example can be given here, that is a Judicial Magistrate or an Assistant Judge is not removable from his office save by or with the sanction of the Government to the extent of his act or purporting to act in the discharge of his official duty there is no necessity of telling more in respect of act in the discharge of his official duty. But it is of course necessary to understand the point of 'purporting to act' in the discharge of his official duty and hence for this you need to read a judgment reported in 12 DLR (SC) 103.

According to sub-section 2 of sections 197 of the Code of Criminal Procedure, the Government may specify the Court concerned as to determination of person and the manner in which the offence for which the prosecutions of such Judge, Magistrate or Public servant is to be contacted.

Hence I am mentioning some principles of law taken from some Judgments for making more clarification as to this section 197 of Criminal Procedure Code.

No sanction under section 197 is necessary for prosecuting a public servant for accepting gratification. [*Ref. Lumbharadar vs King 3 DLR (PC) 1*]

A public servant can be prosecuted for demanding, for accepting as well as for offering a bribe without any sanction. [*Ref. Md. Ismail vs Crown 6 DLR. 152*] The assault and hurt being of a minor nature, and being connected directly and inseparably with the discharge of accused's duty; sanction under section 197, CrPC, would be necessary before the accused is put on his trial. But as regards wrongful confinement, no sanction would be necessary since the accused by ordering the detention of the complainant could not reasonable say that he did that in the discharge of his official duty. [*Ref. Syed Ahmed vs. State 10 DLR (SC) 12*]

If an act complained of is directly concerned with the official duties of a public servant so that, if questioned, he could coaim to have done it by virtue of his office, sanction would be necessary. [*Ref. AKM Reza vs State 9 DLR 594*]

Criminal act such as outraging the modesty of woman and killing a man while the culprit (a Government servant) was being chased has no connection with acts done or purported to be done in the discharge of public duty. [*Ref. Rokunuddin Bhuiyan vs Stat 18 DLR 412*]

The question whether any sanction was required for the prosecution of a public servant who was not a public servant at the time when the

prosecution was started against him has been answered by holding that in such a case sanction for prosecution was not necessary. [*Ref. KM Zakeer Hossain vs State DLR 452*]

Circumstances of the case make it clear that in the present case what the accused Police Officer did was discharge of his official duty. No prosecution permissible without Government sanction. [Ref. *FM Rashiduzzaman v Bahauddin Ahmed DLR (AD)* 181]

The evidence of the witness including the report of the inquiry held by a Magistrate leads to irresistible opinion that the offence alleged has not been committed by the accused in the discharge of their official duties and, as such, we do not find any force in the submission of the learned Advocate as to applicability of section 197 of the Code regarding the two petitioners. [*Ref. ASI Md Ayub Ali Sardar vs State 58 DLR (AD) 13*]

No sanction under section 197 Cr. PC is necessary for taking congisance of the offence alleged in the case, even if the police officer and police constables involved committed the offences while acting or purporting to act in the discharge of official duty. Protection of section 197 Cr. PC is not available to the accused police officials as is available to other public servants. [*Ref. Rokeya Begum v shafiqur Rahman. 2 BCR 4*]

6.39 Prosecution for breach of contact, defamations and offences against marriage

Section 198 of the Code of Criminal Procedure narrates that-

'No Court shall take cognisance of an offence falling under Chapter XIX or Chapter XXI of the Penal Code or under section 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence.

Provided that, where the person so aggrieved is a woman who, according to the customs and manners of the country, ought not to be compelled to appear in public, or where such person is under the age of eighteen years or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint, some other person may, with the leave of the Court, make a complaint on his or her be half.

Provided further that where the husband aggrieved by an offence under section 494 of the said code is serving in any of the armed forces of Bangladesh under conditions which are certified by the Commanding officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, some other persons authorised by the

husband in accordance with the provisions of sub-section (1) of section 199B may, with the leave of the Court, make a complaint on his behalf.

Provisions of section 198 of the Code of Criminal Procedure like the provisions of sections 195,196 and 197 are exceptions to the general and ordinary power of a criminal court to take cognisance of a offence under section 190 of the Code of Criminal Procedure [*Ref.40 DLR (AD) 1988 Page -226] also Md. Zahurul Islam's the Code of Criminal Procedure, Vol. II Page-1076*]

The words 'Cognisance' and 'complaint' have already been discussed and hence it is necessary to discuss as to 'person aggrieved.' The person aggrieved' is the person directly affected or injured. The person aggrieved must have a legal grievance and not a fanciful or sentimental one. [*Ref. AIR 1928 N.5*] But where the person aggrieved is a woman, who according to the customs and manners of the country, ought not to be compelled to appear in public or where such person is under the age of eighteen years or is an idiot or lunatic or is from sickness or infirmity unable to make a complaint, some other person may with the leave of the Court, make a complaint on his or her behalf and according to second proviso of this section 198 of the Code of Criminal Procedure, some other person authorized by the husband who serving in any of the armed forces of Bangladesh, is unable to make a complaint, may with the leave of the Court, make a complaint on his behalf.

Distinction between article 102 of our Constitution and section 198 of the Code of Criminal Procedure to the extent of the person aggrieved:

According to article 102 of our Constitution it is well settled that 'any person aggrieved' means also the person who is not directly affected or injured. But this section 198 of Code of Criminal Procedure narrates the person aggrieved to mean only the person directly affected or injured. I am mentioning here some principles of law declared by the apex Court;

Parents of girls living with them when defamed scandalously are persons aggrieved are persons aggrieved within the meaning of section 198 and as such can file a complaint in Court under section 500 of the Pakistan Penal Code. [*Ref. Hasan Razaki v Meharun Nisa, 23 DLR (WP) 14*]

In case of a married daughter who left her husband and living separately from her father, the father is not aggrieved person. [*Ref. 28 Cr LJ 996 also Md. Zahurul Islam's the Code of Criminal Procedure, Vol. II Page-1079]*

The father of a girl of 20 years of age married, and living with her husband, such person is not competent for purpose of complaint under section 500 PPC in respect of imputations of unchastity against the girl[*Ref. 5 PLD (BJ) 72*]There is no bar for an individual to make a complaint in respect of the alleged defamatory statement in a judicialproceedings. Section 198 of CrPC enables an individual to file such complaint.[*Ref. AY Mashiuzzaman v Shah Alam 41 DLR 180*] A magistrate can not complaint in respect of words contained in a statement made before him and defaming a third party; it is that party alone who can complaint. [*Ref. AIR 1940 All 246*]

6.40 Prosecution for adultery or enticing a married woman: Section 199 of Code Criminal Procedure is as follows;

No Court shall take cognizance of an offence under section 497 or section 498 of the Penal Code, except upon a complaint made by the husband of the woman, or, in his absence, made with the leave of the Court by some person who had care of such woman on his behalf at the time when such offence was committed:

Provided that, where such husband is under the age of eighteen years, or is an idiot or lunatic, or is from sickness or infirmity unable to make a complaint, some other person may, with the leave of the Court make a complaint on his behalf:

Provided further that where such husband is serving in any of the armed forces of Bangladesh under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, and where for any reason no complaint has been made by a person authorised by the husband in accordance with the provisions of sub-section (1) of section 199B may, with the leave of the Court, make a complaint on his behalf.

Scope and limitations of this section:

Any complaint under the scope of this section can be made for the communication of the transgression under section 497 and 498 of the Penal Code. There are two limitations to the extent of periphery of offence and filing or making *locus stand.* That is, the offence must be either of the aforesaid two sections and the *locus stand* belongs to the husband or in his absence, some persons within the purview of this section with the leave of the Court. Complaint by power of attorney holder or counsel as against of husband is not competent [*Ref. AIR 1966 M. 183*] Absence of complaint by the husband or other persons mentioned in the sections the proceeding will be illegal. [*Ref. AIR 1937*

Bom 186] In the absence of leave of the Court the proceedings will be illegal not curable under section 537 [Ref. 1977 PCrLJ 151 Lah also...]

6.41 Objection by lawful guardian to complaint by person other than aggrieved person:

When in any case falling under section 198 or section 199, the person on whose behalf the complaint is sought to be made is under the age of eighteen years or is a lunatic. and the person applying for leave has not been appointed or declared by competent authority to be the guardian of the person of the said minor or lunatic, and the Court is satisfied that there is a guardian so appointed or declared, notice shall be given to such guardian, and the Court shall, before granting the application, give him a reasonable opportunity of objecting to the granting thereof.

6.42: Form of authorization under second proviso to section 198 or 199.

The authorization of a husband given to another person to make a complaint on his behalf under the second proviso to section 198 or the second proviso to section 199 shall be in writing, shall be signed or otherwise attested by the husband, shall contain a statement to the effect that he has been informed of the allegations upon which the complaint is to be founded, shall be countersigned by the Officer referred to in the said provisos, and shall be accompanied by a certificate signed by that Officer to the effect that leave of absence for the purpose of making a complaint in person cannot for the time being be granted to the husband.

Any document purporting to be such an authorization and complying with the provisions of sub-section (1) and any document purporting to be a certificate required by that sub-section shall, unless the contrary is proved, be presumed to be genuine, and shall be received in evidence.

Chapter– 7

Inquiry, Investigation and Power of Judicial Magistrate

7.1 Inquiry and investigation defined

Inquiry: The word ‘inquiry’ as per section 4(1) (k) of the code of criminal procedure is as follwos:

“Inquiry” includes every inquiry other than a trial conducted under this Code by a Magistrate or Court. The term ‘inquiry’ does not include a trial but only refers to a judicial inquiry into the matter by a Magistrate or other Court. [*Ref. RP kapoor v. Pratap singh Kairon AIR 1966 All 66 (1966) Cr LJ 115*]

According to Gladstone- Inquiry is a road to truth [*Ref. KJ AIYER’S Judicial Dictonary fourteenth edition, Page-570*]

Investigation:

According to section 4 (1) (i) of the Code of Criminal Procedure the term ‘investigation’ includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authouised by Magistrate in this behalf. The word ‘investigate’ used in section 157 of the Evidence Act of 1872 is not to be understood in the narrow sense in which the word is used in the Code of Criminal Procedure, It must carry its ordinary dictionary meaning in the sense of ascertainment, search of relevant data [*Ref. state v. Parewar Ghasi AIR 1968 Ori 20*] The word ‘investigation’ is to discover and collect the evidence to prove the charge as a fact or disproved. *[Krishna Swami v. Union of India (1992) 4 SCC 605 P. 646*]

Again ‘investigation’ means no more than the process of collection of evidence or the gathering of material. It is not necessary that it should commence with the communication of an accusation to the person whose affairs are to be investigated [*Ref. liberty Ori Mills V. Union of India 1984 SC 1271 P. 1283, 1284, (1984) 3 SCC 465*]

‘Investigation’ can not be limited only to police investigation but on the other hard, the said word is with wider connotation and flexible so as to include the investigation carried on by any agency whethaer he be a police officer or empowered or authorised officer or a person not being a police officer under the direction at a Magistrate to make an

investigation vested with the power of investigation [*Ref. Directorate of enforcement v. Deepak mahajaan AIR 1994 SC 1775 at 1801, also see KJ AIYER'S Judicial dictionary, fourteenth edition, Page-584*]

7.2 Difference between Inquiry and Investigation:

The fundamental distinctions between the aforesaid two terms are as follows;

Inquiry must be conducted by a Magistrate or Court. On the other hard, investigation may be conducted by a police officer or by any person (other than a Magistrate) who is authouised by Magistrate in this behalf.

The functional periphery is more wide i.e. not limited in respect of inquiry for a Magistrate but that of periphery is not more wide i.e. equivalent to the powers exercised by an officer in charge of a police station in a cognisable case except the power to arrest without warrant.

Every investigation is supervisible or watchable by the concerned Judicial Magistrate who is empowered to take cognisance of police cases but the inquiry is not supervisible or watchable rather considerable by the appellate authority or Court.

7.03 Model Problem and solution:

To understand the Practical Problem and solution regarding investigation which was in fact occurred in a District is narrated here. The problem in short is that, a Senior Judicial Magistrate of Dinajpur District Passed an order for making an investigation by an officer of Assistant Commissioner (Land) of XYZ Upazila and the said officer without complying with the said order forwarded a letter of non conducting the investigation for understanding the substantive part of the said letter, without mentioning the reference and identification, is reproduced below:

উপর্যূক্ত বিষয়ে তার দৃষ্টি আর্কষণ করা হলো। তাঁর আদালত হতে ২৮.০৬.২০১১ইং তারিখের ৩৫৩০ স্মারকে বিরল থানা জি.আর ০৭/১০ নম্বর মামলার এজাহারে বর্ণিত বিষয়ে তদন্ত করে প্রতিবেদন প্রেরণ করার জন্য বলা হয়। যা ফৌজদারী কার্যবিধি ১৮৯৮-এর ১০ (৬) উপধারা মোতাবেক জেলা ও উপজেলায় কর্মরত এ.ডি.সি, ইউ.এন.ও. এবং সহকারী কমিশনার/সহকারী কমিশনার (ভূমি)গণ নির্বাহী ম্যাজিস্ট্রেট, ওই আইনের ১৭ ধারা বিধান মতে নির্বাহী ম্যাজিস্ট্রেটগণ জেলা ম্যাজিস্ট্রেট সাবঅর্ডিনেট ম্যাজিস্ট্রেট। ফৌজদারী কার্যবিধির ৪(ট) ধারার বিধান মতে চীফ জুডিসিয়াল ম্যাজিস্ট্রেটগন তাঁর সাবর্ডিনেট জুডিসিয়াল ম্যাজিস্ট্রেটগনকে জুডিসিয়াল তদন্ত করার জন্য আদেশ দিতে পারেন। ওই আইনের ৪(ঠ) ধারার বিধান মতে তিনি

পুলিশ এবং ম্যাজিস্ট্রেট নন এমন ব্যাক্তিকে তদন্ত করার আদেশ দিতে পারেন। কিন্তু সহকারী কমিশনার (ভূমি) একজন নির্বাহী ম্যাজিস্ট্রেট হওয়ার সত্বেও তদন্তের জন্য নথি/পিটিশন প্রেরণ করা হয়েছে যা ১৮৯৮ সালের ফৌজদারী কার্যবিধি (২০০৭ সাল পর্যন্ত সংশোধিত)-এর ১০(৬) ও ১৭ বিধির সাথে সাংঘর্ষিক মর্মে প্রতিয়মান হয়। কার্যবিধির এর বিধি ২০২-এর ভিত্তিতে সহকারী কমিশনার/ভূমিকে কোন ব্যক্তি হিসাবে তদন্ত করার নিমিত্তে কোন আবেদন/কেস নথির প্রেরণের পূর্বের উপরের বর্ণিত বিষয়গুলো বিবেচনা করার জন্য বিশেষভাবে অনুরোধ করা হইল। এমতাবস্থায় তাঁর আদালত হতে প্রেরিত পিটিশন তদন্ত ব্যতিত ফেরত প্রদান করা হইল। and the said senior Judicial Magistrate being intimate to me informed the matter and thereafter I sent him a response in writing against that letter of non conducting the investigation which is also reproduced here i.e.

"…Seen the aforementioned note and after perusal of the record particularly the request letter dated 18.09.2011 submitted by Shah Mozahid Uddin Assistant Commissioner (Land) *XYZ* Upazila, Dinajpur, it appears to this court that the said Assistant Commissioner (Land) *XYZ* Upazila, Dinajpur was directed under section 202 of the Code of Criminal Procedure of 1898 but he sans complying the same has returned the First Information (FI) of GR case 27 of 2010 for which inquiry it was sent. However, it is necessary to examine the said request letter dated 18.09.2011 and pass the necessary order.

Section 10(6) of the Code of Criminal Procedure of 1898 provides that 'subject to the definition of the local areas under subsection (4) *all persons* (underlined by this Court for emphasis) appointed as Assistant Commissioners, Additional Deputy Commissioners or Upazila Nirbahi Officer in any District or Upazila shall be Executive Magistrates and may exercise the power of Executive Magistrate within their existing respective local areas." and again section 10(5) of the same Code of 1898 provides that " The Government may, if it thinks expedient or necessary, appoint *any persons employed in the Bangladesh Civil Service(Administration)* (underlined by this Court for emphasis) to be an Executive Magistrate and confer the powers of an Executive Magistrate on any such matter."

Here it is crystal clear that an Assistant Commissioner (Land) holds two characters i.e. (1) he is a person and another (2) he is an Assistant Commissioner (Land). For the same reasons, when a person is appointed as an Assistant Commissioner (Land) and Executive Magistrate, he holds three characters i.e. (1) he is a person, (2) he is an Assistant Commissioner (Land) and (3) he is an Executive Magistrate. In knowing these characters of an Assistant Commissioner (Land) *XYZ*, Dinajpur, this Court directed him under section 202 of the said Code of 1898. This

Court did not direct him as an Executive Magistrate because of the fact that an Executive Magistrate admittedly subordinate or inferior to District Magistrate and Sessions Judge of the District according to section 17 and 435 of the said Code of 1898. That is why, an Assistant Commissioner (Land) is liable personally for his all personal works or acts or omissions sans his ex-officio functions. Moreover, section 4(k) of the said Code of 1898 (amended in 2007) provides that

"Inquiry includes every inquiry other than a trial conducted under this Code by *a Magistrate* (underlined by this Court for emphasis) or Court"

Let us see and examine what is meant by *'a Magistrate'* and for understanding this we need to go through section 4A of the aforementioned Code of 1898 (amended in 2007). Section 4A (1)(a) of the said Code provides that "without any qualifying word, to a Magistrate, shall be construed as reference to a Judicial Magistrate; and Section 4A(1)(b) of the said Code provides that

"with a qualifying word not being a word clearly indicating a Judicial Magistrate shall be construed as a reference to a Magistrate as indicated in subsection (2)(b)" and s ection 4A (2) (b) of the said Code provides that which are administrative or executive in nature..." Here 'a' is a qualifier or qualifying word and hence *'a Magistrate'* enumerated in section 4(k) of the said Code is definitely meant by an Executive Magistrate.

Section 202 of the said Code provides that an inquiry or investigation can be made by the three ways i.e. (1) by any Magistrate subordinate to him, (2) by a police officer and (3) by such other persons this Court thinks fit and for this reasons this Court directed the Assistant Commissioner (Land) *XYZ* Upazila, Dinajpur as he has also the character of person i.e. within the orbit of 'such other person' which has been already discussed and even the character of Assistant Commissioner (Land) Birol, Dinajpur to the extent his ex-officio character of Assistant Commissioner (Land) is also directable or orderable authority for the said inquiry.

In view of the aforementioned reasons, the Assistant Commissioner (Land) *XYZ* Upazila, Dinajpur was directed for the said inquiry and the return of complaint without making the directed inquiry is actionable under section 185 of the Code of Criminal Procedure of 1898 and for non compliance with the order dated 28.06.2011 the Assistant Commissioner (Land) *XYZ* Upazila, Dinajpur is directed to show cause

on the next date in person before this Court as to why the action or punishment under section 485 of the said Code shall not be taken against him.

Let a copy of this order be communicated to the said Assistant Commissioner (Land) *XYZ* Upazila, Dinajpur immediately by a special messenger. The office is directed accordingly.

Name…
Senior Judicial Magistrate
Gaibandha

NB: After passing the aforesaid responsive order the concerned Assistant Commissioner (AC) Land sought apology in writing and conducted the investigation.

However, the result was very much positive i.e. the said officer being enlightened in respect of the point of investigation authouised under section 202 of Code of Criminal Procedure by the concerned Senior Judicial Magistrate submitted the investigation report. This example is given just for realising the matter of investigation as there is an adage that example is better than pecept?

7.4 First information in cognisable case:

I have already discussed the differences between the First Information (FI) and tha First Information Report (FIR) in chapter-5 and hence it now necessitates to say some thing regarding the information in cognisable case. However section 154 of the Code of Criminal Procedure provides a term '*every information'* relating to the commission of a cognisable offence and regulation 243(c) of PR-1943 provides the term 'first information' The said regulation number 243 (c) of police regulation 1943 provides that-

"The information of the commission of a cognisable crime that shall first reach the police, whether oral or written, shall be treated as the first information." The first information of a cognisable crime mentioned in section 154 of the Code of Criminal Procedure shall be drawn up by the officer-in-charge of the police station in B.P From 27 in accordance with the instruction printed with it. For the aforesaid reasons, the renouned Justice Mr. Ellis has mentioned in the judgment delivered by him in the case of *Jamshed Ali v. Crown* the correct term the '*first information'* several times.

However, it is information relating to the commission of the cognisable offence it falls under section 154, even though the police officer may have neglected to record it. The condition as to character of statements recorded in section 154 is two fold. First, it must be information and secondly, it must relate to a cognisable offence on the face of it and not merely in the light of subsequent events. It was never meant that any sort of information would fall under section 154 so long as it is first in point of time. [*Ref. Jamshed Ali v. Crown 5 DLR (1953) 210 (369) (Numerical figures within brackets are the original figures of the DLR)*] After getting any information relating to the commission of a cognisable crime the officer -in-charge of a police station is duty bound to comply with aforesaid provisions of law and in case of failure of the same sans the exception mentioned in regulation number 243 (d) of Police Regulation -1943, he will be liable to be sentenced under section 29 of the police Act-1861 beyond the Metropolitan area of this country and within a Metropolitan area he will be liable to be sentenced either

under section 217 of the Penal Code or under the concerned Metropolitan Ordinance.

Whether the officer- in- charge of a police station has the authority for not recording a first information relating to the commission of a cognisable crime? The answer of this question is definitely negative i.e. he has no authority to do anything without recording the same. According to regulation No. 244(a) of Police regulation-1943, the first information shall be recorded in respect of every cognisable complaint preferred before the police, whether prima facie false or true, whether serious or petty, whether relative to an offence punishable under the Indian Penal Code or any special or local law...” Sometimes, it is heard that the officer in charge of a police station has not recorded a complaint as first information sent by the concerned Judicial Magistrate under section 156(3) of the Code of Criminal Procedure in connection with regulation No. 245 of Police regulation 1943 in respect of the same or delay of recording the same. The police officer has no even the authority of asking any question without the compliance with the order of the Court and hence our apex Court has declared that “The police is duty bound to obey order including Judicial orders of the Republic and is not permitted to question the order as to why and how” [*Ref. Shahudul Haque & others v. The State, 3 ADC Page-68 para-17*]

7.5 Information Into cognisable case

In getting an information relating to the commission of a cognisable offence within the purview of section 154 and 156 of the code of criminal procedure the officer in charge of a police station is duty bound under section 157 (1) of the code of Criminal Procedure 1) to send forthwith a report (first information report) of the same to a Magistrate empowered to take cognisance of such offence upon a police report and (2) shall proceed in person or shall depute his sub-ordinate officers not below such rank as the Government may by general or special order prescribed in this behalf to proceed to spot, (3) to investigate the fact and circumstances of the case (4) if necessary to take measures for the discovery, and (5) arrest the of the offender.

The record of the investigating officer almost speaks the compliance with the aforesaid1, 2, 4 and 5 numbered functions. But this is not seen during about 4 years of my magisterial function in Gaibandha to comply with 3 numbered function or duty of the investigation that is, the investigation officer whenever, forwards an arrestee or arrested person, he does not forward the case diary containing the facts and circumstances got by the investigation within twenty four hours.

Whether the investigation officer is bound to forward case diary in every case? The answer is yes. The investigation officer is duty bound under section 167 (1) of the code of Criminal Procedure to forward the case dairy at the time of sending the arrested person, before the concerned nearest Judicial Magistrate, as section 167 (1) does not mean that a copy of the case diary will be forwarded only at the time of seeking the police remand, rather it means to forward the same in every case at the time of sending every arrested person.

Section 167 (1) of Cr. P.C provides that- "Whenever any personis arrested and detained in custody, and it appears that the investigation can not be completed within the period of twenty four hours fixed by section 61, and there are grounds for believing that the accusation or information is well founded, the officer in charge of the police station or the police officer making the investigation if he is not below the rank of sub-inspector shall forthwith transmit to the nearest Judicial Magistarte a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate"

Hence it is clear that whenever any person is arrested and detained in custody, the following in custody, the following things shall be done.

1. the investigation shall be done and if the said investigation can not completed within the period of twenty four hours fixed by section 61 of the code of Criminal Procedure, the investigation officer will have to think as to the grounds of the accusation.
2. After consideration of the facts and circumstances of the case got through the investigation within twenty four hours, if it appears to the investigation officer that there are grounds for believing that the accusation or information is well founded, the officer in charge or the said investigation officer shall forthwith transmit the copy of the case diary to the nearest Judicial Magistrate and at the same time forward the said arrested person (accused) to such Magistrate.

Besides section 167 (1) of the Code of Criminal Procedure of 1889, article-33 of the Constitution of the People's Republic of Bangladeah provides that the ***'grounds of the arrest'*** must be informed to the arrestee and after consideration of the said grounds, the Magistrate concerned shall exercise his authority whether the arrestee shall be detained in such custody as the magistrate thinks fit for a term not exceeding fifteen days in the whole. Hence custody may be jail custody, police custody or etc.

What does the terms 'grounds' mean?

The term 'grounds' according to the oxford advanced learner's Dictionary by A S Hornby, sixth edition, page 568, means a good or true reason for saying, doing or believing something,

The expression grounds in article 22 (5) of the constitution of India do not mean mere factual inferences but mean factual inferences plus factual materials which led to such factual inferences. The grounds must be self sufficient and self explanatory. Copies of documents to which reference is made in the 'grounds' must be supplied to the detainee as part of the grounds. [Ref. shahine som v. Uniou of India (1980) 4 SCC 544, P. 549, shamrao v. District Magistrate AIR 1957 SC 23]

Again the said term 'grounds' means materials on which the order of detention is based. [*Ref. Raji Hazara v. state of Uttar Pradesh (1987) 2 crimes 370 Page-375 (AII)*]

In view of the aforementioned reasons every Judicial Magistrate within the purview of regulation No. 21 of police regulation 1943 is also duty bound to watch the compliance with these provisions of law. This should be strictly watched in respect of shown arrest and it is mentionable that under proviso (a) of section 157 (1) of CrPC local investigation may be dispensed with for the reasons mentioned therein.

7.06 Model Order:

The following model order when the investigation officer does not forward case Diary at the time of forwarding the arrestee or arrested person, can be passed.

"Seen the aforementioned note and the brought arrested person and the said arrested person orally states that he has no knowledge about this allegation or case. After perusal of this record, it appears to this court that the record of this case does not contain the case diary containing the facts and circumstances got through the investigation within twenty four hours without which this Court is not in a position to determine the grounds of authorizing the detention of the accused in jail custody. The first information and the 2nd column of the first information report do not contain the name of this arrested person. The alleged offence does not provide the punishment of either death sentence or life imprisonment. Moreover, the learned legal practitioners Mr. Sharifuzzaman Babu appearing on behalf of this arrested person submits that the investigation officer of this case without informing and mentioning the grounds and violating the fundamental right of this arrestee under article-33 of our

Constitution, has forwarded mechanically the said arrestee before this Court. There is no chance of absconsion as the arrestee is a reputed farmer of this District and permanent citizen of this state.

In view of the aforementioned reasons, the application for bail of this arrested person is allowed subject to furnishing a bond of TK 500/- (five hundred) only with two sureties where one must be the engaged legal Practitioner for a period of two weeks from today. Mean while the investigation officer of this case is directed under the authority of regulation No 21. of Police regulation 1943 and the supervisory authority according to the law declared in the case of *Serajuddowla v.Abdul Kader reported in 45 DLR (AD) 101*, to submit the copy of the case diary within two seeks containing the facts and circumstances of this case got through the investigation within twenty four hours and later on and failing which the arrested person's interim bail shall be extended and the liability of non-compliance with the order of this Court shall be incurred accordingly.

Let a copy of this order be communicated to the District Superintendent of police of Gaibandha and the investigation officer of this case through the officer in- charge of the police station immediately by a special messenger for taking steps.

Md. Azizur Rahman
SJM, Gaibandha.

7.07 The time limit of the investigation:

Is there any time limit of any investigation of a cognisable crime? many of us may think in hearing this question that it was known to us that there is no time limit of the investigation for which an investigation officer submits a police report either in the name of charge sheet or final report after a long delay and for this commonly established view, it may appear to us that there is no time limit. But the law says different saying. This different saying of law can be said in categorizing into two segments (1) One is the time limit under the general law and another one is (2) the time limit under the special law of the land.

Let us to discuss the said two categories with the structure of the existing law of the land.

7.8 Time limit under the General Law:

According to article -33 (2) of the constitution of the People's Republic of Bangladesh and section 61 of the code of criminal procedure whenever a person is arrested and obtained in custody shall be produced before the nearest Magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court or to the Magistrate, Now the question is whether the arresting police officer is duty bound to investigate the facts and circumstances of the case within the period of twenty four hours? The answer simply is yes. According to section 167 (1) of the Code of criminal procedure the arresting police officer is duty bound to investigate the facts and circumstances of the case under the period of twenty four hours mentioned in section 61 of the Code of Criminal Procedure. The investigated facts and circumstances of this case within this period of 24 hours shall be forwarded to the nearest Judicial Magistrate so that he can understand the grounds of authorising the detention mentioned in section 167 (1) of CrPC The authority of authorising the detention includes also the authority of not authorising the detention in other words enlarging the arrestee on bail with or without the sureties in accordance with other provisions of the said code of 1898 as the right to carry on business includes the right not to carry it on and no one can be compelled to do a business against his will. [*Ref. Hathisingh Manu Facturing Company v. India AIR 1960 SC 923, See also mahmudul Isalam's constitutional Law of Bangladesh second edition, (Reprint) Dhaka, May 2006, Page-267*] For this, a Judicial Magistrate has the authority to enlarge an arrested person on bail either in a general law based offence or special law based offence including Nari- O- shishu Nirjatan Daman Ain-200 (amended in 2003 upon which already two version of view have been grown in the context of our legal

regime. One version for enlarging the bail of the arrested person for the allegation under the said Ain-2000 has been reported in 17 BLT (HCD) 192 and 61 DLR (HCD) 743 Para-23 though there is no discussion of the aforesaid constitutional authority there in and another version is not to entertain the application for bail in a case under the said Ain-2000. However, firstly the first time limit for investigation of a cognisable case is 24 (twenty four) hours. According to regulation No 261 (C) of police regulation -1943, secondly the second time limit of the investigation is 15 (fifteen) days. Besides this section 173 (1) of the code of criminal procedure provides that-

"Every investigation under the chapter shall be completed without unnecessary delay...."

Thirdly, the third time of limit of the investigation is the time frame fixed by the concerned Judicial Magistrate having the authority to take cognisance under section 190 of the Code of Criminal Procedure. The said Judicial Magistrate when after receiving a complaint sends under section 156 (3) of the code of criminal procedure to treat the same as first information and fixes a date. The said fixed date is the time limit for the submission of the police report. According to regulation No 245 of police regulation 1943 and failing which the concerned investigation officer shall in duty bound show the explanation of causing delay of non-submission of the police report within the said fixed date. This third time limit of investigation must be varied Magistrate to Magistrate.

II. Time limit under the special law the time limit mentioned in a special law is the time limit for a case under limit for a case under the said special law. The time limit of the investigation like Magistrate to Magistrate must be varied Special law to special law. As for example, the time limit of a case under Nari-O-Shishu Nirjatan Daman Ain-2000 is wider than that of a case under Ain shrinkhala Bighnakari Aporad (Druto Bichar) Ain-2002.

7.09 Where police officer-in-charge sees no sufficient grounds for investigation:

According to section 157 (1) (b) of the code of criminal procedure it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case and under sub-section 2 of section 157 of the code of Criminal Procedure, he shall state the reasons and shall also forth with notify to the informant, it any in such manner as may be prescribed by the Government, the fact that he will not investigate the case or cause it to be investigated.

What does the term 'sufficient ground' mean?

Though there is no definition of the term sufficient ground in the code of criminal Procedure but regulation No. 257 of Police regulation 1943 contain same broad principles in exercising the discretion vested in the officer –in –charge of a police station by section 157 (1) (b) of the code of criminal procedure and the said regulation 257, provides that

a. Any officer in charge of a police –station may, under section 157(b), Code of Criminal procedure refrain altogether from investigation a case in which there appears to him to be insufficient ground for investigating.

b. Police Officer shall observe the following broad principles in exercising the discretion vested in them by section 157(b) of the code of Criminal procedure.

    i. Every cognizable offence, other than one of those enumerated in clause II below shall ordinarily be investigated if the informant so desires. If for any special reason no investigation is made, the special reason shall be recorded.

    ii. No. investigation shall ordinarily be made in-

        a. Cases in which the injured person does not wish for an enquiry, unless the offence has occurred in a crime center or appears to be really serous, or may reasonably be suspected to be the work of a professional or habitual offender or a member or a criminal tribe know to be addicted to crime or unless it is otherwise desirable in the interest of the public that the case shall be investigated.
        b. Case which after consideration of the information and of anything which the informant may have to say, appear to fall under section 95, Indian penal code; and
        c. Case in which the information shows the case to be a purely civil nature, i, e; where the information is apparently seeking to take advantage of a petty or technical to bring into the criminal courts a matter which ought property to be derided by the civil courts.

These instructions indicate only general principal, and police officer shall exercise their discretion in every cognizable case that is reported to them.

Note: In the cases referred to in clause [(3) above, the points to be considered are whether the complainant can obtain adequate redress form the courts by instituting a prosecution, and whether action on the part of the police is expedient for the preservation of order. When the

charge is of enticing away a girl (section 363, Indian Code, and cognate sections), the police should be careful to ascertain that the case is not of elopement of a girl running away to the her parents on account of ill-treatment, and in cases of cattle theft that it is not a mere dispute as to ownership, or to the payment of the price of an animal purchased.

c. In case where investigation is refused the complainant or informant shall be informed in B. P. Form No. 37 A of the fact and of the reasons for abstention.

Report under section 157 CrPC

Section 158 of the Code of Criminal Procedure has provided the procedure to submit the report to a Magistrate in the following way-

1. Every report sent to a Magistrate under section 157 shall, if the Government so directs, be submitted through such superior officer of police as the Government, by general or special order, appoints in that behalf.

2. Such superior officer may give such instructions to the officer in charge of the police station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.

7.10 Power to hold investigation of preliminary inquiry

159. Power to hold investigation of preliminary inquiry,- Such Magistrate, on receiving such report, may direct an investigation or, if he thinks fit at once proceed, or depute any Magistrate subordinate to proceed, to hold a preliminary inquiry into, or otherwise to dispose of, the case in manner provided in this Code.

7.11 Police officer's power to require attendance of witness

160. **Police- officers power to require attendance of witnesses**:- Any police- officer making an investigation under this chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend as so required. The fragmented person action of this section is the assistance of a case and an investigation under chapter XIV of the Code of Criminal Procedure and within this any notice issued by any police officer for the attendance of a person is illegal and hence it has declared by our apex court in the case of Mohsin Hossain (Md) vs. Bangladesh regarded in 49 DLR (HCD) 112 that "since there is no reference as to any investigation

or enquiry in the notice issued by the police officer asking the petitioner to produce documents the same has been issued in an unauthorized manner."

7.12 Examination of witnesses by police

Section 161 of states that-

'Examination of witnesses by police: - (1) Any police-officer making an investigation under this Chapter or any police officer not below such rank as the Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

2. Such person shall be bound to answer all questions relating to such case put to him by such officer, other than questions the answer to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.
3. The police-officer may reduce into writing any statement made to him in the course of an examination under this section, and if he does so he shall make a separate record of the statement, of each such person whose statement he records.

Besides this section 161 of the Code of Criminal Procedure, regulation No. 447 of Police Regulation 1943 is also inter related in respect of examining any person supposed to be acquainted with the facts and circumstances of the case. The said regulation No. 447 provides that-

"447. Statement of witnesses under section 161, Criminal Procedure Code

a. Statements of witnesses recorded by the police under section 161 of the Code of Criminal Procedure shall be kept distinct from the case diary and any other police papers of the case. The date of receipt in the Court office shall be stamped on every page immediately or receipt and they shall be kept in secure custody unless their production is required by a court competent to demand them. When any court sends for the police diaries, only the diary recorded under section 172 shall be sent, and not the statements of witnesses recorded under section 161 unless the production of the latter is required by a court legally competent to demand it. For rules of evidence applicable, see regulation 263 (b). All Court officers shall commit to memory the instructions

contained in that regulation regarding case diaries recorded under section 172, and statements of witnesses recorded under section 161 of the Code of Criminal Procedure.

b. When a competent court directs, under the proviso to section 162 (I) of the Code of Criminal Procedure, that an accused be furnished with a copy of statement reduced into writing, made by any person to a police officer in the course of an investigation, the copy shall be made in the presence of the Court officer in his office.

7.13 Duty to examine and record statements without delay:

The investigation officer is under these provisions of law, duty bound to examine any person supposed be acquainted with the facts and circumstances of the case as section 157 (1) of the said Code of 1898 tells one of the duties of investigating officer is to investigate the facts and circumstances of the case. The question is why the delay should not be caused in examining and recording any person supposed to be acquainted with the facts and circumstances of the case. The reason is, as per section 157 (1) of the Code of Criminal Procedure after forwarding the first information and the first information report to the nearest Judicial Magistrate the third duty of the investigation officer is to take measures for the discovery and arrest of the offender and this third function i.e. the investigated gated facts and circumstances of the case requires the same as this relates to the arrest and forwarding the arrested person within twenty four hours before the concerned Magistrate.

The Criminal Courts attach great importance to prompt interrogation of witnesses under section 161 [*Ref. Mohd Arshad & Mohd Tahir shaikh v. state of maharashtra-1999 (3) Crimes 10 (14) (Bom-DB*]

There should not be a long delay on the part of the investigating authouities in recording statements. In a case where there was an unexplained delay for ten days and there were some contradictions as www, the Supreme Court opined that though the contractions by themselves might not have much significance yet, considered in the light of the delay in the examination,l the evidence became suspect [*Ref. Balakrishna, AIR 1971 SC 804 (1971) 3 SCC 192 : 1973 CrLJ 1120*] The investigating officer, however, should explain specifically about such delay and the reasons therefore [*Ref. Ranbir AIR 1973 Cr LJ 1120*] and for this regulation No. 261 (a) of police regulation-1943 Provides that-

'The investigating officer shall, whenever possible, pursuer the investigation to its completion without a break in continuity.'

Among the witnesses, who are eye witnesses should be examined with priority and hence *in Ganesh Bhaban patel V. state of Maharashtra, reported in AIR 1979 SC 135 : 1979 CrLJ 51 Para-18*, then Lordships of the Supreme Court observed that –

"Normally in a case where the commission of the crime is alleged to have been seen by witnesses who are easily available, a prudent investigator would give to the examination of such witnesses' precedence over the evidence of other witnesses.

The unexplained long delay on the part of the investigating officer in recording the statement of material witness during investigation would render the evidence of such witness unreliable. [*Ref. Bhalchandra Namde shinde v. state of Maharashtra, (2003) 2 MhLJ 580 (2003)(3) Crimes 525 (531) (Bom-DB)*] But mere dely in recording the statement of eye-witness under section 161 of CrPC is not always fatal in a murder case [*Ref Ramdeb v. state of Rajasthan 2003 1 WLC 34: 2003 Cr LJ 1680(1685) (Raj-DB)*] and where delay in recording the statement under section 161 of Cr. P.C is explained it is not fatal to the probative value of the statement of the witnesses. [*Ref Jodhakhoda Raban V. State of Gujrat 1992 Cr LJ 3298 (3343) Dhirajlal's the Code of Criminal Procedure, 18th enlarged edition reprint-2007, Page-520*]

Some laws declared by our apex Court are as follows:

1. Section 161- 'the right of cross-examination on the basis of witnesses' previous statements under section 161, Code of Criminal Procedure having not been available, prejudice to the defense could not be ruled out. The right given to the accused of getting copies of the statements under section 161, Code of Criminal Procedure, is a valuable right. Ends of justice require setting aside the conviction.' [*Ref. State Vs Zahir 45 DLR (AD) 163]*
2. Section 161- 'The examination of prosecution witnesses under section 161, Code of Criminal Procedure, after a considerable lapse of time casts serious doubt on the prosecution story.'*[Ref. Moin Ullah Vs State 40 DLR 443.*]
3. Section 161- 'Accused's right to get statements. Accused has the right to get copies of the statements of witnesses recorded by an investigating office under section 161 and examine them for him to find out whether there is contradiction. It is not impossible that the defense might be able to abstract from the condensed or boiled statement portions which could be attributed to one or the other of the witness whom it intends to contradict by such statements.' [*Ref. Sarafat Vs Crown 4 DLR 204*.]

4. Section 161- 'The trial Court illegally referred to and considered the statements of witnesses recorded under section 161 Criminal Procedure Code, which could only be used to contradict or corroborate the witness.' [*Ref. Abu Bakker vs State DLR 480*.]

5. Section 161- 'Unexplained delay in recording the statements of eye-witnesses by investigation officer casts a doubt as to the truthfulness of their testimonies. They had been given chance of concoction and false implication. Therefore, their evidence should be left out of consideration. When a witness I cross examined by a party calling him, his evidence is not to be rejected either in whole or in part but the whole of evidence so far as it affects both parties favorably or unfavorably must be taken into account and assessed like any other evidence for whatever its worth.'[*Ref. Jalaluddin Vs State 58 DLR 410.]*

6. Section 161,162,164 and 364 – 'The statements made under sections 161 and 164 cannot be taken as substantive piece of evidence. The statements made section 161, CrPC can only, be utilised under section 162 Cr. PC to contradict such witness in the manner as provided by section 145 of the Evidence Act. In no case such statement shall be taken as the basis for drawing an adverse inference against the accused on any point. When the statements made under section 164, CrPC can be used to support or challenge the evidence given in Court by the witnesses who made such statements and such statements can only be used by the accused for the purpose of cross examining him in the manner as provided by section 145 of the Evidence Act.' [*Ref. State vs Nazrul Islam @ Nazrul 9 BLC 129*.]

7.14 Statements of witnesses to Police:

Section 162 of CrPC provides that-

"162. **Statement to police not to be singed; Use of such statements in evidence:**

1. No statement made by any person to a police officer in the course of an investigation under this Chapter shall, if reduced into writing be signed by the person making it, nor shall any such statement or record, be used for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made.

   Provided that, when any witness is called for the prosecution such inquiry or trial whose statement has been reduced into writing as aforesaid, the Court shall on the request of the accused, refer to such

writing and direct that the accused be furnished a copy thereof, in order that any part of such statement, if duly proved, may be used to contradict such witness in the manner provided by section 145 of the Evidence Act. 1872 when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

Provided, further that, if the Court is of opinion that any part of any such statement is not relevant to the subject-matter of the inquiry or trial or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interests, it shall record such opinion (but not the reasons therefore) and shall exclude such part from the copy of the statement furnished to the accused.]

2. Nothing in his section shall be deemed to apply to any statement falling within the provision of section 32, clause (1), of the Evidence Act, 1872 [or to affect the provisions of section 27 of that Act"

Discussion:

This section generally speaks that the investigating officer may receive the statement of any person in the form of reduced into writing. It ensures that no statement made to the police which is reduced to writing be signed by the person who makes it and that no such statement or any record of such a statement whether in a police diary or otherwise or any part of such statement or record shall be used for any purpose other than those stated in the section. They may be used by the accused or by the prosecution to contradict such witness in the manner provided by section 145 of the Indian Evidence Act. 1872 and when it is so used, any part there of may also be used in the re examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination. It means that statements made to the police can be used for contradicting a prosecution witness in the manner indicated in S. 145 of Evidence Act [*Ref. Hazari Lal V. State (Delhi Administration) AIR 1980 SC 873, (1980) 2 SCC 390: 1980 CrLJ 564]*

7.15 Whether statement of a person may be signed?

The answer of this question is definitely yes. Section 162 (1) states clearly that-

"No statement made by any person to a police officer in the course of an investigation under this chapter, shall, it reduced into writing, be signed by the person making it...."

This means that- if any statement of a person is not made in the form of reduced into writing or boil downed for as, then there will be no bar for signing the same. This matter can be clarified with two situations based examples. One is, if a person being acquainted with the facts and circumstances of the case, is not able to speak but to write and he writes his statement, in the case there will be no necessity and scope of recording his statement in the for us of reduced into writing It, That person after writing the facts and circumstances in the form of statement, gives his signature or writes his name what law will bar the same. Section 162 of the Code of Criminal procedure does not make the bar of signing the statement which is not writers as reduced into writing form. Another example can be given also here i.e. Let you are a servant and you are at the time of staying in a place, a crime is occurred and some how you know an important facts and circumstances of that crime. There after a first information was lodged and you are, with due respect, asked by the investigating officer (who is police officer) and it you say something and the same is reduced into writing which is varied from your said something, you will not be satisfied and in that case this is of course the best thing to give a statement in writing with signature. You can keep a copy of the same and for this; the investigating officer shall not be in a position to manipulate your statement and the investigation. Thus think it all the witnesses of a case being literate and educated give their statement in writing with their signature what will be position of the investigating officer in respect of submitting the police report. Can he deny? The answer is no as you being a Judge can easily understand the error of not considering the statement in writing. This is like a brief or statement of minister some before journalists and they will generally write the said brief on statement according to their writing ability and the same will be considered as reduced into writing. It that minister gives the statement or brief in writing to the journalists, there will be no necessity and scope of writing the same as reduced into writing room. There is another dimension i.e. if the statement of a person is not written as reduced into writing, there is also the necessity of signing the same by the said person making it. In fact, the expression "Statement" refused to in this section is the statement recorded under section 161 (3). Statement constitutes the entirety of facts stated by a witness when he was examined on different dates by the same investigating officer or different investigating officers. It includes both oral and written statement including signs and gestures *[Asan Tharayil Baby V. State of Kerala, 1981 CrLJ 1165 (Kes-DB)*

7.16 Whether the Court can see the case diary?

According to section 157 (1) of the code of criminal procedure, the investigating officer of the case is to send the investigated facts and circumstances to the Magistrate concerned and the same is written in the case diary and hence the court has the ample power to see the case diary. This section does not prohibit a Judge from looking into the police diary *suo-moto* without any request by the accused or prevent him from using the statement of a person examined by the police, which is recorded in such diary, for the purpose of contradicting such person when he gives evidence in favur of the Government as a prosecution witness. The only limitation imposed is that such statement may not be used for any other purpose. [*Ref. Lal Miya, (1943) 1 Cul. 543, See, also Ratan Lal and Dhirejlal's the code of criminal procedure, 18th enlarged edition, reprint 2007. Page 532]*

Moreover, regulation 21 of police regulation 1943 provides the authority of watching every and all things done during the investigation under chapter XIV of the Code of Criminal Procedure, to the concerned Judicial Magistrate having the empowerment of taking cognisance of the police cases under section 190 of the said Code of 1898. Thus the Court can look into the case diary but can not rely on it unless its extracts are proved after confronting the same to the concerned witness under this section. *[Mahavir V. State of U. P 1990 CrLJ 1605 (All)]*

Here some important laws declared by our apex Court are given for understanding the matter of this section 162 of the Code of Criminal Procedure.

1. It is desirable that when an investigating officer is being cross examined as to previous statements made to him by the witness for the prosecution, the Court should have the Police diary before it and see whether the negative of the officer really gives a picture of what the witness, in fact, had stated. If not, the fact should be born in mind and the Court should watch whether the matter is cleared up in examination. It is the duty of Public Prosecutor to see that the negative answer of an investigating officer in respect of the statements of a witness does not creat a wrong impression of what the witness stated before the police. He must in these cases bring about other statements to explain the matter referred to in cross examination. If the Public Prosecutor fails to do so, it is the duty of the Court in fairness to the cases and the witness to bring about facts which will clear up the negative answer. This will be legiatimate use of the police diary and one of the modes of taking aid from it in the trial. [*Ref. Anis Mondal v. State 10 DLR 459]*

2. Where the investigating officer was not examined by the prosecution but examined by the defence, section 162 stood as a bar against the prosecution for cross examining him as regards the statements made by the witness to the investigating officer. [*Ref. Anis Mondal v. State 10 DLR 459]*

3. Defence lawyer permitted to defend an accused is entitled to have access to the record and be supplied with copies as provided under section 162, Criminal Procedure Code. *[Ref. State v. Ain Khan 13 DLR 911]*

4. The summary should of course be speedy but it does not dispense with the legal provisions for engaging a lawyer by the accused. As the record shows, the accusd hardly got any opportunity to be defended by a lawyer. It was contended on behalf of the State that the defence did not suggest any case or placing of the gun in their ring-well. It must be considred that the accused was hardly given any opportunity to arrange their legal defence. In between the date of their arrest and trial only 3 days elapsed. It is not understood why their trial was held in such haste. [*Ref. Pair Baksha v. State 27 DLR 251]*

5. The statements made to the investigating officer can not be used by the prosecution to corroborate or contradicts the statements of its own witness. *[Ref. Ansar Ali v. State 35 DLR 303]*

7.17 **No inducement to be offered:**

Section 163 of CrPC has laid down that-

1. No police officer or other person in authority shall offer or make, or cause to be offered or made any such inducement, threat or promise as is mentioned in the Evidence Act, 1872, section 24.

2. But no police officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this Chapter any statement which he may be disposed to make of his own free will.

7.18 **Power to record statements and confession**.

We need, for the first time, to read the connected laws regarding the authority of recording the statements and confessions of any person. Besides this section, sections 364 and 533 of the code of Criminal Procedure, regulation 283, 284 and 467 of Police Regulation 1943 and Rules 78, 79 and 129 of Criminal rules and order 2009 are to be read.

7.19 **What is statement?**

The word 'Statement' used in section 164 of the Code of Criminal Procedure means according to the privy council that – a statement made under this section can never be used as substantive evidence of the facts stated, but it can be used to support or challenge evidence given in court by the person who made the statement (S.157 of the Indian Evidence Act) The statement made by an approver sunder this section does not amount to corroboration in material particulars which the courts require in relation to the evidence of an accomplice, An accomplice cannot corroborate himself tainted evidence does not lose its taint by repetition. Apart from the suspicion which always attaches to the evidence of an accomplice, it is unset to rely implicitly on the evidence of a man who has deposed on oath to two differnt *stories [Ref. Bhuboni Sahu, (1949) 51 Bom LR 955: 761 A 147]*

7.20 Is there any form for recording the statement of a person?

Section 164 and all other connected Laws provide the form of recording 'confession' but not the statement exactly. But note of Rule-79 of criminal rules and orders-2009 narrates that-

"A statement of a witness, if necessary to be recorded under section 164 of Code of Criminal Procedure 1898, the Magistrate should record it in the manner prescribed for recording evidence of a witness". Under the ambit of this section 164 of the said code, the statement of an arrested person (accused) can be recorded in a plain paper it his statement makes any complaint of ill-treatment by the police or by some other known or unknown persons during police custody. His statement can be recorded according to the aforesaid note.

7.21 Model record of complaint of an arrestee (General Register Case No. 98 of 2011, PS Gobindagonj)

Fact in brief: One Md. Khail son of late Baccha Miah, village of Taraf Kanu @ Kaiyagonj, Police station Gobindagonj, District Gaibandha being arrested in General Register Case No. 92 of 2011 under Gobindagonj police station made the following statement of allegation i.e.

জি.আর. ৯২/২০১১ (গোবিন্দগঞ্জ) মামলার আসামী মোঃ খলিল-এর বিবৃতিঃ

আমি মোঃ খলিল (৪০) পিতা : মৃত: বাচ্চা মিয়া, গ্রাম : তরফমুন @ তরফকানু (কাইয়াগঞ্জ) থানা: গোবিন্দগঞ্জ, জেলা : গাইবান্ধা এই বিবৃতি দিচ্ছি যে, গতকাল ১৮.০২.২০১১ইং তারিখ অনুমান ৪.৩০/৫.০০ ঘটিকার সময় কাইয়াগঞ্জ বাজারের সংলগ্ন চাঁদপুর আরোফিয়া সরকারী প্রাথমিক বিদ্যালয়ের মাঠে আমাকে ১) মাকতুর

রহমান (রাফি) পিতার নাম বলতে পারিনা কিন্তু সে গোবিন্দগঞ্জ উপজেলা চেয়ারম্যান আবুল কালাম আজাদ-এর আপন শ্যালক, যার গ্রাম কাইয়াগঞ্জ খালসে ২) কালাম চেয়ারম্যানের মামাত শ্যালক চপল মিয়া, পিতা মৃত জাহাঙ্গীর মিয়া, গ্রাম- কাইয়াগঞ্জ খলসে, ৩) কালাম চেয়ারম্যানের সমন্দির ছেলে তুষার, পিতা বোরহান, গ্রাম কাইয়াগন্জ, খলসে ৪) আশরাফুল, পিতা- আফছার আলী, গ্রাম : কাইয়াগন্জ ৫) জিলহাস, পিতা : মুরাদ আলী, গ্রাম : খলসে, ৬) সুমন, পিতা-আজিত, গ্রাম : কাইয়াগন্জ, সর্বথানা : গোবিন্দগঞ্জ, জেলা- গাইবান্ধাগণ সবাই মিলে আমাকে ক্রিকেটের ব্যাট ও লাঠি দিয়ে আমার ডান পায়ের উরুতে বাম পায়ের নীচের দিকে, ডান হাতের কাধের দিকে ও মোগরার নীচে, বাম হাতের কনুই এর উপরে আঘাত করেছে। আমার মনে হয় ডান হাতের কাধের নিকট হাড় ভেংগে গেছে, আমি ডান হাত নড়াতে পারিনা। (ডান হাতের মোগরার উপর প্রচণ্ড ফুলা জখম দেখা গেল)। আঘাতের ফলে আমার নাক দিয়ে রক্ত বাহির হয়েছে। আমি অজ্ঞান হয়ে যাই। গোবিন্দগঞ্জ থানার সেকেন্ড অফিসারসহ তিনজন পুলিশ আমাকে উদ্ধার করে নিয়ে যাওয়ার পরে হাসপাতালের বেডে শোয়ার পর জ্ঞান ফিরে পাই। ভ্যানে উঠানোর সময় আমার কিছুটা জ্ঞান ছিল এবং আমি দেখি পুলিশদেরকে। আমাকে তারা মেরেছে এজন্য যে, আমি গত ১২ই জানুয়ারী ২০১১ইং তারিখে অনুষ্ঠিত পৌর নির্বাচনে কালাম চেয়ারম্যানের কথামত নির্বাচনে কাজ করিনি বলে। আমার বাড়ি হতে একটি ফনিক্স সাইকেল, একটি মোটর সাইকেল ও কিছু টাকা নিয়ে যায়। ঘটনাস্থলে আমার বাড়ির সাথেই লাগানো। এই আমার বিবৃতি। আমার ভাইকে মেরেছে। উল্টো ধরে এই মামলায় চালান দেওয়া হইয়াছে।

Name…
Senior Judicial Magistrate
Gaibandha

7.22 Model order in respect of the said complaint:

গোবিন্দগঞ্জ থানার মামলা নং ৪০, তাং- ১৮.০২.২০১১ ধারা ৩৪১/৩৮৫/৩২৫/৩০৭/ ৩৭৯/ ৫০৬ পেনালকোড মোতাবেক আসামী ১) মোঃ খলিল ২) জহুরুল ইসলাম দ্বয়ের বিরুদ্ধে প্রাথমিক তথ্য বিবরণী পাওয়া গেল। মামলার তদন্তকারী অফিসার এজাহার নামীয় আসামী ১) মোঃ খলিল মিয়াকে গ্রেফতার করিয়া আসামীর চালান ও ফরওয়াডিংসহ আদালতে সোপর্দ করিয়াছেন। Seen the aforementioned note and the arrestee Md Khalil Miah who states that he has been beaten by some persons whose names and particulars are written in separate three pages within the purview of section 164 of CrPC send the arrestee to jail custody. Next date 02.03.2011 is fixed under section 344 of the code of criminal procedure. Jail authority is directed to provide necessary treatments. But it also appears to this court that the statements of the said arrestee within the purview of section 4(1)(h) of the Code of Criminal Procedure discloses the facts of offences under sections 143/323/324/ 325/326/307/34 of the penal code and hence the officer –in-charge of Gobindagonj Police station is directed to treat the recorded statements of the arrestee Md. Khalil Miah as the first information in view of regulations 243 and 244 of Police Regulations 1943 and after lodging the First Information (FI) in B.P Form No. 27. Send the said FI and FIR to this court on the next working day in getting this order along with the said recorded statements of the arrestee. It is mentionable that, the arrestee Md. Khalil Miah shall be the informant of the said FI and FIR. Next date 21.03.2011 is under regulation 245 of Police Regulations-1943 fixed for police report of the said recorded statements which must be lodge as FIR.

The investigating officer of this case is directed to produce this arrestee before the concerned doctor of Gaibandha Adhunik Sadar Hospital who after examination shall submit an injury certificate within seven days from the date of examination of the arrestee. Let a copy/photocopy of this order to all concerned authorities.

(Md. Azizur Rahman)
Senior Judicial Magistrate 2nd Court
Gaibandha

Note: The investigating officer submitted the police report (charge sheet) on 16. 03.2011

What is confession?

The word confession is a genus and statement is a species and hence "it is well settled that all confessions are statements but all statements are not confessions*" [Ref. N.S.R Krishna Prasad V. Directorate of Enforcement, 1991 (3) Crimes 652,655 (Ap-DB) confession is not evidence as defined under S. 3 of the eviudence Act [Ref. R. Ravindran Nair V. supt of police, CBI, 1981 CrLJ 1424 (ker)]* However, a confession is an admission made any time by a person charged with an offence, stating or suggesting the inference that he has committed the offence. *[STEPHEN'S digest on the law of evidence see also, Ratan Lal and Dhirey Lal's the Code of Criminal Procedure, 18th Enlarged edition, Reprint, 2007 Page-551]*

The necessity of verification to confession:

A police officer who investigates a case under the code of Criminal Procedure of 1898 is duty bound to make the verification of a confession of an arrested person or suspected person and the concerned Judicial Magistrate is also duty bound to watch whether a police officer performs his duty in respect of making the said verification Regulation 283 of police regulation 1943 states that –

"283. Verification to confession – (a) (i) when an accused or suspected person volunteers a confession it should be recorded in detail by a police officer who, if it appears to be true, shall take immediate steps for its verification. Such verification should include the tracing and examination of witnesses named or indicated in the confession and the search for, or the recovery of, stolen property or other exhibits material to the investigation.

The officer recording the confession shall further arrange for the confessing person to be sent to a Magistrate in order that the confession may be judicially recorded."

But unfortunately, most of the Judicial Magistrates are not either knowingly or unknowingly, exercising this regulation. At the time of working as Judicial Magistrate in Gaibandha, I got an opportunity of passing order in respect of recording a confession of an arrested person and passed the following order.

"Seen the aforementioned note given by the general register officer (GRO) and the arrested person brought and produce before this court that the investigating officer either knowingly or unknowingly has not complied with regulation No. 283 and hence the investigating officer of this case is directed to comply with the said regulation No. 283

Carefully in future and fornoncompliance with the said regulation, this application for recording the confession is hereby rejected.

Let a copy of this order be communicated to the District superintendent of police of Gaibandha and the investigation officer of this case through the officer in charge of the police station, Gaibandha for necessary steps.

The result was that the investigating officer did not make more applications for recording the confessions of the accused, within four years. I had to record only three confessions of three arrested persons in three different cases where the said regulation No. 283 of police regulation 1943 was fully complied.

If this law is not exercised or watched by the Judicial Magistrate, the police will get an opportunity of manipulating the matter of recording the confession.

Procedure of recording of confessions:

Regulation No. 467 of Police regulation 1943 has laid down the Procedure of recording the confession. The said regulation provides that

"The High Court issued the following circular (Circular Order, Criminal No. 2 of 1937) regarding the recording of confessions by Magistrates:

Magistrates should clearly understand the great importance of giving their closest attention to the procedure to be followed, from first to last, in the recording of confession, This should be followed, without haste, with care and deliberation, it being understood that this duty is not a distasteful but, one which is of consequence to the confessing accused. His co-accused and courts responsible for the administration criminal justice. A confession which is recorded perfunctorily and hastily is a source of embarrassment to the trial court, the prosecution and the detente. The provision of section 24 to 28 of the Indian Evidence Act and of section 164 of the Code of Criminal Procedure should be carefully studied and the following safeguards, among other shall be adopted:

1. Confessions are to be recorded during the Court hours, and in the Magistrate's court or other room in a building ordinarily use as a Court house, unless the Magistrate, for reasons recorded by him on the form No (M) 84, certifies that compliance with these conditions is impracticable or that he is satisfied that the ends of justice would be liable to be defeated thereby. It must be clearly understood that the

recording or a a confession at a Magistrate's private residence, or at any place other than the Magistrate's Court shall be the exception and not the rule and that on Sundays and holidays when it is necessary to record a confession the Magisrtate shall proceed to his court for the purpose, after making all arrangements for the production of the accused before him in that court. If the confession is recorded in a room that is ordinarily open to the public, the Magistrate may, if he thinks fit, order that the public generally or any particular persons shall not have access to, or be or remain in, the room used for the purpose.

2. When the accused is produced the Magistrate should ascertain when and where the alleged offence was committed, an by questioning the accused, should further ascertain when and where the accused was first placed under Police observation, control or arrest.

3. Magistrate shall not, except under circumstances which render delay impossible, record the confession of an accused person immediately the police bring him into Court. He shall be given at least three hours for reflection, during which period he shall not be in contact with any police and shall not permitted to hold converse with any person.

4. During the examination of the accused and the record of his statement a co-accused and, unless in the opinion of the Magistrate the sate custody of the prisoner cannot otherwise be secured, police officers should not be present. In particular the police officers concerned in the investigation of the case or in the arrest or production of the accused shall be excluded.

5. The magistrate should give the explanations required by section 164 (Code of Criminal Procedure) and the other explanations mentioned in the form in a careful and patient manner, not perfunctorily, but so as to ensure that they are fully understood.

6. a. The magistrate should not proceed to record to the statement of the accused unless and until he has reason, upon questioning him and observing his demeanor, to believe that the accused is seeking and is about to speak voluntarily.

   b. While it is not in general necessary or desirable to invite complaints of ill-treatment by the police, cognizance of such complaints when made should be promptly taken, and any indications of the use of improper pressure should be at once investigated. It any injuries are noticed on the body of the accused or are refereed to by him be should be asked how he came by

them, and if necessary, in order to enable the Magistrate to be satisfied that the accused is about to speak voluntarily, the accused should be medically examined before his statement is taken.

c. It must be clearly understood that the questioning of an accused person in order to discover if the making of a confession is voluntary is not a mere formality. The magistrate must apply his mind judicially and Endeavour to base his finding upon definite premises and grounds.

7. While carefully avoiding anything in the nature cross-examination the magistrate should endeavor to record his statement in the fullest detail and to his end may properly put such questions, not being leading questions, as may be necessary to enable the prisoner to state all that he desires to state and to enable the Magistrate clearly to understand his meaning.

The form No (M) 84 has now been amended slightly by Rule 78 of criminal Rules and orders -2009 and the amended form No. (M) 45 which contains basically the language of the said regulation 467 of PR-1943.

7.23 Model Order when investigating officer will not comply with regulation 283 of police regulation 1943:

DISTRICT: GAIBANDHA

IN THE COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA

Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.

Date of passing Judgment: 17th May 2012

General Register Case No … of 2005

Arising out of Fulsari Police Station Case Number… dated 13.04.2011

The State ... Prosecution

-Versus-

Hunan Hokkani and others ... Accused

Under section 379 of the Penal Code

Order No. 02 dated 17.05.2012

অদ্য মামলার তদন্তকারী অফিসার মামলার এজাহার নামীয় আসামী (১) মোছাঃ কুলসুম বেগম, স্বামী- মোঃ আবুল কাশেম, সাং মুন্সিপাড়পাড়া (উত্তর বানিয়ার জান) এবং মামলার ঘটনার সহিত জড়িত (তদন্ত প্রাপ্ত) আসামী (২) মোছাঃ মর্জিনা, স্বামী- আমিরুল ইসলাম, সাং খাঁপাড়া মাতৃসদন রোড, উভয় থানা ও জেলা গাইবান্ধা দ্বয়কে গ্রেফতার করিয়া চালান ফরোয়াডিংসহ পুলিশ স্কটের মাধ্যমে বিজ্ঞ আদালতে সোপর্দ করিয়াছেন এবং মামলার সুষ্ঠ তদন্তের স্বার্থে গ্রেফতারকৃত আসামী কুলসুম এর কোড অব ক্রিমিনাল প্রসিডিওর ১৬১ ধারার জবানবন্দিসহ আসামী মোছাঃ কুলসুম বেগম-এর কোড অব ক্রিমিনাল প্রসিডিওর ১৬৪ ধারার জবানবন্দি লিপিবদ্ধের জন্য আবেদন দাখিল করিয়াছেন। Seen the aforementioned office note and two arrested persons (women) and after perusal of this record it appears clearly to this court that the investigating officer of this case has not complied with regulation 283 of Police Regulation 1943 with out which this court finds no reason of recording judicially the confession of the aforesaid two arrestee .

In view of the abovementioned vital reasons and the facts and circumstances of this case, the investigating officer of this case is directed to comply with regulation No 283 of Police Regulation 1943 in future and submit a verification report accordingly.

In view of the aforementioned reasons and facts and circumstances, the application dated 17.05.2012 is hereby rejected.

Let a copy of this order be communicated to the District Superintendent of Police of Gaibandha and the investigating officer at once for necessary steps.

Send the two arrestees meanwhile to the jail hajat as there are overt acts against them wich are in facts the grounds of sending them in jail hajat. Next date 23.05.2012 under section 344 of the code of criminal procedure is fixed for the production of the accused. The office is directed accordingly.

Name…
Senior Judicial Magistrate
Gaibandha

7.24 Search by Police officer:

165.(1) Whenever an officer in charge of a police-station or a police-officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorized to investigate may be found in any place within the limits of the police-station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station:

Provided that no such officer shall search, or cause search to be made, for anything which is in the custody of a bank or banker as defined in the Bankers' Books Evidence Act, 1891 (XVIII of 1891), and relates, or might disclose any information which relates, to the bank account of any person except,-

a. For the purpose of investigating an offence under sections 403, 406, 408 and 409 and section 421 to 424 both inclusive and sections 465 to 477A (both inclusive) of the Penal Code with the prior permission in writing of a Sessions Judge; and

b. in other cases, with the prior permission in writing of the High Court Division.

2. A police-officer proceeding under sub-section (1) shall, if practicable, conduct the search in person.

3. If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may after recording in writing his reasons for so doing require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing specifying the place to be searched and, so far as possible, the thing for which search is to be made; and such subordinate officer may thereupon search for such thing in such place.

4. The provisions of this Code as to search-warrants and the general provisions as to searches contained in section 102 and section 103 shall, so far as may be, apply to a search made under this section.

5. Copies of any record made under sub-section (1) or sub-section (3) shall forthwith be sent to the nearest Magistrate empowered to take

cognizance of the offence and the owner or occupier of the place searched shall on application be furnished with a copy of the same by the Magistrate:

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

Discussion: Before making discussion as to this section it is necessary to say that according to regulation No. 19 (Vii) of PR-1943, the sub-inspectors of police are duty bound to have touch with the respectable inhabitants of his charge and to acquire local knowledge.

At the time of making inspection by the Chief Judicial Magistrate or the Chief Metropolitan Magistrate this matter shall be supervised. However, the necessity of having the touch of the respectable inhabitants and the local knowledge of the sub inspectors of police relates to the matter of search and others derived from the said search, section 165 (1) of the Code of Criminal Procedure, 1898 clearly says that-

Firstly: An officer-in-charge of a police station or a police officer should make an investigation.

Secondly: In making an investigation, in a case he should realise or consider the reasonable grounds for believing that any thing necessary for the purpose of an investigation into any offence may be found in any place within his jurisdiction.

Thirdly: He will have to make an opinion that the said thing can not be otherwise obtained without undue delay.

Fourthily: He will have to record in writing the grounds of his belief.

Fifthly : He will have to specify in such writing so far as possible, thing for which search is to be made.

The word ‘anything’ used in this section means one or more that one thing and that’s why before making a search, there must have a search list and hence in accordance with regulation No. 280 (a) of Police Regulation-1943, the search list must be made in B.P Form No. 44. How ever, this section now authorises a general search on the chance that some thing might be found But the officer acting under this sub-section (1) or sub-section (3) must record in writing his reasons for the making of a search and under sub-section (1) and (3) the thing shall be specified as for possible. The provisions of section 100 (in the Code Prevailing in Bangladesh section 102 and 103 collectively) and 165 are mandatory *[Ref. Selvan V. State 1941 CrLJ 1942. 1945 (Mad)]*

Whether the term "Seizure List" is correct?

The term "Seizure List used and known commonly is definitely a wrong term as regulation No. 280 (a) of PR-1943 provides the correct terms "search list" The said "Search List" made in B.P Form No. 44 contains the property or articles seized.

7.25 The necessity of compliance with regulation No. 280 of Police Regulation-1943:

In respect of making search, the police is duty bound to comply with the rule 280 of police regulation 1943 along with section 102, 103, 165 and 166 of the code of criminal procedure. The said regulation 280 of police regulation 1943 provides that-

"a. The law, in regard to searches is contained in Chapter vii and sections 102 and 103, 165 and Code of Criminal procedure. These sections must be scrupulously followed. The officer conducting a search should take precautions to prevent the possible on the one hand, of any articles being introduced into the house without the knowledge of the inmates, and on the other, of any articles being taken out of the house while the search is in progress. Search should be made in the presence of the owner or some one on his behalf. The presence of search witnesses [vide clause (h) below] must not be looked upon merely as a formally, but they must actual be eye-witnesses to the whole search and must be able to see clearly where each article is found. They should then sign the search list (B .P. Form No. 44). If any search witness be illiterate, it should be read over to him and his left thumb impression should be written in the vernacular. The suspected person whose property is seized, should, if present at the search, also be asked to sign the list. Should he refuse, a note will be made to this effect and it should be certified to by the witnesses. The suspected person, or in his absence, the person in charge of the house or place searched, should be given a copy of the search list. He will be given an opportunity of comparing it with original and be asked to sign an acknowledgment for the copy of the original list. Should he refuse, a note to that effect should be made and should be certified to by witnesses in cases where no property by the search witnesses and the owner of the house.

b. Only searches for any specific article, which is known or reasonably suspected to be in any particular place or in the possession of any particular person, can be made without warrants. General searches without warrants are illegal and the only search which can be made without warrant is under section 165, Code of Criminal procedure. There must be some specific thing necessary for purposes of

investigation and there must be reasonable ground for believing that it is in a particular place and that delay in search is likely to interfere with the recovery of property. The police officer must record in his diary (i) the ground of his belief and (ii) the thing is looking for, and must as soon practicable send a copy of such record to the nearest Magistrate empowered to take cognizance of the officer [Section 165 (ii), Code of Criminal procedure]. No place should be searched without a warrant merely because the occupier is a registered bad character or absconding offender. Such a search should be made only under the circumstances given in section 165, Code of Criminal Procedure, and when the police officer has reason to believe that the thing searched for will be found in the place to be searched. Provided that reasonable suspicion exists and a definite article (or articles) is (or are) searched for, the police are entitled to search the house of an absconding offender, whether he has been proclaimed or not. Police officer should note in their diaries the reasons for search, though they are not obliged to give the name of the person upon whose information they act. The name, father's name and residence, etc; of any person producing keys of any locked receptacles or claiming ownership of articles seized should always be noted in the case diary.

c. Under section 165 (2) of the Code of Criminal Procedure, the officer in charge of the police –station or the investigation officer, who must not be below the rank of Sub-Inspector, must if practicable, perform the actual search in person. Only when he is incapacitated from so doing can be depute another officer he must first of all record his reasons for doing so and then given written orders to the officer deputed specifying what the search is for and where it is to be made. A verbal order given on the spot will not full fill the requirements of the section.

d. Before the commencement of the search the person of every police officer who is to conduct it, as also that of every witness and informer shall be examined before the witnesses and the owner of the house or his representative.

e. The law does not require a search under the Code of Criminal procedure, to be made by daylight, except those under section 14 of the Opium Act, 1878, but there are advantages in searching by daylight, and a searching officer should consider whether a house search should proceed by night or whether daylight should be awaited. Matters must be so arranged as to cause as little inconvenience as possible to the inmates, and especially the women.

f. When suspected property is found in a house all the property in the house is not to be seized. Proverty seized must be either alleged or suspected to have been stolen or found under circumstances. Which create a suspicion of the commission of an offence, and nothing can justify the seized of the whole of a man's property because he is suspected to having stolen some particular article or articles.

g. The number of witnesses required to attend a house-search depends on the circumstances of each particular case, and not hard and fast rule can be laid down. The witnesses selected should be residents of the same or adjoining villages. If necessary, such residents may be served with an order in writing to attend and witness the search.

h. Care should be taken that the witnesses are, so far as possible, unconnected with any of the parties concerned or with the police, so that they may be regarded as quite independent. Whenever possible, the presence of the panchayat or headman of the village shall be obtained to witness a search. Under no circumstances should a spy or habitual drunkard or any one of doubtful character, be called as a search witness. Reasons for rejecting any person as a witness to the search should be noted in the case diary.

i. Whenever it becomes necessary for a search to be made for arms illegally possessed, a warrant must invariable be obtained under section 25 of the Indian Arms act, 1878 (XI of 1878) from a Magistrate. Searches can only be conducted by, or in the presence of, an authorised of his own motion to make a search for arms illegally possessed (vide section 30 of the Act).

j. In order to satisfy the court as to the identify of articles alleged to have been discovered at a house- search and to prevent irregularities, the officer conducting a search under sections 103 and 165, Code of Criminal procedure, shall prepare a list in triplicate in B. P. Form No. 44 of the property of which he has –taken possession and shall forward it to the Court officer by the first available dak after the search together with a report regarding the search. One copy of his list will be sent to the court officer together with copies of the records prescribed under section 165 (5) of the Code. One copy the list only shall be given to the householder or his representative and the third copy will remain with the investigating officer. On receipt and in the Court office, this list shall be stamped with the date of record put up before the Magistrate. Investigating officer are required to note carefully the instruction contained in the heading of the form and are enjoined to conduct searches under such conditions

that there may be no room for suspicion on the part of the witnesses that articles or chaukidars, or anyone whatever under their influence, with a view to their being including in the list of property actually discovered in the place under search. Witnesses should be allowed free access to the place being searched and be given every facility to see and to hear everything that transpires.

All articles or weapons found at a house –search or the person of a prisoner shall be carefully labelled and if a charge sheet is submitted in the case, shall be sent to the Court officer. The labels shall be signed by the officer conducting search.

k. If the warrant is issued in form No. 8 of Schedule V of the Code of Criminal Procedure, or if the search is made without a warrant or on a warrant issued under section 98 of the Code, the police are not authorized to take away anything except the specified thing for which the search was directed or made, but in all cases in which the magistrate proceeds under paragraphs 3 and 4, sub-section (1) of section 96 of the Code of Criminal procedure, and directs in his warrant that there should be a general search followed by a more careful inspection at the police-station or some other convenient place, papers and documents and other articles need not be examined and initialled piece in situ. They should be collected and packed in bundles or receptacles should be closed or locked, as the case may be, and must in all cases be sealed or marked by the search witnesses and entered in the search lists. For instance, the contents of a desk drawer be collected, packed together and initialled by the search witnesses. For example, it might be marked... Any other bundles, packages, papers or documents similarly packed up together might be sealed or marked... etc. All these packages may be packed for easy carriage in a large receptacle which should in this case be marked A and should contain all the AA bundles or packages, Subsequently these boxes or packages should be very formally opened by the search witnesses who sealed or marked and signed them during the search, and their contents should be gone over piece by piece, examined, kept or rejected, but in every in question. Each of these pieces must bear the initial letter and the serial of its original bundle plus its own serial number in that bundle. Should any difficulty be experienced in getting a search witness to examine the documents at the police –station, it will be open to any police officer to call in the assistance of the court to compel the attendance of such search witnesses at the court to open the bundles, boxes, etc. Should he refuse to sing the contents of the bundles, the police officer

should, if possible, invoke the help of an Honorary Magistrate or such other officers as may be available?"

One question may arise whether police regulation should be considred at the time of announcing the judgment? The answer has been given by the Supreme Court of Bangladesh in the case of ZULFIKAR ALI v. STATE reported in 47 DLR (HCD) 603 para- 6 & 7 that-

"Regulation No. 280 of the Police Regulation-1943 sets out the law in regard to search as contained in chapter VII and sections 102, 103, 165 and 166 of the code of criminal procedure. These sections must be scrupulously followed… The police did not at all try to comply with the mandatory provision relating to search and seizure, as such the search made on the person (accused Bashna) is wholly illegal…"

7.26 When officer in charge of police station may require another to issue search warrant.

Section166 of the code of criminal procedure states that-

"166. 1. An officer in charge of a police-station or a police-officer not being below the rank of sub-inspector making an investigation may require an officer in charge of another police-station, whether in the same or a different district, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made, within the limits of his own station.

2. Such officer, on being so required, shall proceed according to the provisions of section 165, and shall forward the thing found, if any, to the officer at whose request the search was made.

3. Whenever there is reason to believe that the delay occasioned by requiring an officer in charge of another police-station to cause a search to be made under sub-section (1) might result in evidence of the commission of an offence being concealed or destroyed, it shall be lawful for an officer in charge of a police-station or a police-officer making an investigation under this Chapter to search, or cause to be searched, any place in the limits of another police-station, in accordance with the provisions of section 165, as if such place were within the limits of his own station.

4. Any officer conducting a search under sub-section (3) shall forthwith send notice of the search to the officer in charge of the police-station within the limits of which such place is situate, and shall also send with such notice a copy of the list (if any) prepared under section 103, and shall also send to the nearest Magistrate empowered to take

cognizance of the offence, copies of the records referred to in section 165, sub-sections (1) and (3).

5. The owner or occupier of the place searched shall, on application, be furnished with a copy of any record sent to the Magistrate under sub-section (4):

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

Discussion: The discussion made in chapter 7.18 is applicable with equitable principle. The same matter can be done in the same way just by another officer in charge of another police station within or outside of the District.

7.27 Procedure when investigation can not be completed in twenty four hours.

167.1. Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police-station or the police-officer making the investigation if he is not below the rank of sub-inspector shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

2. The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole. If he has not jurisdiction to try the case or send it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that no Magistrate of the third class, and no Magistrate of the second class not specially empowered in this behalf by the Government shall authorize detention in the custody of the police.

3. A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

[4. If such order is given by a Magistrate other than the Chief Metropolitan Magistrate or the Chief Judicial Magistrate, he shall forward a copy of his order, with his reasons for making it to the Chief Metropolitan Magistrate or to the Chief Judicial Magistrate to whom he is subordinate.]

[4A.] If such order is given by a Chief Metropolitan Magistrate or a Chief Judicial Magistrate, he shall forward a copy of his order, with reasons for making it to the Chief Metropolitan Sessions Judge or to the Sessions Judge to whom he is subordinate.]

[5. If the investigation is not concluded within one hundred and twenty days from the date of receipt of the information relating to the commission of the offence or the order of the Magistrate for such investigation-

a. the Magistrate empowered to take cognizance of such offence or making the order for investigation may, if the offence to which the investigation relates is not punishable with death, imprisonment for life or imprisonment exceeding ten years, release the accused on bail to the satisfaction of such Magistrate; and

b. the Court of Session may, if the offence to which the investigation relates is punishable with death, imprisonment for life or imprisonment exceeding ten years, release the accused on bail to the satisfaction of such Court:

Provided that if an accused is not released on bail under this sub-section, the Magistrate or, as the case may be, the Court of Session shall record the reasons for it:

Provided further that in cases in which sanction of appropriate authority is required to be obtained under the provisions of the relevant law for prosecution of the accused, the time taken for obtaining such sanction shall be excluded from the period specified in this sub-section.

Explanation-The time taken for obtaining sanction shall commence from the day the case, with all necessary documents, is submitted for consideration of the appropriate authority and be deemed to end on the day of the receipt of the sanction order of the authority.]

(6)-(7A) [Omitted by section 2 of the Criminal Procedure (Second Amendment) Act, 1992 (Act No. XLII of 1992)]

(8) The provisions of sub-section (5) shall not apply to the investigation of an offence under section 400 or section 401 of the Penal Code, 1860 (Act XLV of 1860).]

Discussion:

According to section 167(1) of the code of criminal procedure after arresting and detaining any person if the investigation is not completed within 24 hours fixed by section 61 of the code of criminal procedure and appears that

1. there are grounds for believing that the accusation is or information is well founded,
2. the officer in charge of the police station or the investigatign officer not below the rank of sub-inspector shall forthwith transmit a copy of the case diary to the nearest Judicial Magistrate
3. shall at the same time forward the arrested person to such Magistrate.

In accordance with sub-section 2 of section 167 of the said code, when an arrested person is forwarded under this section,

1. the Magistrate whether he has or has not jurisdiction to try the case from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit for a term not exceeding fifteen days as a whole.
2. If the Magistrate has not jurisdiction to try the case or send it for trial and considers further detention unnecessary, he may order the accused to be forwaeded to a Magistrate having such jurisdiction.

Provided that no Magistrate of the third class, and second class not specially in this behalf by the Government shall authorize the detention in the custody of the police.

Custody as the Magistarte thinks fit:

Though this section has not categorized the types of custody but from the different declarations of the apex court, the custody is the following categories:

3. Judicial or jail custody
4. Police custody
5. Etc.

7.28 Report of investigation by subordinate police officer

Section 168 of the Code of Criminal Procedure narrates that-

"168. When any subordinate police-officer has made any investigation under this Chapter, he shall report the result of such investigation to the officer in charge of the police-station."

Discussion:

The sub-ordiante police officer must not be below such rank as the Government may by general or special order prescribe in this behalf, i.e. according to the present order of the Government, the sub-ordinate police officer for making the investigation is the sub inspector of police officer.

7.29 Release of accused when evidence deficient

Section 169 of the Code of Criminal Procedure narrates that-

"169. If, upon an investigation under this Chapter, it appears to the officer in charge of the police-station or to the police-officer making the investigation that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police-report and to try the accused or [send] him for trial."

Discussion:

This section is applicable while the case is still under investigation of police and not applicable to a case where the accused has appeared before the Magistrate. [Ref. 1971 PCr.LJ 164] This code and the police regulation dealwith two categories of accused persons, namely one relating to persons in respect of whom there is no sufficient evidence so to justify their forwarding to Magistrate and such case are covered by section 169 of the Code of Criminal Procedure and regulation 275 of the police regulation enjoins that final report should be submitted in such case. The other category relating to person against whom there is sufficient evidence and such case are covered by section 170 of the Code of Criminal Procedure and regulation 271 of the police regulations provides for submission of charge sheet against them.[*Ref.27 DLR 93 and 114, see also Md. Zahurul Islam's the Code of Criminal Procedure, Vol.I, page 866 and 867*]

When a cognizable offence is reported to the police they may after investigation take action under s. 169 or S. 170 Cr PC. If the- police think there is not sufficient evidence against the accused, they may, under s. 169 release the accused from custody on his executing a bond to appear before a competent magistrate if and when so required; or, if the police think there is sufficient evidence, they may, under s. 170, forward the accused under custody to a competent magistrate or release the accused on bail in cases where the offences are bailable. In either case the police should submit a report of the action taken, under s. 173, to the competent magistrate who- considers it judicially under s. 190 and takes the following action:

1. If the report is a charge-sheet under s. 170 it is open to the magistrate to agree with it and take cognizance of the offence under s.

190(1) (b); or to take the view that the facts disclosed do not make out an offence and decline to take cognizance. But he cannot call upon the police to submit a report that the accused need not be proceeded against on the ground that there was not sufficient evidence.

2. If the report is of the action taken under s. 169, then the magistrate may agree with the report and close the proceeding. If he disagrees with the report he can give directions to the police under s. 156(3) to make a further investigation. If the police, after further investigation submit a charge-sheet, the magistrate may follow the procedure where the charge-sheet under s. 170 is filed; but if the police are still of the opinion that there was not sufficient evidence against the accused, the magistrate may agree or disagree with it. Where he agrees, the case against the accused is closed. Where the magistrate disagrees and forms the opinion that the facts set out in the report constitute an offence, he .can take cognizance under s. 190(1)(c). The provision in s. 169 enabling the Police to take a bond for the appearance of the accused before a magistrate if so required is to meet such a contingency of the magistrate taking cognizance of the offence notwithstanding the contrary opinion of the police. The power under s. 190(1)(c) was intended to Secure that offences may not go unpunished and justice may be invoked even where persons individually aggrieved are unwilling or unable to prosecute…" [*Ref. State of Gujarat v. Shah Lakhamshi, A.I.R. 1966 Gujarat 283 (F.B.); Venkatusubha v. Anjanayulu, A.I.R. 1932 Mad. 673; Abdul Rahim v. Abdul Muktadin, A.I.R. 1953 Assam 112; Amar Premanand v. State, A.I.R. 1960 M.P. 12 and A. K. Roy v. State of West Bengal, A.I.R. 1962 Cal. 135 (F.B.), approved. State v. Murlidhar Govardhan, A.I.R. 1960 Bom 240 and Ram Wandan v. State, A.I.R. 1966 Pat 438, See also http://indiankanoon.org/doc/49832/*]

What does it mean by the term 'sufficient evidence of suspicion'?

Though the word 'sufficient' means 'enough to meet a need or purpose'and the word evidence means 'a thing or things helpful in forming a conclusion or judgment' [*Ref. http://www.thefreedictionary. com/sufficient*] In fact, the term 'sufficient evidence' in this section definitely means adequate things of suspicion for which the investigating officer of a case can consider the justification of forwarding the accused to the nearest Judicial Magistrate and if there is no sufficient evidence the investigating officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police-report and to try the accused or send him for trial.

What does it mean by the term 'reasonable ground of suspicion'?

The term *reasonable* is a generic and relative one and applies to that which is appropriate for a particular situation.In the law of negligence, the reasonable person standard is the standard of care that a reasonably prudent person would observe under a given set of circumstances. An individual who subscribes to such standards can avoid liability for negligence. Similarly a reasonable act is that which might fairly and properly be required of an individual. [Ref *http://legal-dictionary. thefreedictionary.com/reasonable]* and again the said expression 'reasonable' means 'rational according to the dictates of reason and not excessive or immoderate. An act is reasonable when it is conformable or agreeable to reason, having regard to the facts of the particular controvery.' [Ref. Raghbir Singh v. CIT AIR 1958 Punj 250, See also KJ AIYER'S Judicial Dictionary, Fourteenth edition, page 907] and the expression 'ground' means the foundation for an argument, a belief, or an action; a basis. Often used in the plural.[Ref. *http://www. thefreedictionary. com/grounds*]. Again the said expression 'grounds' mean materials on which the order detention is based. Apart from conclusions of facts, 'grounds' have a factual constituentalso. They must contain the pith and substance of the primary facts, but not subsidiary facts or evidentialdetails. [Kamal Chand v. D.M. Bilaspur, 1981 Jab LJ (SN) 1 (DB), See also KJ AIYER'S Judicial Dictionary, Eleventh edition, page 545]

Howver, for any suspicion made by the police and based on this, if any arrest of any person is made, there must have the rational reasons which will form the grounds.

In Castorina v Chief Constable of Surrey [1988] NLJ Rep 180 Woolf LJ suggested that, when it is alleged that an arrest was unlawful, there are three questions to be considered as follows:

'1. Did the arresting officer suspect that person who was arrested was guilty of the offence? The answer to this question depends entirely on the findings of fact as to the officer's state of mind.

2. Assuming the officer had the necessary suspicion, was there reasonable cause for that suspicion? This is a purely objective requirement to be determined by the judge if necessary on facts found by a jury.

6. If the answer to the two previous questions is in the affirmative then the officer has a discretion which entitles him to make an arrest and in relation to that discretion the question arises as to whether the

discretion has been exercised in accordance with.[Ref.*http://www. lawgazette.co.uk /news/arrest-and-reasonable-grounds-suspicion*]

It is clear law that reasonable cause will only be present if a reasonable man, in the position of the officer at the time of the arrest, would have thought that the plaintiff (in our country accused or arrestee) was probably guilty of the offence: see Dallison v Caffrey [1965] 1 QB 348, 371 and Wiltshire v Barrett [1966] 1QB312, 322[Ref.*http://www. lawgazette.co.uk/news/arrest-and-reasonable-grounds-suspicion*]
Section169 of the code of criminal procedure provides that if upon an investigation it appears to the officer in charge of the police station or to the officer making the investigation that there is not sufficient evidence or reasonable grounds of suspicion to justify the forwarding of the accused to a Magistrate such officer shall release him on his executing a bond with or without sureties to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report and to try the accused or commit him for trial. [*Ref. 29 DLR (SC) 256 para-9]*

7.30 Case to be sent to Magistrate when evidence is sufficient

Section 170 of the Code of Criminal Procedure narrates that-

170.1. If, upon an investigation under this Chapter, it appears to the officer-in-charge of the police-station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police-report and to try the accused or [send] him for trial or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

2. When the officer-in-charge of a police-station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section , he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate as thereby directed and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

3. If the Court of the [Chief Metropolitan Magistrate,] [or the Chief Judicial Magistrate] is mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference is given to such complainant or persons.

4. The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with his report.

Discussion:

This section is a counterpart of section 169 of the code of criminal procedure and the discussion stated above is almost applicable with equitable equality. Sections170 and 173 must be read together. They contemplate a simultaneous action. And this consists in this that the accused should be forwarded after the officer in charge of a police station comes to the conclusion that there is sufficient evidence and he should also forward a report under section 173. The code contemplates the filing of an additional or supplementary charge sheet as is seen from section 173(2) under which a superior officer can order a further investigation.[*AIR 1956 Ori 129*] Section 170 obligates the investigating officer to submit the police report if in the course of investigation sufficient evidence or reasonable ground is made out for the trialofthe accused. It is for the officer in charge of the police station to decide whether there is sufficient evidence or not, to justify forwarding of the accused.[*Ref. AIR 1939 Lah 523*]

However, section 170 of the code of criminal procedure provides that if upon an investigation it appears to the officer in charge of the police station that there is sufficient evidence or reasonable gounds of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and and to try the accused or commit him for trial or if the offence is bailable shall take security from him for his appearance before the Magistrate. [*Ref. 29 DLR (SC) 256 para-9]*

7.31 What is the duty of the officer in charge of the police station for bailable offence?

If, upon an investigation under this chapter, it appears to the officer-in-charge of the police-station that there is sufficient evidence or reasonable ground as aforesaid and if the offence is bailable and the accused is able to give security, such officer, shall take security from

him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed. In fact, the officer in charge is duty bound to ask the arrested person and be convinced that whether the said arrestee is able to give the security and if it appears that the said arrestee is able to give security, the officer in charge shall be bound to take the security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

7.32 What is the duty of the Judicial Mgaistrate when the officer in charge will not comply with this section?

The answer is simple i.e. the Magistrate concerned is under the responsibility to watch the afoeresaid function of the police officer that is to say, the Magistrate is duty bound under regulation No. 21 of police regulation 1943 and the law declared by the Appellate Division of the Supremem Court of Bangladesh in a case of *SERAJUDDOWLA v. ABDUL KADER* reported in 45 DLR (AD) 101 Para-12 to watch the aforesaid function of the police offiocer.

The Judicial Magistrate

concerned is duty bound to *watch* whether the officer in charge of the police station has made the steps to understand the ability of the accused to give security and what steps thereafter have been taken by him. If it appears to the Magistrate concerned that the officer in charge of the police station has not had any steps to understand or realise the ability of the accused in a bailable offence, the said Magistrate can pass the following orders.

7.33 Model Order in this behalf:

DISTRICT: GAIBANDHA
IN THE COURT OF JUDICAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Judicial Magistrate, Gaibandha.
Date of passing order: 23rd March, 2011
General Register Case Number… of 2011
Arising out of: Fulsari Police Station Case Number…dated 07.01.2011
The State ... Prosecution
-Versus-
Md. Aminul Islam and others ...Accused
Under section: 447,323 and 324 of the Penal Code
Md. Shahidul Islam, CSI ...For the state
No advocate is present for the accused

Order dated 23.03.2011

…Seen the aforementioned note and the submitted police report dated 19.03.2012 and after perusal of the record and the said police report it appears to this court that the officer in charge of the Fulsari police station has not had any steps for understanding the ability to give the security and taking the same of the accused. The officer in charge has not submitted through the investigating officer of this case the intelligence as to the matter of taking any steps for ubderstanding the ability of the accused to give security i.e. "a pledge or pawn, something laid down or given as a security for the performance of some act by the person depositing it, and forfeited by nonperformance"[*http://www.definitions.net/ds.aspx?term=security%20in%20law*]

It also appears that the offence is bailable for which the arrested person possesses the right of having bail and hence the said arrestee is enlarged on bail subject to furnishing his own bond of taka five hundreds.

In view of the aforesaid reasons and facts and circumstances of this case, the officer in charge of Gaibandha police station is directed to comply with section 170(1) of the code of criminal procedure strictly in respect of the bailable offence and failing which this shall be regarded as the willful neglect or violation of this order and the action under section 29 of the Police Act 1861 shall be taken against the concerned officer in charge.

Let a copy of this order be communicated to the District superintendent of police of Gaibandha and the officer in charge concerned immediately.

Judge Md. Azizur Rhaman
Senior Judicial Magistrate 2nd Court
Gaibandha

7.34 What is the definition of the expression ‘accused’?

I made the follwing post on the facebook on 07.05.2012 and some facebook friends responded which are mentioned here before making the discussion or giving the answer of the aforesaid question for exchange of view with the readers of this book.

Dear friends, would you mind expressing your view as to the definition of the word 'accused' i.e. who will be treated as accused within the orbit of Code of criminal Procedure?

Like ·

Manzurul Ahasan Mamun and Shahriar Tarik like this.

Manzurul Ahasan Mamun: The person who is engaged himself to a forbidden task by the existing laws of an individual community or the sight of humanity having criminal intention; is known as an accused.

May 7 at 1:43am · Like

Azizur Rahman Dulu, is there any basis of section under CrPC?

May 7 at 1:44am · Like

Sk Muzu person against whom the allegation is made, is an accused person

May 7 at 1:46am · Like · 1

Abu Siddque 'An accused is a person arrested by the police for breach of law/s of the sovereign and produced before a Judicial Magistrate'

May 7 at 6:37am · Like

Kalim Mridha Accused means the person against whom making any complain (FIR/C.R.case) any person before the trial Court that person called accused...

May 7 at 7:48am via mobile · Like

Azizur Rahman Dulu: If a first information is lodged with the police station and the said first information contains the names and addresses of some persons with suspicion and the recording officer (OC) accordingly does not mention their names in column No. 2 of B.P. Form 27(FIR) and tell me friends whether those persons shall be treated as accused. If the answer is yes under what provision of law and if no what are the reasons and authority of law.

May 7 at 2:41pm · Like

Abu Siddque: One thing I need to add to your concern that is: Can we address them as something else? In general terms accused should best describe their situation. As allegation are made for breach of laws. Some other thoughts?

May 7 at 2:47pm · Like

Azizur Rahman Dulu: What do you mean by "In general terms accused should best describe their situation? As allegation are made for breach of laws. Some other thoughts"?

May 7 at 3:08pm · Like

Abu Siddque: Do u have any law that defines detainee? A person is a detainee purely because of his circumstance. Same rule applies to an Accused.

May 7 at 3:21pm · Like

Azizur Rahman Dulu: Mr. Abu Siddque, Tell me directly whether those persons shall be treated as accused?

May 7 at 3:34pm · Like

Abu Siddque: In my opinion they should best describe as Suspect (Suspected of a crime) rather than accused. Given that no accusation has been made so far and further investigation is pending on the suspect to become an accused.

May 7 at 3:38pm · Like

Azizur Rahman Dulu: Is there any legal provision in support of this?

May 7 at 3:39pm · Like

Abu Siddque: No law defines who is a suspect but as I said like detainee or accused, Suspect relies on circumstance. For example, The Touts Act 1879, Section 36 (2A) gives power to the local authority to prepare and publish a list of persons alleged or suspected to be touts. Cheers

May 7 at 3:49pm · Like

Abu Siddque: This is so far law goes in BD

May 7 at 3:50pm · Like

Azizur Rahman Dulu: I am expecting from you that whether there is any provision of law in Bangladesh?

May 7 at 3:55pm · Like

Abu Siddque: No

May 7 at 3:57pm · Like

Manzurul Ahasan Mamun: when an allegation is arisen against a person and if the court does take cognizance that incident as the violation of law, then that person will be committed as an accused...

May 7 at 5:20pm · Like

Azizur Rahman Dulu : Manzurul Ahasan Mamun, My question was whether a person whose name was in the first information but not in Column No. 2 of FIR shall be treated as an accused?

May 7 at 10:47pm · Like

Manzurul Ahasan Mamun: No... He won't be committed as an accused.

May 7 at 10:51pm · Like

Azizur Rahman Dulu : Manzurul Ahasan Mamun bhai, If it is, is there any legal provision of law in CrPC for which we can regard that only the name of the person in Column No. 2 of FIR shall be treated as accused? Whether that kind of person can be arrested by the police? What is the remedy of that person?

May 7 at 10:55pm ·

Note: Nobody gives any more answer.

Discussion or answer:

The expression 'accused' is though not defined in the entire code of criminal procedure but the said expression means 'a formal criminal charge against a person alleged to have committed an offense punishable by law, which is presented before a court or a magistrate having jurisdiction to inquire into the alleged crime.'[*http://legal-dictionary.thefreedictionary.com/accusation*] According to regulation No. 243(a) of police regulation 1943 'the first information of cognizable crime mentioned in section 154, Code of Criminal procedure shall be drawn up by the Officer- in-charge of the police – in B. P. From No. 27 in accordance with the instruction printed with it.' There are nine instructions whcich are to be followed at the time of drawing up the said B.P. Form and among that instruction No. 4 provides that

"Persons charged shall be distinguished from persons suspected. The informant shall be asked to state distinctly whether he charges the person or persons he names and only when does charge them shall the name or names be entered in column 2 of the form. The names of suspected persons shall not be entered in column 2. They shall be shown in the complainant's statements at the foot of the return. If the informant

says that certain persons were recognized, their names shall be clearly stated; or if he is unable to say that any one was recognized, this shall be distinctly recorded at this stage." The expressionaccused mentioned in section 170 means a person against whom there has been an acquisation and evidence is being collected by the police officer against him. Therefore, from time to time of the commission of the offence whoever are or have come to the knowledge of the police officer as offender or suspected offender, come within the purview of accused within the meaning of this section though it may be that these suspects after arrest are released onsurity bond during investigation.[*Ref. AIR 1958 A.P. 37*] The code of criminial procedure and the police regulations deal with two categories of accused persons, namely, one relating to persons in respect of whom there is no sufficient evidence or reasonable grounds of suspicion to justify the forwarding of them to a Magistrate and other relating to person against whom there sufficient evidence or reasonable grounds of suspicion to justify such forwarding. The cases of the former are covered by section 169 of the code and the regulation 275 of the police regulations enjoins that final report should be submitted in such cases. The cases of the later are covered by section 170 of the code and regulation 272 of the police regulations provides for submission of the charge sheet against them. The cases of persons whose names are shown in column 2 of the charge sheet are dealt with separately either in the code or in the police regulations. [Ref. 27 DLR (1975) 111 para-22] Hence it is clear that without the charge brought by the informant against any person can be regarded as 'accused' even when the name of that person shall be named by the informant as suspect in his statement of allegation. In accordance with the aforesaid instruction his name shall only be distinguished. It is not said that his name shall not be cut from the point of the expression 'accused.' Moreover, the synonyms of the word 'accused' are 'criminal, crook, culprit, delinquent, felon, guilty party, guilty person, jailbird, lawbreaker, malefactor, sinner, suspect, transgressor,
wrongdoer'[*http://thesaurus.com/browse/suspect?page=4&qsrc=121*]

7.35 What are the preconditions for forwarding an arrestee to the nearest Judicial Magistrate in a case?

The answer of this question definitely not generally discussed and exercised in our country. Before making your opinion after reading this answer given by me, you are simply urged to separate this writings from myself as I am not a renouned jurist. However, the police can arrest any person on the basis of a first information or complaint. But he can not forward the arrestee to the nearest Judicial Magistrate without comlying

with the preconditions laid down in section 170(1) of the code of criminal procedure. Two preconditions as per the said section are as follows:

a. There must have an investigation under chapter xiv of the code of criminal procedure and
b. There must have sufficient evidence or reasonable ground according to the understanding of the officer in charge of the concerned police station.

Generally a question then arises that what the expression ‘an investigation’ of section 170(1) of the said code denotes. According to section 4(1)(l) of the code of criminal procedure the expression *"investigation"* includes all the proceedings under this Code for the collection of evidence conducted by a police-officer or by any person (other than a Magistrate) who is authorised by Magistrate in this behalf and hence it is crystal clear that without exhausting all the proceedings under this Code for the collection of evidence conducted by a police-officer, the officer in charge of the concerned police station cannot forward the arrestee to the nearest Judicial Magistrate. Now a question again arises that if *an investigation* of section 170(1) of the code of criminal procedure means to include all the the proceedings under this Code for the collection of evidence conducted by a police-officer and having no provision of segmentising *an investigation* in this behalf, the officer in charge of the police station concerned wll not be authorized to forward the arrestee to the nearest Judicial Magistrate. But there is an exceptional provision in respect of this section 170(1) of the code of criminal procedure. Section 167(1) is that exceptional provision which provides that

“Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police-station or the police-officer making the investigation if he is not below the rank of sub-inspector shall forthwith transmit to the [nearest Judicial Magistrate] a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.”

That is, when section 170(1) of the code of criminal procedure is not applied, the preconditions enumerated in section 167(1) of the said code must be complied and the preconditions are as follows:

i. There must have the valid reasons for not completing the investigation within the period of twenty-four hours fixed by section 61 of the code of criminal procedure,

ii. There must have the grounds for believing that the accusation or information is well-founded and

iii. A copy of the entries in the diary according to section 172 of the code of criminal procedure (commonly known as case diary) relating to the case must be transmitted to the nearest Judicial Magistrate at the time of forwarding the accused.

In our country, from my experience, it is fact that the police officer is not complying with the said section 170(1) and 167(1) of the said code and the Judicial Magistrate being empowered to watch under regulation No. 21 of police regulation-1943 and the law declared by the Appellate Division of the Supremem Court of Bangladesh in a case of *SERAJUDDOWLA v. ABDUL KADER* reported in 45 DLR (AD) 101 Para-12 as to the said non compliance, are not watching the same and taking steps for compliance with the said vital preconditions.

7.36 Model Order in this behalf:

DISTRICT: GAIBANDHA
IN THE COURT OF JUDICAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Judicial Magistrate, Gaibandha.
Date of passing order: 23rd March, 2011
General Register Case Number… of 2011
Arising out of: Fulsari Police Station Case Number…dated 07.01.2012
The State ...Prosecution
-Versus-
Md. Aminul Islam and others ...Accused
Under section: 447,323 and 326 of the Penal Code
Md. Shahidul Islam, CSI ...For the state
Mr. Sharifuzzaman Babu for the accused

Legal practitioner

Order dated 23.03.2011

…

Seen the aforementioned note and the first information in writing dated 07.01.2012 and the first information report in B.P. Form 27 and the the arrestee Md. Khalilur Rhman and the application for bail of the arrestee. Heard the submission of learned legal practitioner and the court sub-inspector in respect of the application for bail and after perusal of the record, it appears to this court that the officer in charge of the Fulsari police station has not complied with the following preconditions of section 167(1) of the code of criminal procedure

i. There must have the valid reasons for not completing the investigation within the period of twenty-four hours fixed by section 61 of the code of criminal procedure,

ii. There must have the grounds for believing that the accusation or information is well-founded and

iii. A copy of the entries in the diary according to section 172 of the code of criminal procedure (commonly known as case diary) relating to the case must be transmitted to the nearest Judicial Magistrate at the time of forwarding the accused.

For the noncompliance with the aforesaid preconditions, it is not clear before this court as to the grounds of detaining the arrestee in jail custody. It also appears that the offence is though not bailable but does not provide the punishment of either death sentence or life imprisonment. Having no case diary and documents this court is not in a position to understand the grounds for believing that the accusation or

information is well-found. The learned legal practitioner appearing on behalf of the arrestee submits that there is no chance of absconsion as the arrestee has the permanent homestead within the jurisdiction of this Court and hence the said arrestee is enlarged on interim bail subject to furnishing a bond of taka five hundreds only with two usual sureties till submissionof the police report.

In view of the aforesaid reasons and facts and circumstances of this case, the officer in charge of Fulsari police station is directed to comply with either section 170(1) or section 167(1) of the code of criminal procedure strictly in respect of forwarding the arrestee and failing which this shall be regarded as the willful neglect or violation of this order and the action under section 29 of the Police Act 1861 shall be taken against the concerned officer in charge.

Let a copy of this order be communicated to the District superintendent of police of Gaibandha and the officer in charge concerned immediately.

Name…
Senior Judicial Magistrate
Gaibandha

7.37 Responsibility of police officer to ensure the appearance of the witnesses

Section 171 of the Code of Criminal Procedure narrates that-

171. (1) No complainant or witness on his way to the Court of the Magistrate shall be required to accompany a police-officer, or shall be subjected to unnecessary restraint or incon-venience, or required to give any security for his appearance other than his own bond:

Provided that, if any complainant or witness refuses to attend or to execute a bond as directed in section 170, the officer in charge of the police-station may forward him in custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed.

(2) Not withstanding anything contained in sub-section (1), it shall be the responsibility of the police-officer to ensure that the complainant or the witness appears before the Court at the time of hearing of the case.

Discussion: The responsibility belongs to the police officer to to ensure that the complainant or the witness appears before the Court at the time of hearing of the case. But the practical scenerio is quite unexpected as almost all the Courts are adjourning the proceedings of the cases due to non appearance of the witnesses including the informant or the complainant and even the investigating officer. Section 170 (2) of the code of criminal procedure provides that-"When the officer-in-charge of a police-station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section , he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate as thereby directed and prosecute or give evidence (as the case may be) in the matter of the charge against the accused."

That is, at the time of forwarding an arrestee to a Magistrate or taking security for his appearance before the concerned Magistrate, the officer in charge of the police station is duty bound to take a bond of the the complainant or the informant and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he

may think necessary to appear before the Magistrate as thereby directed and prosecute or give evidence (as the case may be) in the matter of the charge against the accused. This function should be watched by the concerned Judicial Magistrate under regulation No. 21 of police regulation-1943 and the law declared by the Appellate Division of the Supremem Court of Bangladesh in a case of *SERAJUDDOWLA v. ABDUL KADER* reported in 45 DLR (AD) 101 Para-12.

7.38 Model Order in this behalf:

DISTRICT: GAIBANDHA
IN THE COURT OF JUDICAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Judicial Magistrate, Gaibandha.
Date of passing order: 23rd March, 2011
General Register Case Number… of 2011
Arising out of: Fulsari Police Station Case Number…dated 07.01.2012
The State ... Prosecution
-Versus-
Md. Aminul Islam and others ...Accused
Under section: 447,323 and 326 of the Penal Code
Md. Shahidul Islam, CSI ...For the state
Mr. Sharifuzzaman Babu for the accused
Legal practitioner

Order dated 23.03.2011

...Seen the aforementioned note and the first information in writing dated 07.01.2012 and the first information report in B.P. Form 27 and the police report dated 07.04.2012 including the recommended five accused and after perusal of the record, it appears to this court that the officer in charge of the Fulsari police station has not complied with the following preconditions of section 170(2) of the code of criminal procedure

i. The officer in charge of the police station shall send to concxerned Magistrate any weapon or other article (if any) which it may be necessary to produce before and
ii. The officer in charge of the police station shall require the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate as thereby directed and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

For the noncompliance with the aforesaid preconditions, it is not clear before this court as to the grounds or binding scope of getting the appearance of the witnesses when they will be required. For not destrying any time in order to have the evidence from the witnesses in a case, the aforesaid two preconditions have been laid down in section 170 (2) of the code of criminal procedure.

In view of the aforesaid reasons and facts and circumstances of this case, the officer in charge of Fulsari police station is directed to comply with either section 170(2) of the code of criminal procedure strictly in

respect of executing the bonds of the witnesses and failing which this shall be regarded as the willful neglect or violation of this order and the action under section 29 of the Police Act 1861 shall be taken against the concerned officer in charge.

Let a copy of this order be communicated to the District superintendent of police of Gaibandha and the officer in charge concerned immediately.

Name…
Senior Judicial Magistrate
Gaibandha

7.39 Diary of proceedings in investigation

172.1. Every police-officers making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

2. Any Criminal Court may send for the police-diaries of a case under inquiry or trial in such Court and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries, not shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police-officer who made them, to refresh his memory or if the Court uses them for the purpose of contradicting such police-officer, the provisions of the Evidence Act, 1872, section 161 or section 145, as the case may be, shall apply.

Discussion:

It has been earlier stated and discussed that the officer in charge of the police station or the police-officer making the investigation if he is not below the rank of sub-inspector is duty bound under section 167 (1) of the code of criminal procedure to transmit the copy of the diary The (commonly known as case diary) enumerated in section 172 of the said code. The officer in charge of the police station or the police-officer making the investigation if he is not below the rank of sub-inspector shall do the following duties;

i. He shall day by day enter his proceedings in the investigation in a diary setting forth the time at which the information reached him,
ii. He shall write the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

The Court can exercise its authority by doing any of the following things:

i. Any Criminal Court may send for the police-diaries of a case under inquiry or trial in such Court and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial and

ii. The said Court can watch the investigation done by the police officer and can take proper steps by passing necessary order.

7.40 Model Order in this behalf:

DISTRICT: GAIBANDHA

IN THE COURT OF SENIOR JUDICAL MAGISTRATE, GAIBANDHA

Present: Md Azizur Rahman, senior Judicial Magistrate, Gaibandha.
Date of passing order: 23rd March, 2011
General Register Case Number… of 2011
Arising out of: Fulsari Police Station Case Number…dated 07.01.2012
The State ...Prosecution

-Versus-

Md. Aminul Islam and others ...Accused
Under section: 447,323 and 326 of the Penal Code
Md. Shahidul Islam, CSI ...For the state
Mr. Sharifuzzaman Babu for the accused
Legal practitioner

Order dated 07.05.2012

…Seen the aforementioned note and the first information in writing dated 07.01.2012 and the first information report in B.P. Form 27 and five arrestee and after perusal of the record, it appears to this court that the officer in charge of the Fulsari police station has not complied with the sections 172(1) and 167(1) of the code of criminal procedure. He has not transmitted the copy of the case diary before this court for which this Court is not in a position to understand the grounds of sending the arrestee in jail hajat. For the noncompliance with the aforesaid sections, it is not clear before this court as to the grounds of rejecting the application for bail. Moreover, the learned legal practitioner submits that the arrestees have permanent homestead within the jurisdiction of this Court and hence there is no chance for absconsion in respect of them and hence the application for bail of the arrestees is hereby allowed till submission of the police report subject to furnishing the bond of taka five hundreds only.

In view of the aforesaid reasons and facts and circumstances of this case, the officer in charge of Fulsari police station is directed to comply with sections 172(1) and 167(1) of the code of criminal procedure strictly in respect of making and transmitting the copy of the case diary and failing which this shall be regarded as the willful neglect or violation of this order and the action under section 29 of the Police Act 1861 shall be taken against the concerned officer in charge.

Let a copy of this order be communicated to the District superintendent of police of Gaibandha and the officer in charge concerned immediately.

Name…
Senior Judicial Magistrate
Gaibandha

7.41 Report of police officer

173. (1) Every investigation under this Chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the police-station shall-

(a) forward to a Magistrate empowered to take cognizance of the offence on a police-report a report, in the form prescribed by the Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused (if arrested) has been forwarded in custody or has been released on his bond, and, if so, whether with or without sureties, and

(b) Communicate, in such manner as may be prescribed by the Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given.

(2) Where a superior officer of police has been appointed under section 158, the report shall in any cases in which the Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer-in-charge of the police-station to make further investigation.

(3) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(3A) when such report is in respect of a case to which section 170 applies, the police-officer shall forward to the Magistrate along with the report-

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under sub-section (3) of section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(3B) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (1) has been forwarded to the Magistrate and, whereupon such investigation, the officer in charge of the police-station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed;

and the provisions of sub-section (1) to (3A) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (1).

(4) a copy of any report forwarded under this section shall on application, be furnished to the accused before the commencement of the inquiry or trial:

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

Discussion:

The expression police report is though not defined in our existing Code of Criminal Procedure but defined in section 2(r) of the Indian Code of Crimeinal procedure and section 2 (r) of the said Indian Code provides that "Police report" means a report forwarded by a police officer to a Magistrate under sub-section (2) of section 173. "In our country it has been declared in the case of KHORSHED ALAM V. STATE that

"It may be noted that section 173 of the code refers to the report of the police officer on completing the investigation and such report includes cases covered by sections 169 and 170 of the code, namely the case where the police officer thinks that the evidence is insufficient to send up the accused and the case where the police officer thinks that the evidence is sufficient to justify the forwardingof the accusedto the Magistrate. The code does not contain the words "charge sheet" and "final report". Rule 272 of the Police Regulations-1943, however, refers to charge sheet in respect of accused sent up under section 170 of the code and rule 275 of the said regulations refers to 'final report" which is to be drawn in a case which does not result in a charge sheet. Rule 276(a) provides that the Magistarte may accept the findings of the final report or direct further inquiry under section 156(3) of the code or he may take cognizance under section 190(1) (b) of the code and rule 276(a) lays down that when a further inquiry is directed by the Magistrate, the police after investigation may submit charge sheet, if the charge is proved or submit afinal report. The forms of charge sheet and final report have been prescribed in Vol.II of the police regulations. Clause (a) of rule 277 of the police regulations lays down that if in any case, in which final report has already been made, any information or clue is obtained, the investigation shall be reopened and clause (c) of the said rule lays down that if the fresh investigation leads to collectionof evidence sufficient to justify a trial, a charge heet shall be drawn up otherwise a supplementary fina lreport shall be submitted.[Ref.27 DLR (1975) 111 para-16]"

Under this section, the investigation will come to its natural end only under section, 173 of the Code of Criminal procedure either by final report or by charge sheet. "[*Ref. 40 DLR (1988) 326 Para -4*] In police regulations of Bengal a distinction has been made between these two kinds of recommendation e g. the recommendation for prosecution is called charge sheet and the police report containing recommendation for discharging the accused is called final report.[*Ref. 36 DLR (AD) 58*]

7.42 What is 'every investigation'?

One of my colleagues Mr. Mahiuddin Murad one day asked me whether the report of investigation of non-cognisable offence shall be submitted, if the allegation is truth, in B.P.Form No. 39 which is known as charge sheet under regulation 272 of police regulation 1943, as the investigation of non -cognisable offence is also done under chapter XIV of the Code of Criminal Procedure?

In response to this question what I told him is stated here i.e. though it appears generally that the answer of the said question is 'yes' but the correct view is 'no' and 'yes'. Let me state how the answer is 'no' and 'yes'. According to section 154 of Cr.PC and regulation 243 of Police Regulations-1943, B.P. Form 27 is used in respect of first information of any cognisable crime and regulation 254 of Police Regulations-1943 deal with case in which first information is not used and in place of B.P. Form No. 27, B.P. Form No. 33 is used.

Regulation 254(c) of PR-1943 speaks that, the reports for trial in such cases [as mentioned in regulation 254 (a) (b) of Police Regulations-1943 shall be submitted duplicate in B.P. Form No. 35. There is also an exception i.e. the cases under sections 107 and 145 of CrPC. shall be submitted in duplicate in B.P. Form No. 36. According to regulation 254 (b) of PR-1943, If as a result of this inquiry, the Superintendent considers that a cognisable case under the Indian Penal Code has been made out, he will order the usual first information report and case diaries to be utilised besides there, it is clear that the report of non- cognisable case except. The cases mentioned in regulation 254 of of Police Regulations-1943, shall be submitted under section 173 of CrPC.

As per example, the report of the allegation of sections 506/417/418/ 500 etc. shall be of course submitted under section 173 of CrPC.

Where the police after investigation into a non-cognisable offence under section 155 (2) filed a complaint in stead of report under section 173, it was held that the procedure was irregular though it did not vitiate the trial. [Ref. AIR 1929 Mad. 115]

7.43 Why is no unnecessary delay for completion of investigation?

The answer of this question is in fact given in regulation 261(c) of PR-1943 which provides that

"(c) Circle Inspector shall see that investigating officer completes their investigation as required by section 173, Code of Criminal Procedure, and that the provisions of clause (b) are not abused. If the directions in clause (a) are strictly, it should rarely be necessary to prolong the investigation of even the most difficult case beyond 15 days."

Moreover, this sub-section underlines the importance of promptitude and diligence in the investigation of cases. Every investigation shall be completed without unnecessary delay. Any slackness on the part of the investigating agency can result in disappearance of material evidence which might other wise he available and thus prevent the effective detection of crème. [*Ref. AIR 1970 Del. 154*] It is in order to provide a safeguard against slackness it has been provided that the accused can not remain in custody beyond a specified period without the order of the Magistrate [*Ref. AIR 1970 154 FB; See : also Md. Zahurul Islam's the Code of Criminal Procedure, Vol . I, Page-885*]

7.44 What kind of Power is vested on Judicial Magistrate?

Though in the case of *KHORSHED ALAM V STATE,* reported in 27 DLR (1975) 111, it has been held that police enjoys unfettered right on an investigation to submit charge sheet or final report but the regulation 21 PR-1943 had not been discussed in the said case and many cases where the same view was expressed. Regulation No. 21 of PR-1943 dose not authorise the aforesaid view as under the said regulation the Magistrate having the empowerment to take cognisance of police cases and responsibility are bound to watch the investigation of a police officer done under chapter XVI of the Code of Criminal Procedure .

As for example a first information of a cognizable offence under sections 379/380 of the Penal Code is lodged with a police station without mentioning any person's name and address and the officer-in-charge being duty bound under section 157 of CrPC shall forthwith send the copy of the said first information and first information report and the concerned Magistrate in knowing the regulations 21 and 261(c) of PR - 1943 , if gives a next date after two weeks and not exceeding 15 days and if no report is submitted, he shall have the authority to call for the case diary to watch the investigation i.e. how is the investigation going on? And why is the same not completed?

Meanwhile, if any person is forwarded to the said Magistrate, he shall have the right to have the case diary u/s, 167 (1) if Cr. P.C so that he can determine whether the investigating officer has investigated the facts and circumstance of the case and whether the investigating officer got sufficient evidence or reasonable grounds of detaining the arrestee in jail custody. If it is appeared to that Magistrate that the investigation is done duly and there is no sufficient evidence or reasonable grounds of forwarding the arrestee, he (the arrestee) should , of course be released on bail either on his own bond where there is no application for bail by any legal practitioner as according to article 33(1) o f the constitution of the People's Republic of Bangladesh no arrestee shall be detained in custody without the grounds and the investigating officer can be show caused as to such arrest without grounds or sufficient evidence as regulations 33 and 260 of PR- 1943 Prohibits for causing unnecessary harassment to the people generally . The Magistrate for violation of these regulations can impose punishment under section 29 of the Police Act 1861, against that investigating officer. So police does not possess the unfettered power butwatch able and actionable power by the Magistrate. The Magistrate concerned is not bound to take cognizance by report (charge sheet or final report) submitted by the police under section 173 of CrPC

The Court has the ample power to refuse taking cognizance of the offence on the facts disclosed in the police report [Ref. 31 DLR (AD) 70 Para -14] But when there is no police report against a particular person the Magistrate, unless he is empowered under section 190 (1) (c), can not issue a warrant against that person for being tried before him.[12 Cr LJ92]

7.45 Model Order in this behalf:

DISTRICT: GAIBANDHA

IN THE 2ND COURT OF SENIOR JUDICAL MAGISTRATE, GAIBANDHA

Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing order: 23rd March, 2012
General Register Case Number… of 2012
Arising out of: Fulsari Police Station Case Number…dated 07.01.2012
The State ...Prosecution

-Versus-

Md. Aminul Islam and others ...Accused
Under section: 447,323 and 326 of the Penal Code
Md. Shahidul Islam, CSI ... For the state
Mr. Sharifuzzaman Babu for the accused
Legal practitioner

Order dated 07.05.2012

…Seen the aforementioned note and the first information in writing dated 07.01.2012 and the first information report in B.P. Form 27 and five arrestee and after perusal of the record, it appears to this court that the officer in charge of the Fulsari police station has not complied with the sections 172(1) and 167(1) of the code of criminal procedure. He has not transmitted the copy of the case diary before this court for which this Court is not in a position to understand the grounds of sending the arrestee in jail hajat. For the noncompliance with the aforesaid sections, it is not clear before this court as to the grounds of rejecting the application for bail. Moreover, the learned legal practitioner submits that the arrestees have permanent homestead within the jurisdiction of this Court and hence there is no chance for absconsion in respect of them and hence the application for bail of the arrestees is hereby allowed till submission of the police report subject to furnishing the bond of taka five hundreds only. It also appears that this is not one the most difficult cases and hence regulation 261© of the police regulations 1943 shall be complied by the officer in charge of the Fulsari police station.

In view of the aforesaid reasons and facts and circumstances of this case, the officer in charge of Fulsari police station is directed to comply with sections 172(1) and 167(1) of the code of criminal procedure strictly in respect of making and transmitting the copy of the case diary

and failing which this shall be regarded as the willful neglect or violation of this order and the action under section 29 of the Police Act 1861 shall be taken against the concerned officer in charge.

Let a copy of this order be communicated to the District superintendent of police of Gaibandha and the officer in charge concerned immediately.

Name…
Senior Judicial Magistrate
Gaibandha

7.83 Duty of Judicial magistrate after getting the police Report

Discussion:

The Judicial Magistrate is in fact at the liberty to dispose of the case after getting the police report as is directed by his conscience i.e. he inview of the law reported in 31 DLR (AD) 70 para-14 can take cognizance even where the police has submitted the final report in making the recommendation to release the accused. According to regulation 21 of police regulations 1943, the Judicial Magistrate having the empowerment of the authority of taking the cognizance in the police cases, under the responsibility are duty bound to watch the function of the investigating officer done under chapter XIV of the Code of Criminal Procedure.

The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1) (b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1) (b) does not lay down that a Magistrate can take cognizance of an offence only if the Investigating Officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the Investigating Officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, in exercise of his powers under Section 190(1)(b) and direct the issue of process to the accused. [*Ref.India Carat Pvt. Ltd. v. State of Karnataka***,** *See: http://indiankanoon.org/doc/1213973/]*

7.47 Whether the expression 'charge sheet is accepted' is correct?

The answer of this question is, of course, not correct. No provision of the entire code of criminal procedure contains the expression *'charge sheet is accepted'* and moreover section 190 of the said code contains the expressionis that 'the cognizance of the offence' and hence the cognizance of the offence' is taken under sections… against the accused…and hence issue the summonses upon the accused and next date… is fixed for report as to the return of summonses.

7.48 Inquiry and report on suicide etc and Intimation of Executive Magistrate

174. (1) The officer in charge of a police-station or some other police-officer specially empowered by the Government in that behalf, on receiving information that a person-

(a) has committed suicide, or

(b) has been killed by another, or by an animal, or by machinery or by an accident, or

(c) has died under circumstances raising a reasonable suspicion that some other person has committed an offence, shall immediately give *intimation* thereof to the nearest Executive Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the Government, or by any general or special order of the District Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighborhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted:

Provided that, unless the Government otherwise directs, it shall not be necessary under this sub-section, in any case where the death or any person has been caused by enemy action, to make any investigation or to draw up any report or to send any intimation to a Magistrate empowered to hold inquests.

(2) The report shall be signed by such police-officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate.

(3) When there is any doubt regarding the cause of death, or when for any other reason the police-officer considers it expedient so to do, he shall, subject to such rules as the Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) [Omitted by the Schedule of the Adaptation of Central Acts and Ordinances Order, 1949.]

(5) The following Magistrates are empowered to hold inquest, namely, any District Magistrate or any other Executive Magistrate specially empowered in this behalf by the Government or the District Magistrate.

Discussion:

Regulations 299 and 302 of police regulations -1943 are connected laws with this section. Under this section the police officer has to make an investigation and draw up a report, to find out the cause of death, in presence of two or more respectable inhabitants of the neighbourhood. [*Ref. PLD 1966 W.P. Lah.344*] and for this reasons, according to regulation 19 of police regulations-1943, at present under section 4A (2) (a) of the code of criminal procedure, Chief Judicial Magistrate or the Chief Metripolitan Magistrate has the responsibility to see whether the sub-inspector appears to have a proper knowledge of his duties, whether he is in touch with the respectable inhabitants of ghis charge, has acquaired localknowledge, and takes an interest in his work.

7.49 Whether all the sub-inspector of a police station are empowered to hold inquests in view of section 174 of the code of criminal procedure?

The answer of this question is of course very pertinent as all the sub-inspector of a police station is not empowered to hold inquests in view of section 174 of the code of criminal procedure. Who are empowered is provided in the said section 174 of the said code. Section 174 (1) of the said code provides that

"The officer in charge of a police-station or some other police-officer specially empowered by the Government in that behalf, on receiving information that a person-

(a) has committed suicide, or

(b) has been killed by another, or by an animal, or by machinery or by an accident, or

(c) has died under circumstances raising a reasonable suspicion that some other person has committed an offence, shall immediately give **intimation** thereof to the nearest Executive Magistrate empowered to hold inquests…" That is, only the officer in charge and the sub-inspectors who are specially empowered by the Government in that behalf are entitled to hold the inquests. But when this matter was arisen in the police Magistracy onference by me, a question was put by one of the officer in charges of the police stations that is, at the same time, more than one person is died or killed in different places, and having that special empowerment, how will a officer in charge manage histinme and holds theei inquests. The answer was givenby me that you being an Officer in charge, will goto aplace and for your departure, the sub-inspector who takes the charges of your responsibility, will move next and thus it can be increased.

7.50 Whether intimation is necessary?

Intimation means ‘in the civil law, a notification to a party that some step in a legal proceeding is asked or will be taken. Particularly, a notice given by the party taking an appeal, to the other party, that the court above will hear the appeal. In Scotch law, a formal written notice, drawn by a notary, to be served on a party against whom a stranger has acquired a right or claim; c. g., the assignee of a debt must serve such a notice on the debtor, otherwise a payment to the original creditor will be good.[Ref. *http://thelawdictionary. org/intimation/] and the same expression also means ‘the information given of some act done, or the interpellation by which some act is required to be done. It also signifies, simply, knowledge; as A had notice that B was a slave.’[Ref.http://www. juridicaldictionary.com/Intimation.htm*] Of Course, according to section 174(1) of the said code, intimation is mandatory as it relates to a public interest based task. When I realized that “the officer in charge of a police-station or some other police-officer specially empowered by the Government in that behalf, on receiving information that a person-

a. has committed suicide, or
b. has been killed by another, or by an animal, or by machinery or by an accident, or
c. has died under circumstances raising a reasonable suspicion that some other person has committed an offence, are not giving the intimation, I passed the following order:

DISTRICT: GAIBANDHA

BEFORE THE COURT OF JUDICAL MAGISTRATE, GAIBANDHA

Present: Md Azizur Rahman, Judicial Magistrate, Gaibandha.

Date of passing order: 30th September, 2008

General Register Case Number 340 of 2008

Gaibandha Police Station case number 16 dated 12.09.2008

Under section 11(ka) of Nari O Shisu Nirjatan Daman Ain 2000(Amended in 2003)

The State ...Prosecution

-Versus-

Md. Zahurul Islam ...Accused

Order No.04

Dated 30.09.2008

…The produced record is taken up for order and seen the submitted Post Mortem report, inquest report and the chalan which are produced and hereby these are seen. No report of the investigation has yet been submitted till totay.

In respect of this matter, it appears after the perusal of the record particularly the inquest report to me that the inquest report has been done without the intimation of the concerned Executive Magistrate required under section 174 of the Code of Criminal Procedure.

Here the word ‘to see’ does not mean mere to see and put signature but as per Oxford dictionary ‘to see’ means ‘to understand something and to express an opinion as to that something.’ For this reason, it is necessary for the police officer to give intimation thereof to the nearest Executive Magistrate empowered to hold inquests required under section 174 of the Code of Criminal Procedure.

In this case, before or at the time of making the inquest report, the concerned police officer did not give the intimation to the nearest Executive Magistrate and without doing this the police officer has submitted the said inquest report.

In view of the above reasons, the concerned police officers are directed to maintain the requirement of section 174 of the code of

criminal procedure in respect of the aforementioned intimation for the inquest report unless the contrary is proved.

Let the copy of this order be communicated to the officer in charge of all police stations, Gaibandha as well as also to the office of the District Superintendent of police, Gaibandha.

Name…
Acting Chief Judicial Magistrate
Gaibandha

Memo Number… Date…

Copy of the order is sent for necessary steps
1. Superintendent of police, Gaibandha
2. All officer in charge of Gaibandha District

Name…
Acting Chief Judicial Magistrate
Gaibandha

Note: *After passing the aforesaid order, all the officer in charge of the police stations very cautiously are comply with section 174 in respect of giving intimation.*

A question is arisen whether the information within the purview of section 174 of the code of criminal procedure after fulfilling the required B.P. Form under police regulations Vol. I in the police station by the officer in charge shall be forwarded to the Judicial Magistarte or Executive Magistrate? Though the inquest report made under this section shall be forwarded to the District Magistrate but the ultimate investigation report according to regulation 276 of police regulations 1943 before the Judicoial Magistarte within the orbit of section 4A(1) (a) of the code of criminal procedure. As for example, a man is died by accident bewteen two buses and an inquest report is made and either an Unnatural Death (UD) Case or a General Register case being entried shall be forwarded to the concerned Judicial Magistarte.

7.51 Whether the forwarding of inquest report to the District Magistrate solely is correct?

Before giving the answer of this question, I would like to mention the relevant part of the provision in respect of this from section 174 of the code of criminal procedure i.e. the said section 174(2) provides (at present existing) that-

"The report shall be signed by such police-officer and other persons or by so many of them as concur therein, and shall be forthwith forwaded *to the District Magistrate*"

Again the previous provision [section 174(2)] before the amendment done in 2007 was-

"The report shall be signed by such police-officer and other persons or by so many of them as concur therein, and shall be forthwith forwaded *to the Chief Metropolitan Magistrate, the District Magistrate and Sub-divisional Magistrate*''

An example can be given for understanding the reality and opportunity between the two provisions. Let for a fact, an Unnatural Death (UD) Case has been entried on the basis of the first information given by an informant and the inquest report is forwarded to the District Magistrate according to the existing provision and if any other person claiming the son of the deceased files a complaint or lodges another first information alleging some persons as accused, what will be scenerio? The scenario is simple, that is, the preiding Judicial Magistrate will have to call for the inquest report from the District Magistrate for perusing the same and passing the necessary order. Again for the second phase of lodging first information, the investigating officer will have to have the said inquest report either directly or through the Judicial Magistrate

Court which, of course, is a time consuming procedure or in comparing with this, it is crystal clear that the previous provision was very much correct and more rational. However, the Judicial Magistarte concerned can fulfill this lacuna by calling for the inquest report from the District Magistarte.

7.52 Who is entitled under this section to handover the dead body?

Section 174 of the code of criminal procedure does not provide the answer of this question as there is no direct provisional instruction. For getting the answer, we need to know whether the dead body is a property. The expression 'property' according to article 152 of the Constitution of the People's Republic of Bangladesh "includes property of every description movable or immovable, corporeal or incorporeal, and commercial and industrial undertakings, and any right or interest in any such property or undertaking" and it is necessary to see whether the dead body contains any right or interest to any persons.

In England, "however, in spite of the well defined rule heretofore expressed and declared by both court and commentator, there appears to have existed, prior to 1804, a right to arrest a dead body for debt. In 1700 the body of the poet Dryden was so arrested and in 1784 the body of Sir Bernard Taylor was arrested from his funeral cortege. In 1804, Lord Ellenborough declared such arrest illegal as contra bonos mores. (Redfield's Surr. Rep. Vol 4, p. 527) It is hard to justify the right to arrest, if the doctrine of Lord Coke controlled for if there could be no property in the dead, and no value, how could there be an arrest, which is legally but an attachment of the body. [Ref. 13222333333232303 D%378731T*http://scholarship.law.marquette.edu/cgi/viewcontent.cgi?article=4512&context=mulr&seiredir=1&referer=http%3A%2F%2Fwww.google.com%2Furl%3Fsa%3Dt%26rct%3Dj%26q%3Dwhether%2520dead%2520body%2520is%2520a%2520property%26source%3Dweb%26cd%3D2%26sqi%3D*2%26ved%3D0CFoQFjAB%26url%3Dhttp%253A%252F%252Fscholarship.law.marquette.edu%252Fcgi%252Fviewcontent.cgi%253Farticle%253D4512%2526context%253Dmulr%26ei%3DOeC7T8DyJs7prQfntfDaDQ%26usg%3DAFQjCNFrlOt_FpX1mCSCzkQM_S29T54yTg#search=%22whether%20dead%20body%20property%22]

"The law of dead bodies has had a most singular history. The earliest American case on the subject of the interest that relatives have in the remains of their deceased, is ln re Widening of Beekman Street, (4 Bradf. (N.Y.) 503), where the history of the law applicable was fully considered and which settled the law that the relative had an interest sufficient to entitle him to the reinterment and settling the propositions:

1. That neither the corpse, nor its burial, is legally subject, in any way, to ecclesiastical cognizance or to sacredotal power of any kind.
2. That the right to bury a corpse and to preserve its remains is a legal right, which the courts of law will recognize and protect.
3. That such right in the absence of any testamentary disposition belongs to the next of kin.
4. That the right to protect the remains includes the right to preserve them by separate burial, to select the place of sepulture and change it at pleasure.
5. That if the place of burial be taken for public use, the next of kin may claim to be indemnified for the expense of removing and suitably reinterring their remains." [*Ref ibid*]

Inview of the aforesaid discussion it is clear that the dead body is definitely a property and hence the general authority of the property is applicable here and hence under Chapter XLIII of the code of criminal procedure, the concerned Judicial Magistarte Court is entitled to hand over the dead body of the deceased to his relatives.

7.53 Whether the officer in charge of a police station can dispose of the dead body to his relatives?

The answer is definitely negative and in this point, the Supreme Court of Bangladesh in a case of SIDDIQUE AHMED SAWDAGAR v. THE STATE reported in 40 DLR (HCD) 268 para-6 that-

"The act of the investigating officer to give custody of the property on the basis of the practice in vogue in the police Department without any support of the statutory provisions of law to that effect in violation of section 523 of the code of criminal procedure is without any lawful authority and is illegal. Section 516A empowers a criminal court to pass an order for custody and disposal of property during any enquiry or trial and it does not empower an investigating officer to give any property in the custody of any person. Only under the order of the Magistrate the investigating officer can give property into the custody of a person on taking from him a surety bond." According to the law reported in 21 DLR (1969) 807 para-11 the court in a fit case without the physical production of the property, the can give the custody of the said property. Moreover, in accordance with regulation 310 of police regulations 1943 the final disposal of the dead body rests with the Magistrate.

7.54 Model Order in this behalf:

DISTRICT: GAIBANDHA

BEFORE THE COURT OF JUDICAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Judicial Magistrate, Gaibandha.
Date of passing order: 30th April, 2012
Unnatural Death Case Number 40 of 2012
The State ... Prosecution
-Versus-
Md. Zahurul Islam ... Accused

Order No.04 dated 30.04.2012

…The produced record is taken up for order and seen the submitted inquest report and the chalan which are produced and hereby these are seen.

In respect of this matter, it appears after the perusal of the record particularly the inquest report to me that the officer in charge has disposed of the dead body i.e. the dead body has been handed over in the custody of the relatives of the deceased without any permission of this court. But "the law of dead bodies has had a most singular history. The earliest American case on the subject of the interest that relatives have in the remains of their deceased, is ln re Widening of Beekman Street, (4 Bradf. (N.Y.) 503), where the history of the law applicable was fully considered and which settled the law that the relative had an interest sufficient to entitle him to the reinterment and settling the propositions:

1. That neither the corpse, nor its burial, is legally subject, in any way, to ecclesiastical cognizance or to sacredotal power of any kind.
2. That the right to bury a corpse and to preserve its remains is a legal right, which the courts of law will recognize and protect.
3. That such right in the absence of any testamentary disposition belongs to the next of kin.
4. That the right to protect the remains includes the right to preserve them by separate burial, to select the place of sepulture and change it at pleasure.
5. That if the place of burial be taken for public use, the next of kin may claim to be indemnified for the expense of removing and suitably reinterring their remains."

Inview of the aforesaid discussion it is clear that the dead body is definitely a property and hence the general authority of the property is

applicable here and hence under Chapter XLIII of the code of criminal procedure, the concerned Judicial Magistarte Court is entitled to hand over the dead body of the deceased to his relatives." The Supreme Court of Bangladesh in a case of SIDDIQUE AHMED SAWDAGAR v. THE STATE reported in 40 DLR (HCD) 268 para-6 that-

"The act of the investigating officer to give custody of the property on the basis of the practice in vague in the police Department without any support of the statutory provisions of law to that effect in violation of section 523 of the code of criminal procedure is without any lawful authority and is illegal. Section 516A empowers a criminal court to pass an order for custody and disposal of property during any enquiry or trial and it does not empower an investigating officer to give any property in the custody of any person. Only under the order of the Magistrate the investigating officer can give property into the custody of a person on taking from him a surety bond." According to the law reported in 21 DLR (1969) 807 para-11 the court, in a fit case without the physical production of the property, can give the custody of the said property. Moreover, in accordance with regulation 310 of police regulations 1943 the final disposal of the dead body rests with the Mgaitrate.

In view of the above reasons, the officer in charge of Fulsari police station and other officers of the police stations of this District are directed to comply with the aforementioned law declared by our apex court and not to dispose of the dead body without the order of the oncerned court even without the physical production of the same.

Let the copy of this order be communicated to the District Superintendent of Police, all officers in charge of all police stations, Gaibandha immediately.

Name…
Senior Judicial Magistrate 2nd Court
Gaibandha

Memo Number Date...

Copy of the order is sent for necessary steps
1. District Superintendent of police, Gaibandha
2. All officer in charge of Gaibandha District

Name…
Senior Judicial Magistrate 2nd Court
Gaibandha

7.55 Duty of Judicial Magistrate

According to regulation No. 21 of police regulations-1943 and the law declared by the Appellate Division of the Supremem Court of Bangladesh in a case of *SERAJUDDOWLA v. ABDUL KADER* reported in 45 DLR (AD) 101 Para-12, the duty of Judicial Magistrate is to watch the function of the police officers conducted under chapter XIV of the code of criminal procedure of 1898 and to pass the necessary order or orders to eliminate the lacuna of the police function.

7.56 Power to summons persons

175.(1) A police-officer proceeding under section 174 may, by order in writing summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

(2) If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the police-officer to attend a Magistrate's Court.

Discussion:

The investigating officer under this section and proceeding under section 174 may, by order in writing summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. The summoned person or persons shall be bound to attend attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture. But a Judicial Magistarte is to watch whether a police officer makes such questions forwhich the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture. This can be, either in taking the written forms of questions put to the witnesses or in questioning the investigating officer under the authority of section 540 of the code of criminal procedure and section 165 of the Evidence Act 1872, watched by the concerned Judicial Magistrate.

7.57 Inquiry by Magistrate into cause of death

176.(1) When any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and, in any other

case mentioned in section 174, clauses (a), (b) and (c) of sub-section (1), any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police-officer, and if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed according to the circumstances of the case.

(2) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may, cause the body to be disinterred and examined.

Discussion:

Sub-section (1) of section 176 of the code of criminal procedure deals with broadly two types of death. One kind of death is in the custody of the police and another is beyond the custody of the police inview of section 174 of the said code. When any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and, in any other case mentioned in section 174, clauses (a), (b) and (c) of sub-section (1), any Magistrate so empowered may hold an inquiry into the cause of death either instead of, or in addition to, the investigation held by the police-officer.

Though sub-section (2) of the aforementioned section 176 of the said code of 1898, deals with the matter of disinterring the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate i.e. the Judicial Magistate may, cause the body to be disinterred and examined.

7.58 Duties of Investigating officer under Regulation No. 256 of Police Regulation 1943

Discussion: When an offence is reported the investigating officer shall consult all registers which area likely to assist him in his investigation, particularly the Village Crime Note-Book, before proceeding to investigate. But today we are in a position for which we are not getting the questions from either from the bar or from the bench in respect of the compliance with this duty of the investigating officer.

7.59 Seizure of documents or things (alamot)

Discussion:

Sections 94 and 165 of the code of criminal procedure and regulation number 280 of the police regulations -1943, in fact, deal with the matter

of *seizure of documents or things (alamot).* If an Investigating Officer considers the production of any particular document or thing, necessary or desirable for the purpose of investigation, he may issue a written order to the person in whose possession or power such document or thing is believed to be, for its production under section 94 of the Code of Criminal Procedure. A Court can also issue summons for production of such document or thing under section 94 of the Code of Criminal Procedure. "Section 94 of the code of criminal procedure provides that whenever any Court, or any officer in charge of a police-station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order."

[Ref.42 DLR (HCD) 151para-4] **'**If the document(s) or thing(s) required for investigation are likely to be found at a place and the Investigating Officer has reason to believe that such documents or things cannot otherwise be obtained without undue delay, such Officer may, *after recording in writing the grounds of his belief and specifying in such writing so far as possible the document(s) or thing(s) for which search is to be made,* conduct a search of a place or dwelling u/s 165 CrPC. for such document or thing. The search shall, if practicable, be made by the Officer himself but if he is unable to conduct the search in person he may, after recording in writing his reasons for so doing, require any Officer subordinate to him by an order in writing to make the search. Such order shall specify the places to be searched and as far as possible the thing or document for which search is to be made. Copies of any record made u/s 165 (1) or (3) shall forthwith be sent to the nearest Magistrate or Special Judge empowered to take cognizance of the offence.' [Ref. http://www.cbi.gov.in/ aboutus/manuals/Chapter_13.pdf] In India the Central Bureau of Investigation follows the following guidelines:

"Guidelines to be observed during Searches:

While the broad principles for taking a decision to conduct search have been mentioned in the foregoing paragraphs, the Investigating Officers or other Officers participating in the search may keep the following guidelines in mind. Guidelines for conducting search where computers or any other electronic data storage equipment are available have been discussed separately.

a. Searches must always be carried out in strict conformity with law. Provisions of Sections 94, 165, 166, 100, 101, 102, and 103 CrPC. must be fully complied with.

b. Searches should preferably be conducted after obtaining Search Warrants. In the case of accused persons, search warrants should be obtained under Section 93 (1) (c) of Cr.PC, 1973. In all cases where searches are decided to be carried out, prior approval of the Competent Authority should be obtained. For this purpose, a self-contained note personally prepared in hand or self-word processed by the I.O. with the comments of the SP, should be sent to the Competent Authority. This note should be treated as "Secret" and sent to the Competent Authority by name in a sealed cover with due precautions against leakage of information. Wherever possible, the note should be hand-delivered or sent by registered post (in name cover). In urgent cases, it could be Page 2 of 10sent through encrypted electronic mail message with digital signatures of the Officer(s) concerned. The SsP should exercise due caution against possible leakage. A watch of the place to be searched may be kept wherever necessary during the period of verification of information. It will not be possible to follow this procedure in certain emergent cases where there is evident risk of loss of evidence due to inherent delays. In such cases, the provisions of Section 165 CrPC. may be invoked after completing all necessary legal formalities, including preparation of grounds of search. Searches after dark should be avoided as far as possible. In such cases, it is for the Branch SP to personally satisfy himself about the need for taking emergent action. However, approval of the Competent Authority should be taken as soon as possible.

c. Soon after registration of the case, the need for conducting searches should be evaluated and the proposal for search should be sent to the Competent Authority without causing undue delay.

d. In case during the course of a search/investigation/enquiry, the involvement of an Officer of the level of Joint Secretary and above becomes apparent, the inquiry/investigation against the latter would be initiated only after obtaining permission u/s 6-A of DSPE Act.

e. Members of the search party should be fully briefed about their allotted tasks and about the do's and don'ts on searches contained in this Manual and other instructions issued from time to time, before they set out for actual search.

f. Once a search party reaches the place of search and starts the proceedings, normally persons from the house should not be allowed to go out or outsiders allowed tocome in. However, in genuine cases like school going children and medical emergency etc. the persons may be allowed to go and come after proper personal search. If the person whose house is being searched happens to be out at that time and returns during the course of search, he would, of course, be allowed to come in. The search party should have control over all the access points and outlets to the house. The search party should also take control of the telephones.

g. The addresses and places to be searched should be verified before taking a decision and confirmed before searches are actually launched.

h. Whenever searches are being organized, monitoring of the progress by senior Officers involved should be done at the Branch. A stand-by reserve team along with a vehicle should also be kept at the Branch/Unit, to move immediately to assist a search party. Whenever required, it could also be utilized if, during a search, necessity of searching other premises arises.

i. As far as possible, searches should be completed in one stretch. In case, search is to continue, after a break, on the next day due to any reason, the premises should be properly sealed in the presence of witnesses and unsealed again in their presence. Adequate guarding/ security arrangement should be ensured for this period.

j. In cases, such as those of disproportionate assets, searches could be held not only at the residence and office of the suspect Officer, but also at the place of his close relation, friends and Chartered Accountants etc., who very often are entrusted with incriminating documents. Such an assessment will have to be made prior to the registration of the case. In cases of disproportionate assets, a separate inventory should be prepared of items, which are not seized. The value, preferably as per agreement of all concerned, should be indicated against each item. Milometer reading of cars and scooters should also be shown in the inventory list. A conscious effort should be made to locate and seize the locker keys; which have a typical appearance. The locker concerned should be located quickly and sealed for conducting a search later on (within a day or two), if immediate search is not possible.

k. Searches should not, unless unavoidable, be carried out on the occasion of festivals/celebrations or mourning etc. going on in the

house concerned. Page 3 of 10(l) Searches must always be conducted quickly and quietly and in a manner to avoid unnecessary embarrassment, humiliation or inconvenience to the occupants and members of their families. Due courtesy should be shown to them.

l. In cases of disproportionate assets, articles of trifling value and/or daily use need not be mentioned individually in the search list nor seized. It would, however, be useful to note down the lump sum value of such articles in the house. Colour photographs of various parts of the house should be taken and got signed at the back by the photographer. His statement should also be recorded under Section 161 CrPC.

m. Disproportionately large cash or jewellery, unaccounted foreign exchange, costly electronic gadgets, arms and ammunition without licence etc. should be seized. It should be borne in mind that even if such an item is not covered by the search warrant, Section 102 CrPC. could be invoked.

n. The size of the raiding party should depend on the requirements. Show of force should be avoided. If for any special reasons, some force is required, it may be kept in reserve at some distance. However in important cases where violent conduct on part of the accused or individual being searched is expected, adequate assistance of local Police should be taken. SP of the Branch may make an assessment and take necessary steps.

o. Officers not below the rank of Inspector should invariably head search parties. In case of searches of houses of senior Officers or big firms, the SP should supervise the searches personally. According to the importance of the case, the DIG concerned also should supervise such searches. However, the DIG/SP shall not be a formal witness to the search, as he would not remain continuously present during the searches.

p. Informants/colleagues/subordinates of the public servant/accused whose house is searched should not as a rule be selected as search witnesses and should not accompany the search party. [Ref. http://www.cbi.gov.in/aboutus/manuals/Chapter_13.pdf] In comparing with this legal position of India, it can be said that our law is almost similar with India and hence our apex Court has declared the best law in the case of ZULFIKAR ALI v. STATE reported in 47 DLR (HCD) 603 para 6 and 7and we the Judicial Magistrates need to watch whether the police in our country follow this law.

7.60 Disposal of seized documents or things before trial or during trial

Discussion: Chapter XLIII of the code of criminal procedure, sections 25 and 27 of the Police Act of 1861, regulations 333, 379, 525, 526, 527, 528, 590, 598 and 1181 of police regulation 1943 and rules 163 and from 205 to 213 are connected for the disposal of the property.

In accordance with the declared law of our apex Court in the case of ALI BEPARI v. NOWSHER ALI reported in 3 DLR (1951) 87 and in the case of SIDDIQUE AHMED SAWDAGAR v. THE STATE reported in 40 DLR (HCD) 268 para-6 that- 'a police can not himself give the property in the ecustody of a person' and "The act of the investigating officer to give custody of the property on the basis of the practice in vogue in the police Department without any support of the statutory provisions of law to that effect in violation of section 523 of the code of criminal procedure is without any lawful authority and is illegal. Section 516A empowers a criminal court to pass an order for custody and disposal of property during any enquiry or trial and it does not empower an investigating officer to give any property in the custody of any person. Only under the order of the Magistrate the investigating officer can give property into the custody of a person on taking from him a surety bond." According to the law reported in 21 DLR (1969) 807 para-11 the court in a fit case without the physical production of the property, the can give the custody of the said property.

7.61 Production of seized documents or things before trial or during trial

Discussion: The seized documents or things must be produced in before the court according to section 516A of the code of criminal procedure. The law declared in the case of MONO RANJUN DAS v. STATE, reported in 19 DLR (1967) is that "the word 'produced' occurring in section 516A of the code of criminal procedure clearly indicates that the property spoken of must be such as may be produced in a court…" According to the law reported in 21 DLR (1969) 807 para-11 the court, in a fit case without the physical production of the property, can give the custody of the said property. Moreover, in our technological ephoc, the police officer in keeping the property temporarily in the custody of a jimmadar executing a bond to produce the property before the court at any time on demand can submit the picture or video of the said property.

7.62 Failure of production of seized documents or things and punishment

Discussion: Section 485 of the code of criminal procedure deals with the punishment of failure of of production of seized documents or things to whom the said documents or things belong to.

7.63 Whether a person being directed can be punished for non submission of any report under section 202 or any thing?

The answer of this question is not so easy to understand. For understanding this, we need to understand as to the expression ‘document’ which means ‘something tangible that records communicationor facts with the help of marks, words or symbols.’[Ref. http://www.businessdictionary.com/ definition/document.html] and again the said xpression according to section 3 of the Evidence Act of 1872, document means any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of these means, intended to be used or which may be used for the purpose of recording the matter. In view of this discussion, it is clear that the matter for which a person is directed to make an investigation and submit a report which is nothing but the descrption of the matter as to its truth or falsehood, is definitely within the orbit of the aforesaid definitionof the word document and hence any person being directed does not comply with the direction of the court and submit the report, he may be punished under section 485 of the code of criminal procedure. Before imposing the punishment under this section, you need to ensure that the order has been communicated duly and the copy of receving the order is available before you very correctly. Of course, a criminal miscellaneous case must be opened for exercising the authority of this section.

7.64 Model order

IN THE 2ND COURT OF SENIOR JUDICAL MAGISTRATE, GAIBANDHA
Present. Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Criminal Miscellaneous Case No. 15 of 2010
Offence of *suo moto* cognizance
Date of knowledge: 30th December, 2009
Arising out of
General Register Case Number 442 of 2010
Gobindagonj Police Station case number 01 dated 01.08.2010
The State ... Prosecution
-Versus-
Mithu Miah,
V Aid Road, Gaibandha ...accused

Order No. 01dated 30.12.2010

…In pursuant to the facts mentioned in the complaint of suo moto cognisance dated 30.12.2010 the aforesaid accused being responsible under section 485 of the code of criminal procedure to submit the injury certificate which is popularly known as Medical Certificate (MC) in respect of the order dated... which was communicated to and received by... of your office on... at... You the director Mr. xyz was directed to submit the MC within... but you have not submitted the said required M/C and in not giving the same have declined to submit said MC. This decline to not submit the MC is in fact nothing but the refusal of producing or submitting the MC and hence Director xyz of... Hospital is directed to explain in writing as to why the proceeding and action under section 485 of CrPC shall not be taken against you on the next date... Next date... is fixed for submitting the explanation.

Next order of passing sentence

Order No.2 dated…

After perusal of the facts mentioned in the complaint of suo moto cognisance dated 30.12.2010 and the explanation in writing dated... it appears to this court that the aforesaid accused has declined to submit the injury certificate knowingly and deliberately. The steps for getting the injury certificate which were taken earlier are... description in short.

In view of the facts and reasons of non compliance with the order of this court dated ... and the law reported in 19 DLR (SC) 198 there are sufficient grounds to impose the sentence of simple imprisonment and hence three days simple imprisonment is announced against the accused. Issue a warrant of commitment and send the accused to jail. The office is directed accordingly.

Name…
Senior Judicial Magistrate 2nd Court
Gaibandha

7.65 **Visit of place of occurrence**

Discussion: According to section 157 of the code of criminal procedure, the officer in charge of the police station or the investigating officer not being below sub-inspector shall proceed in person to the place of occurrence.

7.66 **Preparing of map**

Discussion: RegulationNo.273 of the police regulations 1943 deals with the matter of accompanying a map or plan with the charge sheet. A map or plan shall always accompany the charge-sheet in cases of murder, dacoity, serious riot, mail robbery, highway robbery, extensive burglary or theft where Rs. 600 or more are stolen. Ordinarily, maps will not be required cases other than those mentioned above; but the investigating officer may, at his discretion, prepare and send up, a map in any other case. The map shall prepare at as early a stage of the investigating as possible.

7.67 Powers of arrest without warrant

Discussion: Regulation No. 316 of police regulations-1943 deals with the powers of arrest without warrant. According to the said regulation the power of arrest without warrant possessed by police officers are laid down in sections 54, 55, 57 (1), 128, 151 and 401 (3) of the code of criminal procedure.

7.68 Discretion of police officers

Discussion: Th general conception is grown in our country that police can do many things. This conception is correct as the authority of making the check and balance is not balanced with the required legal knowlwdge and information. Very few, being receivers of the reasonable legal knowledge and information are not in a position to exercise the authority of making the check and balance of the power exercised by the police. As for example, the police can arrest a person under the code of criminal procedure, it is true but the Magistrates have the authority to examine the fact that whether the arrest is legal. Even after forwarding the arrestee, the Magistrate is to watch whether the preconditions mentioned in section 170 of the code of criminal procedure have been maintained or complied strictly. The problem lies in the legal educational structure of the country i.e. The laws regarding the check and balance of the power exercised by the police are not taught even in the University level education. I can give at least here a misconception of the law i.e. in every District; you can see writing “the office of police super” and in Bengali “police super er karjaloy.” This is

also written by the concerned diferent offices of the sub-ordinate Courts and the Supreme Court of Bangladesh. But no provision of law supports the said expression. Moreover the Police Act of 1861 and section 86 of the code of criminal procedure provide expression- District superintendent of police and the Benglai of this term according to Bangla Academi dictionary is জেলা পুলিশ তত্ত্বাবধায়ক but we the judges and the Magistrates are not using the said correct rexpression because we don't think that we are not commoners.

7.69 Dying declaration

Discussion: Regulation No. 266 of police regulations-1943 deals with dying declaration clearly. According to the said regulation, if it is not possible to have the statement of a person whose evidence is required and who is in imminent danger of death recorded by the Magistrate and it becomes necessary for some other person to record a dying declaration, this shall be done, Whenever possible, in the presence of the accused or of attesting witnesses. A dying declaration made to a police officer shall be signed by the person making it.

If a seriously injured person, not in imminent danger of death, is sent to hospital the investigating officer shall warn the medical officer about having the person's statement recorded by a Magistrate, should the necessity for such a course arise. At present, due to technological advancenment and availability, the Magistrate may also record the statement of the person concerned by any device even by a mobile set having the capacity to record.

7.70 **Identification of suspects**.

Discussion: Regulation No. 282 of police regulations-1943 deals with dying declaration clearly. The said regulation provides that whenever it is necessary to submit a person suspected to have been concerned in any offence to identification, the proceedings should be conducted whenever possible in the presence of a Magistrate, or of a Sub-Registrar or, if no such officer is available, in the presence of two or more respectable persons not interested in the case. Who should be asked to satisfy themselves the identification has been conducted under conditions precluding collusion. The identification proceedings should be under taken as soon after the arrest of the suspected person or persons as possible, and should be taken that before the commencement of the proceeding the identifying witnesses are kept in charge of a court peon or other persons not being a police officer at such distance from the place where the proceeding are held as to have no change of seeing the

suspects. The suspected person should, if possible, be paraded along with 8 or 10 persons, or, there are more than one suspect, with as 20 or 30 persons, similarly dressed and of the same religion and social status. Care should be taken that the mixing up of the suspect or suspects with the other persons does not take place in view of the police officer and the witnesses. Each identifying witnesses should then be brought up singly in charge of the Magistrate's orderly or some other person not being a police officer, to pick out the accused if he is able to do so. The identification by such witness should be conducted out of sight and hearing of other witnesses. If there is any fear that the identifying witnesses may be subjected to threats or injury, should they become known to the suspects or to their friends, the witnesses should be allowed to view the persons paraded from place where they themselves cannot be seen, as for instance through a window or an opening in a or a wall. When the officer conducting the identification has satisfied himself that no communication between the police and the witnesses was possible, he should given a certificate to this effect.

7.71 **Further investigation**.

Discussion: Section 173(3B) of the code of criminal procedure deals with the expression further investigation. The final report submitted by the investigating officer is not final, where the investigating officer has not conducted the case properly, has acted negligently and carelessly, there is material on the record and there is further scope for investigation, the Magistrate may order for further investigation under section 156(3) of the code of criminal procedure. [*Ref. Dilip Kumar Roy v. State 1994 CrLJ 3489; see also: Ratanlal and Dhirajlal's the code of criminal procedure, 14th edition, and page-630*] A Magistrate in exercise of its power under section 173 of the code of criminal procedure is competent to disagree with the final report and and direct further investigation in a matter. But existence of valid and good reasons is pre-requisite for issuance of such a direction.[*Ref. Gain Prokash Sharma v. CBI Chandigarh, 2004 CrLJ 3817(3821)]* However, if the police after further investigation again submits final report the Magistrate may take cognizance of the offence under section 190(1)© of the code of criminal. According to the law reported in 31 DLR (AD) 70 para-14, the ample power belongs to the Magistrate in respect of taking cognizance of the offence either on the basis of charge sheet or final report. Where during further investigation fresh materials comes on surface, acceptance of final report would not preclude the Magistarte from taking cognizance of the offence. [*Ref.State of Rajasthan v. Aruna Devi, 1994 (3) 849(850):*

1995 (1) SCC 1: 1995 SCC (Cri) 1] In accordance with the law declared by our apex Court reported in 4 BLD (AD) 206 after taking cognizance on the basis of the charge sheet, the Magistarte can not order for further investigation. "Further investigation may also be directed in a case in which some of the accused 'challaned' i.e. sent up for trial, and some have been left out, that is, final report has been submitted in their case. And if the police after making the further investigation, submits charge sheet against the remaining accused or any of them, then the report goes by the name of suuplementary charge sheet. A supplementary charge may also be submitted against an accused against whom a charge sheet has already been submitted, if further evidence has been available justifying his trial on an additional charge. All such subsequent charge sheets are submitted on the basis of further investigation. [*Ref. 27 DLR (1975) 342 para-4]* In the case of *Abhinandan Jha & Ors vs Dinesh Mishra 1968 AIR 117, 1967 SCR (3) 668 it* was held that

"If the report is of the action taken under s. 169, then the magistrate may agree with the report and close the proceeding. If he disagrees with the report he can give directions to the police under s. 156(3) to make a further investigation. If the police, after further investigation submit a charge-sheet, the magistrate may follow the procedure where the charge-sheet under s. 170 is filed; but if the police are still of the opinion that there was not sufficient evidence against the accused, the magistrate may agree or disagree with it. Where he agrees, the case against the accused is closed. Where the magistrate disagrees and forms the opinion that the facts set out in the report constitute an offence, he .can take cognizance under s. 190(1)(c). The provision in s. 169 enabling the Police to take a bond for the appearance of the accused before a magistrate if so required is to meet such a contingency of the magistrate taking cognizance of the offence notwithstanding the contrary opinion of the police. The power under s. 190(1)(c) was intended to Secure that offences may not go unpunished and justice may be invoked even where persons individually aggrieved are unwilling or unable to prosecute, or he police either wantonly or through a bona, fide error do not submit a charge-sheet. But the magistrate cannot direct the Police to submit a charge- sheet, because the submission of the report depends entirely upon the opinion formed by the police and not on the opinion of the magistrate. The magistrate, if he disagrees with the report of the police, can himself take cognizance of the offence under s. 190(1) (a) or (c), but, be cannot compel the police to form a particular opinion on

investigation and submit a report according to such opinion." [*Ref. http://indiankanoon.org/doc/49832/]*

However, "in the interest of the independence of the Magistracy and the judiciary and in the interest of purity of the administration of criminal justice and in the interest of various agencies and institutions entrusted with different stage to stage administration, where a proceeding is pending before a Court it is desirable that the police should inform the Court and seek formal permissionto make further investigation when fresh facts come light." [*Ref. Raghunath Singh v. State of Bihar, 1990 (1) Crimes310 (Pat); Mahima @ Mahimanda Mishra v. State of Orissa, 2002 (1) Crimes 137 (Ori)]*

7.72 Model order

DISTRICT: GAIBANDHA
BEFORE THE COURT OF JUDICAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Judicial Magistrate, Gaibandha.
Date of passing order: 30th April, 2012
Unnatural Death Case Number 40 of 2012
The State ... Prosecution
-Versus-
Md. Zahurul Islam ... Accused

Order No.04 dated 30.04.2012

The produced record is taken up for order and seen the submitted final report and the the naraji in writing dated… and the complainant is examined under section 200 of the code of criminal procedure and the substance of the said examination is recorded duly. After perusal of the of said recorded substance, the findings of the police report, case diary and other documents connected with case, it appears to this Court that the investigating officer has made the investigation negligently and carelessly. He has not mentioned the attempts of getting the alamot. He has mentioned mechanically that he has tried to get the alamot. He has not complied with regulation 264 and appendix XIV of the police regulations-1943. He has not even complied with the regulation 278 of the police regulations-1943.

In view of the above reasons, the officer in charge of CID, Gaibandha is directed to make a further investigation and to submit a report within the next date. Next date… under regulation 245 of the police regulations-1943 is fixed for the report.

Let the copy of this order be communicated to the District Superintendent of Police, and officer in charge of CID, Gaibandha immediately.

Name…
Senior Judicial Magistrate 2nd Court
Gaibandha

Memo Number Date: ...
Copy of the order is sent for necessary steps
1. District Superintendent of police, Gaibandha
2. Officer in charge of CID, Gaibandha District

Name…
Senior Judicial Magistrate 2nd Court
Gaibandha

7.73 Re-investigation

Discussion: Further investigation is not synonymous *to re-investigation***.** It is altogether, different from re-investigation. Re-investigation, if permissible, will result in cancellation of the charge sheet already submitted. Thre is no provision of law under which a charge sheet once submitted can be cancelled. If the charge sheet has been submitted by mistake, such as, against a person, the proper remedy lies in withdrawal from the prosecution against him under section 494 of the Code. In fact, there is no term like re-investigation in the code and as such it should be given it ordinary dictionary meaning which is fresh investigation-a course not contemplated in Chapter XIV of the Code, after submission of a charge sheet. [*Ref. 27 DLR (1975) 342 para-4**]*** But this has been in fact overruled by the law declared by our apex Court later reported in 29 DLR (SC) (1977) 257 para- 11 for which the grant of the application submitted by police in getting evidence, for re-investigation is not without jurisdiction.

7.74 Whether an application for further investigation can be allowed before a magistrate under 173(3B) of CrPC, in a case where trial is already started?

After framing charge against six of the accused persons and discharging the rest, the learned Magistrate had no jurisdiction to order a reinvestigation as had been done in the instant case, having regard to the provisions of Section 362 CrPC. as considered by this Court in the case of Sooraj Devi vs. Pyare Lal & Anr. [(1981) 1 SCC 500] [Ref. http://www.lawyersclubindia.com/experts/Further-investigation-219851.asp]

But according to the law declared by our apex court reported in 37 DLR(HCD) (1965)167 para-3, the Magistrate concerned can take cognizance ubder section 190 (1)(c) of the code of criminal procedure and issue process against the person against whom the fresh incriminating evidence will come during taking evidence.

7.75 Supplementary police report

Discussion: If the police after making the further investigation, submits charge sheet against the remaining accused or any of them, then the report goes by the name of suuplementary charge sheet. [*Ref. 27 DLR (1975) 342 para-4]* The police can submit any number of supplementary charge sheets. [*Ref. 38 DLR 124*]

7.76 Revival of investigation

Discussion:

Regulation No. 277 of police regulations-1943 deals with the expression of revival of investigation which provides that-

a. If in, any case in which a final report has already been made any information or clue is obtained, the investigation shall be reopened and shall be conducted by such officers as may be detailed to do so by the officer in charge of the station.

b. When the investigation of any case is revived, the forgoing regulations shall apply to such farther investigation in lime manner as to the original investigation.

c. If a revived investigation leads to the collection of evidence sufficient to justify a trial, a charge sheet shallbe drawn up, in accordance with the foregoing regulations. Otherwise, a supplementary final report shall be prepared and dealt with in the same maner as original finalreport.

According to the law declared by our apex Court and reported in 29 DLR (SC) (1977) 257 para- 9 that "to say that the same police officers or their superiors on receipt of further information or on the availability of better evidence can not revive the investigation already done leading to contrary or varied result would virtually amount to putting a seal on human errors and frailties once committed whether by design or inadvertence with no opportunity to make amends, although it is possible to do so." In the case of SHAFIQUR RAHMAN v. STATE reported in 37 DLR(HCD) (1965)167 para-3, it has been held that "after discharge of the accused the case can not be revived against the accused; but this is not a case of revival. In this case, when fresh incriminating materials came up before the Metropolitan Magistrate in the course of trial he has issued process against the accused suo-moto under section 380 of the penal code in exercise of his power under section 190(1)(c) of the code of criminal procedure. We therefore, do not find any illegality in this subject.

7.77 Model order:

DISTRICT: GAIBANDHA
BEFORE THE 2ND COURT OF SENIOR JUDICAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing order: 30th April, 2011
Unnatural Death Case Number 40 of 2010
The State ... Prosecution
-Versus-
Md. Abul kalam ... Accused

Order No.34 dated 30.04.2011

The produced record is taken up for order and the evidence of five prosecution witnesses are recorded duly. After perusal of the recorded evidence it crystal clear that some frsh incriminating materials are come in respect of the two earlier discharged accused who were not sent in the police report dated… and in this stage of coming fresh incriminating materials, it is necessary to consider for taking step as to the said discharged accused against whom the fresh incriminating materials have come. However, in the case of SHAFIQUR RAHMAN v. STATE reported in 37 DLR(HCD) (1965)167 para-3, it has been held that "after discharge of the accused the case can not be revived against the accused; but this is not a case of revival. In this case, when fresh incriminating materials came up before the Metropolitan Magistrate in the course of trial he has issued process against the accused suo-moto under section 380 of the penal code in exercise of his power under section 190(1)(c) of the code of criminal procedure. We therefore, do not find any illegality in this subject.

In view of the above reasons and facts and circumstances, cognizance of the offence of 325 penal code under section 190(1)(c) of the code of criminal procedure is taken against the two discharged accused and issue accordingly summonses upon them. The officer in charge of the police station is directed to submit a report about issued summonses within the next date. Next date… is fixed for the report.

7.78 Complaint and police case for same offence and its procedure

205D.(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which

is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police-officer conducting the investigation.

(2) If a report is made by the investigating police-officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.

Discussion: In connection with this, rule 92(5) of the criminal rules and orders -2009 also deals with the subject matter of the complaint and police case for same offence and its procedure. However, for the same occurrence, if an investigation by the police is going on and a complaint is made, the Magistrate under sub-section (1) of section 205D of the code of criminal procedure, shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the the investigation. The relevant case has been reported in 14 BLT (HCD) 284. If a report is If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code and here the relevant case is reported in 18 DLR (AD) 474 para- 3&7. If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code and the relevant case has been reported in 4 MLR (AD) 412.

7.79 **Model Order**:

DISTRICT: GAIBANDHA
BEFORE THE 2ND COURT OF SENIOR JUDICAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing order: 30th April, 2011
Complaint Register Case Number 43 of 2010
Rahima Khatun ... Prosecution
-Versus-
Md. Abul kalam and others ... Accused

Order No.o1 dated 30.04.2011

Seen the aforementioned office note and the complainant appeared before this Court. The produced complaint is taken up for examination of the complainant and passing order. The complainant is examined under section 200 of the code of criminal procedure upon oath.The substance of the said examination is recorded duly in the form of reduced to writing. The complainant after reading/hearing the recorded the substance of the said examination, gives his signature/left thump impression and therafter as the presiding officer of this Court I sign duly. After perusal of the recorded substance of the examination and the injuries of the victims who are present before this Court and also the pictures of the those injured parts of the body, it crystal clear that there are sufficient grounds to proceed with this complaint and hence cognizance of the offences of sections 143/448/325/326/34 of the penal code, is taken against the persons whose names and addresses including their ages are mentioned in the complaint and accordingly issue summonses upon them to appear in person on the next date… The officer in charge of the police station is directed to submit a report about the issued summonses within the next date. Next date… is fixed for the report or the appearance of the persons.

(Name…
Senior Judicial Magistrate 2nd Court
Gaibandha

7.80 False case and its procedure

250.(1) If in any case instituted upon complaint or upon information given to a police-officer or to a Magistrate, one or more persons is or are accused before a Magistrate or any offence triable by a Magistrate, and the Magistrate by whom the case is heard discharges or acquits all or any of the accused, and is of opinion that the accusation against them or any of them was false and either frivolous or vexatious, the Magistrate may, by his order of discharge or acquittal, if the person upon whose complaint or information the accusation was made is present, call upon him forthwith to show cause why he should not pay compensation to such accused or to each or any of such accused when there are more than one, or, if such person is not present direct the issue of a summons to him to appear and show cause as aforesaid.

(2) The Magistrate shall record and consider any cause which such complainant or information may show and if he is satisfied that the accusation was false and either frivolous or vexatious may, for reasons to be recorded, direct that compensation to such amount not exceeding one thousand Taka or, if the Magistrate is a Magistrate of the third Class, not exceeding five hundred Taka, as he may determine be paid by such complainant or informant to the accused or to each or any of them.

(2A) The Magistrate may, by the order directing payment of the compensation under sub-section (2), further order that, in default of payment, the person ordered to pay such compensation shall suffer simple imprisonment for a period not exceeding thirty days.

(2B) When any person is imprisoned under sub-section (2A), the provisions of sections 68 and 69 of the Penal Code shall, so far as may be, apply.

(2C) No person who has been directed to pay compensation under this section shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made or information given by him:

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(3) A complainant or informant who has been ordered under sub-section (2) by a Magistrate of the second or third class to pay compensation or has been so ordered by any other Magistrate to pay compensation exceeding one hundred taka] may appeal from the order, in so far as the order relates to the payment of the compensation, as if such complainant or informant had been convicted on a trial held by such Magistrate.

(4) When an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (3), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if any appeal is presented, before the appeal has been decided and, where such order is made in a case which is not so subject to appeal, the compensation shall not be paid before the expiration of one month from the date of the order.

(5) Notwithstanding anything contained in this section, the Magistrate may, in addition to the order directing payment of the compensation under sub-section (2), further order that the person ordered to pay such compensation shall also suffer imprisonment for a period not exceeding six months or pay a fine not exceeding three thousand taka.

Discussion: In order to impose the punishments under this section, 'the Court must be satisfied that the case is willfully false and that the complaint has been brought, not bonafide for furthering the ends of justice but for some ulterior object such as to harass the accused or to bring pressure on them to achieve some other purpose.'[*Ref. 18 DLR 206]* If the complainant is present he is bound to show cause immediately. He can not insist upon the grant of an adjournment for the purpose. [*Ref. AIR 1929 Bom. 287*]

The fact in brief in the case of *Nandkumar Krishnarao Navgire vs Jananath Laxman Kushalkar And ... on 23 July, 1997 cited in 1999 CriLJ 5022, JT 1998 (4) SC 249, 1998 (2) MPLJ 111* that "the State at the instance of the complainant had prosecuted the appellant and another on charges of cheating, criminal breach of trust, etc. The appellant was acquitted of the charges by the Presiding Officer of the Court who issued simultaneously a notice to the complainant-respondent as to why he should not be ordered to pay compensation under Section 250 of the Criminal Procedure Code. By the time the respondent could give his response, the Presiding Officer got changed. The succeeding one took the view that he had no jurisdiction to proceed further in the matter under Section 250 of the CrPC. He opined that he jurisdiction conferred on a Magistrate under Section 250 of the CrPC was personal to the incumbent and that a successor could not continue with the proceedings. Thereafter, this was upheld by the High Court in revision and then by the Supreme Court of India." While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law.

One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. [Ref. Rajeswar Tiwari & Ors. vs Nanda Kishore Roy on 19 August, 2010: http://indiankanoon.org/doc/ 60838/]

Whether the expression 'friovolous accusations in cases tried by Magistrates' is correct?

Before starting the section 250 of our code of criminal procedure of 1898 it has headed that *'friovolous accusations in cases tried by Magistrates.***'** This expression is of course defective as the section 250 of the said code has started with the expression 'if in any case instituted upon complaint or upon information… and the expression *any case* does not mean the cases only tried by the Magistrates. In fact, the expression 'friovolous accusations in cases tried by Magistrates' has been substituted by Ordinance No XXIV of 1982, S.19 for the expression 'friovolous accusations in cases tried by Magistrates' Section 250 of the said code not only provide the authority of taking action in respect of the cases tried only by the Magistartes but also in respect of the cases tried by other Courts i. e. the cases where the Magistrate can discharge the accused, can give the order or orders against the complainant or the informant.

7.81 Model judgment-1 for bringing false case

DISTRICT: GAIBANDHA
IN THE COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing Judgment: 14th February 2010
General Register Case No… of 2005
Arising out of Gaibandha Police Station Case Number… dated 13.04.2005
The State ... Prosecution
-Versus-
Hunan Hokkani and others ... Accused -petitioners
Under section 379 of the Penal Code
Mr. Md. Ayub Ali Prodhan APP ...For the state
Mr. Salauddin Salim, Legal Practitioner ... For the accused petitioners

JUDGMENT

Hunan Hokkani and others having been depicted as offenders for theft under section 379 of penal code faced trial of charge under section 379 of penal code in General Register case being No… of 2005 arising out of Gaibandha Police Station Case Number... dated 13.04.2005

POINTS FOR DETERMINATION

1. Whether the alleged fact was committed? 2. Whether the fact constituted the alleged offence? 3. Whether these accused persons committed the alleged offence? 4. Whether the prosecution has been able to prove the alleged transgression beyond all reasonable doubt?

2. The prosecution case in brief is that for the extension of Gaibandha Lakshipur-Dariapur road a tender was advertised and being the highest bidder the accused Hunan Hokkani got legally the work order for cutting 44 trees and thereafter he cut the said 44(forty four) trees along with other 8(eight) trees and thereafter the informant lodged the first information (FI) and the officer in charge after recording the same in B.P. Form 27 forwarded the first information report (FIR) to the learned court.

3. On the basis of such allegation Gaibandha Police station case being No… dated on 13.04.2005 was started. The investigating officer of this case after investigating into the matter submitted the police report on 06.10.2005 recommending for prosecution in respect of accused of this case except the arrested accused Nurul Islam who was recommended for discharge.

4. On 29.01.2009 charge under section 379 of penal code was framed against the accused which was read over and explained to them and after hearing the same the accused pleaded their innocence.

DISCUSSION AND DECISION

5. The prosecution to bring home charge against the accused examined 6 (six) witnesses out of 10 (ten*)* police reported witnesses and thereafter the learned APP Ayub Ali Prodhan made his submission in writing on 26.01.2010 to close the taking of evidence and prayed for the next proceeding.

6. Defense put forward the accused as demonstrated from the trend of cross examination was that the accused were innocent and the first information (FI) had been falsely lodged and engineered by police at the instance of the informant's interest.

7. PW 1 Md. Khorshed Alam in his examination in chief testified that "গাইবান্ধা দাড়িয়াপুর লক্ষীপুর রাস্তা সম্প্রসারণের জন্য বিভিন্ন প্রজাতির ৪৪টি গাছ দরপত্রের মাধ্যমে বিক্রয় করা হয়। সর্বোচ্চ করদাতা হিসাবে হুনান-হক্কানী, ব্রিজ রোড গাইবান্ধা (১নং আসামী)-কে গাছগুলো অপসারণের জন্য Work order দেয়া হয়। Work order দেয়ার সময় অফিসের প্রতিনিধি হিসাবে উপসহকারী প্রকৌশলী এর নিকট থেকে বুঝে নেয়ার জন্য (গাছগুলো) বলা হয়। কিন্তু ১নং আসামী উপ-সহকারী প্রকৌশলী-এর নিকট যোগাযোগ না করে টেন্ডারের অন্তর্ভূক্ত ৪৪টি গাছসহ এজাহার ভূক্ত আরো বিভিন্ন প্রজাতির ৮টি গাছ কর্তন করে।

He also testified in his cross examination that "হুনান হক্কানী আমাদের বৈধ ঠিকাদার। ঐ সময় উক্ত রাস্তা মিনি বিশ্বরাস্তা করার জন্য দু'ধারের গাছগুলো অপসারণের জন্য টেন্ডার দেয়া হয়। আসামী টেন্ডারের হিসাবে ২,৫৬,০০০/= টাকা ও আরো কিছু টাকা অফিসে জমাদেন।

He has further stated in his cross examination that আমি যে ৪/৫ বার ঘটনাস্থলে গিয়েছিলাম সেই সময় আসামীর সাথে আমার দেখা হয়নি। He has asserted in his cross examination that অবৈধভাবে গাছকাটা বিষয়ে (Work order)-এর বাহিরে আমি সংশ্লিষ্ট মেম্বার ও চেয়ারম্যানকে মৌখিকভাবে জানিয়েছিলাম।

He has deposed in his cross examination that Work order-এর বহির্ভূত গাছকাটার সময় আমি দেখিনি। He has also testified in his cross examination that আসামীদের বাড়ি হতে কোন গাছ উদ্ধার হয়নি। গাছ কাটার সময় উপসহকারী প্রকৌশলীর উপস্থিত থাকার কথা।"

8. PW 2 Md. Afzal Hossen in his examination in chief stated that লক্ষীপুর দাড়িয়াপুর রাস্তার উন্নয়নমূলক কাজ করার জন্য ৪৪টি গাছ প্রতিবন্ধকতা

সৃষ্টি করলে সেগুলো কাটার জন্য টেন্ডার আহবান করা হয়। টেন্ডারে হুনান হক্কানী সফল করদাতা হন এবং তার অনুকুলে কার্যাদেশ দেয়া হয়। কার্যাদেশ দেয়ার পর আসামী কার্যাদেশে উলেখিত ৪৪টিসহ আরো ৮টি গাছ বেশী কাটে। He has also testified in his cross examination that সংবাদদাত খোরশেদ আলম আমার অধঃ স্তন কর্মকার্তা।

আমি অতিরিক্ত গাছকাটার কথা শুনে সবার আগে থানায় খবর দিতে যাই। জেলা পরিষদের সচিবও থানাকে অবহিত করে। He has also testified in his cross examination that আমি আসামীদেরকে ঘটনাস্থলে ঐ সময় দেখেনি। আমি ঐ রাস্তায় ঘটনার ২ বার ঐ সময়ের মধ্যে গিয়েছিলাম। আসামী একজন সফল ঠিকাদার। He has asserted in his cross examination that রাস্তা সম্প্রসারণের কাজে রাস্তার জায়গায় মরা ও জীবিত গাছ কাটাতে হয়। ঘটনার পরে পুলিশ কতদিন পর আমার জবানবন্দী নিযেছিল তা বলতে পারবো না। আমার সাথে বাদীর, ফজলার রহমান, সুলতান মিয়ার ও জবানবন্দী থানায় একসাথে নিয়েছে। He has deposed in his cross examination that সত্য নহে যে, ঠিকাদারের নিকট আমি টাকা দাবি করেছিলাম এবং এ জন্য মনোমালিন্য সৃষ্টি হয়েছিল। সত্য নহে যে, আমরা সঠিকভাবে কাজ বুঝে দেইনি He has declared in giving the answer to the question put by the Court that... গাছগুলো (৪৪টি) বুঝে দেয়ার জন্য ০১.০৪.২০০৫ হতে ১৩.০৪.২০০৫ তারিখে আসামীকে বলেছিলাম।

9. PW 3 Md. Noor Alam in his cross examination has testified that আমি যখন মামলা রুজু করি তখন শুধু অভিযোগপত্র বা এজাহার পেয়েছিলাম। আর অন্যকোন কাগজ পাইনি।

10. Hasan Imam in his examination in chief has affirmed that গাইবান্ধার থানার সাধারন ডাইরী নং-৬১০ তারিখ ১৩.৪.২০০৫ মোতাবেক ৪ জন সাক্ষীর উপস্থিতিতে একটি সিজারলিষ্ট তৈরি করি। He has testified in his cross examination that মামলা হওয়ার আগে আমি জিডিমূলে আলামত জব্দ করি। He has stated in his cross examination that আমি যে এলাকায় আলামত জব্দ করেছি সেই এলাকার কোন গন্যমান্য ব্যক্তিকে (চেয়ারম্যান বা মেম্বারকে) সাক্ষী করেনি। He has deposed in his cross examination that আশে পাশে কোন বাড়িঘর বা দোকান ছিল না। ঘটনাস্থল হতে কতদূরত্বে বাড়িঘর ছিল তা বলতে পারবো না। আমি এই মামলার আলামত জব্দের সময় কোন আসামীকে পাইনি। He has stated in his cross examination that আমার সেদিনে জব্দকৃত আলামত আজ আমার সামনে এই আদালতে নেই।"

11. Karjan Chawdury in his examination in Chief has testified that ঘটনার তারিখ বলতে পারবো না। বিকাল ৪.০০ টার দিকের ঘটনা শুনি। কার নিকট শুনেছি তা এখন স্মরণ নাই। আমি শুনি যে জেলা পরিষদের কাজ অনুমতি

নিয়ে কাটতেছে ২ দিন ধরে। পরে পুলিশ গিয়ে গাছ আটক করে এবং পুলিশ স্বাক্ষর দিতে বললে স্বাক্ষর দেই। এর বেশি কিছু জানিনা। এই আমার জবানবন্দী।"

12. PW- 06 Md. Masud Rana in his cross examination has asserted that আমি ১৪.০৪.২০০৫ইং তারিখ সকাল ১০.১৫ ঘটিকায় ঘটনাস্থলে যাই। আমি ঘটনাস্থলে ঐ দিন গিয়ে এজাহার নামীয় কোন আসামীকে *দেখেনি।* আমার সংগে একজন কনস্টাবল গিয়েছিল যার নাম মনে নাই। ঈ/উ-তে ও তার নাম উল্লেখ নেই। He has testified in his cross examination that ঐ এলাকার চেয়ারম্যান বা মেম্বারকে এই ঘটনা সম্পর্কে জিজ্ঞাসাবাদ করিনি। He has declared in his cross examination that তাজুল ইসলাম গন্যমান্য ব্যক্তি। তাজুল ইসলাম কি করে মনে নাই। সিডি (ঈ/উ)-তে ও নোট দেয়া নেই। তাজুল ইসলাম কি করে। কিসের ভিত্তিতে তাজুল ইসলাম গন্যমান্য ব্যক্তি তা মনে নাই। এবং ঈ/উ-তে ও কোন তথ্য ও নাই। He has stated in his cross examination that পুলিশ রিপোর্টে উলেখিত সাক্ষীগণ ব্যতিত আরো সাক্ষীদেরকে জিজ্ঞাসাবাদ করেছিলাম কিন্তু জবানবন্দী লিখি নাই। He has testified in his cross examination that অন্যান্য লোকজন কে তা বলতে পারবো না। এ ব্যাপারে ঈ/উ-তে কোন তথ্য বা নোট নেই। He has expressed in his cross examination that আসামী হুনান হক্কানী জেলা পরিষদের একজন বৈধ ঠিকাদার কিনা তা জানিনা। He has affirmed in his cross examination that ঐ সময় ঘটনাস্থলের রাস্তার দু'পাশে রাস্তা সম্প্রসারণের কাজ হইতেছিল। ঐ সময়ের আগে ঐ রাস্তার গাছ কাটা নিয়ে টেন্ডার দেয়াহয়েছিল এবং আমি জানতাম। হুনান হক্কানী গাইবান্ধা জেলা পরিষদ হতে বৈধভাবে ঐ রাস্তার দু'পাশের গাছের জন্য বৈধ ঠিকার হিসাবে কাজ পেয়েছিলেন কিনা তা আমি জানি না। আমি টেন্ডার সম্পর্কিত কোন কাগজ জব্দ করিনি। He has also testified in his cross examination that হুনান হক্কানীকে ঘটনাস্থলের রাস্তার দু'পাশের মরা ও শুকনা গাছের হস্তান্তর পত্র দেয়া হয়েছিল এবং তা আমি জানতাম। He in addition to earlier statement deposed in his cross examination that সাক্ষী আফজাল হোসেন এর লিপিবদ্ধ জবানবন্দী আমি নিজ হাতে লিখিনি তবে পি.এস.আই. ফাহিমা হায়দার আমার কথামত লিখেছিল। অন্যান্য সাক্ষীদের জবানবন্দী ও চার্জশীর্টের ক্ষেত্রেও তাই হয়েছে। He has also testified in his cross examination that আসামী হুনান হক্কানী, ১ম শ্রেণীর একজন ঠিকাদার সে সম্পর্কে তদন্তে কিছু জানতে পারি নাই। দরপত্র অনুযায়ী ৪৪টি গাছের পৃথকীকরণ ও চিহ্নিত করন করেছিলাম। কবে- কখন উক্ত পৃথকীকরণ ও চিহ্নিতকরণ করেছিলাম তা তদন্ত রিপোর্টে বা ঈ/উ-তে কিছু নাই। He has also deposed in his cross examination that আমার এই ত্রুটিপূর্ণ তদন্তের কারনে হুনান হক্কানী নিঃস্ব হয়েছে সত্য নহে। আমার তদন্ত ত্রুটিপূর্ণ- সত্য নহে। আমি জেলা পরিষদের কর্মকর্তার কর্তৃক প্রভাবিত হয়ে এই তদন্ত রিপোার্ট দিয়েছেন- সত্য নহে।"

13. Accused has highlighted lot of grievances in bringing home contentions. Contentions pressed into service are catalogued there under:

    i. Delay of 12 days of lodging the first information from the first date of occurrence had no reasonable and satisfactory reasons.

    ii. Independent witnesses who are close neighbours of the accused or the members or the chairman of the locality had not been examined in support of the prosecution and adverse presumption under section 114(g) of the Evidence Act 1872 has arisen against the prosecution.

    iii. Material witnesses mentioned in the police report namely Tajul Islam, Sultan Hossain, Fazlar Rahman, Ayub Ali and Amjad whose name has been mentioned in the sketch map's description had not been produced and examined and adverse inference is drawn against prosecution and by this non production of material and important close-neighbour witnesses prosecution case had become doubtful.

    vi. No reliance can be placed on the contradictory evidence of the interested witnesses.

Contention No.1

14. Though the first information (FI) lodged by the informant under section 154 of the code criminal procedure in connection with Regulation 243 and 244 of Police Regulations 1943 is not substantive evidence but important in respect of obtaining the early information of alleged criminal activity. It is also necessary for showing reasonable and satisfactory causes of lodging the delayed first information. For this in the case of KARIM Vs STATE reported in 15 DLR (WP) 135 para-14 it was held that the delay of more than 12 hours in making the report to the police makes the prosecution case all the more doubtful.

15. In the first information report (FIR) it has been stated that the informant lodged the first information (FI) with the police station after 12 days of the occurrence and the police report does not contain the reasonable and satisfactory reasons for the said delay. According to section 23 of the Police Act 1861 it was the duty of the investigating officer to collect and lay down the intelligence affecting public peace i.e. correct intelligence in respect of the delayed first information. After perusal of the police report of this case it appears to me that the police report does not contain any

intelligence relating to the delay of 12 days of lodging the first information and no information has been written even either in the police report or in the case diary and accordingly the contention No.1 having carried *substance is accepted.*

16. Contention Nos. 2 and 3:

Contention Nos. 2 and 3 are dealt together. *As per the description of the index of the sketch map*, there is a house of one Amjad on very close of the place of occurrence and the members of the said Amjad family mentioned in sketch map as 'D' live around the place of occurrence and as per the evidence given by PWs *none of the persons of the said house has been examined and police reported witnesses Nos. 2, 5,, 6, and 7 had not been also produced and examined*. Non examination of the close-neighbuors and police reported witnesses call for an adverse presumption under section 114(g) of the Evidence Act. In respect of this the following laws have been declared by the Supreme Court of Bangladesh is "Non-examination of independent witnesses, especially some of the close neighbours calls for a presumption against the prosecution. This view finds support from the case reported in 25 DLR 398. *Kausarun Nessa and another vs. State* 48 DLR 196" and "As there is not a single independent and disinterested witness to support the prosecution case and admitted enmity is in existence, it is unsafe to convict the petitioner on the basis of the evidence of interested prosecution witnesses." 28 BLD (AD) 106

17. Section 114(g) of the Evidence Act, 1872 postulates that non-examination of independent witnesses raises a presumption against prosecution. Section 134 of the Evidence Act enshrines that no particular number of witnesses shall in any case be required for proof of any fact. Law does not, thus, require particular number of witnesses to prove a case and conviction may be well founded even on testimony of a solitary witness provided his credibility is not shaken by any adverse circumstances against him and at the same time convinced that he is a truthful witness. Evidence on a point is to be judged not by the number of witnesses produced but by its inherent truth. The well known maxim which is a Golden Rule that evidence has to be weighed and not counted has been, thus, given statutory placement in section 134 of the Evidence Act.

18. It is true that prosecution is bound to produce and examine witnesses who are essential to unfolding of narrative on which prosecution case is based but it can not be also laid down as an inflexible Rule that if large number of persons are present at the

time of place of occurrence, prosecution is bound to call and examine each and everyone of persons present at the time of occurrence. There is no good reason for castigating the prosecution for not examining more or all witnesses to speak about the occurrence. It is up to the prosecution to call and examine persons and witnesses in support of prosecution case. Non-examination of vital and necessary witnesses in proof of guilt of accused person shall put prosecution case into peril and prosecution case shall fall to the ground.

19. No explanation had been even assigned for the non examination of the family members of one Amjad who are the close neighbours and the police reported witnesses by the prosecution. Non-production of them was very much fatal for prosecution case and the presumption contemplated in section 114(g) of the Evidence Act must follow and accordingly contention Nos. 2 and 3 having carried substance are accepted.

Contention No. 4

20. As per the testimony of PW 1 who is the informant of this case, the accused Hunan Hokkani being numbered 1 (one) in the FIR was the highest bidder and lawfully obtained the tender and work order from the Zila Parishad Authority. He in his cross examination testified that the accused Hunan Hokkani was a valid contractor and after obtaining the tender lawfully paid taka 2, 56,000.00 and this fact has been corroborated by the testimonies of PW 2 and PW 5 and there is no testimony which can discard the aforesaid fact but the investigating officer of this case being PW6 has testified that he does not know whether accused Hunan Hokkani was a valid contractor of Zila Parishad and he even does not know the admitted fact of getting the tender and work order and these absolutely indicate the improper investigation. He also testified that he went to the place of occurrence 4/5 times but he did not see any accused. Even he further testified in his cross examination that he did not see the cutting of the trees exceeding 44 trees.

21. The vital point of fact for considering the matter of committing the alleged transgression is whether the accused Hunan Hokkani cut more than 44 trees. In respect of this, the PW 1 has testified in his cross examination that he did not see the cutting of the trees exceeding 44 trees. PW 2 is silent about this fact. PW 3 is the recording officer of this case and PW 4 is a witness who seized the alamot of this case being authorised by General Diary (GD) being

No. 610 dated 13.04.2005 before recording the first information lodged by the informant and these two witnesses have no part to see the matter of cutting more than 44 trees. PW5 testified that he heard that accused Hunan Hokkani was cutting the trees for two days with the permission of the Zila Parishad Authority. Though the investigating officer of this case testified in his cross examination that he has separated and identified the 44 trees as per the tender but he has not mentioned any information or intelligence either in the police report or in the Case Diary and even he testified nothing about the same.

22. If an investigating officer says that he does not know the admitted fact of getting the tender and the work order which is mentioned in the FIR, it generally arises a question that what type of investigation was done by him. The fact of unknowingness of the investigating officer in respect of the aforementioned admitted as well as important facts indicates clearly the improper investigation. Though the investigating officer has mentioned in his submitted sketch map about the existence of the family of one Amjad near at the place of occurrence but he has not had any statement of any members of the said family and that even of Amjad. The investigating officer of this case as per deposition of PW 2 has recorded the statements of the witnesses in the police station. For the aforementioned reasons, it is clear that the investigating officer had not collected the intelligence for which he was under the responsibility according to section 23 of the Police Act 1861 and accordingly it is necessary to inform the aforesaid matter of improper investigation to the concerned authority of the investigating officer for taking proper step.

23. This is a vital question of law that if the information of the Commission of a cognizable crime is first reached to police, what will be the position of that information in the eye of law. Regulation 243 (c) of Bangladesh Police Regulation (PR-1943) provides clearly that "The information of the commission of a cognisable crime that shall first reach the police whether oral or written, shall be treated as the first information. It may be given by a person acquainted with the facts directly or on hearsay but in either case it constitutes the first information required by law, upon which the enquiry under Section 157, Code of Criminal procedure shall be taken up when hearsay information is given, the station officer shall not wait to record as first information, the statement of the actual complainant or an eye witnesses." Now the term "regulation" whether law and the law answers that "regulation" absolutely is law like any law

existing in our country. Article 152 of the Constitution of People's Republic of Bangladesh provides that "Law means any Act, ordinance, order, rule, regulation, bye-law, notification or other legal instrument and any custom or usage having the force of law in Bangladesh." Hence, the General Diary being No. 610 dated 13.04.2005 should be treated as the First information Report (FIR). This conception of law has been upheld by the Supreme Court of Bangladesh in the case of MUSLIMUDDIN vs. STATE reported in 38 DLR (AD) 311 Para-45 i.e. "In the early morning 'somebody' was sent to the police station to give information about this gruesome murder. In point of time that information carried to the police 'by somebody' is the First Information Report within the meaning of section 154 of Cr PC and all subsequent information fall within the purview of section 161 of the Cr PC." and this law has been also declared by the said court thereafter in different cases reported particularly in 46 DLR (1994) page-575, 1987 BLD (AD) 1, 57 DLR 513, 59 DLR 653 Para-53 and 53 DLR (AD) 115. The prosecution has not had the notice of that General Diary (GD) being No. 610 dated 13.04.2005 and this absolutely indicates the absolute doubt in respect of the alleged allegation and thus the aforementioned positions and contradictions make absolute doubt in respect of the prosecution case.

23. On a close analysis of testimonies of PWs it appears to me that the prosecution has been failed to prove the charge against the accused beyond all reasonable doubt. Court as a rule of prudence and caution and in order to exclude every possibility of involvement of innocent person in a case by prosecution along with guilty person or persons always look for corroboration by some reliable witnesses to create probable basis for basing conviction. It is though true that on the strength of section 134 of the Evidence Act conviction can be awarded even on the basis of testimony of a single witness but testimony of PW 1 was not of such a quality as it was required to be relied upon without sufficient corroboration and he being an informant in the case can be characterised to be an interested witness.

From the above facts and circumstances and evidence on record I am of the opinion that the prosecution has not been able to prove charge against the accused and as a result the accused petitioners are entitled to get acquittal order and hence it is ordered that the accused are acquitted and free to go now if they are not required to be detained in connection with any other offences. Sureties are discharged from all the liability of the respective bond.

In view of the aforementioned reasons and orders I am of the opinion that the accusation against the accused was false and either frivolous or vexatious and I am also satisfied that this case is willfully false and that the allegation has been brought, not bona fide for furthering the ends of justice but for some ulterior object such as to harass the accused or bring pressure on them to achieve some other purpose and accordingly issue a summons upon the informant to appear in person and show cause on the next date as to why he should not be directed to pay the compensation to such accused. Next date 18.02.2010 is fixed for the appearance and showing cause.

Let a copy of this judgment be communicated to the office of the District Superintendent of Police, Gaibandha for taking necessary action in respect of the improper investigation done by the investigating officer of this case. The office is directed accordingly.

Name…
Senior Judicial Magistrate 2nd Court
Gaibandha

Next Order No…

DISTRICT: GAIBANDHA
IN THE COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing Judgment: 14th February 2010
General Register Case No… of 2005
Arising out of Gaibandha Police Station Case Number… dated 13.04.2005
The State ...Prosecution
-Versus-
Hunan Hokkani and others ...Accused –petitioners
Under section 379 of the Penal Code
Mr. Md. Ayub Ali Prodhan APP ... For the state
Mr. Salauddin Salim, Legal Practitioner ... For the accused petitioners

Order No…

Seen the aforementioned note and the appeared informant summoned under section 250 of the code of criminal. The informant appearing along with the learned legal practitioner Sirajul Islam Babu and others submits a time petition for showing the written cause. After perusal of the same it appears to this court that the grounds for which he seeks time is not satisfactory and sufficient as he availed the opportunity for the same. Moreover, section 250 of the code of criminal procedure provides the forthwith show cause when the informant or the complainant is present and in this case as he was not present on the date of pronouncing the judgment, he was show caused and provided the opportunity to show the causes and accordingly without showing the causes to seek an adjournment is not well intended. Moreover the informant was show caused by the order dated 14.02.2010 for showing causes as to why he should not pay compensation to the accused under section 250(1) of the code of criminal procedure. After getting an opportunity, the attempt of not showing the causes is not satisfactory and reasonable due to the law i.e.

"if the complainant is present he bound to show cause immediately. He can not insist upon the grant of an adjournment for the purpose" [AIR 1929 Bomb. 287]

In view of the aforementioned reasons the application dated 18.02.2010 for seeking an adjournment moved by the learned advocate Sirajul Islam Babu is hereby rejected. Thereafter the following question was put in Bengali in the open court to the informant

প্রশ্ন এই মামলার প্রাপ্ত সাক্ষ্য প্রমানের ভিত্তিতে গত ১৪.০২.২০১০ইং তারিখে প্রদত্ত রায়ের মাধ্যমে ব্যক্ত আপনার দায়েরকৃত এই মিথ্যা বা বিরক্তিকর মামলার জন্য কেন আপনার বিরদ্ধে আসামীদের প্রতি ক্ষতিপূরণ প্রদানের আদেশ দেয়া হবেনা তার কারন বলেন।

The informant then orally seeks time to show the causes in writing by the legal practitioner and hence for the ends of justice the oral application of the informant was orally allowed and accordingly the learned advocate Mr. Faruk Ahmed Prince and others submits the causes in writing with the signature and the thump impression of the informant. After perusal of the shown causes in writing by the informant of this case it appears to this court that the informant has tried to escape his responsibility and to shift the same upon the shoulders of others including the investigating officer of this case. The informant has tried to show that his function was his ex officio or government function.

Section 250 of the code of criminal procedure does not categorise between or among the informants or the complainants of any case instituted upon complaint or upon information given to a police officer or to a Magistrate.

Besides, the term "government" has been defined by the Supreme Court of Bangladesh in the case of SALEH AHMED KHAN vs. ADDITIONAL SECRETARY, RURAL DEVELOPMENT, M/O LOCAL GOVT. & ORS reported in 41 DLR (HCD) Page 210 Para- 9 provides that

"In the absence of any delegation of power, the Government means the President and unless provided for in the Rules of Business, a Government order must be approved or ordered by the President."

In this case, there is nothing in respect of the order of lodging the First Information (FI) by the informant as to any aforementioned delegated authority or power within the purview of Rules of Business and even the same has not either been approved or ordered by the President. The Constitution of the People's Republic of Bangladesh does not provide the immunity generally to make torture upon the individuals and moreover, all the fundamental rights guaranteed in the aforesaid constitution provide the protection of their rights. In the instant case, the informant lodging this false, frivolous or vexatious accusation as first information, has infringed the rights of the accused which necessitates proceeding under section 250 of the code of criminal procedure.

In view of the reasons mentioned in the judgment dated 14.02.2010 passed by this court in this case and the aforementioned reasons, the

show caused and appeared informant of this case is hereby convicted under section 250(2) of the code of criminal procedure and ordered to pay compensation of taka 500) five hundred) only to the accused and in default to undergo simple imprisonment for a period of 2(two) days.

In addition to the order passed under section 250(2) of the code of criminal procedure of direction of payment of the compensation, it is further ordered under section 250(5) of the same code that the informant ordered to pay such compensation shall also suffer simple imprisonment for a period of 10(ten) days more. Send the informant Khorshed Alom to jail through warrant of commitment. The office is directed accordingly

Name…
Senior Judicial Magistrate 2nd Court
Gaibandha

7.82 Model judgment-2 for bringing false General Register case

DISTRICT: GAIBANDHA
IN THE COURT OF JUDICAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Judicial Magistrate, Gaibandha.
Date of passing Judgment: 22nd March, 2009
General Register Case Number… of 2005
Arising out of: Fulsari Police Station Case Number dated 07.12.2005
The State ...Prosecution
-Versus-
Md. Aminul Islam and others ...Accused -petitioners
Under section: 447,323 and 324 of the Penal Code
Mr. Md. Mominur Rahman, CSI ...For the state
Mr. Md. Saiful Islam Sada with
Mr. Md. Rahmat ullah Azad
Mr. Md.Samsul Alom Hiru,
Legal Practitioners For the accused petitioners

JUDGMENT

1. Md. Aminul Islam and others having been depicted as offenders for simple hurt and hurt with dangerous weapon and criminal trespass faced trial of charges under sections 447, 323 and 324 of penal code in General Register(GR) case being No. 96 of 2005 arising out of Fulsari Police Station Case Number: 01 dated 07.12.2005.

2. The prosecution case in brief is that the informant Md. Salim Miah on 07.12.2005 lodged the first information with Fulsari police station alleging *inter alia* that he was used to see the property of his father in law and on 03.12.2005 he taking labourers Ashek Ali, Asharu and Gatu Sheikh was changing the old fence of his father in law's house and at the time of doing that the accused being armed with lathi, sora etc. entering into the periphery of the house and having the order of the accused Akbar Ali accused Amjad Ali causes hurt with lathi and accused Aminul Islam causes bloody injury on the back side of the head of Fatema Begum and thereafter the informant lodged the first information through his nephew Md. Atoar Rahman and the officer in charge after recording the same in B.P. Form 27 forwarded the first information report to the learned court.

3. On the basis of such allegation, Fulsari Police station case being No. 01 dated 07.12.2005 was started. The investigating officer of the case after investigating into the matter submitted the police report on 24.12.2005 recommending for prosecution.

4. On 13.04.2008 charges under sections 447, 323 and 324 of penal code were framed against the accused which were read over to them and after hearing the same accused pleaded their innocence except accused Md. Aminul Islam whose trial has been conducted under section 339B (I) of the code of criminal procedure and accused Amjad Ali who was not present on that day.

5. The prosecution to bring home charge against the accused examined five (5) witnesses out of 10 (ten) police reported witnesses. PW 1 Md. Salim Miah is the informant of this case, PW 2 Most. Fatema Begum is the wife of the informant, PW3 Abdul Majid @ Gatu is the brother in law of the informant, PW 4 Kahinur Begum is village relationship based sister in law of the informant and PW 5 Sada Miah is the brother in law of the informant.

6. Defense put forward the accused as demonstrated from the trend of cross examination was that the accused were innocent and the first information had been falsely lodged and engineered by police at the instance of his interest.

7. PW 1 Md. Salim Miah being the informant of this case in his examination in chief testified that there was an old fence on the North side of the house of his father in law and taking two labourers Ahek Ali and Asharu was changing the said fence. He in his examination in chief testified that the accused Akbar Ali gave order to his sons Aminul Islam and Amjad Ali to finish his life. He also in his examination in chief testified that the accused Aminul Islam stabbed on the crown of the head of his wife

   He in his cross examination testified that the house of his father in law is surrounded by the houses of on the north side Abdur Rahman, on the west side Wahed, on the south side Abdur Rahim, Sultan, Nasir uddin, Anowar Kshem, Shukna, Batashu, Razzak and many others and the house of the accused is surrounded by the houses of on the north side Sabed Ali, Sadrul, Ainuddin, Badsha, Hafij uddin, Chandu and Mostafa. He also in his cross examination testified that these persons are not the witnesses of this case. He also in his cross examination testified that at the time of committing the occurrence his married daughter Salina was in the house. He also in his cross examination testified that Ramisa Begum is his full sister and Akbar Ali is the husband of her sister. He further in his cross examination testified that accused Md. Aminul Islam is his nephew and he had been staying in abroad since six years from today. He also in his cross examination testified that he had given the bloody dress to the investigating officer but he had not had the same.

8. PW 2 Most. Fatema Begum in her examination in chief testified that at the time of entering into the periphery of the house accused Aminul Islam was being armed with sora and Amjad held lathi. She in her examination in chief testified that accused Aminul Islam caused bloody and deep injury on crown of her head. She also in her examination in chief testified that she was hospitalised for 21 (twenty one) days in Fulsari Health Complex. She in her cross examination testified that at the time of committing the occurrence 20/30 persons came on the place of occurrence.

   She in her cross examination testified that her daughter Salina, nephew Abdul and neighbour Taslim went to the hospital by the van by which she was carried and the van-wala was not known to her. She denied the suggestion that the accused Aminul Islam did not stab on the crown of her head.

9. PW3 Abdul Majid @ Gatu in his examination in chief testified that the accused Aminul Islam stabbed on the crown of the head of victim Fatema Begum and police took statement after 4 (four) days of the occurrence. He in his cross examination testified that at the time of committing the offence he did not rescue the informant and her wife. The victim was taken to the hospital with the van of his brother in law Nasir uddin. He denied the suggestion that the informant due to previous enmity has lodged this false case.

10. PW 4 Kahinur Begum in her examination in chief testified that the accused Aminul Islam stabbed on the crown of the head of victim Fatema Begum. She in her examination in chief testified that people after rescuing the victim taken to UDEKHALI hospital. She in her cross examination testified that she did not rescue the victim and she shouted there and due to her shouting the persons who came will not be named by her.

11. PW 5 Sada Miah in his examination in chief testified that he had heard that accused Aminul stabbed on the head of Fatema Begum. Salim and Fatema Begum were taken to UDEKHALI hospital with a van by 2/3 persons. He in her cross examination testified that what has been stated in the examination in chief is the hearsay. Police took his statement after 5 (five) days of the occurrence.

12. Accused has highlighted lot of grievances in bringing home contentions. Contentions pressed into service are catalogued there under:

    i. Delay of 4 (four) days of lodging the first information from the date of occurrence had no reasonable and satisfactory reasons.

ii. Independent witnesses who are close neighbours of the accused or the informant except had not been examined in support of the prosecution and adverse presumption under section 114(g) of the Evidence Act 1872 has arisen against the prosecution.

iii. Material witnesses mentioned in the police report namely Abdul, Ashek Ali, Asharu @ Lalmiah, Doctor Md. Rafiq ud doula and the investigating officer Ahammad Ali of this case and the seizure listed witnesses Asharu @ Lalmiah,Md. Md. Majid and Md. Roshok Ali had not been produced and examined and adverse inference is drawn against prosecution and by this non production of material and seizure listed witnesses prosecution case had become doubtful.

iv. No reliance can be placed on the contradictory evidence of the interested witnesses.

Contention No.1

13. Though the first information report under section 154 of the code criminal procedure in connection with Regulation 243 and 244 of Police Regulations

    1943 is not substantive evidence but important in respect of obtaining the early information of alleged criminal activity. It is also necessary for showing reasonable and satisfactory causes of lodging the delayed first information. For this in the case of KARIM Vs STATE reported in 15 DLR (WP) 135 para-14 it was held that the delay of more than 12 hours in making the report to the police makes the prosecution case all the more doubtful.

14. In the first information report it has been stated that the informant lodged the first information with the police station after 4(four) days of the occurrence through his nephew Md. Atoar Rahman due to unavailability of the proper person in his family.

But as per the evidence given by PW 1 in his cross examination that PW3 Abdul Majid @ Gatu is his brother in law and her married daughter Salina was in the house and the van was run by Salina, Abdul and Taslim. As these three capable and proper persons run and taken the victims to the hospital, any of them could lodge the first information just after the occurrence within reasonable time without causing any delay. According to section 23 of the Police Act 1861 it was the duty of the investigating officer to collect and lay down the intelligence affecting public peace i.e. correct intelligence in respect of the delayed first information. After perusal of the police report of this case it appears to

me that the police report does not contain any intelligence relating to the delay of 4 (four) days and the truthfulness unavailability of the proper person in his family and no information has been written even in the case diary and accordingly the contention No.1 having carried substance is accepted.

15. Contention Nos. 2 and 3:

Contention Nos. 2 and 3 are dealt together. As per the description of the index of the sketch map and the evidence given by PWs, families of the persons namely Abdur Rahman, Wahed, Abdur Rahim, Sultan, Nasir uddin, Anowar Kshem, Shukna, Batashu, Razzak, Sabed Ali, Sadrul, Ainuddin, Badsha, Hafij uddin, Chandu and Mostafa live around the place of occurrence and none of the persons of those families has been examined and police reported witnesses Nos. 5,6,7,9 and 10 had not been also examined. Non examination of close-neighbuors and police reported witnesses including the investigating officer as well as the doctor call for an adverse presumption under section 114(g) of the Evidence Act.

16. Section 114(g) of the Evidence Act, 1872 postulates that non-examination of independent witnesses raises a presumption against prosecution. Section 134 of the Evidence Act enshrines that no particular number of witnesses shall in any case be required for proof of any fact. Law does not, thus, require particular number of witnesses to prove a case and conviction may be well founded even on testimony of a solitary witness provided his credibility is not shaken by any adverse circumstances against him and at the same time convinced that he is a truthful witness. Evidence on a point is to be judged not by the number of witnesses produced but by its inherent truth. The well known maxim which is a Golden Rule that evidence has to be weighed and not counted has been, thus, given statutory placement in section 134 of the Evidence Act.

17. It is true that prosecution is bound to produce and examine witnesses who are essential to unfolding of narrative on which prosecution case is based but it can not be also laid down as an inflexible Rule that if large number of persons are present at the time of place of occurrence, prosecution is bound to call and examine each and everyone of persons present at the time of occurrence. There is no good reason for castigating the prosecution for not examining more or all witnesses to speak about the occurrence. It is up to the prosecution to call and examine persons and witnesses in support of prosecution case. Non-examination of vital and necessary witnesses

in proof of guilt of accused person shall put prosecution case into peril and prosecution case shall fall to the ground.

18. No explanation had been even assigned for the non examination of the close neighbours and the police reported witnesses including the investigating officer as well as the doctor by the prosecution. Non-production of them was very much fatal for prosecution case and the presumption contemplated in section 114(g) of the Evidence Act must follow and accordingly contention Nos. 2 and 3 having carried substance are accepted.

Contention No. 4

19. As per the record of this case the date of occurrence of the alleged offence was 03.12.2005 and the date of lodging the first information with the concerned police station was 07.12.2005. But PW 1 the informant of this case has testified in his examination in chief that the accused Aminul Islam stabbed on the crown of the head of victim Fatema Begum.

    Again PW 1 the informant of this case has testified that the accused Md. Aminul Islam had been staying in abroad for six years ago from today i.e. from 24.07.2008. Six years ago from 24.07.2008 means from 24.07.2002. Mathematically it is clear that the accused Md. Aminul Islam had been staying in abroad for six years ago from 24.07.2002 and accordingly it is absolutely clear that the accused Aminul Islam was not present even in Bangladesh at the time of committing the alleged offence and the question of committing the offence of stabbing on the crown of the head of victim Fatema Begum is absolutely false accusation. PW 3 in his examination in has testified that police took his statements and recorded the same under section 161 of the code of criminal procedure after 4(four) days of the alleged occurrence. PW 5 in his examination in has testified that police took his statements and recorded the same under section 161 of the code of criminal procedure after 5(five) days of the alleged occurrence and thus the aforementioned contradictions make doubt.

20. On a close analysis of testimonies of PWs it appears to me that the prosecution has been failed to prove the charge against the accused beyond all reasonable doubt. Court as a rule of prudence and caution and in order to exclude every possibility of involvement of innocent person in a case by prosecution along with guilty person or persons always look for corroboration by some reliable witnesses to create probable basis for basing conviction. It is though true that on the

strength of section 134 of the Evidence Act conviction can be awarded even on the basis of testimony of a single witness but testimony of PW 1 was not of such a quality as it was required to be relied upon without sufficient corroboration and he being an informant in the case can be characterised to be an interested witness.

From the above facts and circumstances and evidence on record I am in the opinion that the prosecution has not been able to prove charge against the accused and as a result the accused petitioners are entitled to get acquittal order and

Hence it is ordered

that the accused are acquitted and free to go now if they are not required to be detained in connection with any other offences. Sureties are discharged from all the liability of the respective bond.

In view of the aforementioned reasons and orders I am of the opinion that the accusation against the accused was false and either frivolous or vexatious and accordingly issue a summons upon the informant to appear and show cause on the next date as to why he should not pay compensation to such accused. Next date 23.04.2009 is fixed for the appearance and showing cause. The office is directed for the same.

Name…
Senior Judicial Magistrate 2nd Court
Gaibandha

DISTRICT: GAIBANDHA

N THE COURT OF JUDICAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Judicial Magistrate, Gaibandha.
Date of order 23 April 2009
General Register Case Number… of 2005
Arising out of: Fulsari Police Station Case Number…dated 07.12.2005
The State ... Prosecution

-Versus-

Md. Aminul Islam and others ... Accused -petitioners

Under section: 447,323 and 324 of the Penal Code

Mr. Md. Mominur Rahman, CSI ... For the state

Mr. Md. Saiful Islam Sada with

Mr. Md. Rahmat ullah Azad

Mr. Md.Samsul Alom Hiru,

Legal Practitioners For the accused petitioners

Order No…

অদ্য এজহার কারীর হাজিরা ও কারণ দর্শানোর জন্য ধার্য্য আছে। এজাহার কারী হাজির হইয়া বিজ্ঞ কৌসুলীর মাধ্যমে সময়ের প্রার্থনা করিয়াছেন। Seen the petition for time on behalf of the informant for this case in respect of showing causes.

Heard the learned legal practitioner on be half of the appeared informant of this case. He submits for seeking time that an appeal being No. 16 of 2009 has been proffered before the court of learned session's Judge. He also submits that the said appeal is pending before said court for the maintainability of the appeal. The date of hearing for the maintain ability of the appeal was fixed on 04.05.2009. He further submits that the appeal against the acquitted order dated 22.03.2009 had been preferred without the direction of the government required under section 417 of the Code of Criminal Procedure and for having the same an application has been forwarded to the government through proper authority.

But there is no legal bar for passing the order in this case as there is no stay order of the order of admitting the appeal which has been preferred by the informant without having the direction of the Government required under section 417 of the Code of Criminal Procedure.

Moreover, the informant was summoned by the order dated 22.03.2009 for showing causes in respect of payment of compensation to the accused of this case under section 250(2) of the Code of Criminal Procedure. For the ends of justice, an adjournment order was passed by this court on 23.04.2009. But it has been held that-

If the complainant is present he is bound to show cause immediately. He can not insist upon the grant of an adjournment for the purpose reported in AIR in 29 Bom 287. In this case, the informant, within the purview of section 250 of the Code of Criminal Procedure was and is present today before this court and hence he is bound to show cause as to why he should no pay compensation. In view of the aforementioned reasons the petition for seeking time for the grant of an adjournment dated 07.05.2009 moved by the learned legal practitioner Abu Ala Md. Siddikul Islam (Ripu) is rejected. Thereafter, the following question was put in Bengali to the informant.

প্রশ্ন এই মামলার প্রাপ্ত সাক্ষ্য প্রমানের ভিত্তিতে গত ২২.০৩.২০০৯ইং তারিখে প্রদত্ত রায়ের মাধ্যমে ব্যক্ত আপনার দায়েরকৃত এই মিথ্যা বা বিরক্তিকর মামলার জন্য কেন আপনার বিরদ্ধে আসামীদের প্রতি ক্ষতিপূরণ প্রদানের আদেশ দেয়া হবেনা তার কারন বলেন?

The informant standing on the dock after having time gave the following answer:

উত্তর: মামলা মিথ্যা নয় এবং এই মামলায় আসামীদের সম্পর্ক নিয়ে আমি যে সব কথা বলেছি তা সত্য। আমার স্ত্রী খুবই অসুস্থ।

There after the answer given by the informant in writing was reading over to him and he gave his signature on the paper of showing causes duly the said paper is also annexed with this order. Perused cause shown by the informant himself and after considering the same it appears to this court that the informant lodges the said false, frivolous or vexatious accusation as first information against the accused not bonafide for furthering the ends of Justice but for some ulterior object such as to harass the accused or bring to pressure on them to achieve some other purpose. In view of the reasons mentioned in the judgment date 22.3.2009 passed by this court in this case and the aforementioned reasons, the appeared informant of this case is convicted under section 250 (2) of the code of criminal procedure and ordered to pay compensation of taka 800/- (eight hundred) only to the accused and in

default to under go simple imprisonment for a period of 10 (ten) days. In addition to the order passed under section 250 (1) of the Code of Criminal Procedure directing payment of the compensation, it is further ordered under section 250 (5) of the same code that the informant ordered to pay such compensation shall also suffer simple imprisonment for a period of (3) three months only. Send the informant Md. Selim Miah to jail through warrant of Commitment. The office is directed for the same.

Name…
Senior Judicial Magistrate 2nd Court
Gaibandha

Chapter– 8

Inspection of Police Station

8.1 **Necessity of inspection of police station.**

Discussion: The necessity of making the inspection of the police station by the Chief Judicial Magistrate is definitely an important duty of the concerned Chief Judicial Magistartes or Chief Metropoltan Magistrates of the country. The law has given this authority of inspecting the function of the police station so that the police officers can work very correctly and cautiously. By the way of inspecting the police station and sending the copy of the report to the higher authority regularly the bad incidents occurred time to time in the police stations through out the country and published in different dailies can be checked and balamced. But the practical secenerio is that most of the Chief Judicial Magistrates or the Chief Metropolitan Magistrates of this country at present are not inspecting the police station regularly though the Criminal Rules and Orders-2009 has been enacted in 2009. However, rule 85(3) (4) of the Criminal Rules and Orders-2009 provides that-

"(3) The Chief Judicial Magistrate in a district or the Chief Metropolitan Magistrate in a Metropolitan area shall have the authority to inspect any police station within their respective jurisdictions to verify

i. If the processes are being promptly and duly served,

ii. If the Magistrate's orders are directed to the police under the code are being properly carried out and

iii. If the police officers are discharging their functions satisfactorily under the code while presenting the police file before the Magistrate.

iv. After such inspection, the Chief Judicial Magistrate shall send a report to the superintendent of police and the Chief Metropolitan Magistrate shall send a report to the Metroplitan police commissioner in Metropolitan area making comments on the performance of the concerned police officers. A copy of the said report shall also be forwarded to the concerned Sessions Judge"

The following is the short write up as to this matter of inspection which is necessary to know:

Authority of Inspection:

Rule 85(3) of CrRO-2009 and section 4A (2) (a) of CrPC

Scope of Inspection under Rule 85(3) of CrRO-2009 and Regulation 19 of PR-1943:

i. Whether the processes are being promptly and duly served;

ii. Whether the Magistrate's orders directed to the Police are being properly carried out;

iii. Whether the Police Officers are discharging their functions satisfactorily under the Code while presenting the Police file before the Magistrate;

iv. the general diary and the manner in which it is written up;

v. the recording of vital statistics;

vi. the proper working of the Arms Act;

vii. the methods of collecting crop statistics;

viii. the working of the rural police;

ix. the general sate of crime in the police station and any reasons for its increase or decrease;

x. whether the Sub-Inspector appears to have a proper knowledge of his duties, whether he is in touch with the respectable inhabitants of his charge, has acquired local knowledge, and takes an interest in his works;

xi. whether the police station officials appear to be working properly and have a proper knowledge of their duties and the neighborhood;

xii. Whether the police station has been regularly and properly inspected.

POST INSPECTION FUNCTIONS:

i. Inspection notes should be written in the nature of brief and to the point *[Regulation 52 of PR-1943]*

ii. An inspection report should be made making comments on the performance of the concerned Police Officers and sent to the Superintendent of Police and forwarded to the concerned Sessions Judge of the District. *[Rule 85(4) of CrRO-2009]*

iii. For any gross negligence in the matter of compliance with the Court's order on the basis of the report of Chief Judicial Magistrate or Chief Metroplitan Magistrate, the Superintendent of Police after taking necessary disciplinary action shall inform CJM as to the action so taken. *[Rule 66(2) of CrRO-2009]*

iv. Chief Judicial Magistrate or Chief Metroplitan Magistrate can independently take action for the said gross negligence or violation of the Court's order under section 29 of the Police Act 1861. *[Section 29 of Police Act 1861]*

v. Chief Judicial Magistrate or Chief Metroplitan Magistrate has the authority to report to IGP as to the officers above inspector. *[Regulation 20(b) of PR-1943]*.

vi. Chief Judicial Magistrate or Chief Metroplitan Magistrate has the authority to be accompanied by a guard of one head constable and six constables on the occasion of his visits to the interior. *[Regulation 691 of PR-1943]*

8.2 Model office order and police station inspection report

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
সিনিয়র জুডিসিয়াল ম্যাজিস্ট্রেট
গাইবান্ধা।

স্মারক নং- ৩৯৭ তারিখঃ ০৭.১২.২০১০ইং

বিষয়ঃ Criminal Rules and Orders ২০০৯-এর Rule ৮৫(৩)-এর পরিপ্রেক্ষিতে পুলিশস্টেশন পরিদর্শন প্রসংঙ্গে।

উপযুক্ত বিষয়ের প্রেক্ষিতে নির্দেশিত হয়ে জানানো যাচ্ছে যে, গাইবান্ধা জেলার মাননীয় চীফ জুডিসিয়াল ম্যাজিস্ট্রেট, জনাব মোঃ জালাল উদ্দিন নিম্নে বর্ণিত পুলিশ স্টেশন পার্শ্বে বর্নিত সময়সূচী অনুযায়ী পরিদর্শন করিবেন।

পরিদর্শন সময়সূচী

তারিখ ১০.১২.২০১০ইং
সকাল-১০.০০ টায় - গাইবান্ধা থানা
বেলা-৩.৩০ টায়- সুন্দরগঞ্জ থানা

তারিখ ১১.১২.২০১০ইং
সকাল -৯.৩০ টায়- গোবিন্দগঞ্জ থানা
সকাল- ১১.০০ টায়- পলাশাবড়ী থানা
দুপুর - ১২.৩০ টায়- সাদুল্যাপুর থানা

উক্ত পরিদর্শনের নিমিত্তে প্রয়োজনীয় সকল ব্যবস্থা গ্রহণের জন্য অনুরোধ করা হলো।

(মোঃ আজিজুর রহমান)
সিনিয়র জুডিসিয়াল ম্যাজিস্ট্রেট
গাইবান্ধা।

জ্ঞাতার্থে ও কার্যার্থেঃ
১। জেলা পুলিশ তত্ত্বাবধায়ক, গাইবান্ধা।
২। ভারপ্রাপ্ত কর্মকর্তা (সকল থানা)
৩। কোর্ট ইন্সপেক্টর/সাব- ইন্সপেক্টর, গাইবান্ধা।
৪। অফিস কপি।

People's Republic of Bangladesh
Office of the Chief Judicial Magistrate
Gaibandha

Subject: Police station Inspection Report

Police station: Polasbari, Dist: Gaibandha, Total Union- xx

Population: xxxx Area: xxxxx Square Km, Remote Union: x

Notes of Inspection:

1. Name and designation of the Inspecting Magistrate: Mr. Md. Jalal Uddin, Chief Judicial Magistrate, Gaibandha with Md. Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
2. Date of Inspection : 11th December 2010.
3. Name of officer in charge of the police station: S. M Ahsan Habib.

   Date of joining of the officer in charge 30/07/2010
4. Number of other officers and their designation :

SL	Name of Post	Number of Approved Post	Working Persons	Non working Post	Comment
1	Inspector	1	1	0	
2	S I	6	4	2	Residue is necessary
3	A S I	4	4	0	
4	Constable	31	20	13	Residue is necessary
	Sweeper	1	1	0	

5. Whether the processes are being promptly and duly served.

At the time of the inspection, it is clearly observed that the processes register particularly the arrest warrant (AW) and the summons register do not contain the full data as to the promptly and duly service of the processes.

Arrest Warrant (AW) register does not contain whether regulation 323 of PR- 1943 is complied fully.

Strong recommendations:

i. All processes (arrest warrant and summons) shall be promptly and duly carried out in view of section 23 of the police Act 1861 and the law declared by the Appellate Division of the Supreme Court of Bangladesh reported in III ADC page-64 para-17.

ii. Either Regulation 323 of PR- 1943 in connection with or without Rule- 65 of CrRO-2009 has to be complied completely. Warrant report should be submitted before the court concerned in B.P Form No. 55 (Reg.323, PR-1943)

iii. All columns of arrest warrant and summons registers should be written properly so that without looking into the dispatch register one can know the compliance/ non-compliance information of all processes.

6. Whether the Judicial Magistrate's orders directed to the police are being properly carried out. Generally different Judicial Magistrate Courts pass different orders which ore communicated to the officer in charge in the short and known to them as order sheet (O/S). The different order sheets are received in the police station in a register called PART-I register.

The concerned register does not contain the full information as to the compliance of the said order sheets and even the necessary columns for all necessary information.

Strong recommendations

i. The concerned register should contain all necessary columns and information so that without looking into the dispatch register one can know the compliance or non compliance information of the order sheets.

ii. Every sub-inspector should maintain a personal file in respect of the order sheets (O/S) directed and endorsed to him, so that one can easily know the information as to the compliance with the order sheets of the Judicial Magistrates.

7. Whether the police officers are discharging their functions satisfactorily under the code while presenting the Police file before the Magistrate.

Satisfactory function of the Police officers of the Police Station depends on the satisfactorily compliance with the provisions of CrPC Particularly the sections from 154 to 174 of CrPC and the sections from 195 to 199 of the said code.

Recommendation:

i. To study and exercise carefully the Cr.PC 1898, PR -1943 and Cr RO-2009.

8. Whether the general diary and the manner in which it is written up;

   No- error is seen at the time of inspecting the general diary and the manner in which it is written up.

9. Whether the recording of vital statistics is done perfectly;

   No chart of comparative vital statistics of increasing or decreasing cases is seen in the police station in view of B.P form 70 under Regulations 380 and 1111 of PR-1943.

10. Whether the sub-inspectors appear to have a proper knowledge of his duties and whether he is in touch with the respectable inhabitants of his charge.

    ii. No sub-inspector has shown any list of respectable inhabitants in writing of the locality.
    iii. No compliance of regulation 323 (C) of PR-1943 in respect of making and submitting a list of property of an absconder with the charge sheet along with the report as to the arrest warrant containing the signature of Union Parishad Chairman or a respectable inhabitant on the said list of the property.

Recommendation:

Every sub-inspector should have a list of locally respectable persons.

11. **Important instruction**:

i. All processes and order should be carried out or complied with promptly under section 23 of the Police Act 1861.

12. **Comments as a whole**:

The functions of the police station in terms of service of processes and maintaining the process register properly and complying with the orders of the courts are not completely satisfactory.

(Md. Jalal Uddin)
Chief Judicial Magistrate
Gaibandha

Copy of this report is forwarded and sent to the following authorities for necessary steps:
1. Learned Sessions Judge of Gaibandha.
2. District Superintended of Police of Gaibandha.

8.3 **Scope of inspection regulation from 243 to 410 of PR 1943**

Regulation 243

Recording of information under section 154, Criminal Procedure Code.($12, Act *V,1861.)*

a. The first information of cognizable crime mentioned in section 154, Code of Criminal procedure shall be drawn up by the Officer- in-charge of the police – in B. P. From No. 27 in accordance with the instruction printed with it.

b. The first information report shall be written by the officer taking the information in his own hand writing and shall be signed and sealed by him.

c. The information of the commission of a cognizable crime that shall first reach the police, whether oral or written, shall be treated as the first information. It may by a person acquainted with the facts directly or on hearsay, but in either case it constitutes the first information required by law, upon which the enquiry under section 157, Code of Criminal procedure, shall be taken up. When here say information of a crime is given, the station officer shall not wait to record, as the first information, the statement, of the actual complainant or an eye – witness.

d. A vague rumour shall be distinguished from a hearsay report. It shall not be reduced to writing or signed by the informant, but entered in the general diary, and should it, on subsequent information prove woll – founded, such subsequent information shall constitute the first information.

e. A telegram is not a writing given to the police signed by the person making the statement and, therefore, does not company with section 154, Code of Criminal Procedure. If, however, in the opinion of an officer receiving a telegram reporting the occurrence of a cognizable offence, the circumstances justify action being taken, her should himself lodge a first information on the basis of the telegram. If he does not take such action, he should make an entry in the general diary.

   In the case of a telephone massage reporting such an occurrence, the informant should be asked to come to the police – station to lodge general diary. If is considered necessary to start investigation on the basis of the message and the informant remains anonyms or can not be found, the officer receiving the massage must himself lodge the information on the basis there of.

f. Police Officers shall not defer drawing up the information report until they have tested the truth of the complaint. They shall not await the result of medical examination before recording a first information, when complaint is made of grievous hurt or other cognizable crime.

g. A constable left in charge of a station may accept a written report of a cognizable offence. He shall get the report signed by the person giving it, enter an abstract of it in the general diary and report the fact to the Officer– in– charge of the station. If the report of a cognizable offence is given such constable orally, he shall similarly enter the substance of in the general diary and the complainant or informant to the Officer–in– charge of the station with a note the case. If the report relates to the occurrence of heinous crime, he shall send immediate information to the Circle Inspector ; and if the fact of the case, as may occur in dacoity, murder, etc., require the immediate apprehension of the accused, he shall taken all possible steps to effect arrets.

h. First information reports, once recorded, shall on no account be cancelled by Section Officers.

Regulation - 244

First information to be recorded in all but certain cases ($ 12, Act V, 1861)

a. A first information shall be recorded in respect of every cognizable complaint preferred before the police, whether prima facie, false or true, whether serious or petty, whether relative to an offence punishable under the Indian penal Code or any special or local law. This does not apply to cases under section 34 of the police Act, 1861, or to offence against Municipal, Railway and Telegram bye – laws for which see regulation 254.

b. When a police Officer has been assaulted in the performance of his duties as a public servant he shall obtain the previous permission of an officer superior in rank to a Sub- Inspector before instituting a case where this can be done without detrimental delay. The responsibility for complying with this orders rests with the police officer who complaints of an assault. When first information of such an offence is given, the Officer –in – charge of a police – station is bound by the provisions of section 154 of the Code of Criminal procedure to record a first information.

c. When information is lodged at a police station, that a police officer has committed a cognizable offence, the Officer –in – charge should proceed to enquire in to the charge, but should send a copy of the first information immediately to the Superintended and to the District or Sub divisional Magistrate.

d. Section 21, 22 (1) read with section 25 and section 24 of the Criminal Tribes Act, 1924 (v1 of 1924) are cognizable by the police and in cases under these sections, first information report and charge – sheet shall be used. For an offence under section 22(2), which is non-cognizable, a report shall be submitted to the Magistrate for his taking cognizable and the offender shall be arrested by an Officer-in-charge of a police- station or any police officer not below the rank of a Sub-Inspector, no other officer being empowered the Act to arrest without a warrant.

Regulation -245

Cognizable offence referred by Magistrate.

a. When a Magistrate directs the police to enquire into the complaint of a cognizable offence, of which no previous information has been laid before the police, the written information sent by the magistrate to the police shall be treated as the first information.

b. In every case referred to the police for enquiry, a date shall be fixed by the Magistrate by which the report or an explanation of the cause of delay shall reach him.

Regulation -246

Despatch of first information report. ($ 12, Act V, 1861)

(a) The first page of the information report, viz. that signed, sealed or marked by the complainant or informant under section 154, Code of Criminal procedure shall be treated as the original .It shall be sent without delay to the District Magistrate or the Sub-divisional Magistrate, as the case may be, through the court officer. The first carbon copy of the first information shall be sent to the Superintendent. The second copy shall be kept at the police station for future reference. A copy (not carbon) shall be sent to the Circle Inspector direct at the same time as the original and the first carbon copy are despatched to the Court Officer and the Superintendent. In subdivision where there is a Sub-divisional police Officer two copies of the first information report shall be made out on ordinary papers, by the carbon process, one for the Sub-divisional police Officer and the other for the Circle Inspector.

Border crime to be reported

(b) In order to secure full co-operation between officers of bordering police station the Officer –in-charge of a police station shall, immediately on receipt of the commission of all crime within three miles of his border other than that referred to in clause(c), sent information by post card (B.P. Form No. 27 A) to the officer–in–charge of the police –stations concerned and if it borders on another circle, to the Circle Inspector concerned.

The officer receiving such reports shall mark the occurrence on their crime map, note the fact in the general diary and take such steps as may be necessary

Serious cases to be forthwith reported

(c) On receipt of such information of the commission of any of the offences mentioned in Appendix XV and of any serious offence by a police officer the Officer –in –charge of the police –station shall inform his Superintendent, Circle Inspector and other officer in the manner prescribed in t he that Appendix.

Use of railway telegraph and control telephone in emergencies.

(d)With a view to assisting the in the prevention of crime, the Railway Board have issued instructions to railway officials to the effect that information regarding any occurrence endangering human life, servants of all the Crown or Crown property should be despatched forthwith by railway telegraph to the Superintendent and if possible to the nearest police –station, even in circumstances where the informant is unable to tender payment for the message, and that where transmission by telephone is likely to the quicker method, the control telephones should be utilized for this purpose. The cost of such telegrams if not paid by the informant may be recovered from the provincial Government.

Regulation -247

List of stolen property to be obtained from the complaint (12, Act V, 1861)

(a) In cases involving loss of property, the complaint shall be required to put on a list of property stolen, signed by himself, which shall be sent to the Court Officer with the first information report. The investigating officer shall keep a copy of the list to aid him in his enquiry. If the complainant is unable to furnish a list of the property when he gives the first information, he shall be required by the investigating officer to supply a list in writing as soon as possible. The investigating officer shall forward it, duly signed by the complainant, to the Court Officer.

Every effort must be made to secure from the complainant at the time when to first information is recorded the most precise description if the stolen property.

Regulation-248

Heinous cases occurring outside jurisdiction.(12, Act V, 1861)

a. When the report of a crime mentioned in clause (c) of regulation 246 or triable exclusively by the Court of Section relates to an occurrence outside the jurisdiction if the officer to whom the report is made, he shall at once send information, by telegram whenever possible or by express letter, to the police-station in the jurisdiction of which the occurrence took place, and if the circumstances of the case warrant it, shall effect the apprehension of the case warrant, shall effect the apprehension of the accused .

b. In cases where the officer of two or more police –stations have jurisdiction in respect of the same offence, and complaint is laid simultaneously at such stations, the police officers concerned shall apply to the Superintendent for instructions before submission of the final report.

When complaint is laid in two districts regarding an offence when is cognizable in either district (section 182, etc., Code of Criminal procedure), the final report shall be submitted in one district only.

Regulation-249

Information of an offence committed within him outside railway limits.

When information of an offence committed within railway limits is given at a district police –station, the Officer –in –charge of that police –station shall record the information on plain paper and send it by the quickest route to the Officer –in – charge of the railway police –station concerned. In order the case may be registered and investigated by the Railway police. Should immediate action meanwhile be necessary, the district police shall take such action as they legally may. Similar action shall be taken by the Railway police when information is lodged with them of an offence committed outside railway limits.

Regulation 250

Issue of hue-and –cry notices.

a. When the immediate dissemination of intelligence and the co-operation of the staff of neighboring railway and district police station is desirable, hue-and cry notice in B.P. Form. No. 28 shall be issued in the following classes of all the persons concerned have not

been immediately arrested or the property stolen has not been recovered:-

i. Professional drugging cases.

ii. dacoity, and all organized crime in which wandering gangs, foreigners or residents of other jurisdictions are know or suspected to have been concerned;

iii. escapes of prisoners from lawful custody;

iv. cases of cheating by professional criminals;

v. cases of shaking off police supervision by wandering gangs;

and

vi. Important cases in which the accused have absconded after committing the offence, or in which identifiable property of large value has been stolen.

b. Have –and –cry notice should ordinary be dispatched by post, unless there is reason to believe that the immediate communication of information to some particular officer may result in the apprehension of culprits or the recovery of stolen property, in which case the contents of the hue-and -cry notice should be communicated to such officer or officers by ‘special police, telegrams or by special messengers, whichever is likely to prove quicker. Full details should be immediately dispatched by post.

c. All police –station shall maintain a list of bordering district and railway police station including their outposts, showing the distance of each place from the nearest telegram office these lists shall be approved by the Superintendent.

d. The hue- and –cry notice shall be drown up by the Officer –in –charge of the police –station who draws up the first information report of the case, one copy being sent to the Superintendent along with the first information of the case by the quickest available means. The Officer –in – charge shall exercise his discretion as to which other officer the notice should also be sent direct. The Superintendent shall at the same time be informed of the officers to whom the notice has been sent. On receipt of the notice the Superintendent shall sent copies to the Superintendent, Railway police, or to any other to whom it has not been sent direct, if the considers it desirable.

Note: *When a notice is to be sent to a police station of the Calcutta police, an additional copy shall be sent to the Commissioner of police, Calcutta, for circulation the Calcutta police Gazette.*

e. On receipt of a hue- and -cry notice the officer-in-charge of a police -station shall at once enter it in red ink in the register of letters received and in the general diary and shall take all necessary action. He shall cause enquiries to be made about the movements of local bad characters and shall check surveillance reports. He shall also enquire particular investigation and shall communicate the result in a brief supplementary case diary. He shall in all cases communicate the contents of the notice to his subordinates and to all dafadars and chaukidars of his jurisdiction, either by special messengers as far as possible or muster parades, and shall warn them to be the look –out for the offender or stolen property, as the case may be. All actions taken shall be clearly noted on each notice which shall be consecutively numbered and filed. Successful detection of culprits or tracing of stolen property should be always rewarded.

Regulation- 251

Action to be taken on receipt of information regarding intestate property

a. On receipt of information that any person who has died intestate has left movable property to which there is no claimant, the infested has left movable property to there is claimant, the Officer –in- charge of a police –station shall, in accordance with Bengal Regulation V of 1799, take possession of such property and shall forward to the Sub-divisional Magistrate a list in B. P. Form 29 of all items taken unto custody. This list shall specify the approximate value of any animal which has been impounded in accordance with clause (c). The orders of the District judge regarding of the property shall then be awaited.

b. If the deceased has also left any immovable property, the Officer –in –charge shall such collect such particulars as possible regarding the property and shall them in a memorandum when shall be attached to B. F. Form No. 29.

c. Ordinary property, including live stock, which has been taken into custody in accordance with clause (a) shall not be- sold without the orders of the District judge. If however, it includes any items which very rapidly deteriorate and perish, the officer -in- charge may exercise his discretion in selling such items in anticipation of orders. Livestock shall be placed in the nearest pound.

d. When property is sold, either under clause (c) or under the order of the District Judge, it shall be sold by the Officer-in-charge and, whenever possible, at a public market. He shall prepare an account of the sale in B.P. Form No. 30 which shall be forwarded, in

triplicate, along with the proceeds of the sale, to the Sub- divisional Magistrate. If any animal which has been impounded is sold, the pound fees shall be paid form the proceeds of the sale direct to the pound –keeper, and the balance only forwarded with the account.

e. If the District Judge order that the property be sent to court the officer –in- charge shall dispatch it with a forwarding advice in B. P. Form No. 31 in triplicate, in which shall be recorded the cost of transporting the property. If the deceased has been burier or cremated at the expense of a municipality the expenses so incurred shall also be recorded in the form and the chairman or Vice chairman shall be advised apply to the District Judge for the recovery of the expenses.

f. The third copy of B. P. Form No. 31 or of Form No. 30 which will in due course be returned by the District Judge shall be filed in the police station.

g. The police shall not question the validity of any claim or will which may be set up by any claimant, and property shall not be taken into custody from the possession of any such claimant, If however the Officer-in-charge has reason to believe that a claimant has obtained possession dishonestly or that a will has been forged, he shall apply to the Superintendent for orders regarding, prosecution section 404 or section 467, Indian penal Code.

Regulation 252

Warning to owners and occupiers of land when a breach of the peace is apprehended

a. When a dispute in respect of land which is likely to lead to a breach of the peace is reported the officer –in-charge of the police station or outpost or any officer not below the rank of Assistant Sub-Inspector deputed by him shall, If immediate preventive action on his own part not required issue a warning in B. P. Form No. 32 to the owner, occupier or other person having or claiming in such land. Such warning bring the owner, occupier or person claiming an interest in the land within the scope of section 154, Indian penal Code, should be not Endeavour to prevent the dispute culminating in a riot.

b. The warning shall be issue in duplicate, and the signature or left thumb impression, of the person to whom it is issued shall be obtained on the inflate copy in the presence of reliable witnesses which names and addresses should be noted. The exact date and hour of service shall be noted on the duplicate copy which should then be passed on to the office copy.

Regulation- 253

Forgery of currency notes.

a. On receipt of a forged note from any source, an enquiry should be undertaken regarding its origins and a report sent immediately to Currency Officer, Calcutta a copy being sent to the Deputy General, Criminal Investigation Department. This report should contain the following information regarding each note or series of notes:-

   i. Denomination;

   ii. Sandal letter and number;

   iii. General number;

   iv. Circle and date of notes of old type;

   v. Place of appearance;

   vi. Date of appearance;

   vii. Whether process or hand made;

b. If in regard to any forged note an enquiry is not considered necessary, it will be forwarded by the Officer –in- charge to the Currency Officer along with the report mentioned in clause (a), otherwise after the in query or investigation has been completed. In the latter event a reference will be made to the original intimation sent to the Currency appears the Currency Officer that the forgery is new made to be process-made and the note has nor been sent with the report, he will immediately call for it in order to communicate the particulars to all other Currency Officer and shall there after return the note the police for any further investigation that they may desire to make. The Currency Officer has been directed to send to the police, for enquiry, all process made new forgeries irrespective of their face value and all forged notes of Rs, 10 or of a higher denomination, received by him (vide paragraph 368, Reserve Bank of India, Issue Department Manual.

c. If there is any probability of the guilt of the utterer or forger being, established, a case should be formally instituted and thoroughly investigated by expert officers. The Superintendent is responsible for seeing that proper discrimination is displayed, both in the matter of instituting appropriate cases, and in specially reporting such of these as are required to be reported in accordance with serial 12 of the Schedule attached to Appendix XV.

d. On the conclusion of enquiries, where cases are not instituted, final reports along with the forged notes should sent to the Currency Officer in continuation of the first reports showing the result of the

enquiries made and quoting in each case the number and date of the first report.

e. When cases are instituted but not specially reported, the short histories referred to in the remarks column against serial 12 of the Schedule attached to Appendix XV should be submitted quoting the reference to the report submitted in accordance with clause (a) above.

f. Should a case be sent up in charge sheet a copy of the judgment should be sent along with the Final Report?

g. Particular attention should be paid to investigation of dangerous forgeries, i. e., those which are sufficiently good to deceive persons accustomed to handling notes as such cases are reported by the Deputy Inspector –General, Criminal Investigation Department, to the Director, Intelligence Bureau, for the information of the Central Government. The reports on such forgeries should include information regarding the area in which the notes have been circulated, whether there is reason to believe that a large number have been put into circulation, and whether the investigation has led to the detection of the forgers of any other known series of dangerous forgeries.

Regulation 254

Case in which first information not submitted

a. A register shall be kept in B. P. Form. No. 33 in which shall be entered all cases enquired into by the police in which no first information report is required, e. g., cases under municipal or railway bye –laws, section 34, police Act, 1861, cases under sections 107, 109, 110,144 and 145 of the Code of the Criminal procedure non-cognizable cases under the Criminal Tribes Act, 1924, cases under section 176 or 211, Indian penal Code, the Motor Vehicle Act, 939, Serias Act 1867, etc, etc.

b. A separate register in Bengal Form No. 403 (Q), (B. P. Form No. 34) shall be maintained for all occurrences of collision, breakdown and running down and running down in which a motor vehicle is concerned. The formed is printed in duplicate in bound books, the upper foil being perforated. As soon as an incident of this nature occurs, an entry shall be made in this form and an enquiry started. When the enquiry is complete, the perforated copy shall be sent through the Circle Inspector to the Superintendent. If, as a result of this enquiry, the Superintendent considers that a cognizable case under the Indian Penal Code has been made out. he will order the usual first information report and case diaries to be utilised , but this form will the attached so may serve as a brief for the prosecution. If,

on the other hand, the Superintendent considers that the enquiry discloses an offence under the Motor Vehicles Act, 1939, or the framed there under or other minor Acts, them this together with a report in B. P. Form No. 35 shall be submitted by the Investigation officer to the Magistrate. In a case in which no prosecution is considered necessary, the perforated copy of the form shall be returned by the Superintendent to the police-station to be filled with the counterfoil. In a case in which a prosecution is ordered, this form shall be submitted eventually to the Superintendent together with the final memorandum and he shall perusal pass order, if necessary, and return it with the police –station copy of the final memorandum.

c. Reports to the court for trial in such cases, excepting those under section 107 and 145, Code of Criminal procedure, which shall be submitted in duplicate in B. P. Form No. 36, shall be submitted in duplicate in B. P. Form No. 35. In cases, however, under the Criminal, Tribes Act, 1924, and Goondas Act, 1923 (Bengal Act 1 of 1923), section 109 and 110, Code of Criminal procedure, or under section 182 or 211, Indian penal Code, only of the form shall be used. In all cases where duplicate forms are used one copy showing the result of the case shall be returned by the Court Officer direct to the station officer in lieu of a final memorandum. Care shall be taken to see that column 6 of Form No. 33 is filled up in due course. If after a reasonable Period the duplicate copy is not returned with the Magistrate, s order, a reminder shall be sent to the Court Police Officer.

Regulation-255

Responsibility of Station Officer

a. The general responsibility for all investigations within the limits of his jurisdiction will rest with the senior Sub-Inspector of the police –station.

b. No officer of lower rank than a Sub-Inspector shall be employed in the investigation of criminal cases except in unavoidable emergencies when an Assistant Sub-Inspector may be so employed as laid down in regulation 207(c).

Regulation-256

Investigating Officer to consult connected registers before proceeding to investigate.

When an officer is reported the investigating officer shall consult all registers which area likely to assist him in his investigation, particularly the Village Crime Note-Book, before proceeding to investigate.

Regulation - 257

Abstention form investigation.

a. Any officer in charge of a police–station may, under section 157(b), Code of Criminal procedure, refrain altogether form investigation a case in which there appears to him to be insufficient ground for investigating.

b. Police Officer shall observe the following broad principals in exercising the discretion vested in them by section 157(b) of the Code of Criminal procedure.

    1. Every cognizable offence, other than one of those enumerated in clause. It below shall ordinarily be investigation is made; the special reason shall be recorded.

    2. No. investigation shall ordinarily be made in-

        1. Cases in which the injured person does not wish for an enquiry, unless the offence has occurred in a crime center or appears to be really serous, or may reasonably be suspected to be the work of a professional or habitual offender or a member or a criminal tribe know to be addicted to crime or unless it is otherwise desirable in the interest of the public that the case shall be investigated.

        2. Case which after consideration of the information and of anything which the informant may have to say, appear to fall under section 95, Indian penal Code; and

        3. Case in which the information shows the case to be a purely civil nature, i, e; where the information is apparently seeking to take advantage of a petty or technical to bring into the criminal courts a matter which ought property to be derided by the civil courts.

    These instructions indicate only general principal, and police officer shall exercise their discretion in every cognizable case that is reported to them.

Note: *In the cases referred to in clause (3) above, the points to be considered are whether the complainant can obtain adequate redress form the courts by instituting a prosecution, and whether action on the part of the police is expedient for the preservation of order. When the charge is of enticing away a girl (section 363, Indian Code, and cognate sections), the police should be careful to ascertain that the case is not of elopement of a girl running away to the her parents on account of ill-treatment, and in cases of cattle theft that it is not a mere dispute as to ownership, or to the payment of the price of an animal purchased.*

c. In case where investigation is refused the complainant or informant shall be informed in B. P. Form No. 37 A of the fact and of the reasons for abstention.

Relegation -258

Investigation on the sport

If the Officer-in-charge of a police station of decides that an investigation is necessary, after dispatching a first information report, he shall himself proceed to the sport or depute a Subordinate to hold an enquiry, who shall not be below the rank of Assistant Sub-Inspector. In a case where the complaint is not of a serous nature, and is made against a person known, clause (a) of section 157, Code of Criminal procedure, does away with the legal necessary for a local investigation. In rural areas, it is permissible only when a case of a simple nature is brought to the police complete, the complainant and witnesses being present. In town, the investigation may be conducted at the police station it is close to the scene of crime.

Regulation-259

Investigation outside jurisdiction

Subject to the provisions of section 156, Code of Criminal procedure, no station officer may be deputed to undertake the duties of, or conduct a special enquiry in, the jurisdiction of another police –station, without the sanction of the Circle inspector or any officer of higher rank. [See Regulation 189 (u)]

Regulation -260

Harassment of the public to be avoided

Investigation officers should carefully abstain form causing unnecessary harassment to the parties or to the people generally. Only those persons who are likely to assist the inquiry materially should be summoned to attend. Where possible the investigating officer should himself go to the house of the witness to be examined. The proceedings should be as informal as possible. The questioning of witness should ordinarily be conducted apart and in a manner that will not be distasteful to them.

Regulation -261

Duration of investigation

a. The investigating officer shall, whenever possible, pursue the investigating to its completion without a break in continuity.

b. The investigating officer may, for the purpose of following up any clue or conducting an-enquiry which may be done more easily and expeditiously in person than by correspondence, proceed beyond the limits of his jurisdiction, but he shall report his intention to the Inspector before proceeding.

c. Circle Inspector shall see that investigating officer completes their investigation as required by section 173, Code of Criminal Procedure, and that the provisions of clause (b) are not abused. If the directions in clause (a) are strictly, it should rarely be necessary to prolong the investigation of even the most difficult case beyond 15 days.

d. The practice of delaying the submission of the final report after the completion of the local enquiry on the sport shall be discouraged. It is the duty of Superintendents and even more of Inspectors to insist that investigation in case in which the accused are known are brought promptly to a conclusion.

e. When a Magistrate forwards a complaint to the Officer–in–charge of a police–station for investigation, it shall, whenever possible, be completed within the time by the Magistrate for that purpose. If this is not possible, the investigating officer shall, in any event report by the prescribed date the progress made and the date by which be expects to complete the investigation. The same procedure shall be followed when an enquiry is made in to a complaint referred to the police under section 155 (f) or section 202, Code of Criminal procedure.

Regulation-262

Complaints of ill-treatment against the police by arrested persons

Directly an accused person is placed under arrest, the investigating officer shall ask him whether he has any complaint to make of ill-treatment by the police, and shall enter in the case diary the question and answer. If an allegation of ill- treatment is made, the investigating officer shall them and there examine the prisoners body, if the prisoner consents, to see if there are any make of ill- treatment, and shall record the result of his examination. He shall further consider and note whether there is any reason to believe that marks found are attributable to other than ill-treatment, such as resistance to arrest. If the prisoner refuses to allow his body to be examined, the refusal and the reason therefore shall be recorded. If the investigation officer finds that there is reason to believe the allegation of ill- treatment he shall forward the prisoner with

his complaint, the record of corporal examination, any other evidence available, and if possible the police officers implicated by the prisoners complaint, to the nearest Magistrate having jurisdiction to enquire into the case.

Regulation-263

Case diary

a. Section 172, Code of Criminal procedure, prescribes the case diary which an investigating officer is bound by law to keep of his proceeding in connection with the investigation of each case. The law requires the diary to show-

   i. the time at which the information reached him;

   ii. the time at which be began and closed his investigation;

   iii. the place or place visited by him;

   iv. a statement of the circumstances ascertained through his investigation.

   Nothing which does not fall under of the above heads need be entered but, all assistance rendered by panchayats or presidents or members of union boards shall be noted. When the information given by the panchayat or president or a member of a union board is of a confidential nature, his name shall not be entered in the case diary, but the investigation officer shall communication his name and the same time note briefly in the case diary that this has been done.

   Under heads (3) and (4) shall be noted the particulars of house searches made with the names of witnesses in whose presence search was made (section 103, Code of Criminal procedure); by whom, at what hour, and in what place arrest were made; in what place property was found, and of what description; the facts ascertained; on what points further evidence is necessary, and what further steps are being taken with a view to complete the investigation.

   The diary shall mention every clue obtained even though at the time it seems unprofitable, and every step taken by the investigating officer, but it shall be as concise as possible. The statement of witnesses examined shall be recorded in the diary, but the names of all witnesses examined shall be given. The diary shall be a record of acts done by the officer and of the facts ascertained by him, i. e.; of the result of his investigation.

b. A diary so composed that is a diary which does not contain the statement of witnesses, is privileged. The court may send for it and

may use it, not as evidence, but as an aid in judicial enquiry or trial, but the accused has no right to call for it or to see it, even if referred to by the court, the only exception is that when it has been used by the police officer who made it to refresh his memory or when the court use it for the purpose of contradicting such officer, them the provisions of section 145 or section 161 of the Evidence Act , (1 of 1872) shall apply.

Regulation-264

Instructions for writing case diary

a. Case diaries (B. P. Form No. 38) shall be written up as the enquiry progresses, and not at the end of each day. The hour of each entry and name of place at which written be given in the crime on the extreme left. A note shall at the end of each diary of the place from the house at, and the means by which, it is dispatched. The place where the investigating officer baits for the night shall also be mentioned. A specimen case diary given in Appendix XVI

b. A case diary shall be submitted in every case investigated. The diary relating to two or more days shall never be written on one sheet or dispatched together. Two or more cases should never be reported in one diary; a separate diary shall be submitted in each case diary unite the enquiry is completed. But it is not necessary to the send one on any day on which the investigation, though pending is proceeded with.

c. The diary shall be written in duplicate with carbon paper, and at the close of the day the carbon, copy, along with copies of any statement which may have been recorded under section 161. Code of Criminal Procedure and the list of property recovered under section 103 or 165 of that Code, shall be sent to the Circle Inspector. In subdivisions where there is a Sub-divisional police Officer, another copy of the diary in special and misconduct report cases shall be made out by the carbon process and submitted to him. The copy shall be preserved for one year. When an investigation is controlled by an Inspector of the Criminal Investigation Department, the investigating officer shall forward the Circle Inspectors copy of the case diary through that officer who shall stamp or write on the diary the date of receipt by him and, after perusal it to the Circle Inspector.

d. In special report cases in extra carbon copy shall be prepared of the diaries, statements of witnesses recorded and lists of property recovered and sent direct to the Superintendent and a further carbon copy to the Sub-divisional Police officer where there is one.

e. Each form shall have a separate printed number running consecutively throughout the book so that no two forms shall bear the same number. On the conclusion of an investigation the sheets of the original diary shall be removed form the book and filed together. Every file shall be docketed with the number month and year of the first information report, the final form submitted and the name of the complaint, the accused and the investigating officer. The orders regarding preservation and destruction of these papers shall also be noted.

f. When sending charge –sheet to the Court Officer, the investigating officer shall send all his original case diaries which shall be returned by the Court Officer on the case being finally disposed of (vide regulation 272).

g. Case diaries shall be written in English by those officers competent to do so. Other officers shall write either diaries in the vernacular. Statements recorded under section 161. Code of Criminal procedure, shall, however, always be recorded in the vernacular, except when recorded by European officers.

h. Instruction for the custody and dispatch of case diaries are given in regulation 68.

Regulation -265

Recording of statements under section 161, Criminal procedure Code

Besides the diary an investigating officer has discretion, under section 161 of the Code of Criminal procedure, to record or not the statement of any witness examined by him. All such statements shall be signed and dated by the officer recording them and, when taken in his presence, by the superior officer locally supervising the case. No such recorded statement shall be used for any purpose (except the following) at an enquiry into or trial of the case in which it was recorded. When, however, the witness, whose statement has been so recorded, is called for examination by the prosecution, the accused is, under section 162 of the Code, entitled to request the court to refer to the statement, and the court is bound to do so. The court shall also direct the accused to be furnished with a copy thereof in order that any part of such a statement, if duly proved, may be used to contradict such witness as provided in section 145 of the Indian Evidence Act, 1872. Only if the court considers that any portions are irrelevant or that its disclosure is not essential to the interests of justice and is inexpedient in the public

interest it shall exclude such part form the copy of the statement furnished to the accused. The rule regarding the confidential treatment of case diaries is mutatis, application to statement recorded under section 161, Code of Criminal Procedure.

Regulation- 266

Dying declaration

a. If it is not possible to have the statement of a person whose evidence is required and who is in imminent danger of death recorded by the Magistrate and it becomes necessary for some other person to record a dying declaration, this shall be done, Whenever possible, in the presence of the accused or of attesting witnesses. A dying declaration made to a police officer shall be signed by the person making it.

b. If a seriously injured person, not in imminent danger of death, is sent to hospital the investigating officer shall warn the medical officer about having the person's statement recorded by a Magistrate, should the necessity for such a course arise.

c. In case of doubt whether action under clause (a) or under clause (b) should be taken, the investigating officer shall act in accordance with clause (a).

Regulation-267

Police may not decide question of lunacy

It is not for a police officer to decide whether a person charged with a cognizable offence is or is not a lunatic. He will deal with the case as if the person were same, and if an officer be proved, will send the prisoner up for trial. But the investigating officer shall ask the court to have an enquiry made regarding the mental condition of the accused as soon as he shows signs of insanity and he shall not send up witnesses for the prosecution without previously ascertaining whether in the opinion of the court prisoner is capable of making his defense.

Regulation -268

Investigation for non-cognizable cases

a. On receipt of a copy of the complaint form the Magistrate directing an investigation to be made by the Police under section 155, Code of Criminal Procedure, in a case which is not cognizable by the police or ordering the police to enquire under section 202 of that Code together with the intimation of the date by which the report of the

investigation or enquiry shall reach him, the police officer concerned shall, if he is unable to report by the date fixed, send a report on or before such date explaining the delay and stating on what that date the reports expected to reach him. The complainant should be informed of the date so fixed and directed to appear the investigating officer at the sconce of the occurrence.

b. Sub-divisional police Officer or Circle Inspector shall watch the working of the sections so far as they affect the police and bring to the notice of the Superintendent any irregular orders passed by Magistrate or the excessive use of this procedure. (See regulation 21).

Regulation- 269

Binding down of witnesses

a. Unless the District Magistrate otherwise directs, the witnesses shall be bound down to attend before the Magistrate as soon as they can reach his

court, except when the occurrence of a gazette holiday renders it improbable that the case can be heard at once, in which case they shall be bound down to appear on the morning of the next day after the holiday or holiday is allowed for the convenience of the witnesses or for any other special reason, the circumstance shall beat once reported to the Magistrate.

b. To enable the Court Officer to prepare himself for the case in time for the trial, charge sheets shall be sent so as to reach him at least one clear day before the date fixed for trial. The final diary shall one contain a summary of the case and a synopsis of the evidence against the accused.

Regulation-270

Number of witnesses to be sent up

It lies with the police, subject, to general instruction from the magistrate, to determine what evidence is necessary to establish a charge, and what number of witnesses are required to prove each fact. Much will, of course, depend on whether the fact is seriously disputed or not. Where the fact to be proved is not likely to be disputed, unnecessarily witnesses should not be harassed by being sent in. Under section 171, Code of Criminal Procedure, no witness or complainant can be required to accompany a police officer. A witness refusing to execute a bond may be sent up in custody.

Regulation-271

Information from past or telegraph officer records

Records of a post or telegraph officer shall be produced and information available in them shall be given by the post master or telegraph master on the written order of any police officer who is making an investigation under the Code of Criminal procedure, but only those entries in the records shall be disclosed which relate to the persons accused of the officer under investigation, or which are relevant to that offence. In any other case the post master shall refer for orders to the Postmaster – General who will decide whether or not, under section 124 of the Indian Evidence Act, 1872, the information required shall be withheld. When the information required by a police officer shall be is a not available in the records of the post office, the police officer shall be informed according irrespective of the question whether the information, if available, might not be given.

Regulation-272

Charge sheets

a. When an officer in charge of a police–station on completion of an investigation under Chapter XIV, of Criminal procedure, find the charge proved and propose to against any person, he shall, notwithstanding that he has to arrest all or any of the persons against whom the charge is proved at once submit a charge sheet. in B.P. Form No. 59 which is the report prescribed under section 173, Code of Criminal procedure. Thus a charge–sheet shall be submitted when the accused is absconding or is sent up for trial in custody or bond (section 170, Code of Criminal procedure). In cases where an accused is absconding, the investigating officer shall submit with the charge –sheet a list of the absconder's property so that the court may issue attachment orders.

b. The following instructions shall be observed:-

    i. The charge–sheet shall be sent by the question to the Court officer for submission to the Magistrate. When a prime facie case is made out in a case in which articles have been sent for chemical analysis, the charge-sheet shall not be delayed till receipt of the Chemical Examiner's report. If a case in the first instance is reported final report, but subsequently by the Magistrate's order or otherwise, the accused person is place on his trial, the final report form shall be cancelled and a charge – sheet submitted. It, on transit form a police–station to the court,

an accused person absconds the charge-sheet form shall stand. The case shall be kept pending till the absconder is arrested, or till his arrest is considered hopeless.

ii. When submitting a charge –sheet, the officer in–charge of a police station shall also communicate in B. P. Form No. 40 or 40A, the action taken by him to the person, if any, by whom information relating to the commission of the officer was first given.

iii. Lists of property stolen lists of property found on parties arrested, reports on previous conviction's the bail and recognizance bonds executed under section 170, Code of Criminal procedure (Form xxv and of Schedule V, of the Code), and a map in cases in which the rules require a map, shall be attached to the charge sheet form. Only the precise particulars as required by the column heading shall be noted in the charge- sheet. The charge- sheet shall be given an annual serial number and a counterfoil shall be kept at the police-station. Superior officer police may not return or detain a charge-sheet once submitted by the investigating officer. They may, however, direct a further enquire pending the instructions of the District Magistrate. If the correct name or address of the accused has not been ascertained the investigating officer shall ask that a remand be applied for.

iv. A police officer sending up an accused person for trial shall certify on the back of the charge-sheet that he has carefully examined the register of persons convicted. (Village Crime Note –Book, part 2), and that has in all other respects made full enquiry whether such accused person has been previously convicted. A similar certificate shall be given regarding absconders against whom a charge is proved. Should previous convictions be ascertained, a short repot of all particulars concerning them, including them of any person who can prove each previous conviction, will be sent with the charge-sheet to enable the court officer to prove them under section 511, Code of Criminal procedure. In addition to the certificate referred to the investigating officer, when the accused is charge with an officer for which enhanced can be given on reconviction, shall note on the back of the charge-sheet as to whether the accused has resided in his jurisdiction for a period of more or less than 10 years.

v. When the entry regarding the previous conviction of the person sent for trial would, under existing rules, be in the register of another section, the investigating officer will note this fact on the charge sheet and inform the officer –in- charge of that station that such a person is being sent for trial, in order that letter may search his station register and supply direct to the Court Officer required particulars about his previous conviction. On receipt of this report, the Court Officer shall attach it to the charge-sheet. The receipt, however, of such information in no way relieves a Sadar Court Officer from the performance of the duty of searching the index register of convictions and ascertaining whether any conviction other than those noted by the station- police are entered therein against an accused person. Enquiries should not be made in Nepal as to the antecedents of persons professing to reside in that state.

vi. On the duplicate of the charge-sheet shall be entered in red ink the number of volume and page of the conviction (Village Crime Note- Book, part 2) and surveillance registers in which the convict's name has been registered, and in all cases declared true, whether convicted or not, the number of the entry in the property register, if any shall also be noted.

vii. The antecedents of each accused person shall be noted on the back of the charge-sheet under one or other of the following leads:-

viii. Known thief, dacoit, and robber.

ix. Vagrant with no fixed residence.

x. Suspicious character.

xi. Habitual drunkard.

xii. Prostitute.

xiii. Good character.

xiv. Antecedents unknown.

Regulation- 273

Map or plan to accompany charge-sheet in certain

a. A map or plan shall always accompany the charge-sheet in cases of murder, dacoity, serious riot, mail robbery, highway robbery, extensive burglary or theft where Rs. 600 or more are stolen. Ordinarily, maps will not be required cases other than those mentioned above; but the investigating officer may, at his discretion, prepare and send up, a map in any other case. The map shall prepare at as early a stage of the investigating as possible.

b. The map shall, if possible, be drawn to scale, but this is not essential. If not drawn to scale, the fact shall be noted clearly on the map.

c. The draughtsman or investigating officer who prepares the map shall bear in mind that it is essential for a correct appreciation of the situation by the court and jury that a clear distinction should be made between (1) facts actually seen by the draughtsman himself and;(11) facts deposed to only by witnesses. Statements made by the draughtsman as to the first group are always relevant; his statements as to the second are prima facie inadmissible and cannot be used as primary evidence to go the jury.

   If is necessary to maintain a suitable distinction in the map between these two sets of facts. This distinction shall be effected as follows:-

   i. The objects actually seen by the person preparing the map including such permanent feat ores as building, trees, roads, paths and tangible points connected with the case, such as blood stains, foot- prints, cloth and corpse, etc., actually seen by him shall be indicated by letters of alphabet A, B, C, D, etc., explanations of these letters being given preferable in the margin of the map, but if this cannot be conveniently done. The explanations shall be furnished on a separate sheet of paper attached to the map.

   ii. Particular derived from witnesses, e. g., place where witness X is said to have stood, where the accused is said to have been standing when seen by X, where the blow was struck, etc., Shall be indicated on the map by the number 1, 2, 3, 4, etc. The explanations of the numbers, however, shall on no account be given on the fact of the map or the separate sheet of paper referred to above, but on another sheet of paper distinct from either the map or the list of explanations of the actual facts indicated by letters.

d. The number of the case and the name of the accused shall be given at the top of the map, and the signature of the person who prepared it at the foot. Use should always be made of cadastral and other maps, where they are available and are of sufficiently large scale.

e. The draughtsman or the investigating officer who prepared the map shall be produced as a witness at the trial.

Regulation-274

Brief of a case

a. Simultaneously with the submission of the charge-sheet and its annexure the investigating officer shall prepare two copies of a brief

containing full particular of the case and of evidence available for sending up the accused person, in B. P. Form No. 41. [The brief shall be kept apart and shall not from part of the case diary during the tendency of the case]. One copy of the brief shall be sent to the Court officer, and the other to the Superintendent, so as to reach them, if possible, at least seven days before the date fixed for trial. Should the Superintendent notice defects in the investigation, he shall at once draw the attention of the investigating officer to them so that further investigation may be undertaken if necessary and he shall send to the Court officer a copy of any orders he issues.

b. Any suggestions the Superintendent has to make regarding the conduct of the prosecution shall be communicated by him to the Court officer who shall take the necessary action for making the preparation of the case complete. He shall not wait, however, for such suggestions before remedying defects which become apparent to him.

Regulation-275

Final report forms

a. A final report in B. P. Form No. 42 shall be drawn up by the investigating officer in every investigated case which does not result in charge-sheet. In column 8 a clear statement of the case and of the evidence shall be given together with the reasons for not sending up any person for trial. The investigating officer shall also suggest in the same column with reasons how the case may be entered by the Magistrate in the General register for statistical purpose whether as " true" " intentionally'' " false'' " mistake of fact'', "mistake of law,'' of "no cognizable.''

b. The form shall be written in triplicate, every final report being given an annual serial number. One copy will be kept at the police-station and filed with the case diaries and receipt of the final information and the other two copies will be sent to the Circle Inspector, the actual date and hour of dispatch being entered on all the three copies. The circle Inspector will attach one of the case diaries and forward the other to the Magistrate with his remark and recommendations. [see regulation 196]

c. The final report shall contain a specific application for the release of an arrested person from custody or his discharge from bond. Bail and recognizance bonds shall be attached to the final report.

Regulation-276

Magisterial orders on final reports

a. On receipt of the final report, the Magistrate may accept the police finding and declare the case accordingly or may, under section156 (3). Code of Criminal procedure, order further enquiry on specified points or may take cognizance under section 190 (b) of that Code, and if the persons accused have not already been arrested issue process against them under section 204 of the Code and require the investigating officer to furnish the names and address of the witnesses.

b. When further enquiry is ordered, it shall be entered on and completed as soon as possible. If, on the completion of such enquire, the investigating officer considers the charge proved, he shall submit a charge-sheet form, if not, he shall submit a final report in the usual way.

Reglation-277

Revival of investigation

a. If in, any case in which a final report has already been made any information or clue is obtained, the investigation shall be reopened and shall be conducted by such officers as may be detailed to do so by the officer in charge of the station.

b. When the investigation of any case is revived, the forgoing regulations shall apply to such farther investigation in lime manner as to the original investigation.

c. If a revived investigation leads to the collection of evidence sufficient to justify a trial, a charge sheet shallbe drawn up, in accordance with the foregoing regulations. Otherwise, a supplementary final report shall be prepared and dealt with in the same maner as original finalreport.

Regulation -278

Communication of action taken to information on completion of investigation

On completion of the investigation written a final in B. P. Form No. 42 is Submitted the investigating officer shall under section 173 (1) (b), Code of Criminal procedure, communicate to the informant in B. P. Form No. 43 or 43(A), the action taken by him.

Regulation- 279

Procedure in false Cases

a. Whenever a case reported to the police is found after investigation to the maliciously false, the investigating officer shall, it evidence is available for prosecution of the complainant under section 182 or 211, Indian penal Code, submit to the Magistrate, through the Circle Inspector, a formal complaint, attached to his final report, to enable the Magistrate to take cognizance of the case under section 190. Code of Criminal procedure [under proviso (aa) of section 200 of that Code, the Magistrate need not examine the complainant.] The investigating officer shall at the same time furnish the Court officer with a brief of the case.

b. Prosecution against complainants in false cases shall be instituted only when the charge made are deliberately and maliciously false and not when they are merely exaggerated.

c. The Circle Inspector shall, after satisfying himself that the complainant is well founded and that all possible enquires have been made to collect the requite evidence, forward the complaint to the Magistrate.

d. If a complainant case referred to the police for investigation is found to be maliciously false, the investigating officer shall submit, together with the final report, a report to the Magistrate through the Circle Inspector giving the grounds in which the case is held to be false and recommending as to whether the complainant should be prosecuted.

Regulation- 280

Searches

a. The law, in regard to searches is contained in Chapter vii and sections 102 and 103, 165 and Code of Criminal procedure. These sections must be scrupulously followed. The officer conducting a search should take precautions to prevent the possible on the one hand, of any articles being introduced into the house without the knowledge of the inmates, and on the other, of any articles being taken out of the house while the search is in progress. Search should be made in the presence of the owner or some one on his behalf. The presence of search witnesses [vide clause (h) below] must not be looked upon merely as a formally, but they must actual be eye-witnesses to the whole search and must be able to see clearly where

each article is found. They should then sign the search list (B .P. Form No. 44). If any search witness be illiterate, it should be read over to him and his left thumb impression should be written in the vernacular. The suspected person whose property is seized, should, if present at the search, also be asked to sign the list. Should he refuse, a note will be made to this effect and it should be certified to by the witnesses. The suspected person, or in his absence, the person in charge of the house or place searched, should be given a copy of the search list. He will be given an opportunity of comparing it with original and be asked to sign an acknowledgment for the copy of the original list. Should he refuse, a note to that effect should be made and should be certified to by witnesses. In cases where no property by the search witnesses and the owner of the house

b. Only searches for any specific article, which is known or reasonably suspected to be in any particular place or in the possession. Of any particular persons can be made without warrants. General searches without warrants are illegal and the only search which can be made without warrant is under section 165, Code of Criminal procedure. There must be some specific thing necessary for purposes of investigation and there must be reasonable ground for believing that it is in a particular place and that delay in search is likely to interfere with the recovery of property. The police officer must record in his diary (i) the ground of his belief and (ii) the thing is looking for, and must as soon practicable send a copy of such record to the nearest Magistrate empowered to take cognizance of the officer [Section 165 (ii), Code of Criminal procedure]. No place should be searched without a warrant merely because the occupier is a registered bad character or absconding offender. Such a search should be made only under the circumstances given in section 165, Code of Criminal Procedure, and when the police officer has reason to believe that the thing searched for will be found in the place to be searched. Provided that reasonable suspicion exists and a definite article (or articles) is (or are) searched for, the police are entitled to search the house of an absconding offender, whether he has been proclaimed or not. Police officer should note in their diaries the reasons for search, though they are not obliged to give the name of the person upon whose information they act. The name, father's name and residence, etc; of any person producing keys of any locked receptacles or claiming ownership of articles seized should always be noted in the case diary.

c. Under section 165 (2) of the Code of Criminal Procedure, the officer in charge of the police –station or the investigation officer, who must

not be below the rank of Sub-Inspector, must if practicable, perform the actual search in person. Only when he is incapacitated from so doing can be depute another officer he must first of all record his reasons for doing so and then given written orders to the officer deputed specifying what the search is for and where it is to be made. A verbal order given on the spot will not full fill the requirements of the section.

d. Before the commencement of the search the person of every police officer who is to conduct it, as also that of every witness and informer shall be examined before the witnesses and the owner of the house or his representative.

e. The law does not require a search under the Code of Criminal procedure, to be made by daylight, except those under section 14 of the Opium Act, 1878, but there are advantages in searching by daylight, and a searching officer should consider whether a house search should proceed by night or whether daylight should be awaited. Matters must be so arranged as to cause as little inconvenience as possible to the inmates, and especially the women.

f. When suspected property is found in a house all the property in the house is not to be seized. Proverty seized must be either alleged or suspected to have been stolen or found under circumstances. Which create a suspicion of the commission of an offence, and nothing can justify the seized of the whole of a man's property because he is suspected to having stolen some particular article or articles.

g. The number of witnesses required to attend a house –search depends on the circumstances of each particular case, and not hard –and –fast rule can be laid down. The witnesses selected should be residents of the same or adjoining villages. If necessary, such residents may be served with an order in writing to attend and witness the search.

h. Care should be taken that the witnesses are, so far as possible, unconnected with any of the parties concerned or with the police, so that they may be regarded as quite independent. Whenever possible, the presence of the panchayat or headman of the village shall be obtained to witness a search. Under no circumstances should a spy or habitual drunkard or any one of doubtful character, be called as a search witness. Reasons for rejecting any person as a witness to the search should be noted in the case diary.

i. Whenever it becomes necessary for a search to be made for arms illegally possessed, a warrant must invariable be obtained under section 25 of the Indian Arms act, 1878 (XI of 1878) from a

Magistrate. Searches can only be conducted by, or in the presence of, an authorised of his own motion to make a search for arms illegally possessed (vide section 30 of the Act).

j. In order to satisfy the court as to the identify of articles alleged to have been discovered at a house- search and to prevent irregularities, the officer conducting a search under sections 103 and 165, Code of Criminal procedure, shall prepare a list in triplicate in B. P. Form No. 44 of the property of which he has –taken possession and shall forward it to the Court officer by the first available dak after the search together with a report regarding the search. One copy of his list will be sent to the court officer together with copies of the records prescribed under section 165 (5) of the Code. One copy the list only shall be given to the householder or his representative and the third copy will remain with the investigating officer. On receipt and in the Court office, this list shall be stamped with the date of record put up before the Magistrate. Investigating officer are required to note carefully the instruction contained in the heading of the form and are enjoined to conduct searches under such conditions that there may be no room for suspicion on the part of the witnesses that articles or chaukidars, or anyone whatever under their influence, with a view to their being including in the list of property actually discovered in the place under search. Witnesses should be allowed free access to the place being searched and be given every facility to see and to hear everything that transpires.

   All articles or weapons found at a house –search or the person of a prisoner shall be carefully labelled and if a charge sheet is submitted in the case, shall be sent to the Court officer. The labels shall be signed by the officer conducting search.

k. If the warrant is issued in form No. 8 of Schedule V of the Code of Criminal Procedure, or if the search is made without a warrant or on a warrant issued under section 98 of the Code, the police are not authorized to take away anything except the specified thing for which the search was directed or made, but in all cases in which the magistrate proceeds under paragraphs 3 and 4, sub-section (1) of section 96 of the Code of Criminal procedure, and directs in his warrant that there should be a general search followed by a more careful inspection at the police-station or some other convenient place, papers and documents and other articles need not be examined and initialled piece in situ. They should be collected and packed in bundles or receptacles should be closed or locked, as the case may be, and must in all cases be sealed or marked by the search witnesses

and entered in the search lists. For instance, the contents of a desk drawer be collected, packed together and initialled by the search witnesses. For example, it might be marked... any other bundles, packages, papers or documents similarly packed up together might be sealed or marked ... etc. All these packages may be packed for easy carriage in a large receptacle which should in this case be marked A and should contain all the AA bundles or packages, Subsequently these boxes or packages should be very formally opened by the search witnesses who sealed or marked and signed them during the search, and their contents should be gone over piece by piece, examined, kept or rejected, but in every in question. Each of these pieces must bear the initial letter and the serial of its original bundle plus its own serial number in that bundle. Should any difficulty be experienced in getting a search witness to examine the documents at the police –station, it will be open to any police officer to call in the assistance of the court to compel the attendance of such search witnesses at the court to open the bundles, boxes, etc. Should he refuse to sing the contents of the bundles, the police officer should, if possible, invoke the help of an Honorary Magistrate or such other officers as may be available.

Regulation – 281

Searches by state police in British Indian and police in Indian

When the police authorities of an Indian State consider that, in the interest of law and order, a house in British Indian should be searched; an officer not below the rank of an officer in charge of a police station should apply direct is required to be made. The latter should them proceed to make the search as he would upon a requisition made under section 166 (1) of the Code of Criminal Procedure.

Mutatis mutandis the same procedure should be followed by the police of British Indian when it is necessary to search a house in an Indian State. The rules relating to arrests under the Indian Extradition Act, 1903 are contained in Appendix XX.

Regulation -282

Identification of suspects

a. Whenever it is necessary to submit a person suspected to have been concerned in any offence to identification, the proceedings should be conducted whenever possible in the presence of a Magistrate, or of a Sub-Registrar or, if no such officer is available, in the presence of two or more respectable persons not interested in the case. Who

should be asked to satisfy themselves the identification has been conducted under conditions precluding collusion. The identification proceedings should be under taken as soon after the arrest of the suspected person or persons as possible, and should be taken that before the commencement of the proceeding the identifying witnesses are kept in charge of a court peon or other persons not being a police officer at such distance from the place where the proceeding are held as to have no change of seeing the suspects. The suspected person should, if possible, be paraded along with 8 or 10 persons, or, there are more than one suspect, with as 20 or 30 persons, similarly dressed and of the same religion and social status. Care should be taken that the mixing up of the suspect or suspects with the other persons does not take place in view of the police officer and the witnesses. Each identifying witnesses should then be brought up singly in charge of the Magistrate's orderly or some other person not being a police officer, to pick out the accused if he is able to do so. The identification by such witness should be conducted out of sight and hearing of other witnesses. If there is any fear that the identifying witnesses may be subjected to threats or injury, should they become known to the suspects or to their friends, the witnesses should be allowed to view the persons paraded from place where they themselves cannot be seen, as for instance through a window or an opening in a or a wall. When the officer conducting the identification has satisfied himself that no communication between the police and the witnesses was possible, he should given a certificate to this effect.

b. A statement in B. P. Form. No. 45 should be prepared when suspects are presented for identification, and when the identification is not held in the presence of a Magistrate, the witnesses should be prepared to testify to the fairness of the manner in which the identification was affected in the proper columns.

c. These regulations apply only to instance in which suspects have been arrested and have to be confronted with witnesses who express themselves able to recognize them by appearance, although not previously acquainted with them. When as frequently happens, the complainant or other witness states that amongst his assailants he recognized certain persons of his acquaintance, either by their appearance or by their voice, his credibility is a matter for the courts and no departmental rules can become applicable.

d. It should be before in mind that the primary objects of identification proceeding is to test the ability of the witness to identify a suspected person and to ascertain whether there is sufficient evidence to place

him on trial. A Magistrate is chosen merely as a person whose impartiality and honesty is less likely to be called into question by the defense when the case is under trial, and when conducting the proceedings he is not acting in a judicial capacity (unless the case is under trial before him). It is not his duty, therefore, to record statements or put questions to suspects or witnesses except such as are necessary for the purpose of identification. While on the one hand the identification should be conducted with complete fairness and impartiahuty, on the other hand no attempt should be made to confuse or puzzle a witness or to create conditions which would render a witness who is honestly capable of defying incapable of doing so.

e. Test Identification shall, whenever circumstance permit, be held inside the jail. The above rules are applicable in the case of an under –trial prisoner or a suspect in jail. Men on bail shall not be mixed up with under- trial prisoners except with the permission of the Magistrate. In the case of confessing accused, separate test identification parade shall be held unless the Magistrate insists that it is essential to mix confessing with non-confessing accused and hold the test identification parade simultaneously. In subdivision jails the accused shall, if necessary, be mixed up with outsides for holding the test identification therein, as very few under –trail prisoners of similar nature and of the same social status are available there for the purpose.

f. In rioting other cases the police shall keep the persons arrested during the occurrence distinct from those arrested afterwards on suspicion of having taken part in it. Police officer shall use the utmost care to prevent the identity of rioters and other offenders caught in the act form being impugned at the trial. The names of the offenders and of the persons arresting or identifying them shall be recorded as soon as possible in all cases, before the prisoners are removed in custody from the spot; and the place and hour of arrest shall be most accurately noted. Offenders caught red-handed shall be kept quite distinct from those arrested on suspicion.

g. When a suspect refuses to attend a test identification parade no action can be taken in the absence of any evidence other than evidence of identification. When, however, there is other evidence against a suspect and he refuses to appear at a test identification parade he shall be sent for trial on the strength of such other evidence. During the trial, evidence of such refusal shall be led in favour of the reception. At the time of trial, the suspect will be in the dock and available for identification by the witnesses. a suspect refuses to attend a test

identification parade, the Magistrate holding the parade shall be requested to make an appropriate note of the fact in B.P. Form No. 45 and, if the suspect is later sent for trial the Magistrate shall be examined as a witness to prove the refusal.

Regulation- 283

Verification to confession

a. i. When an accused or suspected person volunteers a confession it should be recorded in detail by a police officer who, if it appears to be true, shall take immediate steps for its verification. Such verification should include the tracing and examination of witnesses named or indicated in the confession and the search for, or the recovery of, stolen property or other exhibits to the investigation. The officer recording the confession shall further arrange for the confessing person to be sent to a Magistrate in order that the confession may be judicial recorded.

ii. Anything which savors of oppression or trickery in obtaining a confession must be avoided. The aim of a police officer should be to obtain circumstantial and oral evidence so convincing that the accused person cannot escape. If he succeeds in obtaining such evidence, the confession will often follow and will materially strengthen the case, but to seek to obtain the confession first and the corroborative evidence afterwards is to reverse the proper order of proceedings. If, however, a confession is volunteered in an inquiry, ever effort must be made to ascertain if there is evidence corroborative of any point in the confession which can be verified. A statement purporting to be a confession will often be made in order to mislead the inquiring officer, and such statements are very rarely true in all particulars, and also are frequently made in order to throw blame on other persons, or with a view to deter from further inquiry. Also they are generally retracted in court, in which case, if they stand alone and uncorroborated, they have little or no probative value, There is thus every reason for testing so-called confessions very carefully and not accepting them as final and conclusive, and stopping the inquiry .

b. i. Every confession which a person in police custody wishes to make should be recorded by the highest Magistrate short of the District Magistrate who can be reached in a reasonable time. Confessions can be recorded only by presidency Magistrate, Magistrate of the first class and Magistrate of the second class specially empowered by the provincial G government.

ii. Investigation police officers should not be allowed to be present when a confession is recorded. The Magistrate should satisfy himself in every reasonable way that the confession is made voluntarily. It should be made clear to the prisoner that the making of a statement or not is within his discretion. Cognizance of complaints of ill –treatment by the police should be promptly taken and any indications of the use of improper pressure should be at once investigated. Confessions should ordinary be recorded in open court hours, provided that if Magistrate is satisfied, for reasons to be recorded in writing on the form of confession, that the recording of the confession in open court would be liable to defeat the ends of justice, the confession may be recorded elsewhere. The immediate examination of an accused person directly the police bring him into court should be deprecated, and, when feasible, a few hours for reflection in circumstance in which he cannot be influenced by the police should be given him before his statement is recorded.

c. After a confession which relates to more than one case and discloses the activities of a gang of criminals, has been judicially recorded, it should be verified by a police officer and ordinarily an Inspector should be deputed for this purpose. Should any particulars not be capable of verification without the presence of the confessing accused, an application should, with approval of the Superintendent, be made to the District Magistrate to depute a subordinate Magistrate to verify them with his assistance. When such an application is made, a copy of the translation of the confession together with details of the specific points that it has not been found possible to verify in the absence of the accused, must accompany the application.

d. The verification should be made with a view to discover evidence corroborative of the facts disclosed in the confession and case diaries should be submitted showing for each case all the evidence and information available on the points mentioned below:-

i. Name, father’s name, residence, age and personal description of each member of the gang.

ii. The round by the gang.

iii. The chief incidents during the journey of the gang from start to finish, i. e.,, meeting with any person, visits to shops or blouses for food, oil, light, axes, etc., the hiring of carts, boats or carriages, buying tickets at railway stations, crossing ferries, etc.

iv. The arrival of the gang at the scene of occurrence and the preliminary arrangements makes, lighting torches, cutting sticks, etc.

v. The commission jots the crime, rooms entered, doors betoken, persons tied up or assaulted, crises uttered, or threats used, boxes taken away, chests broken open, property taken, etc.

vi The division of stolen property.

vii. The breaking–up of the gang and the homeward route taken etc.

e. If a confession is made by a convict undergoing imprisonment it should be judicially recorded before action is taken on it. Thereafter if it appears to have been made bona fide and not to implicate his enemies or persons who have given evidence against him it should be verified as descried in clause (c) above. If a magisterial verification of any points is necessary the provincial Government should be moved to suspend the man's sentence temporarily under section 401, C ode of Criminal procedure, as a condition of which suspension Government will require him to remain under the charge of the subordinate Magistrate whom the District Magistrate may select for the purpose.

f. If the prisoner has been confined in jail in default of finding security, the provincial Government may not suspend his section, as he has not been imprisoned for an offence within the meaning of section 401, Code of Criminal procedure, In such cases he may be released on bail, if it is forthcoming, or if not, District Magistrate may cancel the boned under section 125 of that Code. In either case, on release, he should be rearrested and charged with an offence under section 400 or 401, Indian penal Code, and made over to the Magistrate in order that his confession may be recorded (if this has not already been done) and verified if needed.

g. The object of any magisterial verification will be to verify specific points in confessions when certain places or persons cannot be discovered without the assistance of the confessing accused.

h. i. During such verification the Magistrate deputed shall be responsible for the safe custody of the prisoner and shall have sole charge of him, but the latter shall on no account be put in a police station lock-up. No police officer of any fink shall have access to him except the written permission of the verifying Magistrate and

in his presence, and record shall be kept of all such interviews permitted. Ordinary such permission should not be giver to any police officer directly connected with the investigation.

ii. The prisoner shall be guarded by peons arranged for by the verifying Magistrate, when such arrangements are considered sufficient to prevent the escape of or any attack on the prisoner. W hen the custody of peons is considered insufficient, the verifying Magistrate should apply to the District Magistrate for a guard from the Special Armed Force, but the men of this guard shall be forbidden to hold any communication with the investigating police or to converse with the prisoner, the personal wants of the prisoner being attended to by the Magistrate's peons under the eyes of the guard. (Government of Bengal order No. 3571-P.-D,dated the 6th September 1912.)

iii. Where the use of handcuffs or other bonds is deemed necessary. The provisions of regulation 330 shall be followed.

Regulation-284

Procedure to be followed to secure transfer of confessing prisoner from one jail to another

If it is desirable that a prisoner be removed from one jail to another for the purpose of verifying his confession, the following procedure should be followed:-

i. When the two prisons are in the same province, application should be made to the Inspector-General of prisons to direct the transfer under section 29 (2) of the prisoners Act, 1900 (III of 1900).

ii. When the two prisons are in territories under two different provincial Governments, application under two different provincial Government concerned for securing the transfer under section 29 (I) of the Act referred to above.

It will also meet the circumstances if proceedings are instituted against the confessing prisoner in the district to which he is to be removed and an order is then applied for under-section 37 of the Act to the court having jurisdiction in the form set fort in the second schedule of the Act. This procedure should be followed also in the case of all other prisoners, who are accused in the gang case. The removal of prisoners confined beyond the limits of the appellate jurisdiction of the High Court can be effected in the manner laid down in section 40 of the Act.

Regulation -285

Interview with convicts in jails

a. Attention should be paid by Superintendents and police officers generally to the very important subjects of obtaining information from criminals after their conviction. Such information should be received and acted upon with caution, but it can and should be obtained, and a good police officer should know how to utilise it.

b. It should be distinctly understand that the main object of interviewing a convict is not to obtain a confession but information. On many occasions an outbreak of crime has been eventually traced to new gangs, and therefore, when the investigation has established that none of the gangs known to the police have been concerned in the outbreak, the investigating officer will frequently obtain a clue to the gangs concerned from a convicted prisoner in jail home is in the affected area. Much useful information can also be obtained from convicts regarding receivers and the whereabouts of stolen property.

c. It may sometimes happen that from the demeanor in court or at jail parades of a convicted person, the Court Officer may consider that such person can be interviewed with advantage. In such cases it is the duty of the Court officer to report according to the Superintendent.

d. No police officer shall be permitted to interview or interrogate any prisoner in confinement in jail without the permission of the Magistrate of the district, or in his absence, of the Magistrate in charge, or, if the prisoner be confined in the presidency Jail, without the permission of the Commissioner of police, Calcutta, or of the Inspector –General. The permission shall be given in the from of a written order addressed to the Superintendent of the jail. The permission shall be obtained through the Superintendent of police, or in his absence, through the officer in charge at headquarters. As a rule permission to interview a convicted prisoner in jail should not be accorded to an officer below the rank of Sub-Inspector, and, whenever possible, the interview should take place in the morning during the hours when the Civil Surgeon or Superintendent of the jail visiting the jail.

e. If in the course of an interview a convict makes a statement which amounts to a confession, the officer to whom the statement is made shall at once inform the Superintendent of police who shall either personally interview the convict or depute an officer not below the

rank of Inspector to record the statement. If the confession is of an important nature implicating a gang of dacoits professional criminals, the Superintendent shall immediately forward a copy of it to the Deputy Inspector –General, Criminal Investigating Department, or in political cases, to the Deputy Inspector-General, Intelligence Branch, The Deputy Inspector-General shall, on receipt of the confession or statement, use his discretion under regulation 616, whether he will immediately assume control of the investigation or leave the case to be dealt with by the local authorities under the control of the Deputy Inspector –General of the Range. Pending receipt of orders from the Deputy Inspector –General, Criminal Investigation Department or Intelligence Branch, the Superintendent shall take steps to have the confession recorded by a Magistrate and to follow up any clues furnished by the confessing prisoner.

f. It must be understood that the above regulation applies to statements made by convicted prisoners in jail. The procedure to be followed when a person accused or suspected of a crime volunteers a confession and the method of verification of it have been laid down in regulation 283.

Regulation- 286

Remission of sentence

a. When a convict undergoing imprisonment for a substantive offence is tendered pardon in another case or when a person on conviction on his own plea of guilt is examined as a prosecution witnesses against the co-accused, it may be desirable, in consideration of the service rendered to the prosecution, to move the provincial Government to remit or suspend under section 401, Code of Criminal procedure, the whole or any portion of the sentence he is undergoing. Such remission or suspension of sentence shall ordinary be on the conditions noted below and the violation of any of the conditions shall. Under clause (3) of section 401 of the Code, entail the revoking of the order of suspension and his arrest and commitment to jail to undergo the unexpired portion of the sentence:

   i. The convict in whose favour the order was passed shall report himself at the police-station within whose jurisdiction he resides at such intervals as may be ordered by the Superintendent.

   ii. He shall notify his intention to charge his residence to the officer –in –charge of the police –station one week before he charges his residence.

iii. He shall within one week of his arrival at his new residence report himself at the police-station.

iv. He shall not associate with know bad characters.

v. He shall not commit any fresh offence.

vi. If he intends to absent himself temporarily for one or more night from his place of residence, he shall notify the fact personally, or or through the village chaukidar, to the which he is at the time residing, stating the place or place to which he intends to proceed, and the probable dates of his arrival there at and return there from respectively.

b. Applications for the suspension or remission of sentence under section 401, Code of Criminal Procedure, should be made in B. P. Form No. 46, and should be accompanied by all information necessary to guide the provincial Government in the exercise of its discretion.

The period for which it is intended that the conditions shall remain in force should be definitely specified in the application and it must also be stated that the prisoner had consented to the imposition of the conditions.

Regulation- 287

Proceedings under sections 107 and 145, Criminal procedure Code

i. Reports for proceedings to be taken under section 107 or section 145, Code of Criminal procedure, shall be submitted in duplicate in B. P. Form No. 36. One copy showing the result of the case shall be returned direct to the station officer by the Court Officer in lieu of a final memorandum.

ii. In column 4 shall be entered the names of such persons as are considered responsible for a likelihood of a breach of the peace and who should be bund down. These may include names of agents, servants or partisans to the cause of dispute. In a report for proceedings under section 145, Code of Criminal procedure, this column shall remain blank.

iii. f a copy of the Magistrate’s order under section 145, Code of Criminal procedure, is served by the police, it should be served promptly in the manner laid down by law, and every effort should be made to serve it personally on the parties.

iv. In investigating cases of land disputes likely to cause a breach of the peace, the one and only point for determination is to ascertain which party is in actual present possession of the disputed area. In collecting evidence of possession, the investigating officer shall examine people holding or cultivating land in the vicinity and shall note any remarkable feature, such as boundary marks, etc., bearing on the question of possession. It is not necessary to go into documentary evidence, except so far as it throws light on present possession, e.g., a very recent civil court decree followed by delivery or possession or record – of –right recently carried out, etc., may be examined with advantage. When the investigating officer finds one party in possession, he shall ask the Magistrate to take action against the other under section 107 or section 144, Code of Criminal procedure, and if he finds himself unable to collect definite evidence of possession, he shall ask for action under to collect definite evidence of possession. He shall ask for action under section 145 of that Code. The report shall always contain in addition to the reasons for apprehending a breach of the peace a summary of evidence oral or documentary.

Regulation-288

Proceeding under section 109, Criminal procedure:

i. When Circumstances arise which justify proceeding being taken against a man under section 109, Code of Criminal procedure, he should be arrested under section 55 of that Code, and if unable to furnish bail sent to the Magistrate. If, however, immediate drawing up of proceeding is contemplated, the prisoner should be forwarded to the Magistrate whit the necessary witnesses, with a request to draw up proceeding at once and to take the necessary evidence. If for any exceptional reason further enquiry is considered desirable before drawing up preceding either for the purpose of verifying the prisoner's antecedents, collecting further evidence or otherwise, the Magistrate should be moved to grant a remand under section 167, Code criminal procedure. In such a case it will ordinarily be sufficient to send copies of the entries in the diary relating to the case as required by section 167(1) and witnesses need not be sent unless the Magistrate particularly wishes to examine them.

   If should be before in mind that prisoner can only be retained in custody in default of bail for a total period of 15 days under section 167, Code of Criminal procedure, before the actual drawing up of proceedings under section 109. In case the prisoner is remanded to

jail custody without drawing up any proceedings and without any specific charge section 109, Code of Criminal procedure, should be noted in the jail warrant. It is to observed that the circumstance which justify an arrest are identical with those which justify proceedings and are described in practically identical terms in section 55(a) and (b) and section 109 (a) and (b) of the Code of Criminal procedure.

ii. If the Magistrate declines to grant a remand under section 344, Code of Criminal procedure, in order that the previous history of the accused may be ascertained, when the circumstances justifying the arrest have been proved and the proceedings drawn up, the Court officer shall than move the Magistrate to require the accused to enter upon his defense, and if the accused fails to give a satisfactory account of himself, to make an order section 118 of that Code.

Regulation-289

Proceedings under section 110, Criminal procedure Code

A Sub-Inspector having formed an opinion that there exists in any village a habitual thief or a gang of them shall proceed to open a history sheet for them as laid down in regulation 401 and shall quietly, without making his object known, make enquiries to ascertain whether in fact the man or men are habitual thieves and whether evidence will the for throwing against them .If he believes that evidence will be forth – coming he shall report confidentially to the Inspector and the latter, after taking order of the Superintendent or Sub-divisional police Officer, will find out from the Sub-divisional Magistrate or other Magistrate who is to take up the case, when he will able to visit the place to make the enquiry. A fortnight or so before the date fixed by the Magistrate for going to the sport, the Sub- Inspector, accompanied by the Inspector, if possible, shall go there, examine witnesses, fill up the prescribed from, and if evidence is sufficient, arrest under section 55,Code to Criminal procedure, the person proceeded against. If he finds that evidence is not fort coming (but this should not often occur if he has made his preliminary enquiries carefully) the proceedings will be dropped. The persons arrested shall be sent to the Magistrate, who should be moved by the Court officer to draw up proceedings, to read them over to the accused, and to pass an order as to bail and fix an early date for the hearing of the case. On the date fixed he will he go to the sport and should usually be able to finish the case on the same day.

Regulation- 290

Evidence in proceedings under section 110, Criminal procedure Code

i. In cases under section 110, Code of Criminal procedure, evidence of general repute must form the main basic of the prosecution. Under section 117(3) of the Code evidence of general repute is admissible to prove that a person is a habitual offender.

ii. The points to bear in mind connection with evidence of repute are-

iii. That the witnesses should themselves be of good repute and in a position to know the repute and in a position to know the reputation of the accused.

iv. That they should be drawn, if possible, form different classes of the community and not only from the village of the accused, but also from neighbouring Villages.

v. That they should be free from any suspicion of grudge against the accused. In particular, if party faction exists in the village, it must be made clear that the evidence against the accused in not due to faction.

vi. That the witnesses should speak of their own belief and not that of other people, and that their belief carries little or no weight unless it is based on some reasonable ground.

vii. Evidence of general repute may be corroborated by proof of –

viii. Previous convictions.

ix. Want of any know means of livelihood, or manner of living in excess of such means,

x. Association of the accused with other bad characters.

xi. Absence of the accused from his house, especially at night.

xii. Occurrence of crimes at or near the place visited by the accused, coincident with such absence.

xiii. Evidences as to habitual or casual association with know criminals and bad characters is most important, the inference naturally being that the persons who so associates is himself a bad character, and proof of association is necessary to justify more persons than one being tried together under section 117(4), Code of Criminal procedure. Equally important also is the inference to be drawn from dacoities and other crimes occurring at or near place visited by the accused and coincide with such visits. [Vide section 11(2) of the Indian Evidence Act.]

xiv. A statement in B.P. Form No. 47 shall accompany a report under section 109 and 110, Code of Criminal procedure.

xv. In the report for proceedings, no more should be stated than it is proposed to Endeavour to prove. Before the enquiry is held a note shall be prepared for the use of the Court Officer of the evidence obtainable from records and to be given by each witness; and this evidence shall be grouped, so far as circumstances permit, according as it relates to prevalence of crime, suspicion in particular cases movements under surveillance, association, free living without apparent means of livelihood, general repute, or any other facts it is proposed to prove.

xvi. In the case of bad –livelihood proceedings against, it is essential that the evidence should not only be generally arranged in the manner described in clause (f), but it should also be clearly stated and briefed as against each individual accused.

Regulation – 291

Investigating of cases of collision between inland steam – vessels and between inland steam –vessels and country boats

a. When a report is made by the master of an inland steam vessel under section 32 of the Inland Steam Vessels Act, 1917, to the Officer –in –charge of a police –station-

   i. Such officer shall reduce the report to writing and shall at the same time record the statement of the injured party (if any) if available;

   ii. if the place of occurrence be within the local limits of any other police-station, such officer shall forthwith inform the Officer –in –charge of that police-station.

   iii. a copy of the report and of the statement (if any) shall forthwith be Submitted to the Magistrate in charge of Criminal work at district headquarters, or, if the place of occurrence be in a subdivision, to the Sub divisional Magistrate; provided that in cases of casualties occurring within the limits of the port of Chittagong, such report shall be the port Officer, Chittagong;

   iv. pending the orders of the Magistrate referred to above, no arrest shall be made by the police, under Chapter XIV of the Code of Criminal Procedure, with a view to a prosecution for an offence under section 280 of the Indian penal Code, but witnesses may be examined and their names and addresses recorded. so that it may be possible to procure their attendance if it is decided to prosecute;

v. if the Magistrate above to is of opinion that an investigating under section 33 of the Inland Steam –Vessel Act,1917, is necessary, he shall submit a report of the case to the provincial Government;

vi. if he considers that no such investigation is required and that the facts of the case disclose the commission of an offence punishable under section 280 of the Indian penal Code, he may direct the Officer –in –charge of the police station concerned to take cognizance of the offence; and

vii. in cases of serious accidents, such as boiler explosions, or where a vessel is badly damaged, or where a doubt arises as to whether from a technical point of view the vessel is fit to ply, a copy of the first information report submitted to the District Magistrate or the Sub-divisional Magistrate concerned shall be furnished to nearest Marine authority, v i z, the principal Officer, Mercantile Marine Department, Calcutta, or the Nautical Survival, Chittagong, according as the place of accident is near Calcutta Chittagong.

b. If the officer-in-charge of a police-station receives information relation to the commission of an offence under section 280 of the Indian penal code by the master of an inland steam-vessel, he shall adhere to the following rules, namely:-

If the reason to believe, either on information received under clause (II), or on other grounds, that a report has been made by the master of the inland steam-vessel concerned to the officer-in-charge of some other police-station under section 32 of the Inland steam-Vessel, Act,1917-

i. He shall reduce the information to writing and shall take steps to secure the names and addresses of witnesses and to safeguard any property produced;

ii. he shall also submit a copy of the information forthwith to the Magistrate described in clause (a)

iii. Pending the orders of the above Magistrate he shall not make any arrest under chapter XIV of the Code of Criminal Procedure, with a view to a prosecution for an offence under section 280 of the Indian Penal Code;

II. if he has no reason to believe that such a report has been made, he shall proceed to investigate the case under Chapter XIV of the Code of Criminal Procedure. (Bengal Government Notifications No. 1792 j., dated the 16th June 1912, and No 3133j., dated the 14th July 1913)

Regulation -292

Investigation of cases in which British soldiers are concerned

i. Under the orders of the Central Government (i) on the occurrence of a serious affray between British soldiers and villagers, (ii) in all cases in which there is reason to suspect that an Indian has met his death at the hands of a British soldier, the investigation shall be conducted at once on the spot by the Superintendent, unless the District Magistrate himself investigates or orders a European Civil officer to investigate.

ii. With the assistance of military officers, immediate and full enquiry among the soldiers shall be made in such cases. The military authorities are under the absolute obligation of giving immediate information to the civil authorities and of assisting them in the investigation Magistrates of districts should also co-operate with the regimental officers in conducting investigations in these cases.

iii. The post-mortem examination of an Indian who is suspected to have met his death at the hands of a European, shall invariably be made by the Civil Surgeon, except where this is not possible, owing to the Civil Surgeon being at too great a distance from the scene of the occurrence.

iv. In every instance, prompt information of the occurrence shall be sent, where possible by telegram, to the Civil Surgeon of the district as well as to the District Magistrate and the Superintendent.

Regulation -293

Expenses of witnesses and investigating officers incurred in the investigation of cases

i. Bills for expenses of witnesses who are not servants of the Crown for diet money and the cost of travelling by railway or long distances by boat or road in the interests of police investigations shall be sent to the Superintendent for sanction and payment. Such expenses should only be incurred in cases of considerable importance.

ii. The bills after being passed by the Superintendent shall be paid from his contract contingent grant and the amount made over to the witness concerned, if he is present, or sent to the Superintendent of the district, or to the officer-in-charge of the police-station, in which the witness resides, to be paid to the person entitled to the sum. A receipt for the amount paid shall in all cases be taken from the actual payee.

iii. Superintendents, when passing these bills, shall see that police officers have not neglected their duty of themselves going to the scene of the crime and interrogating the witnesses there. The true object of the rule is to provide for those important cases in connection with which the witnesses have to be brought from other districts to identify accused persons or to describe on the spot the progress of events connected with the crime. The bills should be passed and cashed with all possible promptitudes.

iv. All Charges incurred by police escorts on account of travelling and diet expenses of witnesses arrested under warrants issued by criminal courts under section 92 of the code of Criminal Procedure shall be recovered from the courts.

v. All legitimate expenditure of investigation officers, as well as all necessary expenditure incurred in the investigation of cases which cannot, under the existing rules, be paid from other sources or recovered from the courts, shall be paid by the Superintendent from the contract contingent grant, and shall be recorded under a detailed head "Police investigation charges"

Note- Clause (e) of the rule covers expenses such as-

i. travelling and diet expenses of witnesses attending police enquiries, who are not required to appear before the court;

ii. subsistence allowance or travelling expenses of informers and approvers;

iii. diet exdpenses of choukidars and dafadars called in from distant beats to help in the investigation of cases; and

iv. hire of conveyances for bringing important personages to the scene of occurrence to help in investigation.

Regulation -294

Despatch of papers to the Examiner of Questioned Documents

Instructions for the guidance of police officers in sending documents for examination by the Government Examiner of Questioned Documents and requiring his attendance in law courts are laid down in Appendix XVII.

Regulation -295

Utilization of Criminal Intelligence Bureau

i. The services of the Criminal Intelligence Bureau of the Criminal Investigation Department shall be utilised as far as possible for

obtaining information regarding particular classes of crime and criminals. Every investigating officer shall carefully study and observe the rules on the subject contained in chapter IX.

ii. In every case in which a reference is mode to the Criminal Intelligence Bureau, no matter whether such reference has proved successful or otherwise, a further or final report shall be submitted showing briefly the result of the case, to enable the officer-in-charge of the bureau to make necessary additions or corrections to his records.

iii. Besides referring to the Criminal Intelligence Bureau for information all officers should also bear in mind the necessity for furnishing information for record, and after the disposal of any cases of the kind referred to in the first paragraph of clause (a) of regulation 633 a note of the case with details of the modus operandi and of the person accused or suspected, should be sent by the investigating officer to the Officer-in-charge of the bureau for record. See also regulation 189(t).

Note.-For information regarding excise and opium smugglers, application should be made direct to the superintendent, excise Intelligence Bureau, Bengal, who will supply any information available.

Regulation -296

Utilization of photographic Bureau and intensification of finger prints.

i. The services of the photographic Bureau of the Criminal investigation Department shall be utilized as far as possible for the examination of finger marks left behind by criminals in the act of committing offences. The expert in the bureau is able to intensify impressions which are scarcely visible to the ordinary observer, and to examine them with a view to establishing their identity or otherwise with the impression of suspected persons.

ii. Every investigation officer shall observe the following instructions:-

iii. Finger marks should invariably be looked for on glass, metal, polished wool, or lacquer work. Torches abandoned by dacoits should always be carefully examined, as good finger impressions are not infrequently found on the charred surface of the torch; upon bottletorches such impressions are usually very clear. The fact that glass forms the best medium for finger impressions is of importance also in cases in which prostitutes are drugged for the purpose of

robbery, the liquor being usually administered in an ordinary tumbler or bottle. In burglary cases finger impressions are often to be found on the bamboo matting near the point of entry, or on door-posts, and the portion on which the finger impression is found should be carefully cut out and forwarded for examination. In cases of murder immediate search should be made for blood-stained finger impressions. All investigation officers are supplied with a magnifying glass, which they should invariably carry with them on investigations.

iv. Finger marks on glass, polished wood, metal and lacquer work may be intensified by sprinkling the surface with a small quantity of a powder, known to chemists as "Gray powder", which should then be gently shaken or brushed off with a camel hair brush. Should the substances be white in colour, such as paper, wood, etc., "Graphite" may be used instead of "Gary powder", This treatment has the effect of making visible impressions which cannot be seen with the naked eye. Articles which may have been handled by criminals should always be treated in this way, if possible. These powders may be obtained from Bathgate & Co., Calcutta. Steps should be taken by the Superintendents to supply all police-stations with phials of "Gray powder" and "Graphite", the expenditure being met from the contract grant. Inspecting officers are required to see that their officers understand and follow these instructions.

v. Objects appearing to bear impressions should be forwarded to the Criminal Investigation Department for opinion. Great care should be taken not to make other finger impressions on any such article forwarded. It should not be handled unless absolutely necessary. When something with a smooth surface should be slipped underneath. The article should be carefully lifted into the box in which it is to be packed, and nothing with a rough surface should be allowed to come into contact with the portion bearing the finger impression. Particular care should be taken in following these instructions in forwarding tumblers in poisoning and drugging cases.

vi. In important cases, or when exhibits are very heavy or large, they may be sent down by special messenger. Ordinarily the package should be sealed and sent by registered post to the Assistant to the Deputy Inspector-General, Criminal Investigation Department. A label should be attached to each article, giving the name of the police-station name of district, and the name of the officer forwarding the package, and every care should be taken that the

identity of the exhibit can be proved, as in the case of articles sent to the Chemical Examiner.

vii. When impression are left on articles like safes or on walls, a telegram should be despatched to the Criminal Investigation Department asking for the services of an expert to intensify the impression, care being taken in the meantime to protect it.

Note:- *Regarding the submission of the finger prints of deceased persons see regulation 313.*

Regulation -297

Requisition for expert opinion and despatch of exhibits to the Chemical Examiner and other experts.

Instruction for the guidance of police officers in making requisitions for expert opinion and in sending exhibits for examination in connection with the investigation of cases are given in Appendix XVIII.

Regulation -298

Direct correspondence with the police of the orissa, Cooch Behar, Tripura and Jaipur States.

With a view to facilitate enquires and avoid delays in charge of police-station in British districts shall send the following communications direct to police-stations in the Indian States of Cooch Behar, Tripura and Orissa:-

i. Enquiry slips.

ii. Hue-and-cry slips.

iii. Verification rolls.

iv. Application for certified copies of previous convictions.

Correspondence in matters relation to conviction rolls of accused persons and police enquiries regarding suspicious and bad characters should be addressed by superintendents direct to the superintendent of Police of various districts of the Jaipur State in Rajpuma. The Superintendents off police of Jaipur will similarly address such correspondence direct to the Superintendent concerned in this Province.

Delays in receiving replies, if of an exceptional nature, should be reported to the inspector-General.

IV. UNNATURAL DEATHS AND INJURIES

Regulation -299

Inquiries into unnatural and suspicious deaths, First information to be submitted

i. Immediately after receipt of information of a death occurring in any of the circumstances mentioned in section 174, Code of Criminal Procedure, a First Information Form shall be submitted in B.P. Form No. 48. The information shall be recorded in the same manner as a first information in the case of cognizable crime.

ii. A Sub-Inspector, Assistant Sub-Inspector or head constable shall then proceed to the place where the body of the deceased person is, and after making the investigation prescribed in section 174, Code of Criminal Procedure, and making such further enquiry as may be necessary, shall submit his final report to the nearest Magistrate empowered to hold inquests. The investigation report signed by the police officer and two or more respectable persons, as required by section 174 of that Code, Shall be attached to the final report. (See regulation 300).

iii. Case diaries shall be submitted in enquires into unnatural or suspicious deaths only if the enquiry lasts more than one day. But if the police officer making the enquiry finds reason to suspect the commission of a cognizable offence, the enquiry becomes one under section 157, Code of Criminal Procedure and case diaries shall be submitted.

iv. Where several persons meet their death by the same accident, there shall be a separate report on each body, but not necessarily a separate first information or final report.

v. One copy of the first information report and final report shall be kept at the police-station. The number of the corresponding entry in the death register and register of persons killed by wild animals shall be noted at the top.

vi. The following procedure shall be observed in connection with deaths occurring in hospitals situated in calcutta from injuries sustained within the jurisdiction of the Bengal police:-

In all cases where a person seriously injured is sent from a mufassil police-station to a hospital in the town or suburbs of calcutta, a note showing brief facts of the case together with names and addresses of witnesses who will prove facts in connection with the injury should be

sent by the Bengal Police-station concerned to the Officer-in-charge of the Calcutta Police section where the hospital is situated further, a relation of the injured man or a constable of the Bengal Police-station concerned should stay in the hospital or in the neighbourhood in order to identify the body at the time of post-mortem in case of death.

The investigation shall be held by the Officer-in-charge of the Calcutta Police section, before whom the Officer-in-charge of the Bengal police-station concerned shall produce all available evidence to enable him to arrive at a definite conclusion regarding the cause of death.

Regulation -300

Powers of Assistant Sub-Inspectors and junior Sub-Inspectors under section 174(1), Criminal Procedure Code, and duties of constables lift in charges.

i. Assistant Sub-Inspectors and junior Sub-Inspectors Sub-ordinate to an officer-in-charge of a police-station are empowered to act under section 174(1) of the Code of Criminal Procedure. Assistant Sub-Inspector, however, shall not be so employed when a Sub-Inspector is available, nor shall they make enquiries in any case in which the information or the circumstances indicate the possibility of the death being the result of foul play.

ii. A constable cannot make an enquiry; but when no other officer is present at the station, the senior constable shall proceed to the spot, the charge of the body, note its state, and make all arrangements for its despatch, in case the enquiring officer desires to send it for examination.

Regulation -301

Inquiries into unnatural or suspicious deaths by presidents or selected members of panchayats or by presidents or members of union boards and Forest officers

i. When a president or a selected member of a panchayet or the president or vice-president or a selected member of a union board who is authorized by the District Magistrate to enquire into the circumstances of unnatural deaths in which there is no suspicion of suicide or foul play, makes such an enquiry, he shall forward a report signed by two relatives of the deceased, or if there are none available, by two respectable inhabitants of the neighbourhood to the Officer-in-charge of the police-station (within the limits of

which the death occurred) who shall forward the report to the Court Officer, through the circle Inspector unless there is any obvious error or irregularity in the report in which case he will record the first information and return the report to the sender for correction. On receipt of such report the Officer-in-charge of the police-station shall not proceed to the spot or hold an enquiry, unless he has reason to suspect the occurrence of suicide or foul play.

ii. Similar enquiries subject to the same conditions as prescribed above may be made within their respective jurisdictions in forest areas (except of the Darjeeling division), where there is no chaukidari union or union board, by Sub-divisional Forest officers or Range officers who may be authorised by the District Officer for the purpose.

Regulation -302

Death of European officer or soldier, Death of a prisoner in police custody

i. A police officer empowered to hold enquiries, who receives information that a European soldier or officer of the Army has committed suicide, or has been killed, or has died in the circumstances mentioned in section 174(1) of the Code of Criminal procedure, shall not proceed to the spot, but shall confine his action to sending an immediate report to the nearest Magistrate empowered to hold inquests.

ii. When a person dies in the custody of the police, the officer empowered to hold an enquiry, who receives notice of his death, shall send information at once to the nearest Magistrate, but he shall not refrain from commencing an inquiry under section 174 of the Code himself. Information shall also be given by telegram, if possible, to the Superintendent and, if not, by the quickest means of communication available.

Regulation -303

Directions for investigation in cases of suspicious and unnatural deaths

In investigating unnatural and suspicious deaths, the direction in Appendix XIX shall be observed by the police with a view to obtaining as much medico-legal evidence as possible. The instructions contained in “A Guide to Medical Jurisprudence” by Col. R.N. Campbell, C.B., C.I.E., shall also be followed according to the requirements of each case.

Regulation -304

Corpses sent for post-mortem examination.

i. When a corpse is sent in for post-mortem examination, it shall be accompanied by a copy of the surat hal report and a chalan in duplicate in B.P. Form No.49 one copy of which shall be addressed to the court officer who shall forward it to the superintendent and the other copy to the medical officer holding the post-mortem examination. All corpses shall be sent to the headquarters of the district, unless the medical officer at the subdivision has been authorised by the Provincial Government to conduct post-mortem examination. Post-mortem examination shall, as usual be done in cases of infectious diseases, e.g., tetanus, plague, smallpox, etc., whenever repuired by the police.

ii. The chalan shall contain the date and hour of the actual despatch of the corpse, an accurate description of it, a statement of the apparent cause of death, the circumstances, if any, which give rise to any suspicion of foul play and an accurate list of clothes and articles sent in with the corpse.

iii. When sending a corpse for post-mortem examination, a sufficient quantity of powdered charcoal shall be placed next to it and a sheet wound round it, and in all cases wherever a charpoy can be obtained, the corpse shall be carried upon it and shall not be slung on a bamboo.

Regulation -305

Duties of constable in charge

i. The corpse shall be sent in charge of a trustworthy constable whose name, together with those of the bearers and others accompanying it, shall be recorded in the chalan.

ii. The constable shall be given a command certificate, on which the date and hour of his arrival shall be noted by the medical officer.

iii. A Constable in charge of a corpse shall be given strict orders not to loiter on the road but to take it by nearest route direct to the dead-house.

iv. After leaving the body at the dead-house, he shall immediately deliver the surat hal report and one copy of the chalan to the Civil Surgeon (at headquarters) or Assistant Sub-Assistant Surgeon (at Subdivisious). He shall obtain on the second copy of the chalan the medical officer’s endorsement of the date and hour of his arrival and

deliver it to the court officer, who shall forward it immediately to the superintendent or Sub-divisional Police Officer, as the case.

Regulation -306

Post-mortem examination and report

i. On completing the post-mortem examination, the medical officer shall fill up the whole of the B.P. Form No. 50 in triplicate by the pen-carbon process. One of the carbon copies shall be sent to the investigating officer through the constable who brought in the corpse. The original report withthe chalan form and surat hal shall be forwarded to the superintendent, direct or in the case of a subordinate Medical Officer, despatched to the superintendent, through the Civil Surgeon for his remarks. The Superintendent shall then forward the report to the Court Officer to lay before the Magistrate concerned. The register of post-mortem examinations shall be kept by the medical officer.

ii. Police officers shall refer to the Civil Surgeon if they have any doubt in regard to any part of the medical report.

Regulation -307

Presence of police officer at post mortem examination

i. The police officer sent in charge of a corpse need not be present throughout the details of the post mortem examination. It will suffice if he stands sufficient near to be able to testify that the body which had been in his charge was the one examined by the medical officer. He should be present at the court when the medical officer’s testimony as to the result of the examination is given, in order that the identity of the body examined, with the body to which the criminal case relates, may be established, if necessary.

ii. When possible, investigation police officers should be encouraged to attend the post mortem examination.

iii. When a Magistrate in seisin of a case considers for reasons to be recorded in writing, the presence of another medical practitioner to be essential in the interest of justice, one or more medical practitioners to be selected by the Magistrate, may be allowed to be present as witnesses at an autopsy or other medico legal examination conducted by a medical officer in the service of the Crown in connection with the case.

Regulation -308

Expenses of forwarding corpses

Expenses incurred in transmitting corpses or wounded or sick persons to the medical officer for examination or treatment in all cases, railway included, shall be met by the Magistrates, and not from the police budget. In railway cases the bills shall be sent to the Magistrate through the court officer, and the latter shall see that the bills are passed and paid without unnecessary delay.

Regulation -309

Carriage of dead bodies by railway to post-mortem centres without prepayment of fees

On the East Indian, Bengal-Nagpur and Bengal and Assam Railway accommodation for the carriage of dead bodies to post-mortem centres is provided, without prepayment of fees, on requisition to the station-master of the nearest railway station by an officer not below the rank of an Officer-in-charge of a police-station or, in his absence, by the senior police officer present at the police-station.

Regulation -310

Disposal dead bodies

The final disposal of the body rests with the Magistrate or the municipal authorities, according to local arrangements. Charges incurred by the police for the disposal of bodies of persons who have died within railway limits and are not claimed by their friends, shall be paid for by the Magistrate from his district budget.

Regulation -311

Post-mortem and clinical examination on animals

i. When an animal has died or has been injured and the commission of a cognizable offence is suspected, a Magistrate or a police officer not below the rank of Sub-Inspector or an Assistant Sub-Inspector if he is an Officer-in-charge of a police-station, is authorised to require a veterinary assistant, when such an officer is available, to perform a post-mortem or clinical examination. When the circumstances of the case require it, the veterinary assistant will also superintend the removal and despateh to the Chemical Examiner of the viscera of the animal, and the expenditure incurred on that account shall be met by the Magistrate out of his contingent grant. (Vide rule 64 of the Bengal Veterinary Manual.)

Note. *Regarding the fees payable to veterinary assistants for such examination, which are payable by the Magistrate, see rule 65 of the Bengal veterinary Manual.*

i In Places where there is no veterinary assistant, or when that officer is absent on tour or otherwise not available, the Civil Surgeon shall perform the post mortem examination, and shall, when necessary, superintend the removel and despatch of the viscera to the Chemical Examiner.

Regulation -312

Medical examination of wounded persons

i. When a wounded person is sent in for medical examination, a report in Bengal Form No.3865 shall be sent to the medical officer.

ii. The rules relating to duplicate chalans and sending intimation to the superintendent, the Civil Surgeon, and the station police, in post-mortem cases, shall be observed in cases of wound or injury.

iii. Medical officer's reports in B.P Form No.50 and Bengal Form No.3865 need not be attached to the final form, or form part of the Magistrate's record of the case, as such reports are not legal evidence.

iv. Wounded person brought into a station by the police but not charged with any offence shall be sent unless they object, to the nearest charitable hospital or dispensary, sub-divisional hospital or head-quarters hospital, as the case may be, and the expenses incurred in sending them there shall be met by the Magistrate. Those brought in police custody and charged with an offence, shall be treated in the jail hospital, unless they are released on bail, in which case they may be sent to the charitable hospital only by order of the Magistrate.

v. In serious cases police-station officers shall send wounded persons, not required to be kept in custody , without any delay, direct to the nearest charitable hospital with indoor accommodation for first aid. Such cases can subsequently be removed for treatment to the hospital at sub-divisional Headquarters, where all cases which are not of a serious nature shall be taken for treatment from the beginning (for expenses see regulation 308)

If a wounded person in a medico-legal case declines to go to hospital or is too ill to be removed to hospital the police shall requisition the services of the nearest medical officer in the service of the crown for the purpose of obtaining a medico-legal certificate.

If no medical officer in the service of the Crown in available, either the doctor of a Local Fund dispensary or a private registered medical practitioner may be called in to make the examination for the

purpose of a medio-legal certificate and paid a fee not exceeding Rs.4 from the contract contingent grant of the superintendent concerned.

i. If a case of wound or injury is a dangerous one, the investigating officer shall take immediate measures to have the injured mans statement recorded by a Magistrate. (See regulation 266.)
ii. The consent of an injured person is necessary to his removal to hospital.
iii. On no account shall women be subjected to medical examination without their consent.

Regulation -313

Submission of finger prints of unidentified dead bodies for search.

i. Where the identity of a corpse, or of a person killed by accident or who met with death under suspicious circumstances or in the act of committing dacoities, burglaries or other offences has not been fully ascertained by ordinary inquiries, the finger prints should be taken on finger print slip form (B.P. Form No.52). and sent to the Finger Print Bureau for search together with a search reference slip (B.P. Form No.53).

ii. Ordinarily there is not much difficulty in taking impressions from the fingers of a corpse, but it sometimes happens that the skin of the fingers is so contracted and wrinkled that decipherable prints cannot be obtained. In such cases the medical officer holding the post-mortem should be asked to remove the skin from the fingers. The pieces of skin from the ten digits should then be carefully enclosed in separate numbered envelopes and sent to the bureau for examination.

iii. The finger prints of unidentified bodies should invariably be taken under the supervision of an officer not below the rank of a sub-Inspector Finger Prints of all dighs mast be taken, even if it is necessary to remove the skin of the fingers; and the supervising officer will cruelly by his signature on the search slip that the impressions have been correctly taken in his presence. The supervising officer will farther note in the remarks column of the search slip the condition of the body, whether in an advanced stage of decompohion or other wise.

iv. The transmission of finger impressions of unidentified prisoners does not dispense with the necessity of the local enquiry as to the identity of prisoners ordered in regulations 454 and 458.

v. In all cases of murder or suspicious death, where an examination of the surroundings discloses, or may possibly subsequently disclose, anything in the shape of finger marks, biurred or other wise. On any article which might reasonably be expected to have been touched by the victim, the finger prints of the deceased shall invariably be taken for purposes of comparison with the finger impression found on such article (picked up at the scene of the murder.)

Finger impression; of deceased persons shall invariably be taken as quickly as possible after the arrival of the investigating officer at the spot as owing to decomposition which is rapid in India, delay might render the taking of distinct impressions impossible.

Note: *Dupheate finger print slip shall be taken and submitted to be finger print Bureau for search if it is found that for unavoidable reasons and after exercising all possible care the impressions of the subject remain blurred and indistinct.*

Regulation -314

Photographing unidentified corpses

i. In addition to taking the finger impressions of unidentified corpses, as laid down in regulation 493, such corpses shall, whenever possible, be photographed with a view to tracing their identity. Such photographs shall whenever possible, be of half-plate size.

ii. If a competent photographer cannot be arranged for locally a photographer will be deputed from the criminal Investigation. Department on receipt of a requisition by wire. To save time, such requisitions may be sent from police-station officers direct, but a wise discretion shall be exercised, and they shall be sent only when the corpse is identifiable and there is reason to believe that the photographer will arrive before the corpse is unrecognizable owing to decomposition.

iii. When it is necessary to photograph an unidentified corpse, the whole body should be included in the photo, the corpse being placed in such a position that all scars and similar marks of identification are clearly visible. This is especially important in cases where the features are in any way disfigured. Distinguishing marks on the body are much surer means of identification than articles of clothing, and as they disappear with the corpse, a full and accurate record of them is necessary.

iv. Whenever an unidentified corpse is photographed, particulars of the subject, as far as they are known, shall be clearly written on the back of the photo. (See regulations 639.)

Regulation -315

Service of warrants

a. Warrants directed to an officer-in-charge of a police-station for execution under section 77, Code of Criminal Procedure, shall be addressed to him either by name or by title of his office. Section 79 of the Code prescribes that all subsequent endorsements shall be by name. If therefore, the officer to whom the warrant is addressed desires to entrust the execution of the warrant to some other police officer the endorsement shall be by name. His authority to endorse shall be made clear by addition of the words "Officer-in-charge" after his signature. An officer below the rank of Assistant Sub-Inspector, unavoidably left in charge of the police-station, has no power to endorse a warrant.

b. The officer entrusted with the service of a warrant shall be informed of the date on which he is required to return; and on his return, the warrant, it is has been executed, shall be returned to the Court officer with a report endorsed on its back by the Officer-in-charge of the police-station, stating how and by whom it has been served.

c. Warrants endorsed for bail (See section 76, Code of Criminal Procedure) shall, whenever possible, be executed by a police officer who can read and write. Bail bonds taken shall be returned with the warrants.

d. Warrants issued against railway servants shall be entrusted to some police officer of a superior grade, who, shall, unless immediate execution is necessary, communicate with the Railway Police. For instruction regarding the arrest of railway servant see regulation 593.

Regulation -316

Arrest without warrant

a. The power of arrest without warrant possessed by police officers are laid down in sections 54, 55, 57(1), 128, 151 and 401(3) Code of Criminal Procedure. A telegram may be considered to furnish credible information of a person having been concerned in a cognizable offence. "Cognizable offence" is defined in section 4(f) Code of Criminal Procedure.

b. An Officer-in-charge of a police-station has no legal power to summon before him any person accused of an offence. The only manner in which he can enforce the attendance of such person before him is by arrest, and without an arrest the attendance or detention of

an accused person cannot, under any circumstances, be compelled. It is, therefore, to be understood that, whenever and accused person is sent for and made to attend before and investigating officer, he is to be considered as having been arrested, and to be entered in the return accordingly. The manner in which arrest is to be made is described in section 46 to 48 and section 53, Code of Criminal Procedure. No person who has been arrested may be discharged except on bail, or on his own recognizance, or under the special orders of a Magistrate (see section 63 of the Code.)

c. "Police custody" includes custody on the authority of the police; every person who is kept in attendance to answer a charge in such a way that he is practically deprived of his freedom shall be considered as in custody. A police officer who, without himself arresting a person, directs some of the neighbors to take charge of him, shall be responsible in the same way as if he had made the arrest himself. Requiring a person's attendance by letter and deputing a constable to accompany him with orders to prevent him from speaking to any one amount to an arrest.

d. The attention of all officers is drawn to section 25 of the Criminal Tribes Act, 1924 (VI of 1924), which provides for the arrest without warrant of a registered member of a criminal tribe, whose movements have been restricted or who has escaped from a settlement or school, if found in a place beyond the area prescribed for his residence, and for the removal of such member for his prosecution under section 22(1) of the said Act, to the district in which he should reside or to the settlement of school from which he escaped.

Regulation -317

Unnecessary arrest to be avoided and bail to be allowed freely

a. The police shall be careful to abstain from unnecessary arrests. In petty cases it is hardly ever necessary to arrest on suspicion during the course of an enquiry and never necessary to arrest after the enquiry is over, when the case is not to be sent up in heinous cases it is different. Police officers should not hesitate to arrest on suspicion. Having made the arrest they shall send the accused to the nearest Magistrate in the manner laid down in regulation 324 or else release him on bail.

b. A free use shall be made of the discretion given by section 497(2), Code of Criminal procedure, to accept bail in non-boilable cases. It

shall be before in mind that under section 54 of that Code, "reasonable suspicion" will justify the arrest of an accused person, but that unless the evidence is sufficient to constitute "responsible grounds for believing in his guilt", the arrested should be at one followed by an offer of release bail under section 497(2) of the Code.

Regulation -318

Arrest of persons employed in public utility services

When the immediate arrest of persons employed in a public utility service (such as the Telegraph or Postal service) would cause risk and inconvenience to the public, the investigating officer shall make arrangements to prevent escape and apply to the proper quarters to have the accused relieved. In cases where immediate arrest can be made, without risk or inconvenience to the public, notice of the arrest shall at once be sent to the official superior of the accused to enable him to arrange for his duties.

Regulation -319 Arrest of soldier

Whenever any one subject to the Indian Articles of war is arrested, notice shall be given forthwith by the police to the officer commanding the troops to which he belongs.

Regulation -320 Arrest or surrender of Army deserter

An Army deserter shall on arrest or surrender be taken to the nearest police-station where the Officer-in-charge shall make out a certificate in B. P. Form No.54, specifying the date and place of arrest or surrender. This certificate must be signed by the Officer-in-charge who shall record below his signature the words "Officer-in-charge" and the name of the police-station, and shall be sent without delay to the officer commanding the unit to which the deserter belongs.

The deserter shall then be taken, (i) if a deserter from the British Army, to the nearest Justice of the peace (of. Secs 22 and 25, Code of Criminal Procedure); (ii) if a deserter from the Indian Army, to the nearest Magistrate, either of whom shall prepare a descriptive return and make a summary enquiry preliminary to handing him over to the military authority.

Regulation -321 Illness of person arrested

321. (a) When a person arrested has to be kept in custody, and is in such a state of health that he cannot be removed without serious risk to

himself or others, the officers making the arrest shall make suitable arrangements for procuring medical aid for him.

(b) When it is necessary to provide medical aid for a prisoner the nearest medical officer in the service of the Crown should be called if he is within reasonable distance; but when no medical officer in the service of the Crown is within reasonable distance the nearest private medical practitioner should be employed, and his services paid for. The Officer-in-charge of the police-station shall submit a bill for payment through the superintendent to the District Magistrate, will meet the charge from his contingencies.

Regulation -322

Property of arrested persons taken charge of by police

When persons are searched under section 51, Code of Criminal Procedure, and the police take charge of articles a receipt shall be granted to the prisoners. A list of the property shall be attached to the charge-sheet form or to the case diary or the final report of the case. When such property is sent to the court, full information concerning it shall be given to enable the court officer to fill in the *malkhana* resister.

Regulation -323

Action in cases of failure to arrest

a. A warrant of arrest of an accused person remains in force, and shall be retained at a police-station, till the arrest is made or the individual surrenders, or till the warrant is formally cancelled or withdrawn by the court which issued it.

b. When a police officer to whom a warrant has been entrusted for execution, fails to find the accused person, and has reason to believe that he has absconded or is concealing himself, and the warrant cannot be executed, he shall submit a report in writing, stating clearly the reason for such belief.

c. He shall also, in all except petty cases, make a list of the property movable or immovable belonging to the absconder, and after obtaining the signature of the panchayat or president of the union board or of some other respectable witness on the list, shall send it with a warrant report form (B. P. Form No.55), to the Magistrate, In the case of persons who are absconding at the time of submission of a charge-sheet this list shall be submitted together with the charge-sheet so that an order of attachment may issue immediately.

d. A Magistrate issuing a warrant is required to fix a date by which the warrant is to be execute, or failure to execute reported. It is not possible to return the warrant duly executed to the issuing court by the date fixed by the warrant, the Officer-in-charge of the police-station to whom the warrant has been address or endorsed, shall submit, so as to reach the issuing court not later than the morning of the date fixed a report in B. B. Form No. 55 stating the reason why the warrant has not been exeeuted. If the accused is absconding, he shall also sent with his report the original report, referred to in class (b) above, of the officer to whom the warrant was made over for service, together with the list of properly belonging to the absconder, It will than rest with the court officer to apply for proclamation and attachment, if necessary.

e. The officer to whom the execution of the warrant was entrused, shall, if necessary, be sent with the report referred to in clause (d) above so that his sttement can be recorded with a view to taking proceeding under section 87, Court of Criminal Procedure.

f. An unexpected warrant for the arrest of a witness in form No. VII, Schedule V, Code of Criminal Procedure shall be returned to the Magistrate on the date fixed therein, so that he may take any further steps he may think advisable.

g. Unexecuted warrant, for arrest of accused persons shall be kept in file until they are arrested or the warrants are cancelled or withdrawn.

h. A register of warrants of arrest shall be maintained at each Police-station in B. P. Form No 56.

Regulation -324

Accused to be forwarded to Magistrate and application for detention in police custody

a. Section 61, read with section 167 of the Code of Criminal Procedure, requires than an accused shall be sent forthwith to the nearest Magistrate, together with the copy of the entries, in the case dairy if the inquiry be not completed within 24 hours of his arrest; but in no case shall be accused remain the police custody longer than under all the circumstances of case is reasonable.

b. The High Court have issued the following order regarding remands:

"The attention of all Magistrates is invite to the provisions of section 167 of the court of Criminal Procedure and to the importance of

exercising a sound judicial disertion in the matter of granting refusing remands their under. Orders under the section it is to be observed, should be made in the presence of the presoner and after hearing any objection no may have to make to the proposed order. When future detertion is considered necessary the remand should be for the shortest possible period. Application for remands to police custody should be carefully seraunized and in general should be granted only when it is shown that the presence of the accused with the police is necessary for the identification of persons the discovery or identification of property, or the like spral reasons. In particular, the court is of opinion that applications, it ever made, for remand to police custody of a prisoner who has filed to make an expected confession statement should not be granted"

c. When the conditions justifying a remand to police custody exist the station officer shall forward the accused to the nearest Magistrate (wheather or not he has jurisdiction to try the case) together with a copy of his case diary and report the matter to the superintendent.

d. The grounds upon which the remand is needed shall be distinctly stated in the application to the Magistrate.

e. An application for a remand to police custody shall not be treated as a matter of rounnite and of little importance. It shall be made to the sub-divisional Magistrate through the chief police officer present at the district or Sub-divisional Headquarters.

f. No order reamanding an accused person to police custody shall be passed by an officer of lower status than a Magistrate of the 2nd class and application for remands shall be made to Magistrate of the required status only.

g. The exercise of the power to remand a prisoner to police custody shall be restricted to stipendiary Magistrate of the required status and in their absence, to Honorary Magistrate of the 1st class with single sitting powers.

h. When the object of the remand is the verification of the prisoner's starement he should be remanded to the charge of a Magistrate.

i. The period of remand shall be as short as possible.

j. Whenever an application for the remand of an accused person to police custody is made, he should invariably be produced before the Magistrate. Such an application should be made at the earliest possible moment and subsequent applications for further reamands

to police custody, where necessary, should be made in continuation of the former. As under-trial prisoner cannot remain in police custody after 15 days have elapsed from the date of his first production before the Magistrate.

Regulation -325

Pursuit, arrest and extradition of offenders in Indian states and Foreign Territory

a. Rules for the pursuit, arrest and exradition of offenders who have escapsed from British_India to state territory, or vice versa, are given in Appendix XX.

b. The procedure for securing the extradition of an offender from or to French Chandernagore is laid down Appendix XXI.

Regulation-326

Procedure to be followed to procure the attendance of persons accused of non-extraditable offences who have taken refuge in an Indian state of the Eastern states Agency

a. If it is necessary to secure the attendance of a person accused of a non-extraditable offence who has taken refuge in an Indian state included in the Eastern States Agency, the trial court should be moved to issue a letter of request through the Resident to the Durber concerned asking them to procure the attendance of the offender (V9de Bengal government order Nos. 4225-4254p., dated the 12th April 1938). Warrants and summonses issued by British-Indian courts in such cases have no legal validity in the states.

b. A list of the states included in the Eastern States Agency, together with the addresses of their respective political Agents is given in Appendix XXII.

Regulation-327

Accommodation of prisoners in lock-ups

a. The accommodation of each lock-up shall be based on the scale of 36 square feet per prisoner.

b. A notice in English and vernacular shall be hung up outside the lock-up at every police-station and post showing the maximum number of male or female prisoners which the lock-up is authorized by the provincial Government to accommodate.

c. The authorized number shall never be exceeded, and any excess shall be accommodated in a convenient building under an adequate guard.

Regulation-328

Examination prisoners before admission to lock-ups

a. The Officer-in-charge of a police-station or post shall be responsible for the state custody of all prisoners brought to the station or post.

b. Before admitting prisoners to a police lock-up, he shall carefully examine the person of the prisoner for any signs of injury, and record in the general diary a fall description of any marks of injury found on him, if necessary calling independent witness from the neighborhood to witness the existence of the injuries at the time of admission to the lock-up.

Note: *The object of this regulation is to protect police officers against charges of torture founded on injuries received before the prisoner came into the hands of the police.*

c. He shall also search the prisoner and remove everything from his possession, except articles of wearing apparel, and shall give the prisoner a receipt for all articles taken from his possession. (see regulation 322.) Glass, conch-shell or iron bangles shall not be removed from the person of female prisoners. He shall allow the prisoner to take only strictly necessary clothing into the lock-up

d. He shall then enter and examine the lock-up and see that no weapons or articles that can facilitate escape or suicide, such as bamboos, ropes, tools, etc, are in or within reach of the lock-up.

Regulation-329

Guards for lock-pus

a. On the arrival of prisoner, the officer-in-charge shall note the fact in the general diary and shall tell of a guard and place an Assistant Sub-Inspector a head constable or a senior constable in charge. He shall enter the names of the Assistant Sub-Inspector, head constable or senior constable and the constables detailed and their hours of duty in the general diary. [see regulation 237(f)]

b. At the time of relieving sentries, the Officer-in-charge of the guard and the relieving sentry shall count the prisoners and see that all is well.

c. The key of the lock-up shall remain with the sentry, and except in urgent cases, such as an outbreak of fire, he shall not unlock the door without first calling the Officer-in-charge of the police post.

d. The sentries on duty between sunset and sunrise shall be provided with a lantern, which shall be kept burning brightly at a safe distance from the door, but in such a position as to illuminate the interior of the lock-up.

e. If it be necessary to open the lock-up or to take out a prisoner, the Officer-in-charge of the police post shall be called and the assistance of other constables taken if necessary.

f. Prisoners shall be taken out to relieve nature at as late an hour as possible before officers retire to rest, in order that in may not be necessary to open the lock-up again during the night. Before being taken out they shall be secured with leg-shackles, handcuffs or rope. They shall not be allowed out of sight; and when relieving nature shall be attached by means of a rope to a constable.

Regulation-330

Use of handcuffs

a. Prisoners arrested by the police for transmission to a magistrate or to the scene of an enquiry, and also under-trial prisoners. shall not be subjected to more restrain than is necessary to prevent their escape, the use of handcuffs or rops is often an unnecessary indignity.

   In no case, shall women be handcuffed, nor shall restrain be used to those who either by age or infirmity are easily and securely kept in custody. Witnesses arrested under section 171, Code of Criminal Procedure, shall, in no circumstances be handcuffed.

   In barlable cases prisoners should not be handcuffed unless violent and then only by the order of the Officer-in-charge of the police-station, the reason for the necessary of this action being entered in the general diary and in the certificate in B. P. Form No. 57.

   In non-bailable cases, the amount of restrain necessary must be left to the discretion of the officers concerned. In certain circumstances the use of handcuffs may not be necessary to prevent escape but, if for instance, the prisoner is a powerful man in custody for a crime of violence, or is of notorious antecedents, or disposed to give trouble, or if the journey is long, or the number of prisoners is large, handcuffs may properly be used escort should, in any case, be supplied with handcuffs for use, should necessity arise.

b. In the case of two prisoners whom it is necessary to handcuff, they will be handcuffed in couples. the right wrist of one to the left wrist of the other. In no circumstances should more than two prisoners be secured together.

c. In all cases in which the use of handcuffs is allowed and considered necessary, and when no proper handcuffs are available, the prisoners may be secured by ropes or pieces of clothing. These shall be so tied, as not to interfere unduly with proper circulation and shall be replaced by handcuffs as soon as possible.

d. Great caution shall be exercised at all times in the removal of handcuffs and other fastenings from prisoners en route whether by land or water.

e. Handcuffs shall be kept in good order. If broken, they shall be mended or replaced without delay.

Regulation-331

Guarding and escorting of persons arrested

The regulations in Chapter XI for the escort of convicts apply generally to the guarding and escorting of persons arrested by the police, so far as they are not contradictory to the regulations contained in this Chapter, but no person so arrested shall be subjected to more restraint than is necessary to prevent his escape.

Regulation-332

Escort of prisoners to and from police posts

The following are the rules for the escort of prisoners to and from police posts:-

i. In despatching prisoners clear instructions shall be given to the escort regarding route and halting places.

ii. In the generality of cases it will be sufficient to send one constable in charge of one or even two petty offenders; if really necessary a chaukidar shall accompany him. In the event of the constable having to go aside for any purpose, he shall see that the prisoner is properly secured, and if a chaukidar is available, shall handcuff the prisoner's right wrist to the chukidar's left. Chaukidars selected should be able-bodied. They shall be relieved when possible on the road, and not taken to an unreasonable distance from their villages. Their diet and traveling allowance, lodging hire and lighting expenses in connection with the escort or custody of accused person arrested by them shall be paid from the grant under "Contract Contingencies" in the police budget at the rates laid down in regulation 1165.

iii. Chaukidars shall not be employed more than is absolutely necessary, as they are not liable to judicial punishment when prisoners escape.

iv. If the offence with which the prisoner is charged is of a serious nature, or the prisoner is of a desperate character, or if there be a large number of prisoners, the escort shall be proportionately increased, or in urgent cases more than one chaukidar may be called in to help.

v. When a prisoner sent up for trial is known to be desperate character or to have previously suffered from lunacy the fact shall be reported separately to the court officer.

vi. The officer-in-charge shall despatch prisoners at such a time that; ordinarily, they may arrive at their destination or a suitable halting place before nightfall. A certificate in B. P. Form No. 57 shall accompany the prisoners.

vii. Meals shall be taken by daylight or if a short delay only be necessary, deferred until arrival at a station.

viii. The officer-in-charge shall see, as far as possible, that prisoners in transit are properly fed and treated.

ix. If the party has to sleep at night on the road, the constable in charge shall, on arriving at the village selected for the purpose, go to the headman of the place and call upon him to provide a secure room for the custody of the prisoner or prisoners, and extra men, if necessary, for night guard.

x. When prisoners go aside to relieve nature, they shall be secured by leg-shackles, handcuffs or a rope. They shall not be allowed out of sight and a rope shall connect the prisoner and his guard.

xi. Every prisoner despatched from a station to court shall, if possible, be forwarded direct to the nearest Magistrate having jurisdiction, and shall not be sent station by station or to the next superior officer of police.

xii. Police Officers and others taking charge of vegrants, for the purposes of the European Vagrancy Act, shall take such reasonable care of the vagrants as their physical condition, the season of the year, and other circumstances may render advisable.

xiii. Police Officers shall not compel witnesses or accused persons to travel long distances when they are not in a fit condition physically to stand the journey.

Regulation-333

Bills for prisoners diet and traveling expenses and cost of conveyance of stolen property, etc, sent to the court

a. Expenses incurred in feeding and transporting prisoners while in transit from police-station to headquarters, and of hajat prisoners made over temporarily to the police for purposes of detection as well as the cost of conveyance of stolen property and other articles sent to the court will be paid by the District Magistrate.

b. The Officer-in-charge of the escort shall keep an account of such expenditure and on return to the station, deliver the account, together with the balance of any cash which may have been advanced to him, to the Officer-in-chare of the police-station. If an escort is charged on the journey, the account with any undisbursed cash shall be made over to the relieving officer, who, on his return to his station, shall make it over to the officer-in-charge of the station for transmission to the station of original despatch.

c. At the end of the month the Officer-in-charge of the police-station shall prepare a detailed bill in duplicate in B. P. Form No. 58 of all expenses incurred on this account during the month and shall forward it to the superintendent's office. (See regulation 1181.)

Regulation-334

Memorandum of points for inspection of police-stations and out-posts

VI. INSPECTION

A memorandum of points which should be thoroughly locked into by Superintendent, Sub-divisional Police Officers and Inspectors, is given in Appendix XXIII as an *aide Memoire*. This memorandum is not exhaustive, inspecting officers are, of course, at liberty to include within the scope of their inspections any other matters which appear to them to require scrutiny. It is not intended that remarks shall be recorded on any points unless they require notice. but it is expected that none of these points will be overlooked.

Regulation-335

Inspection of police-station by Civil Surgeons

Civil Surgeon has instructions when on tour to inspect police-stations they may pass through in the course of their tours. They, while making an inspection of the police-station, shall record their remarks in the inspection register in the same manner as any other inspecting officers, copies being forwarded by officer-in-charge of police-station to

Superintendents in the ordinary way. Superintendents shall do their best to carry out any recommendations made by medical officers and if, for financial reasons they are unable to do so, they shall apply through the Deputy Inspector-General to the Inspector-General for necessary funds.

Regulation-336

Persons to be placed under surveillance

VII. SURVEILLANCE

a. It is impossible to define with absolute precision the class of persons to be placed under surveillance and much discretion must be left to Superintendents. They should remember that, although surveillance is to be e3xercised by the village authorities the efficiency of the surveillance will depend largely on the supervision maintained by the station staff, and the number of surveilles should be limited to what the staff is able to supervise effectively. The list of persons under surveillance should, therefore, be confined to the narrowest possible limits. It may, however, be laid down that all persons addicted to the following classes of crime should ordinarily be placed under surveillance:-

   i. Persons who have at any time during the past five years been convicted of dacoity, burglary or theft, robbery, drugging, counterfeiting, murder for gain or bad livelihood.
   ii. Suspects- persons who are known or suspected to have been concerned in any of the above offences during the same period, or who are or are believed to be professional, habitual or notorious cattle-lifters or burglars, thieves, receivers of stolen property, harbourers or abettors or th3eives or to belong to any criminal tribe or gang.

b. No person falling under clause (ii) shall be placed under surveillance unless a history sheet has been opened, and the orders of the Superintendent obtained in the manner laid down in the following regulation. In the case of persons falling under clause (i) the station officer should from time, as opportunity occurs, institute enquiries with a view to ascertaining whether the ex-convict is living an honest life, or has reverted to criminal habits.

Note: *Persons who have been convicted or are reasonably suspected of opium or cocain smuggling and in the districts of Rajshahi, Dinajpur and Bogra persons who have been convicted or are reasonably suspected of ganja smuggling, should be placed under surveillance. Chaukidars, in whose jurisdiction such persons reside, should be furnished with a list giving their names and warned to report their absence to station officers without delay. Station officers shall deal with these reports in the same manner as in the case of other bad characters or suspects.*

Regulation-337

Superintendent to order surveillance

i. When the history sheet of any person gives rise to a reasonable presumption that the person concerned is an active criminal, the fact shall be reported to the Superintendent who will decide whether there are sufficient grounds for requiring the police to exercise closer supervision over him. It is desirable that, whenever possible, this decision should be based on enquiry at the police-station and not merely on a written report, It the Superintendent decides that closer supervision is necessary, he should pass orders for his surveillance and the history sheet will then be dealt with as laid down in regulation 403 and it will be maintained in much greater detail.

Regulation-338

Removal or addition of names for surveillance

a. The Magistrate of the district or the superintendent may direct the removal of surveillance from any person.

b. Superintendents and Circle Inspectors shall scrutinize the entries in the history sheets whenever they visit a police-station. The opinion of the Officer-in-charge of the police-station regarding the removal of names or the addition of new names should not be accepted as a matter of course, but the Superintendent should, whenever possible, proceed to the village where the suspect or ex-convict resides, and by questioning the villagers ascertain whether it is necessary to bring the suspect or ex-convict under surveillance. It may be occasionally expedient for the Superintendent to inform privately a person brought under surveillance that his conduct has been suspicious and that his movements will be closely watched by the police.

Regulation-339

Surveillance over unconvicted persons

No unconvicted person shall ordinarily be kept under surveillance for more than three years. But if, for special reason, it is desirable to continue the surveillance beyond this period, the order of the District Magistrate shall be obtained and renewed at intervals of one year on proceedings drawn up, either by the District Magistrate or by a Sub-divisional Magistrate or by a Superintendent showing in detail the grounds on which surveillance is deemed necessary. These proceedings, with the District Magistrate’s order thereon, shall form the record of information to be noted in the history sheet. Proceedings drawn up under

this regulation shall be treated as "confidential records" and shall be in the custody of the senior station officer.

Regulation-340

Surveillance by village headman, union board, panchayat and watchmen

Surveillance in towns shall be exercised by the police, but in villages it shall also be entrusted to the union board, panchayat or watchmen. All union boards and panchayats shall be furnished by the Officer-in-charge of the police-station with a list of bad characters residing within their jurisdictions, and whenever any person is removed or brought under surveillance, due intimation shall be given to the village headman, President of union board or of panchayat to enable to correct his list.

Regulation-341

Duty of police in regard to surveillance

a. Local enquiries regarding each person under surveillance should ordinarily be made at intervals of not less than one month. Such enquiries shall ordinarily be made by a Sub-Inspector, but when, owing to pressure of work or other special reason, no Sub-Inspector is available, the station officer may depute an assistant Sub-Inspector to make the enquiry, recording his reasons in the general diary. The main object of these visits is to ascertain whether the surveille is being watched by the village chaukidar, and that his movements and the visits to his house of strangers are promptly reported at the police-station. If there is reason to believe that the village authorities are neglecting their duty in this respect, the fact shall be immediately brought to the notice of the superintendent who shall take such action as may be necessary. The opportunity should also be taken to enquire into the general conduct of the surveille, his habits and particulars regarding his antecedents and his associates. All visits paid to the surveilles shall be entered in their history sheets.

b. It is not practicable to lay down hard-and-fast rules regarding the classification of surveilles for purposes of supervision. It is the Circle Inspector who is in the best position to decide, having regard to local conditions and the incidents of crime in his circle, the nature of the supervision to be exercised, and it is for the Circle Inspector subject to the general control of the superintendent to pass orders, from time to time as to the degree and nature of the supervision to be exercised by his station officers over each surveille in his circle jurisdiction.

c. It is important that the method of the supervision exercised should be determined with reference to the class of crime to which the surveille is addicted and should not be allowed to become sterotyped. For instance, a dacoit or burglar should obviously be looked up at his home at night, and, if necessary, several time the same night, especially during the dark nights; but in the case of a pick-pocket it would be of greater use to have him carefully watched at hats and other places which he is known to frequent. In the case also of swindlers, draggers, utteres of counterfeit coins, forgers, etc, it is obviously useless to depend upon night visits. Such visits can serve no useful purpose and are a mere waste of time. What the station officer should aim at is to get early information of the absence of a criminal addicted to any of these crimes and to note the fact of the absence in his registers, and on the return of the criminal question him as to the cause of his absence and verify his statement without delay. No detailed instructions can be laid down, but officers are expected touse their intelligence and make the surveillance as effective as people.

d. It may be occasionally necessary in special instances to maintain a secret watch over the movements of certain criminals, such as cannot be effectively carried out in the ordinary way. In such cases the Officer-in-charge of the police-station may employ agents or informers for the purpose, but he shall in each case report his action without delay to the superintendent, through the Circle Inspector, Charges thus incurred will be met from the Superintendent’s grant for secret service.

e. Gazetted officers should occasionally personally look up persons under surveillance as apportunity offers, and this should be noted in the officer’s tour diary, as well as in the history sheets of the person concerned.

f. The officer-in-charge of the police-station shall see that every member of the station staff is able to recognise every surveille at sight. The local enquiries referred to in clause (a) should as far as possible be made by the officer-in-charge or his Junior Sub-Inspector, but for surveillance Assistant Sub-Inspectors must also be employed and constables singly or as part of an organised patrol party may also be deputed from time to time to ascertain whether surveilles are absent from home, Constables may also be deputed to camping grounds, sarais, ferries, and all places of public resort, to pick up information, but the constables should be given definite instructions as to the localities they are to visit and the enquiries to

be made, and they should be required to return to the police-station by a given time. All such deputations must be entered in the general diary of the police-station, and any information which may have been obtained should be recorded in the history sheets.

Regulation-342

Rules for reporting movements of bad characters

When bad character, who has been placed under surveillance, absents himself, it shall be the duty of the cahukidar immediately to inform the officer-in-charge of the police-station of the fact as well as of the destination of the criminal if this can be known. The information shall be conveyed personally by the village cahukidar, if the distance to be covered does not exceed five miles. In all other cases it will be sufficient if the panchayat or the union board sends a postcard report, the chaukidar confirming the information when he attends at the police-station the next parade day. Printed postcards will be supplied, but if the supply of postcards is exhausted, a written report enclosed in an envelope may be sent by post bearing.

Regulation-343

Bad character roll A

a. The Officer-in-charge of the police-station shall at once, on receipt of the information, fill in a bad character roll "A" (B. P. Form No. 59) and shall add a brief precis of the habits and manners of such bad character and forward it by the quickest possible means, whether by hand or by post, to the Officer-in-charge of the police-station within which is situated the place to which the bad character is alleged or believed to have gone. If the route to such destination lies within the jurisdiction of an intermediate police-station or stations, an intimation shall also be sent to such police-station unless it is believed that the serveille will proceed by railway or steamer.

b. If the destination of the bad character is not known, a copy of the roll shall be sent to every police-station within or outside the province, to which there is any likelihood of his having gone. If the surveille is addicted to crime on the railways, intimation shall also be sent by the quickest possible means to the nearest railway police-station.

c. If the surveille is a member of a known gang of criminals, the Officer-in-charge shall besides taking action as above at once arrange that a special watch be maintained on other members of the same gang, whether residing in his own or other police-stations until the surveille returns.

d. A Police officer who receives the roll shall immediately take steps to ascertain whether the bad character has arrived within the limit of his jurisdiction. If the bad character is found the police officer shall note the date and hour of his arrival, the name of the person with whom he is staying, and the names of any persons with whom he associates and he shall arrange to have his proceedings watched in the same way as if he were a registered bad character of his own station. If he has not been traced on the expiry of one week from the receipt of the roll, the officer receiving the roll shall return it with a statement to that effect on the back of it to the police-station of issue.

e. When the bad character leaves the limits of the station for his home or elsewhere, within or outside the province, the Officer-in-charge shall forward the roll to the Officer-in-charge of the police-station to which the bad character has gone, noting on the back of it all the information regarding the individual's movements which was collected while he was residing within the limits of the station and sending intimation to any intermediate police-station or stations falling on his route, unless it is believed that the surveille will proceed by railway or steamer. If the bad character goes to a police-station other than that in which he is registered, the Officer-in-charge of the latter shall be informed of the fact.

Regulation-344

Bad character roll B

If the union board, panchayat or watchmen hear of the advent of a suspicious stranger in their villages, it shall be their duty to question the person regarding his antecedents and residence, and to send to the police-station, with as little delay as possible, all the information obtained by them. The procedure laid down in regulation 342 shall be followed if the enquiry shows that there is reason to believe that the stranger is a bad character.

344 A.

Bad character roll B

a. On receipt of information that a suspicious stranger has arrived within the station jurisdiction it shall be the duty of the Officer-in-charge of the police-station to send bad character roll "B" (B.P. From No. 60) with the utmost possible despatch to the police-station within the limits of which the stranger alleges that he resides. If before the receipt of the reply to the roll, the stranger leaves the place for another jurisdiction, a copy of the roll shall be sent to that police-station.

b. On receiving such a roll the Officer-in-charge of a police-station shall at once return it with complete information regarding the individual in question, if he is a resident of that station; while, if he is not a resident, the roll shall be returned with a statement to that effect. In such case the officer who issued the roll must take all possible steps to discover the identity of the stranger.

c. The nature of the information received regarding the stranger will guide the police officer as to the steps that should be taken, whether to institute proceedings under section 109 or 110, Code of Criminal Procedure or to watch the movements of the stranger. Bad character rolls "A" and "B" for reporting the arrival or departure of bad character on their return to the issuing officer shall be passed on the foil of the roll book. They shall be destroyed after three years.

Regulation-345

Surveillance of criminals belonging to gangs

(a) Surveillance should be by gangs. If a member of a gang is found absent, and enquiry slip shall be immediately issued to all police-stations within whose jurisdictions any of the members of the gang resides, stating the facts enquiring whether any of the other members were absent at the same time. Similar steps are to be taken on the occurrence of a crime in which a known gang is suspected of having been concerned. In cases of dacoity, there should be no delay in issuing these enquiry slips. They shall be issued immediately after the first information has been recorded and the fact noted in the general diary, giving the number and date of the slip and the officer and the name of the police-station to which the slip has been issued. It shall be the duty of the officer receiving the slip to take action without delay, and to inform the officer who issued the slip of the result of the enquiry. He shall enter in his general diary the date and hour on which he received the slip and the date and hour on which he returned it. In the event of any of the members of the gang being found absent, the fact and the number of the enquiry slip will be noted in the history sheet. All slips shall be carefully filed by the issuing officer, as evidence of absence of gangs of known criminals simultaneous with an outbreak of crime is valuable evidence in bad livelihood cases. As much use as possible shall be made of village panchayats, union boards and chaukidars to assist in the surveillance over gangs, and they should be encouraged by liberal rewards from the Chaukidari Fund to report the absence of a member of a gang or of the visit of any strangers to members of a gang.

Regulation-346

Surveillance juvenile offenders

Juvenile offenders may be placed under surveillance by the superintendent on their discharge from the reformatory or Borstal School only with the approal of the District Magistrate and if their conduct in the school or after discharge from there necessitates such action.

Regulation-347

Report of criminal charges against ex-reformatory school boys

The Officer-in-charge of a police-station shall report to the superintendent all cases in which criminal charges are laid before the police against boys licensed under section 18(1) of the Reformatory schools Act, 1897 (VIII of 1897), by their pro-tempore employers and against adolescents licensed under section 12 (1) of the Bengal Borstal Schools Act, 1928 (1 of 1928) and shall proceed to deal with such cases in the usual manner according to law. All cases in which ex-reformatory school boys are concerned shall be similarly reported. (See regulation 453.)

Note:- “Reformatory school boys” include “Borstal School boys”.

Regulation-348

Surveillance over conditionally discharged or released persons and persons restrained under section 565, Criminal Procedure Code

For rules applying to persons who are conditionally discharged under section 124 of the Code of Criminal procedure and persons against whom and order has been made under section 565 of the Code, see Appendix XXIV.

Police Officers shall report to the District Magistrate through the Superintendent any breach of the conditions imposed under section 124 of the Code of Criminal Procedure.

Regulation-349

Wording to the rules made under section 565, Criminal Procedure Code

a. In giving effect to the rules, in Appendix XXIV no unnecessary harassment of es-convicts shall be permitted. Any reasonable excuse for failure to report residence or any intended change of or absence from residence, or delay in reporting any change of residence, shall

be accepted. When any breach of the rules comes to the notice of an Officer-in-charge of a station and is reasonably explained, particulars shall be entered in the general dairy. If any such breach is not at once reasonably explained, the station officer shall make any summary enquiry which may be required to ascertain the facts, and, in necessary, take action for prosecution under section 176, Indian Penal Code, Any breach of the rules shall be recorded in the village Crime Note-Book at police-stations. The original statement as to residence mentioned in sub-clause (i) of the rules in Appendix XXIV shall be kept in the police-station where the convict has to notify his residence.

b. If the ex-convict does not return to the proposed place of residence within a reasonable time, and his whereabouts are not known, the statement in duplicate received from the jail shall be sent to the Superintendent of the district where he was last convicted, one copy being kept in the superintendent's office and the other in the police-station from which the man was sent up.

Regulation-350

Surveillance off persons convicted under the opium and Excise Acts

The names of persons convicted under the opium Act, 1878, and the Bengal Excise Act, 1909, whom the Superintendent of Excise considers require surveillance, shall be forwarded by him to the Superintendent of Police, who will issue the necessary orders to the police-station officer. The latter will open a history sheet from the information supplied by the excise authorities and exercise the necessary surveillance over the convict.

Regulation-351

Classes of gangs to be watched

It is to be clearly understood that the police cannot interfere with the movements of persons who are bona fide engaged in trade, and that they may only resort to preventive action in order to protect the public from the depredations of those wandering gangs whose objects is rather plunder or larceny than legitimate trade. The following wandering gangs, among others suspected of being criminal, are generally found in Bengal and are a source of nuisance and danger to the public.-

(1) Dom (Maghaya), (2) Karwal, (3) Irani, (4) Minka alias Madari; and (5) Sandars

Regulation-352

Wandering gangs

a. Every dafadar is required to report without delay to his police-station the presence or arrival within his village boundary of any wandering gang.

b. On receipt of such information of Officer-in-charge of the police-station shall personally visit the place where the gang is located, and if such gangs is known or suspected to either criminal or trouble-some and oppressive, shall arrange to watch it carefully, particularly at night. For this purpose a sufficient number of constables, defadars and chaukidars should be told off with clear instruction as to their duties. If the gang is not known or suspected to be either criminal or oppressive, the Officer-in-charge of the police-station shall not place it under surveillance nor interfere with it in any way.

c. At frequent but irregular intervals the Officer-in-charge of the police-station or a junior officer deputed by him shall visit the encampment of every wandering criminal or oppressive gang under surveillance within his jurisdiction, and shall satisfy that the surveillance exercised by constables, dafadars and chaukidars is really effective, Such visit shall be made at night whenever possible. The officer making the visit shall also enquire from the residents in the neighborhood about the behavior of the gang, and if complaints are made against the gang, he shall enquire into them and take such other action as may be necessary in the circumstances of the case. Full details of these visits shall be noted in the officer’s mufassil diary.

d. If the gang is found to be criminal or oppressive, whether it be a foreign Asiatic gang or not, no effort shall be spread to bring the offenders to justice for specific crimes and in default of this to deal with the members of the gang under the preventive sections of the Code of Criminal Procedure. On no account shall they be passed on under police guard from one province or one district to another.

e. Whenever a criminal or oppressive gang leaves, or is about to leaves the jurisdiction of one police-station for another, the Officer-in-charge of the police-station which the gang is leaving shall send by the quickest available means information to the Officer-in-charge of the police-station to which the gang is proceeding, to enable the latter to make arrangements for visiting and watching the gang. Whenever possible, this information shall be sent in advance.

f. All information received at police-stations regarding the movements of wandering gangs shall be entered in the general diary, and it shall be the duty of Circle Inspectors to see that action under this regulation is promptly taken by station officers.

Regulation-353

Foreign Asiatic vagrants

Gangs of foreign Asiatic vagrants shall on no account be passed on under police surveillance from one province or district to another. Whenever it may appear to the Officer-in-charge of a district that the presence of any such foreigners is undesirable, and that they cannot be dealt with under the Code of Criminal Procedure, instead of passing them on to an adjacent district, he shall submit a report of the circumstance through the proper channel, to the provincial Government, asking for their deportation under the Foreigners Act, 1864 (III of 1864). Under section 2 of that Act the onus of proof that he is not a foreigner and not subject to the provisions of the Act lies on the persons so charged. Full lists and descriptive rolls of the persons to be reported shall be submitted.

Note:- *Foreign Asiatic Vagrants are trans-frontier tribesmen who generally visit India with the intention of committing crime. More often than not they wander about the country without any visible means of subsistence. It is believed that many of these vagrants enter India as traders with the connivance of the regular pawindahs, who deliberately allow fellow-tribesmen to accompany them for the purposes of crime.*

Regulation-354

Action to be taken against bad characters and suspicious strangers under sarais and puraos Act

a. This Act is an effective check upon the movements of bad characters and suspicious strangers who reside in hotels, sarais and lodging-house and prey upon the public at important steamer or railway stations, district and sub divisional headquarters and other commercial centers. It is also useful as a means of prevention and detection of crime and facilitates the tracing of missing or suspected persons. The sarai-keeper is required under the Bengal sarais Regulation, 1931, to keep a list of visitors, and literate persons are required to sign their names and lilliterate ones to give their thumb impressions in the register. Illiterate sarai-keepers are to be assisted by a literate officer from the police-station.

b. If any person refuses to give information concerning himself or if any suspicion arises against any particular person or persons, the sarai-keeper should be asked to report the fact immediately to the police for enquiry, with a view to the institution of proceeding under section 109, Code of Criminal Procedure, If necessary.

c. Station officers who will as a rule be authorized as Inspectors under the Act, shall work the provisions of the Act carefully and treat the sarai-keepers with tact, courtesy and consideration.

VII. OUTPOSTS AND PATROS

Regulation-355

Outposts

a. The Officer-in-charge of an outpost though responsible for the state of his post, will only perform the same duties he would carry out if posted to the present police-station, subject in the same way to the control and direction of the Sub-Inspector.

b. Sub-Inspectors in charge of police-station shall inspect all outposts within their jurisdiction frequently, and are responsible for the state of them and for the conduct of the officers stationed here.

Regulation-356

Town patrols.

a. As local conditions differ greatly throughout the province no system of town patrols which will be generally applicable can be laid down, Superintendents shall prescribe a suitable system for the towns in their districts. The rules shall be clearly drawn up in the district order book and a copy supplied to each police-station concerned. A copy in the vernacular shall be hung up in each town outpost.

b. The town area shall be divided into beats and at certain important localities fixed posts shall also be established so that the public as well as the beat constables may know where to apply for aid in case of necessity. Ordinarily one-tenth of the force of each outpost shall be reserved for vacancies, sickness, etc, Two-thirds of the remainder shall be detailed for night duty, the remaining one-third being utilised for day duty. Duty shall be so arranged that every head constable and constable shall have one night out of every three off duty. The desirability of having a certain proportion of the town staff working in plain clothes shall be borne in mind as well as the necessity for concentrating rather on the bye-lanes and the backs of houses man on main thoroughfares. Uniformed constable when

proceeding from the outpost on duty shall invariably be inspected and marched off by a head constable.

The force in particular beats may be strengthened when the state of crime necessitates it by a corresponding decrease in other beats.

c. Town constables should be frequently instructed in the necessity for noticing small details, e,g., open doors at night, suspicious noises, men lurking in the shadows, etc. They shall also be well acquainted with all resident bad characters, their appearance, associates and the places they frequent, all sarais, hotels, licensed liquor shops, etc,

d. A roster of daily duties in B. P. Form No. 61 shall be maintained at each town outpost which shall show how each officer is employed every day as well as the daily number of thefts and burglaries which occur in each beat.

Rural patrol

e. Each patrol party proceeding from a rural outpost shall be given a command certificate in which the villages they will visit and the bad characters they will look up shall be clearly mentioned. On their return to the outpost, the patrol parties will report on the back of the command certificate how the patrolling was carried out and whether the bad characters were found present.

Note: Detailed instructions and suggestion for carrying out hhese patrol will be found in "Notes on patrols" by sir douglas Geraon C. I. E. J. P.

Regulation-357

Abstract of particulars in case of accidents in streets etc, to be supplied to parties concerned an application

In case of accidents in streets or in other public places, abstracts of particulars of an occurrence may be supplied in B. P. Form No.62 to parties concerned an application which must be accompanied by a fee of Rs.5 (see memorandum of instructions on the back of the form.)

Regulation-358

Officers to go the rounds

a. The superintendent shall decide in what towns in the district there shall be nightly rounds, and in each such towns and officer shall be deputed daily to perform them.

b. The superintendent shall himself go to the rounds occasionally and shall depute his Assistant and Deputy Superintendents to do so.

c. In towns where there is no Town Inspector, it is part of the regular duty of the Armed Inspector and Sergeant to go the rounds, and the superintendent shall lay down, in the district order book, how often in the month or week each such officer shall do so.

d. All Inspectors and Sub-Inspectors stationed at or visiting district or sub divisional headquarters are liable for this duty.

e. Although Assistant Sub-Inspectors should be used as frequently as possible for the supervision of town patrols, they should not be deputed as rounds officers or visit the guards.

f. Officers should invariably note in their tour diaries the date and hour of all such night rounds.

Regulation-359

Officers going out on patrol to inspect the watch at post offices at night

The station and town police shall pay special attention to post offices. A note of the fact that there is a post office in any particular village shall be made in part III of the Village Crime Note-Book. All Police officers going out on patrol at night, either in towns or in the interior, shall make a point of inspecting the watch at post offices, or shall see whether the men employed by the Postal Department to guard the offices are doing their duty. If any carelessness or remissness in found, a report shall be submitted through the Superintendent to the postal authority concerned.

Regulation-360

Floating out-posts and patrol launches

a. Floating outpost and patrol launches are at the disposal of the superintendent of the district to which allocated subject to the general control of the Deputy Inspector-General. They are intended to be a mobile force for the purpose of protection of bona fide users of the main waterways of the district and for control and detection of river criminals, and the prevention of river crime. The superintendent with the consent of the Range Deputy Inspector-General may alter the location of any launch or floating outpost but shall invariably specify in a district order the police-station to which it is proposed to be allotted and define its jurisdiction so that the responsibility of the Circle Inspector an Officer0in-charge of the police-station with regard to the observance of the rules relating to these crafts may be specified, and the patrol area of the Officer-in-charge of the floating outpost define.

b. It shall be the duty of the Range Deputy Inspector General to see that efforts is not wasted by allowing two floating outposts to patrol the whole or part of the same area, and to bear in mind the principle that these patrols are for the main water ways, the lesser routes being already provided for by station patrol boats.

c. The strength of a floating outpost is I Assistant Sub-Inspector and 5 constables. The extra strength allotted to a police-station with a patrol launch is I Sub-Inspector and 3 Constables. The Individual personnel will be attached to the parent police-station and the whole staff of Assistant Sub-Inspectors and constables will take turn and turn about on outpost duty- usually at 3 months, intervals, similarly all the Sub-Inspectors at the police-station shall in turn do launch patrolling. When moved from one station to another the out-post shall take its allotted strength to the new station. When possible the Sub-Inspector allotted for a launch shall be accommodated in the upper deck excluding the office and record-room. In other cases the Assistant Sub-Inspector in charge may occupy these4 upper deck quarters.

d. To each floating outpost shall be attached I ghasi boat with I manjhi and 3 mallahs. These boats shall be hired by the superintendent at a rate not exceeding Rs. 60 each per mensem from recognised contractors, tenders being called for where possible. The tenderer shall undertake to provide always a serviceable boat with the requisite crew to perform not less than 15 night patrols per month.

e. There shall be two muskets at each floating outpost and patrol launch with 20 rounds of ball ammunition for each musket and 10 rounds of buckshot ammunition for each floating outpost and patrol launch. The Officer-in-charge shall be personally responsible for the cleanliness, care and safety of these weapons. They shall be taken out with the prescribed ammunition with every patrol party.

f. Detailed rules for the working of floating outposts and patrol launches are contained in Appendix XXV.

Regulation-361

Station patrol bouts

a. In addition to floating outposts and patrol launches patrol boats are provided for certain police-stations as an aid to the officer-in-charge in-

   i. the prevention of crime and particularly that form of crime in which boats are used by criminals either in going to or escaping from the scene of occurrence;

ii. the stopping of any particular area after the commission of a crime in order to examine all suspicious boats and persons coming out of the area under observation;

iii. the observation of the movements of river-borne traffic during the rains over a larger area than would be otherwise possible and its proper protection.

b. These boats shall be under the control of the Superintendent and are to be employed solely on patrol duties.

c. The limits within which each patrol boat is to be employed shall be determined by the superintendent. As a rule boats shall not proceed beyond those limits except under circumstances of emergency, such as the pursuit of offenders.

d. Each boat shall ordinarily be manned by not less than one Assistant Sub-Inspector and two constables. They will form a part of the strength of the police-station to which the boat is attached and shall be detailed for boat duty strictly in turn with the other Assistant Sub-Inspectors and constables there.

e. Patrol should ordinarily be confined to especially dangerous spots with provision for surprise visits at uncertain intervals in other areas, according to the incidence of crime. The period for which each party shall remain on duty depends upon local conditions. The Superintendent shall use his discretion in the matter.

Note:-This does not of course, apply to special circumstances such as a pursuit, when the Assistant Sub-Inspector in charge must use his discretion.

f. In each group of officers detailed for duty in the patrol boat there shall be two officers at least who have recently fired their musketry course and know the use and care of arms.

g. Each patrol boat shall be provided with two muskets from the station with 20 rounds ball ammunition per musket and 10 rounds buckshot ammunition per patrol boat. The packets of ball ammunition shall not be opened until required, but one packet of buckshot ammunition shall be opened, 5 rounds being kept loose in the pouch of each constable on duty.

h. An armed sentry shall always be on duty to be relieved every four hours. The muskets when not in use shall be securely fastened to the boat by drawing a chain or bar through the trigger-guards.

i. Each patrol boat shall have a crew of not less than one manjhi (steersman) and two mallahs (rowers, and be equipped with a serviceable sail and mast.

j. Any one of the crew absent without leave shall be fined 8 annas for every day or part of a day he is so absent. The officer-in-charge shall note such absences in the acquittance roll of the crew. The amount of fine for unauthorised absences shall be deducted from the contract amount payable to the person from whom the boat is hired.

k. The round of weekly duties of the patrol boat shall ordinarily be as below:-

   i. Patrol-four days.

   ii. Observation of traffic in the vicinity of the police-station – Two days.

   iii. Rest- One day.

   These duties may be varied at the discretion of the station officer, the days of patrol, observation or rest being altered every week, so that the direction of the patrol or the day of rest or observation may not be anticipated. One day's rest a week must be given, if possible, to the crew.

l. Every patrol will be carried out under the definite written orders of the Officer-in-charge of the police-station who should detail:-

   i. the streams and khals to be patrolled;

   ii. the villages to be visited;

   iii. the kind of information to be collected;

   iv. the persons to be looked for; and

   v. the kinds of boats to be watched and, if necessary, examined.

m. In sending out a boat for patrol or for observation, etc., the station officer shall, as far as possible, so arrange that an immediate massage can be sent out quickly to it, on the occurrence of any emergency, such as a dacoity, in order that the boat may change its course or come back to the police-station.

n. In performing the duties detailed above, the boat staff shall-

   i. find out all about the boats moored at the ghats, viz,. where they come from, where they are going to, what they carry, with special regard to any suspicious circumstances indicating the possibility that they are concerned in crime.

ii. treat all ghasi and sip boats ordinarily with suspicion and, if any reasonable suspicion exists, shall examine them, asking and noting the names of all the passengers and crew, their destination, the place from which they have come, etc., and then, if necessary, place them under observation until searched according to the provisions of section, 165, Code of Criminal Procedure;

iii. on the occurrence of a dacoity, keep under observation every ghasi or sip boat found within a reasonable distance and time of the occurrence, until searched as in clause (ii) above'

iv. make careful enquiries, particularly at night, about gayana boats found shortly after a dacoity, as these boats also are not always above suspicion;

v. seize and suspicious property found, such as ram doos, kukris, sledge-hammer, chhenis, swords, spears, masks, torches, firearms, etc,;

vi. give as far as possible convoy to boats passing through any particularly dangerous part of the route; and

vii. get acquainted with the different towns and villages on and near the rivers and the habits of the people living therein.

o. The station patrol boats shall not be used either as a means of conveyance for police officers or for the ordinary work connected with a police-station such as the serving or execution of processes, domiciliary visits of bad characters, etc., but advantage may be taken of them to check the work of chaukidars at night or to ascertain the whereabouts of bad characters or suspects on the report of an occurrence.

p. The Assistant Sub-Inspector on duty in the boat shall keep a mufassil diary in duplicate, recording therein his proceedings during his tour of duty and submit it on relief to the Officer-in-charge. The duplicate copy of the diary shall be sent each day to the Circle Inspector.

q. Every boat shall have a distinguishing number and a flag. The number shall be painted on the boat and quoted in all correspondence, defect lists, etc.

r. Superintendent shall watch carefully the working of the patrol boats and shall notice their work in their annual reports. Other inspecting officers shall also pay special attention to these boats and notice their condition.

s. The police employed on rivers shall work in concert with the land police. The land police shall, in like manner, work in co-operation with those in the boats, each communicating to the other any information obtained and mutually assisting in the detection and arrest of offenders.

t. The circle Inspector shall inspect the moving of the patrol boats once every two months, and superior officers as often as they are required to inspect police-stations.

IX. RURAL POLICE

Regulation -362

Status of the rural police

a. Dafadars and chaukidars, commonly known as the rural police, are appointed under the Village Chaukidari Act, 1870 (Ben. Act VI of 1870), or the Bengal Village Self-Government Act, 1919 (Ben Act V of 1919) They are subject to the provisions of these Acts and to the rules contained in the Chaukidari Manual or the Union Board Manual, Volumes I and II Every police officer of or above the rank of Assistant Sub-Inspector is expected to be acquainted with the rules in those volumes, which are binding on the police. The regulations in this chapter are explanatory or advisory and do not override these Manuals and Acts.

b. Members of the rural police are not subject to the provisions of the Police Act, 1861. They are not police officers except for purposes of the Cattle Trespass Act, 1871 (I of 1871). They are, however, public servants under section 21 of the Indian penal Code.

c. The village chaukidar is of great importance as an aid to police work. Without his assistance even the most active officer cannot know all that is giong on in his jurisdiction. The chaukidar is not a well-trained or highly intelligent agents, but he is capable of much good work, and the results attained depend very largely on the care, attention and tact exercised by the Officer-in-charge of the police-station.

Regulation -363

General duties of dafadars and chaukidars

a. The general duties of dafadars and chaukidars are set forth in section 39 and 40 of the village chaukidari Aci, 1870, in the rules in section VI of the Chaukidari Manual, in section 23 of the village self-Government Act, 1919, in rules 36 and 38 of the chaukidari Rules

framed under that Act and in the rules in part III (B) of the union Board Manual, Volume II.

b. Under section 23 (viii) of the village Self-Government Act, 1919, or section 39 (9^{th}) of the village chaukidari Act, 1870, the Officer-in-charfe of a police-station shall direct all chaukidars to bring to the station immediate information of the occurrence of any large fire, storm or inundation and any damage to telegraph posts or wires. He shall also require them to report immediately when the condition of any river, road or crop is such that a serious calamity may be apprehended. The chaukidars of panchayati unions will be required, in addition to the above information, to report the outbreak of any epidemic among human being of cattle and, from time to time, the condition of the standing crops.

c. All officers shall be careful to enforce the responsibility of dafadars for the work and conduct of the chaukidars under them. If there are two or more dafadars in a union, the Officer-in-charge of the police-station shall endeavour to persuade the local authority of that union to define the responsibility of each dafadar. Every excuse or reason offered by a chaukidar for any breach of duty shall as far as possible verified either by the dafadar concerned or by a member of the police-station staff.

d. Any report received either from the dafadar or the panchayat about the disappearance of, or damage to, the village boundary marks, shall be entered in the general diary or forwarded to the Collector for disposal. Unless specially ordered by the District Magistrate, the police shall not investigate charges of mischief in respect of boundary marks, but they shall while moving about in the interior, see whether the marks are in their places and report to the collector any defect notice.

Regulation -364

Prompt reporting of crime to be insisted on

Under section 23 (1) of the village Self-Government Act, 1919, every chaukidar is bound to give information to the Officer-in-charge of the police-station and to the president of the union board of every unnatural, suspicious or sudden death which may occur and any offence in schedule II of the Act which may be committed within the union and must also keep the police informed of all disputes likely to lead to a riot or serious affray. If, however, by going first to the president he will be delayed in going to the police, he should send information to the

president through another chaukidar or other person and shall himself proceed direct to the police-station. Chaukidars who delay to bring information of matters which require to be promptly reported render themselves liable to dismissal. Willful omission to perform duties is punishable under section 166, 170 and 202 of the Indian Penal Code.

If it is manifest that has been deliberated delay in reporting a serious occurrence or the likelihood of a serious breach of the peace or that information has been actually suppressed, the Superintendent will apply for the prosecution of the chaukidar concerned and instruct the Court Officer to press for an exemplary punishment. Chaukidars, when travelling by road, should go at a rate of not less than $2\frac{1}{2}$ miles an hour.

Regulation -365

Use of the telegraph by the rural police

a. All dafadars and chaukidars shall give immediate intimation by telegram or the next quickest available method, to the nearest police-station, about the likelihood of riots, the intention to commit heinous crime, the presence of suspicious characters, the occurrence of serious crimes such as murder, dacoit, rioting with murder, robbery drugging and the like, all other cases in which they consider that immediate intimation should he conveyed to the police. They shall also use the telegraph freely for the purpose of preventing the escape of absconders.

b. The object of sending telegrams is threefold. In the first place, on receipt of a telegram, the investigating officer will reach the place of occurrence with the least possible delay, and will thus have been opportunity of preventing riots and heinous offences; in the second, he will be able to apprehend suspicious character; in the third, if the offenders are known to be absconding, and the dafadar or chaukidar can form a conclusion as to the direction in which they have gone, a telegram sent to a police officer at a police-station railway station or ghat, giving a description of the man wanted and the offence with which he is charged, may not infrequently be successful in secur9ng his apprehension. Where necessary, telegraphic information can also be sent to a neighboring dafadar or chaukidar, if, by so doing, it is thought probable that the arrest of an absconder might be effected.

c. It may be desirable to send more than one telegram in certain cases. for instance, if a murder has occurred and the murderer is absconding by rail, the dafadar or chaukidar should send a telegram not only to the Officer-in-charge of the police-station within which

the crime has been committed, but should also telegraph to the police of the place to which he thinks that the offender may be going, so that he may, if possible, be intercepted, If the dafadar or chaukidar is not sure whether there is a police-station at the place to which the absconder is believed to be going, he should telegraph to the superintendent of the District Police or to the Superintendent of the Railway police.

d. Dafadars and chaukidars are permitted to make use of Government and railway telegraphs without prepayment for all messages which relate to their police duties. These messages are of two kinds, viz,(i) Ordinary telegrams, and (ii) special police telegrams. Special police telegrams shall be sent only in cases of real emergency, but when it is necessary to send a telegram during the hours when a telegraph office is closed, a special police message shall invariably be sent. In such a case, the dafadar or chaukidar shall get his message marked "Special Police", and the telegraph official is bound to accept it at any hour of the day or night. All telegrams shall be marked "state," and when an express message is sent, the words, "Special Police'" shall be endorsed upon it.

e. Telegrams shall be worded as briefly as possible, as except in cases where an absconder is to be arrested, shall usually not contain details of names of parties, etc.

f. Officers-in-charge of Government and Railway telegraph offices have been directed to write out on telegraph forms in English any information which a dafadar or chaukidar desires to send by telegram.

g. Dafadars and chaukidars sending messages about the prevention or detection of crime shall give their names, designations and addresses in the body of the telegram. In the body of the telegram, in the space allotted for "signature" (and which will not be signaled), they shall also give their names, designations and addresses in full, including the name of the police-station and district. A dafadar or chaukidar shall also in all cases affix his left thumb-impression to the message. If he is illiterate, he shall see that the above detaisl are entered on his behalf by the writer of the telegram.

h. When proceeding to send a telegram, dafadars, or chaukidars shall wear their uniform, or shall come with their appointment letter, which they shall show to enable the post of Telegram Master to identify them.

i. Dafadars and chaukidars are enjoined to use the telegraph freely in connection with the prevention and detection of crime, but they shall remember that the use of the telegraph must be confined strictly to that object, and that the privilege of using the telegraph free of charge does not extend to other subjects.

ii. Rewards shall be freely paid to dafadars and chaukidars who send telegrams freely.

Regulation -366

Payment of charges for telegrams sent by rural police

On receipt of the original telegram forms used for such messages from the Government or the Railway Telegraph offices the Superintendent shall at once stamp it with service stamps to the amount indicated for payment and shall return it to the Telegraph or Postal or Railway official concerned within 48 hours. A Superintendent may not refuse to affix stamp to a message, but if he considers that the message should be questioned, he shall write at once to the Telegraph official concerned and say that the message has been stamped, but it has been detained for the purpose of enquiry. The enquiry shall be made urgently, and the message shall be returned to the official in charge of the Telegraph office concerned as soon as the enquiry is complete. Superintendents shall not challange such messages unless it is obvious that the message had nothing to do with Government business, and referred only toa private matter, in which case recovery shall be made from the dafadar or chaukidar concerned and credited to the treasury.

Regulation -367

Employment rural police outside their beast

a. Union boards have been instructed to order their chaukidars never to leave their beats and night except with the permission of the president or, in urgent cases, under the direct orders of a police officer. The boards are also instructed to direct their chaukidars to perform such patrol duties at night for the security of the life and property of the residents of the union. Police officers should, therefore, avoid taking a chaukidar away from his union as far as possible and never without consulting the president except in matters of great urgency. When the matter is so urgent that there is no time to consult the president the police officer shall inform the president of his action as soon as possible. When for the purpose of the better controlling of crime centre it desirous to concentrate chaukidars over a wider area than their own union, it should be possibel for the

Officer-in-charge of a police-station tactful explanation to satisfy the members of the union boards concerned that it is in the interests of their residents that this should be done.

b. Chaukidars and dafadars may be employed in guarding the railway line when Royalty, the Viceroy of the Convernor are traveling, provided the officer employing them sends due information to the president of the union board or the president panchayat as the case may be. (*See rule 45 of the Union Board Manual, Volume II*.)

Regulation -368

Rural police not to be employed on menial duties

Police officers are prohibited from employing dafadars and chaukidars on their private concerns or any duties of menial or degrading kind. Superintendent shall see that the order is obeyed and shall make it special subject of enquiry when inspecting a police-station and shall alsomention it in their annual report.

Regulation -369

Method of holding chaukidari parades

a. The rules for holding chaukidari parades are laid down in the Union Board and the Chaukidari Manuals.

b. The chaukidari parade shall be held at such an hour as to admit of chaukiari returning to their village by sunset, if possible. And in order to ensure this, chaukidars shall be compelled to be punctual. It is equally essential that the police officers shall also be punctual and should not detain chaukidars unnecessarily.

c. The Officer-in-charge shall preside at the parade, and shall not delegate this duty to a subordinate officer, except for every good reasons, which shall be recorded in the general diary.

d. Every chaukidar and dafadar attending the parade shall be in uniform.

e. Parade shall be held in the police-station compound.

f. The chaukidars having assembled, their attendance shall be recorded in the attendance register (B. P. Form No. 63) by the officer holding the parade, black ink entries being made in the case of those who are present, while red ink shall be used for absentees. The names of all chaukidars absent from the muster parade, whose absence is unexplained, shall be entered in the general diary immediately after the parade. A monthly statement of the chaukidars whose absence

during the month is unexplained or unsatisfactorily explained shall be submitted to the punishing authority in the first week of the following month in B. P. Form No. 64.

g. Rewards to chaukidars of panchayati unions shall be distributed by the presiding officer at a pay parade at the police-station.

Regulation -370

Information to be obtained at chaukidari parades

a. After recording attendance, the officer holding the parade shall question the chaukidars present as to whether they have any reports to make on the following points:-

i. births;

ii. deaths;

ii. epidemics;

iv. fires;

v. the state of crops;

vi. cattle disease;

vii. obstruction to telegraph wires;

viii. injury to survey pillars, Government trees, bridges, etc;

ix. the arrival of foreigners, swindlers, or criminal tribes in their villages;

x. the movements of bad characters;

xi. visits of suspicious persons or registered bad characters to their villages;

xii. persons suspected of cattle poisoning;

xiii. loss or straying of cattle;

xiv. the arrival of any suspicious boats;

xv. the existence of any dispute likely to lead to a breach of the peace;

xvi. encroachment on, and injuries to, public roads; and

xvii. any other matter regarding which the officer holding the parade may wish or have been ordered to obtain information

Note : *Information regarding points (i) and (ii) shall only be collected in the rural areas referred to in regulation 234. Information regarding unnatural deaths must, of course, be insisted upon in all areas since this duty is imposed upon the village police by section 45 of the Code of Criminal Procedure.*

b. The subjects on which information is required, as specified in clause (a) above, are intended to be of general application, and not to meet the special requirements of particular areas. District Magistrates are at liberty to prescribe further question, but it is desirable that the number of questions should be strictly limited, and to prevent such special questions being continued after they are no longer required, they should be sanctioned only for a specified time, after which they should be reconsidered. Information obtained in answer to question specially prescribed by the District magistrate shall be entered in the general diary.

c. All chaukidars having information to give on any particular subject shall stand up and remain standing until their information has been recorded.

d. Any dafadar of chaukidar having any information to give as to items (x) to (xvi) and any other men whom the officer holding the parade whises to interrogate, shall be ordered to fall out their information elicited from them out of hearing of the rest so that they may understatd that it will be kept as far as possible confidential. The remaining chaukidars shall then be allowed to depart. Those detained as above shall not be kept longer than is absolutely necessary. These enquiries shall always be made by the Officer-in-charge, when he is present at the police-station and the fact noted in the general diary. The questions noted in items (i) to (ix) above may be put by the second officer or the Assistant Sub-Inspector under his supervision, provided that the Officer-in-charge acquaints himself with the information elicited. If the Officer-in-charge does not himself question the chaukidars who gave information to give privately, he shall explain his reason for doing so in the general diary.

e. The information obtained under items (i) and (ii) in clause (a) above shall be entered in the register of births and deaths, that obtained under other heads in the general diary, items (ix), (x), (xi) and (xv) being also entered in the village Crime Note-Book.

f. When birth and death reports are called for, each chaukidar shall hand in his hath-chitta. These hath-chittas, whether containing entries or not, shall be authenticated by the signature of a member of the Union Board or Panchayat, and shall be brought in by chaukidars even when blank. Fresh entries shall be transcribed into the registers of births and deaths while the parade is going on.

g. Chaukidars should be catechised to ascertain whether they are acqainted with the absconders proclaimed offenders, released

convicts, suspected characters and lathials residing or having relations in their villages.

h. Complaints by chaukidars of non-payment of salaries should be entered in the general diary, after chaukidari parade which will be available for reference when enquiries into a police complaint regarding non-payment of chaukidar's salaries are made.

Regulation -371

Attendance of Circle and Excise officers at chaukidari parades

a. Circle officers are required by the Provincial Government to pay special attention to the work of chaukidars and they are encouraged to attend chaukdari parades at the police-station as well as at the union board offices. At the police-station parades circle officers will be in a position to learn the information required by the police and will then be able to assist them in obtaining it from the chaukidars and the presidents of union boards. Police officers should, therefore, co-operate with circle officers and should keep them fully informed of anything that they require in the way of special information and of any defects in the working of any particular chaukidar of chaukidars.

b. Excise officers are also permitted to attend chaukidari parades to explain matters to chaukidars and dafadars, adn to obtain from them information of any offence against the excise laws.

Regulation -372

Neglectful chaukidars to be reported for punishment

a. Officers of police when investigating any robbery, burglary, theft or other offence shall ascertain whether the chaukidar was present at his post when the offence was perpetrated; if not, the cause of his absence, and whether there may be reason to believe that he was himself concerned in, or connived at, the commission of the crime. In the event of any neglect or suspicion of criminality attaching to a chaukidar, the Officer-in-charge of a police-station shall forward a report to the Superintendent. When reporting chaukidars to the Superintendent for punishment, police officers shall clearly state the nature of offence, recording the statements of any person who may be acquainted with the particulars of the case, and taking down the defence of the chaukidars. If the chaukidar has been reported or punished on any former occasion the fact should also be noted.

   A serious riot, particularly one connected with the land, seldom occurs all on a sudden without previous preparation. When,

therefore, such a riot occurs as to which the chaukidar has given no previous information to the police, the chaukidar's explanation shall be taken and submittd to the Superintendent. If such riots frequently occur in any police-station without the officer in charge having any previous knowledge of their likelihood to arise, it may be taken as an almost certain indication that the officer is a pathetic or incapable.

b. Rules in the Union Board Manual, Volume II, and the Chaukidari Manual contain instructions relating to the reporting of chaukidar's offences and the occasions for and scales of punishments.

REGISTER AND RECORDS, REPORTS AND RETURNS.

Regulation -373

Registers and files

a. A list of registers and files to be maintained at each police-station and outpost (inculding floating outpost) is given in Appendix XIII.

b. In the following regulations are given instructions regarding certain of the registers and files not dealt with elsewhere.

Regulation -374

General rules as to registers

a. No alterations in the form or mode of keeping the registers and files or preparing or rendering the returns mentioned in Appendix XII. and no addition to their number, may be made without the previous sanction of the Inspector-General.

b. Registers issued to police-stations shall bear a certificate under the hand of the head clerk on the inside of the cover as to the number of pages they contain. No certificate is required in the case of registers in which the numbers of the pages are already printed. No page may be torn out of a station register. Any correction which it may be necessary to make in any station register shall be make by drawing a through the mistake, so as to leave the word erased legible, and by writing the corrected work afterwards or in the margin. A piece of paper shall not be pasted over a mistake.

c. All entries shall be neatly and clearly written, and all correction shall be attested by the signature of the officer making them. If words or lines are omitted from an entry, or if an entry is omitted altogether, no interpolation shall be made. The omissions shall be supplied by a fresh entry in the regular course. English figures alone shall be used in all official papers and registers.

d. Station officers shall not rewrite registers without the written permission of the Superintendent.

***Note** : Seals of uniform pattern have provided for all offices and no deviation shall be allowed from the sanctioned design when seals are renewed or new seals are procured.*

Regulation -375

Record of lands and buildings

At every police-station a record of lands and buildings relating to the police-station concerned shall be maintained. It shall consist of:-

i. An extract in B. P. Form No. 239 from the register of lands and buildings kept in the office of the superintendent. The amount spent on repairs each year shall be entered in it to enable Sub divisional Police Officers, Inspectors and other Inspecting officers to check the estimates for annual repairs;

ii. an accurate site plan of all the land in possession of the department with boundaries and boundary pillars. This should be a tracing of any correct and certified plan kept in the office of the Superintendent.

Note : *No such register need be maintained in railway police-stations.*

Regulation -376

Registers of letters received and despatched

a. Two registers shall be kept in Bengal Forms Nos. 16 and 19 in which shall be included all orders, legal processes, as well as other correspondence received and despatched. The registers shall be written up by the Assistant Sub-Inspector, but this shall not relieve the officer in charge of the responsibility of opening, dating and attending to the dad personally.

b. The register of letters received shall be divided into as many parts as required by the nature of the correspondence: thus-
   i. Orders from courts and Magistrates.
   ii. Departmental orders.
   iii. Enquiry slips.
   iv. Miscellaneous.

c. Such papers as are registered elsewhere, such as ffirst information reports, final memorandum, etc., shall not be entered in this register.

Regulation -377

The general diary

a. The general diary as prescribed under section 44, Police Act, 1861, and sections 154 and 155, Code of Criminal Procedure, shall be kept in B. P. Form No. 65 at all police-station. The officer in charge is responsible that it is punctually and correctly written. He shall himself make all but the routine entries. The diary shall be written in duplicate with carbon paper. Each book shall contain 200 pages, duly numbered.

b. Every occurrence which may be brought to the knowledge of the officers of police shall be entered in the diary at the time at which it is communicated to the station, and if no incident be communicated during the day, this fact shall be noted in the diary before it is closed and despatched.

c. In it shall be recorded, as concisely as is compatible with clearness, all complaints and charges preferred, whether cognizable or not, the names of the complainants, the names of all persons arrested, the offences charged against them, the weapons or property of which the police have taken possession, and the names of the witnesses who have been examined. In the case of a person arrested, his name, the number of the case in which arrested, the dates of arrest and receipt in the station look-up, the date and hour when forwarded to the court, and the expenses, if any, incurred in feeding shall be noted.

d. The fact of enquiries having been made regarding absconders and surveilles shall be briefly noted. A note of the number and date of entries in the diary shall also be made in the registers where detailed entries are made. If help is give4n to excise officers in the detection or prevention of excise offences, the fact shall be noted.

e. Information obtained in regard to the following matters relating to general administration shall also be entered:-

The state of crops, roads, rivers, bridges, railway fences, Government building, ferries, embankments, trees, telegraph lines, etc.; the occurrence of large fires, inundations, storms, railway or other serious accidents; the outbreak, prevalence, or cessation of cholera, small-pos, lever or other epidemic disease; serious cattle disease; the passage through, or gathering together within, the limits of the station circle of large bodies of people; the arrival and despatch of prisoners; the receipt and disbursement or transmission of case; particulars of taking and making over charge; distribution of

duty amongst officers, change of police-station sentry; the holding of parade, quinine parade, kit inspection, barrack inspection; departure and arrival of officers to and from the mufassil, or on or from leave; transfers and new arrivals of officer; misconduct or instances of meritorious behaviour on the part of subordinates; assistance rendered by panchayats or members of union boards in all matters not connected with the actual investigation of cases; arrival and despatch of the mail; submission of periodical returns and the imparting of instruction in drill, procedure and other duties to constables; all information as to threatened disturbances; attendance of dafadars and village chaukidars, the information furnished by them at muster parade or otherwise obtained regarding the presence of suspicious characters, gamblers, sw3indlers, foreigners or members of wandering tribes; the occurrence of any suspicious deaths amongst cattle; the presence of strange boats at village ghats, and the disappearance of any there from, and the result of enquiry, if any made, regarding them by dafadars and chaukidars, if such information has not been entered in the village crime Note-Book.

f. Whenever any escort over treasure or prisoners passes a police-station or outpost, whether the escort be of that district or of any other, the fact shall be entered in the diary, and the officer in charge shall enter and put the date and hour on the command certificate of the escort, In the case of escorts over prisoners, and entry shall be made in the diary if the prisoners are fed, what food was given and who were present at the time.

g. Every entry made in the diary shall be given a marginal heading in as few words as possible, and shall be numbered in a monthly series and attested by the signature of the officer in charge at the time.

h. An entry in the diary does not obviate the necessity of a separate report of any occurrence which is required by rule or order to be specially reported.

i. The collection and communication of intelligence on all matters of public importance is one of the principal duties of the police, and the manner in which this duty is performed by an officer in charge of a station will generally be manifested in his general diaries. Officers shall, therefore, endeavour to render their diaries as complete, but at the same time as concise, as possible.

j. The diary shall be completed, and a copy of it despatched in a cover to the address of the Circle Inspector one hour before the departure of the post, whatever time that may be, and shall be a complete

record of all occurrences during the previous 24 hours. It is not necessary that the diary should commence and end with the day, but a note shall be made in the last entry stating that the diary has been closed for the previous 24 hours. At district and sub-divisional headquarters, the diary shall be closed and despatched at 08-00, so that extracts from it may appear in the daily report of the same day.

k. The diary shall also be maintained at each outpost and be written by the officer in charge with carbon paper. In addition to entries concerning patrol work, the diary shall contain information regarding important matters coming to notice and the presence of suspicious characters, gamblers, swindlers, foreigners or members of wandering gangs. Cases that may be reported to such outpost shall also be recorded but no details need be given except a statement on the following lines: "A. B. came to the outpost at 08-00, and reported a burglary in his house fast night. The complainant is sent with constables X. Y. to the police-station." The diary shall be submitted daily to the officer in charge of the parent police-station where it shall be perused and filed after necessary action has been taken. If these diaries are written in Hindi, Officer in charge of police-stations will have them read out to them by one of their up-country constables.

Regulation -378

Register of absconded offenders and escaped convicts living or having connection in the station circle.

a. The register (in B. P. Form No.66) shall be divided into two parts. In part I will be entered the names of all escaped convicts and absconded offenders, irrespective of where they have committed crime, whose usual residence is within the station jurisdiction in which the register is kept. This register must tally with the entries for the station made in the superintendent's register with which it will be compared once a year. (see regulation 1118)

Part II will contain the names of escaped convicts and absconded offenders (i) who have committed crime within the station jurisdiction, but whose residence is either unknown or within some other station jurisdiction; (ii) who have relatives or connections living in the station jurisdiction irrespective of the place where crime was committed. In the case of absconders charged with crime committed within railway limits the superintendent of Railway Police will send their rolls to the Superintendent of Police of the district in which the absconder lives, either permanently or

temporarily, or in which he has relations or connections. The district superintendent will have the particulars entered in the register kept in his own office and in the police-stations concerned.

b. For the purposes of this register the following persons shall be considered as absconded offenders:-

   i. Persons charged with cognizable offences, against whom there evidence sufficient to warrant their trial, and who are at large when charge sheet is submitted on completion of the police-enquiry.

   ii. Persons who have escaped from police custody, or from a jail or look-up.

   iii. Accused persons for whom proclamation has been issued under section 87, Code of Criminal Procedure.

   iv. Persons who are on bail in cognizable cases or cases under Chapter VIII of the Code of Criminal Procedure and who fail to appear when their sureties are called upon to produce them.

c. No entry will be made in the register without the written order of the Superintendent, which should be obtained by the station officer as soon as it appears that a warrant of arrest issued or which may be issued in a cognizable case cannot be executed or whenever a proclamation issued under section 87, Code of Criminal Procedure, has been published.

d. Periodical search and enquiry will be made for each absconder whose name is in the register and the date and results of such enquiry will be entered on the back of the page on which his name is, together with the names of two respectable residents present at the time of the enquiry. The officer in charge of the police-station where the absconder is wanted will also arrange simultaneous “drives” at irregular intervals at all places where he is likely to be found.

   Note : *As a large number of people living in Bengal have relations living in Calcutta, the Calcutta Police do not maintain al list of absconders who have relations or connections living within their jurisdiction. In consequence it is not possible for the Calcutta police to make quarterly enquiries about such individuals.*

e. The capture of an escaped convict or absconded offender should be promptly reported to the Superintendent, who will at once order the entry in his own register and in those of the various police-stations to which the roll was circulated to be cancelled.

f. When a convict who has escaped from the Andaman's is arrested, he will be produced before a Magistrate, together with the notice in the Criminal Intelligence Gazette regarding his escape, and the Magistrate will decide whether there is any reason why the convict should not be removed in custody under section 86, Code of Criminal Procedure, to the Magistrate at the Andaman's who issued the warrant. If no notice regarding the escape has been published in the Criminal Intelligence Gazette, the Court officer will apply to the Magistrate for an adjournment to enable the police to ascertain whether a warrant has been received from Part Blair for his recapture, enquiry being made from the Inspector-General.

g. A police officer to whom a proclamation has been made over for publication is responsible that the provisions of section 87, Code of Criminal Procedure, are strictly complied with and he shall submit to the Magistrate a written report showing clearly that the proclamation has been duly published as required by that section.

h. On receipt of an order of attachment the officer in charge of the police-station shall take necessary steps to effect the attachment and shall submit a report in B. P. Form 67 to the Magistrate issuing the order. In making the attachment, the list prepared under regulation 323 should be made use of and if it is found that any property belonging to the accused as shown in that list, is not forthcoming, action under section 206, Indian penal Code, should be taken against the person responsible for the loss.

Regulation -379

Register of property stolen and of all property and articles taken charge of by the police

a. All property stolen, whether recovered or not, and all property and articles of which the police take charge, shall be entered in a register in B. P. Form No. 68. When any such property is brought to the police-station, it shall be kept in the station malkhana until it is disposed of according to the order of the Magistrate or court. In order to avoid loss to the parties, property which deteriorates very rapidly, such as fruit, may be sold in anticipation of sanction which shall be obtained as soon as possible, and the sale- proceeds thereof shall be sent to the Court officer.

b. The term stolen property is defined in section 410, Indian penal Code, the amount of property to be entered as stolen and recovered shall be the amount accepted by the Magistrate and shown in the

final memo of the case, her promissory notes, bonds and other similar property are stolen, only the intrinsic and the nominal value of the articles stolen shall be entered.

c. unclaimed property (see section 25, police Act, 1861) shall be entered as soon as received at the police- station; or in the case of property not brought to the police –station, but left where found, as soon as the report is authenticated by an officer, The provisions of sections 25 and 27, police act, 1861, apply to all unclaimed property of which any officer of the police may be cases be held by the finder. When unclaimed property is sold, the sale shall in all cases be held by the Sub-Inspector of the police-station and not by an Assistant Sub- Inspector.

   The police shall take over unclaimed arms and ammunition which they find in railway trains or on railway premises. Unclaimed arms and ammunition found by the officer of the railway, including Railway police, shall be sent by them direct to the officers appointed by Government in this behalf and not through the police.

d. Suspicious property seized by the police shall be entered, and a report shall be made at once to the Magistrate under the provisions of section 523, Code of Criminal procedure.

e. Intestate property taken into the charge of the police shall also be entered. (see also regulation 251.)

f. Property, movable or immovable, of absconders under section 888, Code of Criminal Procedure, shall also be entered in this register Undivided interests in the immovable family property of an absconding person who is a member of an undivided Hindu family can be attached under section 88 of that Code.

g. In the remarks column shall be entered the steps taken for disposal of the property and the abstract of the order of the authority to whom reports are sent.

h. When the judge or Magistrate orders the property recovered or found to be returned to its owner or to any other person, the receipt of the person to whom it is to be returned shall be obtained in column 10 of the register and the date of return shall be put under his signature. If the property is sent to the court for production before the court at the time of trial or for any other purpose, a note shall be made in column 10 to that effect, giving the name of the constable by whom, and date on which, it was sent, The entry shall be signed by the officer in charge of the police-station. At the beginning of every month the

senior station officer will give a certificate that he has satisfied himself that the items desposed of in the previous month have been correctly so disposed, that the receipts for such disposal are in order and that no property is unnecessarily pending .

i. At the end of the year all property not disposed of shall be brought forward in red ink.

Regulation -380

Khatian inspection register

A list of all cognizable cases in which first information is used shall be kept in chronological order in B. P. Form No. 69. The following instructions shall be noted:

Column 1.- The number refers to the first information report number of the case. The cases shall be entered serially for each month, the different columns being entered according as different materials are received at the various stages of the case.

Column 3.- Cattle thefts shall be distinguished by writing the letter C T." in red ink in this column.

Columns 4 and 5.- The amount accepted by the Magistrate shall be noted. In cases refused investigation, the value shall be ordinarily that reported by the complainant, but the opinion of the court, if expressed, shall be followed.

Columns 18, 19 and 20.- These shall be written in red ink in respect of entries concerning foreign convicts or suspects.

Column 23.- The Inspector, while inspecting the police- station, shall note in this column the period for which the record of the cases is to be preserved.

The station statistics for the District police shall be compiled in B. P. Form No. 70 and for the Railway police in B. P. Form No. 71.

Regulation -381

List of convicts and suspects of adjoining police

A list of convicts and suspects residing in the border villages of all adjoining police- stations shall be kept at every police- station. Gazetted officers shall, during the course of their inspections or visits, know the criminals of the bordering villages, and see that these lists are brought up to date each quarter.

Regulation-382

Fine warrant register

a. A register in B.P. Form No. 72 shall be kept for all warrants received by the police for realization of fines within the jurisdiction of the police- station. Every such warrant shall specify the time within which shall be returned, which ordinarily shall not exceed six months. The police shall return the warrant in due time, whether the amount of the fine imposed, or any part of it, be realized or not. They shall not retain time- expired warrants in their possession or, after the warrant has been returned, pay any domiciliary visit to a defaulter with a view to the realization of any portion of the fine outstanding, unless fresh orders are issued for them to do so. Any enquiries they may make, then they have no warrant to authorize their action, shall be made only under the order of a Magistrate with a view to ascertaining whether there are grounds for the issue of a fresh warrant. Such enquiries shall not ordinarily be made by an officer of lower rank than a Sub-Inspector.

b. If it appears that a defaulter can in all probability pay the amount of the fine outstanding against him, the police officer shall forth-with report the matter to the Magistrate having jurisdiction with a view to the issue of a warrant, In other cases he shall merely not "on assets" in the remarks column, dating the entry.

c. When a fresh warrant (subsequent to the first) is obtained, it shall be entered in the register in red ink and be treated as a fresh entry, reference being made in the remarks column to the year and number of the original warrant.

d. In the event of the death of a defaulter being reported, one final and formal enquiry shall be made as to whether he has left anywhere property of any kind.

e. All fines realized shall be remitted with the returned warrant at once to the Magistrate's clerk in charge of the fine registers.

f. The Magistrate shall call for the register of each police-station at least once a quarter, and have it compared with the fine registers of his court. He shall also note that the police enquiries have been regularly made and properly recorded. The comparison shall never be made by the clerk in charge of the fine registers. It shall, when possible, be done by a Magistrate, or by some other of the Magistrate's clerks. The Magistrate shall pay special attention to the duty of bringing irrecoverable fines imposed in his district or in

another district to the notice of the District Magistrate concerned with a view to their remission and removal from the register.

g. Entries in the station register regarding realization of fines imposed in other districts, or in a sub-divisional of the same district, shall be compared once a quarter with the Magistrate's cash-book.

Regulation-383

Enquiries to be made when executing fine warrant issued under the Railways Act, 1890

When a police officer, who has been ordered to execute a fine warrant issued under the Indian Railway Act, 1890, is unable to trace the accused at the address given, he must obtain from the president of the union board, or from another gentleman of similar status in the locality, a certificate that the individual named in the warrant does not reside at the address given.

Regulation-384

List of persons exempted or licensed under Arms Act

a. Officers-in-charge of police-station shall be supplied with lists of persons exempted from the operation of the Indian Arms Act, 1878, to enable them to ascertain whether any particular person is or is not exempted.

b. A list of persons licensed to carry or possess arms shall be kept at each police-station in B. P. Form No. 73. The entries shall be arranged village by village, the villages being grouped according to unions. Additions and alterations in lists of licenses made during the year shall be reported promptly by District Magistrates to officers-in-charge of police-station and a list of unrenowned licenses shall also be furnished to police-station officers at the end of the year as soon as renewal of licenses is over. To guard against the possibility of omission on the part of District officers to send notices of additions and alterations made in the list to station officers and of the information thus received not being entered in the lists at police-st5ation, the District Magistrate shall send an up-to-date copy of the list annually to the officer-in-charge of each police-station who shall return the same to the District Magistrate after making necessary corrections in his register.

c. In November of every year officers-in-charge of police-station shall report to the Superintendent (i) whether any licensee is dead, and (ii) whether there is any objection to the renewal of any license. They

need not, however, comment on the suitability of each licensee on the list, but state, when definite objection is taken to the renewal of a license, the grounds of this objection. The Superintendent shall forward these reports with his remarks to the District Magistrate for orders. If any license is cancelled, the Licensee shall be called upon to deposit his arms and license at the nearest police-station within 14 days after receipt of notice.

Regulation-385

List of conditionally released convicts

Officers –in-charge of police-station shall maintain a list in B. P. Form No. 74 of persons whose sentences have been remitted or suspended under section 401, Code of Criminal Procedure, and shall make monthly enquiries regarding them. They will report to the Superintendent any failure on the part of the released convict to fulfill the conditions of his release. This list shall be examined at the time of inspection.

Regulation-386

List of approvers

a. The station-officer shall maintain a list of approvers residing in his jurisdiction together with their history sheets and keep a close watch on them. Enquiries regarding their conduct and mode of life shall be made at least one a quarter, and results noted in the history sheet. At the close of the year the station officer will submit to the Superintendent a summary of the above notes regarding each approver.

b. The Superintendent shall keep a record of all approvers in his district in a form which will allow the annual reports of the station officers to be incorporated. He will take his register with him when inspecting the police-station to see that no case was overlooked.

Regulation-387

Minute book

Each police-station shall maintain a minute book in B. P. Form No. 75 in which police officers visiting the station may record any requisition or suggestion concerning prevention or detection of crime. Such requisitions or suggestions received from other police officers, circle officers or presidents of union boards may also be noted in the minute book by the officer-in-charge of the police-station. The action taken in each case shall be noted in its proper column minute books shall be examined frequently by superior officers of police in order to ensure that prompt and proper action is taken.

Regulation-388

Gang record

At each police-station such extracts from the superintendent's gang register as concern it shall be maintained.

Regulation-389

Enquiry slips

a. When in course of an investigation or at any other time, a police officer requires information from the officer-in-charge of any other police-station regarding an absconder or any other matter connected with the criminal administration of his jurisdiction except in enquiries regarding the movement of bad characters, he shall address an enquiry slip to him in B. P. Form No. 76 or No. 77. Form No. 76 shall be used in addressing officers within and outside the province and Form No. 77 for enquiries from the Calcutta Police.

b. Each slip shall bear a serial number according to the date of issue and shall be entered in red ink in the register of letters received or despatched, as the case may be; if the enquiry relate to an absconder, the nature of the crime with which he is charged shall be clearly noted. On receiving an enquiry slip back with the reply, it shall be pasted on the foil from which it was originally torn. Officers receiving enquiry slips shall treat them as urgent, and deal with them with the greatest possible despatch. if the slip is not received back quickly, a reminder should be issued, but if in the case of a slip sent out of the province any subsequent reminder is necessary, the officer-in-charge shall at once bring it to the notice of this superintendent with a request to communicate with the superintendent of the province concerned for early return of the slip.

Regulation-390

Crime map

a. Vandyked copies of thana maps, scale I inch to the mile, issued by the Director of Land Rerecords and Surveys, shall be used as crime maps in all police- station other than town station, for which town or municipal maps are to be used. A new map shall be used each year. For this purpose the jurisdiction vandyked maps for 5 years shall be supplied to each police-station. They shall be attached to slips of paper placed inside the binding of two card-board covers and entitled ‘‘Crime Maps”. There will thus be a series maps indicating, as each year is filled up, the crime of the police-station during each of a number of years.

Reported cases of dacoity, burglary for committing theft and house thefts only shall be entered on the map in proper places, the former in black ink and the two latter in red. The initial letter of the crime, viz, D- Dacoity, B- Burglary, T- Theft shall be used for the purpose and underneath the initial letter, the number and month of the case shall be given. Thus D- 2.2 will signify dacoity case No.2 of February, B- 4.5 will mean burglary case No. 4 of May and so on. When more than one section applies to an offence, the initial letter denoting the major crime only shall be written. Superintendents may enter other cases in the crime map, with appropriate symbols only if they consider such cases worthy of special attention in any particular area. A red cross (x) shall be made to show where urveilles live.

c. Besides the vandyked crime map, backed with strong canvas, shall also be maintained so as to be readily available for use. On it shall be marked in colours, as fas as possible, liquor shops, public ferries, the boundaries of unions, and any other feature of importance which the Superintendent may think fit to order.

Regulation-391

Village Crime Note-Book

a. In order to deal effectively with crime it is necessary to have a continuous and permanent record to the criminal history of individuals and localities. To secure this, there shall be maintained for each village or other administrative area which may be chose as the unit for the purpose, a ‘‘Village Crime Note-Book” which will contain information about crime and criminals, including convicts and suspects. If shall be kept in B.P. Forms Nos. 78-83 (I-V) at each district police-station. It is maintained under the provisions of section 12, police Act, 1861, and shall be treated as an unpublished official record relating to affairs of State. It is a confidential and privileged document and is not to be exhibited in court without the permission of the head of the office, and no Judge can compel its production except with the same permission (section 165, In Evidence Act, 1872). It is open to inspection by magisterial and police authorities, but no outsider shall see it or obtain copies of its contens.

Note: *If a court directs the production of the Village Crime Note-Book, or any part of it, police concerned will act as laid down in section 123 and 162 of the Indian Evidence Act, 1872,*

b. The Village Crime Note –Book shall be divided into the following parts:-

Part1. The Crime Register, which will deal with professional crime occurring in the area.

Part11.- The Conviction Register, which will contain details of convictions of persons as specified in regulation 394.

Part 111.- The Village History, which will contain notes on special outbreaks of crime in the village, etc.

Part 1V.- The Village sheets of persons residing in the village who are believed to be addicted to professional crime, with an index at the beginnig.

Part 1VA.- Comprises sheets containing enquiries about and movements of surveilles.

Part V. An index of convicted persons whose names have been entered in part II as well as of person suspected in cases, but not convicted

Note. *A Crime Note- Book shall be opened for municipal towns and these regulation shall be applied so far as applicable, the town outpost being the unit.*

c. For facility of reference an alphabetical list of all the villages contained in the jurisdiction of the police-station, with their jurisdiction numbers, shall be prepared in manuscript in the following forms:-

Column 1 – Name of village including local name and names of any hamlets included in the village.

Column.2- Jurisdiction list number of village

Column.3- Number and volume of the village Crime Note-Book

Column.4- Number of pages of Village Note- Book.

Columb.5- Remarks.

Regulation-392

Village Crime Note –Book, how to be bound

a. The Village Crime Note Book shall consist of as many volumes as there are unions or municipal towns within the station. The village in each union or volume shall be arranged alphabetically. For each village there shall be at least one sheet each of parts I, II and III. The forms will be provided with eyelet holes, so that more sheets can be

added as occasion requires. Thus, if a union comprises 20 villages, this volume of the note –book shall contain at least 60 sheets and be bound as follows:-

Village A. - Part I, II, III - 3 sheets, i, e., 1 to 6 pages.

Village B. - Part I, II, III-3 sheet, i. e., 7 to 12 pages and so on.

The sheets for each volume shall be kept in card- board covers provided with corresponding eyelet- holes; the covers are specially designed so that the sheets may be easily taken out when required.

Part IV and IVA which are also eyeletted shall be bound together for each convict or suspect for whom the history sheet is poened. They shall be given serial numbers and kept arranged in a flat file containing all the history sheets of the police – station.

Part V, which is merely an index, shall be in the form of a separately bound register in which the names shall be alphabetically arranged.

b. Spare parts shall be kept for homeless vagrants and persons convicted of offences committed on railways.

Regulation-393

Crime Register

Only matter relating to the true cases of offences named in the schedule below shall be entered in part I:-

Column 1 and 2.- Require no explanation.

Column 3.- Modus operandi should include references to the way in which the crime appeears to have been conceived, how the place of occurrence was reconnoiter, in what way stolen property was carried off, etc.

Column 4.- The value of property as declared by the Magistrate shall be entered and not that given in the first information report.

Column 5.- This column shall contain full particulars of the person suspected in the case mentioned in column 2, Cross references to Parts II, III or of the same or other police-station registers shall be given.

ii. Offences under Chapters XII and XVII, Indian penal Code, punishable with whipping or with imprisonment for 3 years or upwards.

iii. Personating a public servant, etc,- Section 170 and 172, Indian penal Code.

iv. Murder for gain, murder by professional hired assassins and murder of spies and approvers- Section 302, Indian penal Code.

v. Professional drugging – Section 328, Indian penal Code.

vi. Professional kidnapping, abduction and buying or selling of slaves minor children – Sections 363 to 373, Indian penal Code.

vii. Professional swindling.

viii. Professional mischief by killing or poisoning animals- Section 428, Indian penal Code.

ix. Professional forgery – Section 465 to 469, Indian penal Code.

xx. Offences relating to forgery of currency or bank notes- Sections 489A, 489B, 489C and 489D, Indian penal Code.

xi. Offences relating to arms and ammunition- Section 19 (a) (e) and (f), 19 A and 20 of the Indian Arms Act.

xii. Railway – Section 126 or 147 of the Indian Railways Act, 1890.

xiii. Conspiracy, abetment and attempt in respect of offences mentioned in items (1) to (11) above.

13. Offences under the Goondas Act, 1923 (Bengal Act 1 of 1923)

14. Offences in connection with political agitation.

Note: *First offenders deals with by Courts under Section 562, Code f Criminal procedure, shall be treated as convicted. Convictions under section 511, Indian penal Code, In respect of any of the offences mentioned above shall also be entered, persons sent to a lunatic asylum from a jall irrespective of offence under which convicted should also find entry. Abetment in respect of any of the offences mentioned above shall similarly be entered.*

Regulation-394

Conviction Register, part ii

This part shall contain the name of every person residing in the village who has been convicted of any of the offence (i) specified in the schedule in the regulation above; and (ii) under sections 109, 110, Code of Criminal procedure, and culpable homicide- Section 304, Indian penal Code, causing hurt- Section 324,326-27, 329,332 and 333, Indian penal Code, and offences under the Criminal Tribes Act, 1924. The convictions of homeless vagrants shall be entered in the spare part kept under regulation 393(b).

Column 1 and 3.- Require no explanation.

Column 2.- personal description shall be copied from the final memorandum in which the Court officer writes it for the information of the police- station officer.

Column 4.- In the case of a person convicted in the Sessions or High Court the name of the committing Magistrate shall also be given.

Column 5 and 7.- Name of identifying jall warder, notes about p. i, k and F. P. date of release and name of jail from which released, shall be entered on receipt of P. R. slip.

Column 6.- In case of reconviction, cross references shall be given to the old and fresh entry, the fact being similarly noted in the Index (part V).

Regulation-395 Information of convicts made P.R to be sent to station police.

The Superintendent shall send information to the police –station officer of all convicted persons resident in such station who have been made P. R. and the station officer shall enter the letters ‘‘F.P.” in red ink against the names of such persons in the Village Crime Note Book, the Court officer shall communicate to the station officer the F. P. formula to be noted in the conviction sheet.

Regulation-396

Despatch of conviction or other rolls

When a person concerned in an occurrence resides within the jurisdiction of another police-station or when a convict or suspect permanently changes his residence to the jurisdiction of another police-station, a roll in the form of a loose sheet of Part I or II, as the case may be, shall be sent to the Sub-Inspector of the station concerned, who shall enter the facts in Part II or III, as the case may be, and return the roll to the issuing officer. The latter, after copying the references in his note-books, shall file it separately for destruction after a year. Rolls sent to police-station outside the province shall be sent through the Superintendent’s officer.

If a person has resided for 5 years in a village with his family, he shall be regarded as a resident of that village.

Regulation-396

Action on receipt P. R. slips

On receipt of a P. R. slip (release notice) of a convict from a jail or penal settlement, the station officer shall note the necessary particulars in parts II and IV, and ascertain whether the released convict has returned to and intends to reside in his village or not. In case he does not return, the station officer shall report the fact to the superintendent, in order that

orders may issue for the entry of the convict's name in the station in which he may have taken upon his residence. When the date of release shall have been entered in the police-station register and the convict shall have returned home, the P. R. slip shall be returned to the Superintendent's office with a report of these facts and the number of the entry in the register endorsed on it.

Regulation-398

Elimination of names from conviction registers

Names of deceased persons and persons who have attained the age of 60 years but have not been convicted or suspected during the preceding ten years, and of persons who have attained the age of 50 years, but have not been convicted or suspected during the preceding 20 years, shall be struck out under the orders of the Superintendent. At the close of each year all station officer, shall submit lists of persons whose names have been remove during the year to the headquarters Court officer, who shall make the necessary corrections in his index and conviction register and forward the list to the Superintendent. The Superintendent, after satisfying himself that the conviction registers and the indexes have been corrected, shall then file the lists in his office and shall inform the Finger Print Bureau in B. P. Form no. 84 regarding all those who are P. R.

Regulation-399

Special Criminal Intelligence Bureau Elimination list

A Separate list containing the eliminated names of only those classes of criminals as are given in Appendix XXXII shall be prepared by each station officer and submitted to the Superintendent's officer, where a consolidated list for the whole district shall be prepared and sent direct to the Officer-in-charge of the Criminal Intelligence Bureau not later than 1st February. The police-station lists shall be submitted through the Circle Inspector, who shall scrutinize them before forwarding to the Superintendent's office.

Regulation-400

Village History, Part III

The information to be entered in this part shall be obtained from all reliable sources that are available and shall go back as many years as possible. When once the history has been written up, it shall be added to from time to time by the station officer as fresh information is obtained or fresh events occur.

Regulation-401

History sheets, Part IV

a. History sheets shall contain a short account of the life of the person to whom they relate and all facts likely to have a bearing on his criminal history. They shall be opened only for persons who are or are likely to become, habitual criminals or the aiders or abettors of such criminals. The conviction of a person for a heinous offence, such as robbery, dacoity, serious burglary or receiving stolen property, will ordinarily b3ee sufficient to justify the opening of a history sheet, unless there be reason to believe that although convicted of one of these offences, the man is not a habitual criminal. For instance, a history sheet would not be opened for a man who, though convicted of house-breaking, is believed to have committed the offence in order to carry on an intrigue with a woman and not for the purpose of theft. On the other hand, if a person is suspected of being a receiver of stolen property, or of being concerned in systematic cattle theft, a history sheet shall be begun, even if he has not been convicted. History sheets shall not be prepared for persons dealt with as first offenders under section 562, Code of Criminal Procedure. Proceedings under section 110 of that Code shall ordinarily not be taken until a history sheet establishes a case of bad livelihood. But if security has, in any case, been demanded from a person under section 109 or 110, Code of Criminal Procedure, before the preparation of a history sheet, such a sheet shall at once be opened

b. In all cases of the orders of the Circle Inspector shall be obtained before a history sheet is opened, and the Inspector's orders shall be confirmed starting history sheets may also be conveniently passed by the Superintendent on final memoranda. If any information favourable to an individual, whose name has been entered in the history sheet, is obtained, it shall be duly recorded.

c. There shall be no regular watching over the novements of persons for whom history sheets are opened, unless they have been placed under surveillance by the Superintendent, but when the Officer- in – charge visits the village he shall make confidential enquiries regarding the mode of life of such person, and note in the history sheets information, both favourablel and unfavourabel, which may obtain in this or any way. If the man has not been suspected of complicity in any case during any calendar year the fact shall be noted in his favour at the commencement of the next calendar year.

d. History sheets shall be consecutively numbered and kept together in a separate file as long as such persons are not brought under surveillance, with an index at the beginnig.

e. When a man, for whom a history sheet is maintained, leaves the limits of one station and resides for over 3 months in another police-station within or outside the province his history sheet shall be sent to the police-station. When the police –station is in another province the history sheet should be sent through the Superintendent concerned. This transfer shall be noted against the individual's name in the index. Officers receiving history sheets shall acknowledge receipt. Such history sheets will be dealt with in exactly the same way as other sheets in existence in the province, i, e., the sheets shall be labelled ‘‘Confidential" and governed by the rules existing shall be labelled.

Regulation-402

Instruction for writing up history sheet.

a. When a person for whom a history sheet has been opened is placed under surveillance, the classification ordered shall be noted at the top against the heading ‘‘Class". In calculating the approximate date of release, allowance shall be made for ordinary remission of sentence granted to prisoners under the Jail Code. Convictions shall be entered in chronological order, giving date, name of convicting court, section and term of punishment. The actual date of release shall be noted on receipt of the P. R. slip in case of P. R. prisoners and in other cases the date shall be obtained from the Court Officer concerned. The name of the jail from which rleased shall also be noted below the date. If the convict does not return home after release the fact shall invariably be noted.

b. The usual method of committing crime and of any property possessed by the person, the number of persons whom he has to maintain and approximate earnings, and of cases in which he was suspected but not convicted, shall be given in his biography in narrative form.

   Details of cases in which he is known to have taken part as well as of cases in which he is reasonable suspected to have taken part with the grounds for suspicion shall be entered in this part as they occur. In addiction during the preceeding year with any details of permanent interest about the person's criminal history obtained from a perusal of the enquiry note-sheets.

c. All entries shall be signed in full and dated.

Regulation 403

Enquiry note sheet,

History sheets of men placed under surveillance shall be removed from the main file of history sheets and kept in ka separate file, with an alphabetical index at the beginning. This will serve the purposes of a surveillance register and no other surveillance register shall be kept. When a man is removed from surveillance his history sheet detached from this file placed at its original place in the main file. When a surveille leaves the limits of one station and resides in another within or outside the province for over three months, his history sheet shall be sent to the station where he goes and the fact noted against his name in the index. When the police-station is in another province the history sheet shall be sent to the Superintendent concerned in that province. The Officer –in –charge of the new station shall acknowledge receipt of the history sheet and continue to treat the surveille as a surveille of his own police-station until he goes back to his former residence, when his history sheet shall be returned.

Regulation 404

Enquiry notes sheet, part IVA.

a. In these sheets, which will be attached to the history sheets, shall be noted the movements of persons placed under surveillance and the result of enquiries them. Information about the various places frequented by the criminal, the opinion of the people as to his character and doings, the visits of strangers and suspicious characters to his house, the fluctuation of crime with his presence at or absence from any place, his style of living inconsistent with an honest legitimate income, etc., shall all be carefully collected by private visits and other enquiries and duly noted, so that the sheet may contain full materials for instituting proceeding under the preventive sections of the Code of Criminal Procedure, should such be necessary.

   If the suspect is found absent from home, enquiries shall be made as to his whereabouts, and if he is a member of a gang, about the whereabouts of his confederates. Enquiry slip shall freely be issued to test the truth of any statement which may subsequently be taken.

b. All visits made by the station officer and by officers deputed by him shall be entered, as well as any information obtained at such visits, information of real importance being incorporated in Part IV as laid down in regulation 402.

Note: *The inquiry note-sheet, Part IV-A, shall be preserved for three years.*

Regulation 405

Index, Part V.

This shall be kept in the form of a bound register. It is the index of persons convicted as well as of persons suspected but not convicted. For entry of the names a sufficient number of pages shall be allotted to each letter of the alphabet.

Names of those convicted should be entered in red ink and those suspected in black. If a suspected person is subsequently convicted, his name should be underlined with red ink. Names should only be entered once and sufficient space should be left below each name so that subsequent references can be noted in columns 4 and 5. In the "remarks" column the date of birth should be noted against the names of persons convicted. Whenever the name of a person is entered in this index, a reference to the page number on which his name is noted should be given in the connected parts of the Village Crime Note-Book.

Regulation 406

Responsibility of gazetted officers for village Crime Note-Book

Gazetted officers are required to pay special attention to the Village Crime Note-Book and shall make a point of personally making as many entries as possible in it. This may be either confirmatory or supplementary of entries made by the staff of the police-station.

When visiting villages, Sub divisional police Officers and Circle Inspectors shall check by local enquiry a certain proportion of the entries made in Part III relating to the villages in question.

Regulation 407

Periodical reports and returns

a. A list of periodical reports and returns due from each police-station and floating outpost is given in Appendix XII.

b. The original copy of every periodical report and return shall be filed at the station or post, those for the various periods, weekly, monthly, etc., being filed separately.

Miscellaneous returns shall be filed together monthly.

Regulation 409

Police-station cash account

a. The monthly cash account shall be kept at each police-station in duplicate in B. P. Form No 85. All sums received at the station,

whether from the Superintendent's office, from civil courts to be forwarded to the sadar station, small judicial fines realised, cash stolen and recovered, or from any other source whatever, shall be entered in the cash account. Should any sum have been omitted, the officer responsible shall be severely punished.

b. The name of all the payees need not be entered in column 8. A separate voucher shall be maintained for each day's disbursements of the money received under each receipt cheque. It will be sufficient if only the first name on the voucher is shown in column 8 after adding the words "and others" In column 10 shall be shown only the daily total against each receipt cheque.

c. A receipt cheque in Bengal Form No. 39 shall be given to the individual from whom or to the office from which money is received at the station and therefore each item of receipt shall be supported by the duplicate of the receipt cheque, the number of which shall be entered in column 2 of the cash account.

d. A regular receipt in printed form shall be obtained for all money sent out from the station.

e. All receipt vouchers shall be numbered in a monthly series and kept in monthly bundles in order of date. The monthly serial number shall be entered against each payment in the cash account under the date, thus 4th/ No. 10. The bundle shall be in due course destroyed in accordance with instructions in Appendix XIII (8-Police –station)

f. All cheques shall be signed and the entries in the cash account shall be made by the officer in permanent charge of the station in his own handwriting or when he is absent on duty by the officer temporary in charge not below the rank of Assistant Sub-Inspector. The Sub-Inspector in permanent charge shall on return to the station initial the entries concerned and countersign the cheques and satisfy himself as to the correctness of the accounts.

   The officer in permanent charge of the station may, when necessary, for the sake of convenience delegate by an order in writing in the general diary the work of keeping the cash account, disbursing money or signing cheques to a Junior Sub-Inspector or to an Assistant Sub-Inspector by name but in that case the responsibility for the actual cash and for initialing the entries in the cash account shall rest with the officer in charge.

g. At the close of each month the original form in use throughout the month shall be forwarded by the officer in charge to the

Superintendent's officer through the Court officer, the duplicate copy being retained at the station.

h. Cash shall not be kept in hand unnecessarily. If any sum of money has remained in hand for more than two months, the Officer-in-charge shall, when submitting his monthly account, explain fully the reason for the delay.

Regulation 410

Procedure for the disposal of money realized by the police under orders of Magistrates

All miscellaneous magisterial receipts other than fines remitted to the Magistrate's office, such as chaukidari money, sale proceeds of impounded cattle, and any other money realized under orders of the Magistrate unconnected with the police, shall be paid direct into the treasury or sub-treasury, as the case may be, and shall not be sent to the Superintendent or to the Court office. The amounts thus remitted shall be accompanied by chalans in triplicate, in printed form, which shall be presented at sardar to the Magistrate's accountant and at Subdivisions to the nazir or in case the nazir is treasurer or treasury accountant, to the clerk in charge of the five register, or some other clerk from whom security has been taken and who does not perform the duties of the treasurer or tresury accountant. The Magistrate's accountant or Sub divisional clerk, as aforesaid, shall examine the chalans and if they are in order and correct, shall initial them and return them to the police officer to present with the cash at the treasury. At the treasury the chalans shall be taken to the accountant and treasurer, and after being receipted, two copies shall be returned to the police officer, who shall take one back to the Magistrate's accountant or sub-divisional clerk, as the case may be, leaving it with him for the purpose of writing up his books, and shall retain the other as his acquittance.

All other money, such as cash stolen and recovered, cash found on under-trial prisoners, sale-proceeds of unclaimed, attached or suspicious property, shall be forwarded to the Court officer. Intestate money shall be sent to the District Judge direct.

8.4 Register and files under Regulation 373 PR-1943

Discussion:

Regulation No. 373 of police regulation 1943 provides that a list of registers and files to be maintained at each police station and out post

(including floating outpost) is givenin Appendix XIII. Besides this, the following registers also important for the inspection by the Chief Judicial Magistrate or the Chief MetropolitanMagistarte. Regulation No. 374 of police regulation 1943 presents the general rules as to registers.

8.5 Registers of letters received and despatched:

Regulation No. 376 of police regulation 1943 proffers that two registers shall be kept in Bengal Forms Nos. 16 and 19 which shall contain all orders, legal processes as well as other correspondence received and despatched. The registers shall be written up by the Assistant sub-inspector, but this shall not relieve the officer in charge of the responsibility of opening, dating and attending to the dak personally. One of the divided parts of the register of letters received is the Orders from the Courts and Magistrates.

8.06 The General Diary

Discussion: Regulation No. 377 of police regulation 1943 renders that the general diary as prescribed under section 44, Police Act, 1861 and sections 154 and 155, Code of Criminal Procedure, shall be kept in B.P. Form 65 at all police stations. The officer in charge is responsible that it is punctually and correctly written. He shall himself make all but the routine entries. The diary shall be written in duplicate with carbon paper. Each book shall contain 200 pages, duly numbered. The subject matter of this diary is wider than any other register in the police station.

8.07 Register of absconded offenders and escaped convicts:

Discussion:

In accordance with regulation 378 of police regulation 1943 the register (in B. P. Form No.66) shall be divided into two parts. In part I will be entered the names of all escaped convicts and absconded offenders, irrespective of where they have committed crime, whose usual residence is within the station jurisdiction in which the register is kept. This register must tally with the entries for the station made in the superintendent’s register with which it will be compared once a year. (See regulation 1118) Part II will contain the names of escaped convicts and absconded offenders (i) who have committed crime within the station jurisdiction, but whose residence is either unknown or within some other station jurisdiction; (ii) who have relatives or connections living in the station jurisdiction irrespective of the place where crime was committed.

8.08 Register of poperty stolen and of all property articles taken charge of by the polioce.

Discussion:

All property stolen, whether recovered or not, and all property and articles of which the police take charge, shall be entered in a register in B. P. Form No. 68. When any such property is brought to the police-station, it shall be kept in the station malkhana until it is disposed of according to the order of the Magistrate or court.

8.09 Khatian Inspection Register:

Discussion:

According to regulation 380 of police regulation 1943 a list of all cognizable cases in which first information is used shall be kept in chronological order in B. P. Form No. 69. This has 23 column based divisions.

8.10 Fine warrant register:

Discussion:

A register in B.P. Form No. 72 shall be kept for all warrants received by the police for realization of fines within the jurisdiction of the police-station. Every such warrant shall specify the time within which shall be returned, which ordinarily shall not exceed six months. The police shall return the warrant in due time, whether the amount of the fine imposed, or any part of it, be realized or not. They shall not retain time- expired warrants in their possession or, after the warrant has been returned, pay any domiciliary visit to a defaulter with a view to the realization of any portion of the fine outstanding, unless fresh orders are issued for them to do so.

8.11 Minute Book

Discussion:

Each police-station shall maintain a minute book in B. P. Form No. 75 in which police officers visiting the station may record any requisition or suggestion concerning prevention or detection of crime. Such requisitions or suggestions received from other police officers, circle officers or presidents of union boards may also be noted in the minute book by the officer-in-charge of the police-station.

8.12 First Information Report

Discussion:

According to regulation 243 of police regulation 1943 the first information of cognizable crime mentioned in section 154, Code of

Criminal procedure shall be drawn up by the Officer- in-charge of the police – in B. P. From No. 27 in accordance with the instruction printed with it.

8.13 Section 54 of CrPC Register

Discussion:

When a person is arrested forwarded to the nearest Judicial Magistrate under section 54 of the code of criminal procedure, it is written in register which is called as 54 register. In fact, a person in a case under section 302 of the penal code even is arrested under the said section 54 of the code of criminal procedure as the said section contains the same scope.

8.14 Non Cognisable Offence Register

Discussion:

In the light of regulation 268 of police regulation 1943, there is a register in which the matter of permission and submission of the police report is written and which is needed to be inspected by the Chief Judicial Magistrate or th Chief Metropolitan Mgaistrate as to the strict compliance with section 155 of the code of criminal procedure.

8.15 Unnatural Death Register

Discussion:

In the light of regulation 299 of police regulation 1943, immediately after receipt of information of a death occurring in any of the circumstances mentioned in section 174, Code of Criminal Procedure, a First Information Form shall be submitted in B.P. Form No. 48. The information shall be recorded in the same manner as first information in the case of cognizable crime. The register in this matter is known as unnatural death register.

8.16 Cash Account Register

Discussion:

According to regulation 409 of police regulation 1943, the monthly cash account shall be kept at each police-station in duplicate in B. P. Form No 85. All sums received at the station, whether from the Superintendent's office, from civil courts to be forwarded to the sadar station, small judicial fines realised, cash stolen and recovered, or from any other source whatever, shall be entered in the cash account. Should any sum have been omitted, the officer responsible shall be severely punished.

8.17 Village Crime Note Book

Discussion:

Inaccordance with regulation 392 of police regulation 1943 the Village Crime Note Book shall consist of as many volumes as there are unions or municipal towns within the station. The village in each union or volume shall be arranged alphabetically. For each village there shall be at least one sheet each of parts I, II and III. The forms will be provided with eyelet holes, so that more sheets can be added as occasion requires.

8.18 Crime Register Part I:

Discussion:

Regulation No. 393 of police regulation1943 deals with the term crime register and only the matters relating to true cases of offences named in the schedule mentioned in the said regulation shallbe entered in Part I of the said register.

8.19 Conviction Register Part II:

Discussion:

Regulation No. 393 of police regulation1943 procures this part shall contain the name of every person residing in the village who has been convicted of any of the offence (i) specified in the schedule in the regulation above; and (ii) under sections 109, 110, Code of Criminal procedure, and culpable homicide- Section 304, Indian penal Code, causing hurt- Section 324,326-27, 329,332 and 333, Indian penal Code, and offences under the Criminal Tribes Act, 1924.

Chapter– 9

Judicial Service of Bangladesh

9.1 Legal framework

Article 137 of the Constitution, also deals with the term 'legal framework' of Judicial Service of Bangladesh as the said article provides the scope of establishing one or more public service commission for Bangladesh. The Appellate Division of the Supreme Court of Bangladesh in its' judgment passed in Civil Appeal No.79 of 1999 commonly known in the Masder Hossain's case that-

"It is declared that the word "appointments" in Article 115 means that it is the president who under Article 115 can create and establish a judicial service and also a magistracy exercising judicial functions, make recruitment rules and all pre-appointment rules in that behalf, make rules regulating their suspension and dismissal but Article 115 does not contain any rule-making authority with regard to other terms and conditions of service and that Article 133 and Article 136 of the Constitution and the Services (Reorganization and condition) Act, 1975 have no application to the above matters in respect of the Judicial service and magistrates exercising judicial functions and for this declared law of the apex Court, the establishment of judicial service commission of Bangladesh was done.

"Bangladesh Judicial Service Commission has been established in 2007 by the rule ঊাংলাদেশ জুডিসিয়াল সার্ভিস কমিশন বিধিমালা ২০০৭" i.e. Bangladesh Judicial Service Commission Rule, 2007. According to rule 3(2) of the Bangladesh Judicial Service Commission Rule, 2007, the Commission consists of 11 members headed by its Chairman who is to be a Judge of the Appellate Division of the Supreme Court nominated by the Hon. President in consultation with Chief Justice. Other members of the Commission includes- (a) two judges of the High Court Division nominated by the President in consultation with the Chief Justice (b) a member of the Law Commission nominated by the President (c) Attorney General as ex-officio member (d) the Secretary of Ministry of Establishment as ex-officio member (e) the Secretary of Finance as ex-officio member (f) the Secretary of the Ministry of Law, Justice and Parliamentary Affairs as ex-officio member (f) the Dean of the Law Faculty of any one of three leading public university i.e. Dhaka or Rajshahi or Chittagong University nominated by the President (g) the Registrar, Supreme Court as ex-officio member and (h) the District

Judge, Dhaka as ex-officio member. There is also a full fledged Secretariat to assist the Commission. A District Judge of the service functions on deputation as the Secretary of the CommissionSecretariat." [Ref.*http://www.jscbd.org. bd/b_function.php*]

9.2 Recruitment procedure and recommendation:

The recruitment of process Bangladesh Judicial Service Commission is almost same of Bangladesh Public Service Commission. It takes a preliminary (multiple choice question formats) examination, Written examination and then viva voice. According to Rule 5 of "বাংলাদেশ জুডিসিয়াল সার্ভিসের প্রবেশ পদে নিয়োগ বিষয়ক আদেশ, ২০০৭ Judicial Service Commission conducts the said preliminary examination and the applicants having 45% marks in said examination will be qualified for written examination and viva voice of 1100 marks. Among these 1100 marks, 400 marks will be from the compulsory general subjects and another 400 marks will be from compulsory law subjects and 200 marks will be from optional law subjects and 100 marks will be from viva voice. According to rule 6 of the said Order 2007, the said Commission can conduct total 500 marks examination including viva voice. On an average, one applicant will have to have 45% marks of the written examination and separately he will have to have 45% marks in the viva voice and any applicant gets below 25% marks in a subject, it will be deemed that he has not got any marks in that subject. The successful applicants in written examination and viva voice will have to appear for health test. Thus the recruitment process is conducted by the said Commission.

Recommendations: Julian Paul Assange, an Australian computer programmer, political/internet activist, publisher, and journalist and founder of WikiLeaks, supports the free dissemination of government data. *[Ref. www.forbes.com/profile/julian-assange/]* My recommendation for better recruitment is to take the technological help in respect of recording the recruitment procedure and to show the recorded video particularly the viva voice phase so that the people can understand at least that the recruitment is fair and reasonable. Almost, all the time, it is beyond the capacity of the common citizens to understand as to the viva voice procedure and their markings. I am telling to remove the lacuna of not understanding the quality assessment procedure. For example, when a Judge presides his Court and before both the parties delivers his judgment in a disputed matter, both parties, their legal practitioners all other connected and non connected persons being present can observe the entire procedure and the judgment based on the findings or reasons but the same is not possible in a process of recruiting the persons to be

appointed in the Judicial Service of Bangladesh. That's why, the entire recruiting procedure should be recorded and viewed to the citizens of the State. It is necessary to mention that, a Judge in sitting and doing his function in a Court held openly having the access to all the people can understand the weak points and strong points as to the disputed matter and even the correctness or the incorrectness of the findings or reasons given by the said Judge. For this open functioning of a Judge, it is very ascertainable whether a Judge gives his judgment either correctly or incorrectly and the word incorrect includes also the corruption. According to Transparency International the following things should be done; (1). The mark sheet of the successful candidates should be given to the examinees on compulsory basis immediately after the result is published ;(2). The result sheet of all examinees (both successful and unsuccessful) must be published on the website. (3). Existing restrictions against challenging the result of examinations should be immediatelyabolished. [Ref.*http://www. tibangladesh.org/research/ES_ PSC.pdf]*

Besides these, quota system should be abolished as our Constitution or any law has not given the definition and the factors of opting 'backward section' of the citizens. Article 29(3)(a) of our constitution though provides the quota system for 'backward section' of the citizens for the purpose of securing their adequate representation in the service of the Republic but there is no mechanism or procedure for determining the necessity and time frame of the said quota system. As for example, A man in our village had seven sons and two of them are freedom fighters and government servants and financially solvent. If their children get the benefit of quota system, how can we determine them as backward section of the citizens while other sons' being poor are not getting the said benefit and hence Professor M. Abdul Wahhab Dept. of Public Administration, University of Chittagong, Bangladesh has re uttered correctly that The quota policy as enshrined in the constitution is an exception for the advancement of backward sections in the society. Hence quota in no way can supersede the universal principle of merit for ensuring equal employment opportunities for all citizens without any discrimination. So quota of 80-55 percent as practiced in Bangladesh with different executive orders/rules is against the spirit of constitution. Since after liberation in 1971 till date majority posts of the civil services have reserved for the people of preferred groups under quota. Moreover, quota has always been implemented without transparency. It is surprising that that the appointments under quota have never made public either by PSC or by MOE in official document or gazette. The PSC annual reports do not provide adequate information on the

appointments under quota. Quota may be necessary for the advancement of backward sections in the society, but it can never continue for indefinite period as is going on in Bangladesh. Due to quota policy relatively poor caliber officials get entry into the civil service and long term bad impact of quota system is evident in the civil service of Bangladesh. So we propose to abolish quota in civil service recruitment excepting for tribal people (5%) but not for Chakmas who on the average are financially better off than the general people of Bangladesh; and also their literacy is higher around 75 percent and literacy in Bangladesh is 63 percent.

Thus Chakmas in no criterion belong to backward section in Bangladesh. The 30 percent quota for the wards of freedom fighters "though sanctioned by a wave of sympathy and gratitude has not a legal leg to stand on unless the beneficiaries proved to be disadvantageous (Khan and Kazi 2008: i). [Ref. *http://www.napsipag.org/PDF/ABDUL_ WAHHAB.pdf; see also Khan, Akbar Ali and Kazi Rakibuddin Ahmad March 2008. "Quota System for Civil Service Recruitment in Bangladesh: An Exploratory Analysis" 2008 available at http:// www.bpsc,gov.bd/documents/ news/25906 news.doc]*

However, art. 29(3), does not, confer any right on any one, nor impose any constitutional duty on the State to make the reservation. In the face of art.29 (1) &29(2), it merely confers an enabling power. But as it an exception to the guarantee of art.29 (1) &29(2) it should not be interpreted or given effect to in such a way as to nullify the guarantee under art.29 (1) &29(2). The Indian Supreme Court held that reservation in excess of 50% would be unconstitutional. [*Ref. Mahmudul Islam-Constitutional law of Bangladesh, second edition, p.171; see also Devadason v. India, AIR 1964 SC 179; In Indra Sawhney v. India AIR 1993 SC 477, it was held that a year should be taken as a unit or basis for applying the rule of 50% and not the entire cadre strength.]*

Another question comes generally whether all the member citizens of a backward section of the entire citizens are backward equally? The answer is of course 'not' and hence "we are to consider the meaning of 'backward section'. Art. 29 is comparable with art.16 of the Indian Constitution which uses the expression 'backward class' where as the expression used in art. 29(3) is backward section. The Indian Supreme Court has interpreted the expression 'backwardclass' in several decisions. Those decisions may be helpful, but not decisive, in interpreting 'backward section.' This expression has no reference to race, caste, and there may be backward section within a race or caste which as a whole may not be backward. [Ref. *Mahmudul Islam-*

Constitutional law of Bangladesh, second edition, p.171; see also Indra Sawhney v. India AIR 1993 SC 477]

My ultimate recommendation is to abolish all kinds of quota and to provide all kinds of facilities to all kinds of backward citizens of the backward section of the entire citizens so that they can sharpen and enhance their abilities to make competition and have success with equitable equality.

9.3 **Transfer procedure and recommendations:**

The transfer procedures of the Judges of the sub-ordinate Courts of Bangladesh are not transparent and there is no transparent guiding factor of this transfer procedure. The statistics of the judicial officers who got and get transfer in Dhaka and around Dhaka will make the question that under what qualities or factors they have got their transfers therein and thus.

Recommendation:

Without any more discussion, to my mind, the lottery system of transfer is the only way to remove any kind of unfair or unreasonable transfer. How, having some exceptional measures, every after, a particular period of time, that may be 3 years or any reasonable portion of time fixed by law, an open lottery should be held which will be viewed by all the civil servants and the citizens of the State and according to that lottery, their new stations will be determined and if it is taken or done, there will be no request or lobby for the transfer and harassment.

9.4 Promotion procedure and recommendations:

The promotion of sub-ordinate Court's judges are in fact, depended on the Annual Confidential Reports (ACRs). There is no examination system for getting the promotion in the sub-ordinate judiciary.

'Presently, the performance of subordinate court judges is evaluated by way of Annual Confidential Reports (ACRs). It is commonly held that the process has failed to encourage accountability and is not considered to be an effective supervision mechanism. ACRs encourage *tadbir* (lobbying) with subordinate judges being over-cautious and meek in the hope of receiving glowing reviews from senior judges. ACRs are also susceptible to political interference as subordinate court judges feel that their ACRs would contain negative remarks if they fail to tow a particular political line.' [*Ref.http://www.igsbracu.ac.bd/UserFiles/File/archive_file/Judiciary_Policy_Note.pdf*] In our sub-ordinate judiciary, the rule of Annual Confidential Reports is not strictly followed. Particularly rule 420 of Criminal Rules and Orders-2009 is not complied and sub-rule 5 of the said rule 420 provides that-

"Confidential reports should set out distinctly and tersely sufficient particulars and it is essential that they should be clear and definite so that the High Court Division may form a correct opinion on the merits of the officer. In the case of a very bad report, it is necessary that the unfavourable traits should be briefly illustrated. No adverse remarks should be made which cannot be supported by precise data, which are liable, specially in the case of a very bad report of an officer who had hitherto a good or average record, to be called for by the High Court Division." But it is not seen that the precise data are called for by the High Court Division in a case of a Judge who is closely known to me and this is surprising that the rule made by the Supreme Court of Bangladesh is not complied with by the General Administration Committee of the Supreme Court of Bangladesh.

Recommendations:

i. Annual Confidential Report system should be abolished and only merit through examination should be basis of promotion. Before taking part in the examination, there must have a time frame of working experience.

ii. A Committee composed of well experienced based persons concerned shall be formed for every department which will review the aforesaid time frame based works and give the report to the promotion giving authority.

iii. The committee may do mistake and hence there should have an opportunity that if a civil servant obtains good marks in the examination and the committee review report is against him, the basis of the said review report must be checked by another similar committee.

iv. All the performance reviewed by the committee must be publicly viewed either by website with their consideration.

9.5 Training and recommendation:

The Government of Bangladesh has established the Judicial Administration Training Institute (JATI) in accordance with the Judicial Administration Training Institute Act 1995. Under the current training policy, JATI runs a 60-day basic course for newly appointed Assistant Judges, 21-day courses (and at times, 3-day short courses) for Senior Assistant Judges, Joint District Judges and District Judges. However, the quality of training is not satisfactory as it lacks dynamism and fails to provide the judges with a broader outlook including Knowledge of

contemporary international legal issues and necessary social skills. [*Ref.http://www.igsbracu.ac.bd/UserFiles/File/archive_file/Judiciary_Policy_Note.pdf]*

Recommendation:

The quality of training provided by JATI should be improved. A training need- assessment of the subordinate court judges could be undertaken immediately, which will identify the areas of laws (such as, cyber space, money laundering, ethics, arbitration and conciliation) for curriculum development and training. JATI should also plan and implement a continuous point-based training programme for the subordinate court judges. Another interesting and innovative mode of orientation for the judges of the subordinate courts could be a form of 'apprenticeship' for the newly recruited by placing them with the judges of the Supreme Court for a designated period of time. Similar to the system of 'pupillage' for newly qualified lawyers when they spend a period of time with senior lawyers the newly recruited subordinate judges could be assigned to different High Court judges. They could work as 'Research Assistants' of the judges and help them with academic research, drafting of legal instruments, and writing of judgments. After this initial phase of 'apprenticeship', they can then receive further training at JATI. If this particular form of training is allowed, the new recruits will get to learn about the different legal issues and how judgments are written and generally increase their confidence and competence in matters related to law. On the other hand, the judges of the High Court Division, who are severely in need of skilled human resource, could benefit tremendously from the service of the newly recruited judges. This would also develop a working relationship between the judges of the Supreme and the subordinatecourts.*[Ref.http://www.igsbracu.ac.bd/UserFiles/File/archive_file/Judiciary_Policy_Note.pdf]*

9.6 Accountability

The accountability of the judges of the sub-ordinate Courts depends upon for the first time after Allah or the creator towards the law and conscience as embodied in rule 667 of the Criminal Rules and Orders-2009. The function of the judges of the sub-ordinate Courts are also accounted by their appellate Courts.

***Note Bene**: The chapter 9 of this volume is nothing but the part of the thesis submitted for the degree of Master of Philosophy under the Department of Public Administration of the University of Dhaka.*

Chapter– 10

Judicial Independence

10.1 Judicial Independence

Independence of judiciary means a fair and neutral judicial system of a country, which can afford to take its decisions without any interference of executive or legislative branch of government. Taking into consideration some of the recent discussions made in the Beijing Statement of Independence of the Judiciary (a statement resulting from the cumulated views of thirty-two Asian and Pacific Chief Justices) Judicial independence is defined, in this report as a Judiciary uninhibited by outside influences which may jeopardize the neutrality of jurisdiction, which may include, but is not limited to, influence from another organ of the government (functional and collective independence), from the media (personal independence), or from the superior officers (internal independence) (Rahman, 2000; Hadley; 2004). Independence of judiciary truly means that the judges are in a position to render justice in accordance with their oath of office and only in accordance with their own sense of justice without submitting to any kind of pressure or influence be it from executive or legislative or from the parties themselves or from the superiors and colleagues (Halim, 1998; 299). The concept of judicial independence as recent international efforts to this field suggests, comprises following four meaning of judicial independence (Bari, 1993, 2: Rahman, 2000):

i. Substantive Independence of the Judges: It referred to as functional or decisional independence meaning the independence of judges to arrive at their decisions without submitting to any inside or outside pressure;

ii. Personal independence: That means the judges are not dependent on government in any way in which might influence them in reaching at decisions in particular cases;

iii. Collective Independence: That means institutional administrative and financial independence of the judiciary as a whole vis-à-vis other branches of the government namely the executive and the legislative; and

iv. Internal Independence: That means independence of judges from their judicial superiors and colleagues. It refers to, in other words,

independence of a judges or a judicial officer from any kind of order, indication or pressure from his judicial superiors and colleagues in deciding cases. Independence of judiciary depends on some certain conditions like mode of appointment of the judges, security of their tenure in the office and adequate remuneration and privileges. Satisfactory implementation of these conditions enables the judiciary to perform its due role in the society thus inviting public confidence in it (Rahman, 2000, 147). "Independence of the judiciary", it is maintained, "lends prestige to the office of a judge and inspires confidence in the general public" (Robson, 1951). [Ref. http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan020065.pdf] The very important point is internal independence i.e. there is a scope of abuse of power in respect of administering the justice in the sub-ordinate Courts of Bangladesh as the superior officers can use the authority at the time of giving marks in the Annual Confidential Report of a sub-ordinate officer. The powers vested upon different judges in the sub-ordinate judiciary are not checked and balanced in view of the theory of separation of power as 'Montesquieu's basic contention was that those entrusted with power tend to abuse it; therefore, if Governmental power is fragmented, *each power* will operate as a chech on the others' [*Ref. The Macmillan Family Encyclopedia, Vol. 17 page 206]* However, the Appellate Division of the Supremem Court of Bangladesh in the case of SECRETARY, MINISTRY OF FINANCE vs MASDAR HOSSAIN reported in 52 DLR (AD) 82 has delared the following conditions for the independence of thejudiciary:

1. Security of the tenure of the Judges
2. Security of salary or other remuneration
3. Institutional independence of the subordinate judiciary
4. Independent judicial appointment
5. Financial independence of the Supreme Court of Bangladesh

10.2 Annual Confidential Report Law

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
জনপ্রশাসন মন্ত্রণালয়
সিআর-৩ শাখা
(www.mopa.gov.bd)

নং-০৫.১০২.২২.০১.০০.০০১.২০১২-৫৮ তারিখ: ২৩ সেপ্টেম্বর, ২০১২ / ০৮ আশ্বিন, ১৪১৯

বিষয় : গোপনীয় অনুবেদন ফরম পূরণ, অনুস্বাক্ষরসহ লিখন, প্রতিস্বাক্ষর ও সংরক্ষণ সংক্রান্ত অনুশাসনমালা।

সরকারী কর্মকর্তাগণের তত্ত্বাবধান, চাকুরী স্থায়ীকরণ, সিলেকশন গ্রেড প্রদান, পদোন্নতি ও পদায়নসহ বিভিন্ন ক্ষেত্রে গোপনীয় অনুবেদনের গুরুত্ব অপরিহার্য। গোপনীয় অনুবেদন ফরম পূরণ, অনুস্বাক্ষরসহ লিখন ও প্রতিস্বাক্ষরের পর সংরক্ষণের বিষয়ে অনুমোদিত স্বাস্থ্য কর্মকর্তা, অনুবেদনাধীন কর্মকর্তা, অনুবেদনকারী এবং প্রতিস্বাক্ষরকারী কর্তৃপক্ষসহ ডোসিয়ার হেফাজতকারী কর্তৃপক্ষের জন্য সুনির্দিষ্ট নির্দেশমালা থাকা আবশ্যক। প্রথম শ্রেণীর কর্মকর্তাগণের জন্য ১৯৯০ সন হইতে সংশোধিত বার্ষিক গোপনীয় অনুবেদন ফরমের (বাংলাদেশ ফরম নং ২৯০ ঘ) প্রচলন করা হইলেও গোপনীয় অনুবেদন ফরম পূরণের নির্দেশাবলী সংশোধন করিয়া সমন্বিত নির্দেশমালা জারি হয় নাই। গোপনীয় অনুবেদন ফরম ব্যবস্থাপনার প্রয়োজনে বিভিন্ন সময়ে জারীকৃত পরিপত্র এবং বিদ্যমান নির্দেশনা অনুযায়ী গোপনীয় অনুবেদন ব্যবস্থাপনার কার্যক্রম চলিতেছিল। তৎপ্রেক্ষিতে প্রথম শ্রেণীর কর্মকর্তাগণের জন্য গোপনীয় অনুবেদন ফরম পূরণ, অনুস্বাক্ষরকরণসহ লিখন, প্রতিস্বাক্ষরকরণ, বিরূপ মন্তব্য প্রক্রিয়াকরণ ও সংরক্ষণ সংক্রান্ত বিষয়ে বিদ্যমান পরিপত্র ও নির্দেশনাসমূহ সমন্বিত করিয়া নিম্নরূপ অনুশাসনমালা প্রস্তুত করা হইয়াছে।

১. গোপনীয় অনুবেদন সংক্রান্ত তথ্য

১.১ গোপনীয় অনুবেদন

কোন কর্মস্থলে একই ইংরেজী পঞ্জিকা বৎসরে একজন অনুবেদনকারী কতৃপক্ষের অধীনে একজন অনুবেদনাধীন কর্মকর্তার কর্মকালীন সময়ের সার্বিক কর্মমূল্যায়নের নামই বার্ষিক গোপনীয় অনুবেদন। সাধারণত সরকার কর্তৃক নির্ধারিত ফরমে একজন অনুবেদনাধীন কর্মকর্তা তাঁহার ব্যক্তিগত তথ্যাদি লিপিবদ্ধ করিয়া অনুমোদিত স্বাস্থ্য কর্মকর্তার প্রতিবেদনসহ পঞ্জিকাবর্ষ শেষে অনুবেদনকারী কর্তৃপক্ষের নিকট দাখিল করিয়া থাকেন এবং উক্ত ফরমে অনুবেদনকারী ও প্রতিস্বাক্ষরকারী কর্তৃপক্ষ অনুবেদনাধীন কর্মকর্তার

বিগত এক বৎসরের কর্মমূল্যায়নপূর্বক যথাক্রমে অনুস্বাক্ষর ও প্রতিস্বাক্ষর করিয়া থাকেন। তবে প্রয়োজনে এবং বিশেষ অবস্থার পরিপ্রেক্ষিতে এক পঞ্জিকাবর্ষে একাধিক আংশিক এবং বিশেষ গোপনীয় অনুবেদন দাখিলের প্রয়োজন হইতে পারে।

১.২ ডোসিয়ার

ডোসিয়ার হইতেছে এমন একটি নথি বা ফোল্ডার যাহাতে একজন কর্মকর্তার চাকরি বিবরণী, সকল বার্ষিক, আংশিক ও বিশেষ গোপনীয় অনুবেদন এবং ইহাতে প্রদত্ত পরামর্শ ও বিরূপ মন্তব্য সংক্রান্ত আদেশের কপি সংরক্ষণ করা হয়।

১.৩ গোপনীয় অনুবেদন এর প্রয়োজনীয়তা

একজন কর্মকর্তার কাজের পরিমাণ, গুণগতমান, দক্ষতা, সততা, নিষ্ঠা ইত্যাদি বিষয় তথা কার্যসম্পাদন ও ব্যক্তিগত বৈশিষ্ট্য সম্পর্কে সঠিক তথ্য সরবরাহ করাই গোপনীয় অনুবেদনের লক্ষ্য। ইহা সংশ্লিষ্ট কর্মকর্তার ডোসিয়ারের একটি অবিচ্ছেদ্য অংশ। গোপনীয় অনুবেদন একজন কর্মকর্তার চাকরি স্থায়ীকরণ, সিলেকশন গ্রেড প্রদান, টাইমস্কেল প্রদান, পদায়ন, পদোন্নতি, প্রেষণ, প্রশিক্ষণ, পুরস্কার ও তিরস্কার প্রদানের ক্ষেত্রে অপরিহার্য। গোপনীয় অনুবেদন এর প্রকৃত উদ্দেশ্য নিম্নরূপ ঃ

১.৩.১ নির্দেশনার সোপান/প্রশাসনিক নিয়ন্ত্রণ নিশ্চিতকরণ;

১.৩.২ কর্মকর্তার জবাবদিহিতা নিশ্চিতকরণ;

১.৩.৩ কার্যসম্পাদনে উন্নতিসাধন নিশ্চিতকরণ;

১.৩.৪ কর্মকর্তার কর্মসম্পাদনের ক্রমঃপুঞ্জিভূত রেকর্ড প্রস্তুতকরণে নিয়ামক হিসাবে ব্যবহার;

১.৩.৫ সর্বোপরি কর্মকর্তার কর্মজীবন পরিকল্পনায় সহায়ক অনুঘটক হিসাবে ব্যবহার।

১.৪ গোপনীয় অনুবেদন এর প্রকারভেদ

গোপনীয় অনুবেদন ৩ প্রকার, যথাঃ-

১.৪.১ বার্ষিক গোপনীয় অনুবেদন

একজন অনুবেদনাধীন কর্মকর্তা এক কর্মস্থলে এক ইংরেজী পঞ্জিকা বৎসরে একজন অনুবেদনকারী কর্তৃপক্ষের অধীনে এক পঞ্জিকা বৎসর কর্মসম্পাদনের পর বৎসর শেষে যেই গোপনীয় অনুবেদন ফরম ২ (দুই) প্রস্থ অনুমোদিত স্বাস্থ্য কর্মকর্তার মাধ্যমে স্বাস্থ্য পরীক্ষান্তে পূরণপূর্বক অনুবেদনকারী কর্তৃপক্ষের মাধ্যমে লিখনসহ অনুস্বাক্ষর এবং প্রতিস্বাক্ষরকারী কর্তৃপক্ষের মাধ্যমে প্রতিস্বাক্ষর করাইয়া ডোসিয়ার হেফাজতকারী কর্তৃপক্ষের নিকট দাখিল করিয়া থাকেন তাহাই বার্ষিক গোপনীয় অনুবেদন। একাধিক আংশিক গোপনীয় অনুবেদন প্রযোজ্য হইলে সর্বশেষ গোপনীয় অনুবেদনে স্বাস্থ্য পরীক্ষা প্রতিবেদন অবশ্যই থাকিতে হইবে।

১.৪.২ আংশিক গোপনীয় অনুবেদন

নিজ কর্মস্থল পরিবর্তন বা অনুবেদনকারী কর্তৃপক্ষ পরিবর্তনের কারণে একজন অনুবেদনাধীন কর্মকর্তা এক কর্মস্থলে এক পঞ্জিকা বৎসরে একজন অনুবেদনকারী কর্তৃপক্ষের অধীনে ন্যূনতম কর্মকাল ০৩ (তিন) মাস হইবার পর যেই গোপনীয় অনুবেদন দাখিল করিবে তাহাই আংশিক গোপনীয় অনুবেদন হিসাবে গণ্য হইবে। এক পঞ্জিকা বৎসরে এক কর্মস্থলে একজন অনুবেদনকারী কর্তৃপক্ষের অধীনে কর্মকাল ন্যূনতম ০৩ (তিন) মাস বা ততোধিক হইলে আংশিক গোপনীয় অনুবেদন দাখিল বাধ্যতামূলক। কিন্তু অনুবেদনকারী কর্তৃপক্ষের অধীনে অনুবেদনাধীন কর্মকর্তার কর্মকাল ন্যূনতম ০৩ (তিন) মাস পূর্ণ না হইলে গোপনীয় অনুবেদন দাখিল করা যাইবে না। প্রতিস্বাক্ষরের ক্ষেত্রে অনুবেদনাধীন কর্মকর্তাকে গোপনীয় অনুবেদন মেয়াদে যে কোন একটি সময় অবশ্যই প্রতিস্বাক্ষরকারী কর্তৃপক্ষের নিয়ন্ত্রণে কাজ করিতে হইবে এবং এক পঞ্জিকা বৎসরে একাধিক প্রতিস্বাক্ষরকারীর নিয়ন্ত্রণে কর্মরত থাকিলে যে প্রতিস্বাক্ষরকারীর নিয়ন্ত্রণে কর্মকাল সর্বাধিক তৎকর্তৃক গোপনীয় অনুবেদন প্রতিস্বাক্ষরিত হইতে হইবে।

১.৪.৩ বিশেষ গোপনীয় অনুবেদন

সরকার প্রয়োজনে কোন কর্মকর্তার পদোন্নতি/পদায়ন ইত্যাদি বিবেচনার ক্ষেত্রে বৎসরের যে কোন সময় একজন কর্মকর্তাকে বিশেষ গোপনীয় অনুবেদন দাখিল করিবার আদেশ প্রদান করিতে পারে। এই ক্ষেত্রেও একজন কর্মকর্তাকে এক কর্মস্থলে একজন অনুবেদনকারী কর্তৃপক্ষের অধীনে ন্যূনতম ০৩ (তিন) মাস কর্মরত থাকিতে হইবে। সাধারণভাবে শিক্ষাছুটি, বিশেষ ভারপ্রাপ্ত কর্মকর্তা, লিয়েনে থাকা কোন কর্মকর্তার পদোন্নতির ক্ষেত্রে বিশেষ গোপনীয় অনুবেদন দাখিলের প্রয়োজন হইতে পারে। এইরূপ ক্ষেত্রে নিয়োগকারী কর্তৃপক্ষ এবং যেই সকল কর্মকর্তার ক্ষেত্রে নিয়োগকারী কর্তৃপক্ষ রাষ্ট্রপতি সেই সকল ক্ষেত্রে সংশ্লিষ্ট মন্ত্রণালয়/বিভাগের সচিব/ভারপ্রাপ্ত সচিব বিশেষ গোপনীয় অনুবেদন দাখিলের আদেশ প্রদান করিতে পারিবেন।

১.৫ গোপনীয় অনুবেদন সংশ্লিষ্ট কর্তৃপক্ষ

ক. অনুবেদনাধীন কর্মকর্তা বলিতে যেই কর্মকর্তার অনুবেদন লিখা হইতেছে সেই কর্মকর্তাকে বুঝাইবে।

খ. অনুবেদনকারী কর্তৃপক্ষ বলিতে প্রশাসনিক সোপানে অনুবেদনাধীন কর্মকর্তার সরাসরি নিয়ন্ত্রণকারী উর্দ্ধতন কর্তৃপক্ষকে বুঝাইবে যিনি অনুবেদনাধীন কর্মকর্তার গোপনীয় অনুবেদন লিখনসহ অনুস্বাক্ষর করিবেন।

গ. প্রতিস্বাক্ষরকারী কর্তৃপক্ষ বলিতে প্রশাসনিক সোপানে অনুবেদনকারী কর্তৃপক্ষের সরাসরি নিয়ন্ত্রণকারী উর্দ্ধতন কর্তৃপক্ষকে বুঝাইবে যিনি অনুবেদনকারী কর্তৃপক্ষের গোপনীয় অনুবেদন অনুস্বাক্ষরসহ লিখিবেন এবং অনুবেদনাধীন কর্মকর্তার গোপনীয় অনুবেদন প্রতিস্বাক্ষর করিবেন। তবে একই কর্মস্থলে

একই বৎসরে একাধিক প্রতিস্বাক্ষরকারী কর্তৃপক্ষের নিয়ন্ত্রণে দায়িত্ব পালনের ক্ষেত্রে যাহার নিয়ন্ত্রণে সর্বাধিক সময় কর্মরত ছিলেন তিনিই প্রতিস্বাক্ষরকারী কর্তৃপক্ষ হিসাবে গণ্য হইবেন।

ঘ. ডোসিয়ার হেফাজতকারী কর্তৃপক্ষ বলিতে বুঝাইবে–

১. জনপ্রশাসন মন্ত্রণালয়ের ক্ষেত্রে সিআর অধিশাখা

২. অন্যান্য মন্ত্রণালয়/বিভাগ এর ক্ষেত্রে সংশ্লিষ্ট মন্ত্রণালয়/বিভাগ এর প্রশাসন অনুবিভাগ বা সচিক কর্তৃক নির্ধারিত অন্যকোন অনুবিভাগ; এবং

৩. অধিদপ্তর/দপ্তর এর ক্ষেত্রে সংশ্লিষ্ট অধিদপ্তর/দপ্তর এর প্রশাসন শাখা বা অধিদপ্তর/দপ্তর প্রধান কর্তৃক নির্ধারিত কোন শাখা।

১.৬ গোপনীয় অনুবেদন দাখিল, অনুস্বাক্ষর ও প্রতিস্বাক্ষরের সময়সূচি ঃ

১.৬.১ অনুবেদনাধীন কর্মকর্তাকে গোপনীয় অনুবেদন ফরমে তাঁহার জন্য নির্ধারিত ১ম ও ২য় অংশ যথাযথভাবে পূরণ ও স্বাক্ষর করিয়া অনুমোদিত স্বাস্থ্য কর্মকর্তার মাধ্যমে স্বাস্থ্য পরীক্ষান্তে প্রতিবৎসর ৩১ জানুয়ারির মধ্যে পূর্ববর্তী বৎসরের গোপনীয় অনুবেদন আবশ্যিকভাবে অগ্রগামী পত্রসহ অনুবেদনকারী কর্তৃপক্ষের নিকট দাখিল করিতে হইবে। অগ্রগামী পত্রের অনুলিপি প্রতিস্বাক্ষরকারী এবং ডোসিয়ার হেফাজতকারী কর্তৃপক্ষের নিকট প্রেরণ করিতে হইবে।

১.৬.২ অনুবেদনকারী কর্তৃপক্ষকে গোপনীয় অনুবেদন ফরমে তাঁহার জন্য নির্ধারিত ৩য় হইতে ৬ষ্ঠ অংশ পর্যন্ত যথাযথভাবে অনুস্বাক্ষর, পূরণ ও স্বাক্ষরপূর্বক ২৮ ফেব্রুয়ারির মধ্যে সীলগালাকৃত খামে 'গোপনীয়' শব্দটি লিখিয়া অগ্রগামী পত্রসহ প্রতিস্বাক্ষরকারী কর্তৃপক্ষের নিকট প্রেরণ করিতে হইবে। অগ্রগামী পত্রের অনুলিপি অনুবেদনাধীন কর্মকর্তাসহ ডোসিয়ার হেফাজতকারী কর্তৃপক্ষের নিকট প্রেরণ করিতে হইবে। তবে শর্ত থাকে যে, যেই সকল ক্ষেত্রে ক্ষেত্রে প্রতিস্বাক্ষরের প্রয়োজন নাই, সেই সকল ক্ষেত্রে সরাসরি ডোসিয়ার হেফাজতকারী কর্তৃপক্ষের নিকট গোপনীয় অনুবেদন প্রেরণ করিতে হইবে।

১.৬.৩ প্রতিস্বাক্ষরকারী কর্তৃপক্ষকে তাঁহার জন্য নির্ধারিত ৭ম অংশ যথাযথভাবে পূরণ ও স্বাক্ষরপূর্বক ৩১ মার্চের মধ্যে সীলগালাকৃত খামে 'গোপনীয়' শব্দটি লিখিয়া অগ্রগামী পত্রসহ ডোসিয়ার হেফাজতকারী কর্তৃপক্ষের নিকট প্রেরণ করিতে হইবে। অগ্রগামী পত্রের অনুলিপি অনুবেদনাধীন কর্মকর্তা ও অনুবেদনকারীর নিকট প্রেরণ করিতে হইবে।

১.৬.৪ আংশিক গোপনীয় অনুবেদন প্রযোজ্য হওয়ার ক্ষেত্রে সংশ্লিষ্ট পঞ্জিকা বৎসরের যে কোন সময় তাহা দাখিল করা যাইবে। তবে তাহা বার্ষিক

গোপনীয় অনুবেদনের জন্য নির্ধারিত সময়ের মধ্যে অবশ্যই দাখিল করতে হইবে।

১.৬.৫ বিশেষ গোপনীয় অনুবেদন দাখিলের ক্ষেত্রে নির্দেশ প্রাপ্তির তারিখ হইতে ০৭ (সাত) দিনের মধ্যে অনুবেদনাধীন কর্মকর্তাকে গোপনীয় অনুবেদন দাখিল করিতে হইবে। দাখিলের তারিখ হইতে ১৫ (পনের) দিনের মধ্যে অনুবেদনকারী কর্তৃপক্ষ অনুস্বাক্ষরপূর্বক প্রতিস্বাক্ষরকারী কর্তৃপক্ষ বরাবর তাহা প্রেরণ করিবেন এবং প্রতিস্বাক্ষরকারী কর্তৃপক্ষ প্রাপ্তির তারিখ হইতে ১৫ (পনের) দিনের মধ্যে তাহা প্রতিস্বাক্ষরপূর্বক ডোসিয়ার হেফাজতকারী কর্তৃপক্ষের নিকট প্রেরণ করিবেন। এই ক্ষেত্রে অনুবেদনাধীন কর্মকর্তা, অনুবেদনকারী এবং প্রতিস্বাক্ষরকারী কর্তৃপক্ষ প্রত্যেকেই অগ্রগামী পত্রসহ সীলগালাকৃত খামে 'গোপনীয়' শব্দটি লিখিয়া বিশেষ গোপনীয় অনুবেদন প্রেরণ করিবেন।

১.৬.৬ ডোসিয়ার হেফাজতকারী কর্তৃপক্ষ কর্তৃক প্রতি বৎসর ৩১ (একত্রিশ) ডিসেম্বরের মধ্যে পূর্ববর্তী বৎসরের যথাসময়ে প্রাপ্ত গোপনীয় অনুবেদনসমূহের যাবতীয় বিষয় নিষ্পত্তি করিতে হইবে।

১.৭ বিলম্বে গোপনীয় অনুবেদন দাখিল, অনুস্বাক্ষরসহ লিখন ও প্রতিস্বাক্ষরকরণের ক্ষেত্রে করণীয় ঃ

১.৭.১ অনুচ্ছেদ ১.৬ এ উল্লিখিত গোপনীয় অনুবেদন দাখিলের নির্ধারিত তারিখের পরে দাখিলকৃত গোপনীয় অনুবেদনসমূহ বিলম্বে দাখিলকৃত গোপনীয় অনুবেদন হিসাবে গণ্য হইবে।

১.৭.২ অনুচ্ছেদ ১.৬ এ উল্লিখিত নির্ধারিত সময়সূচির মধ্যে যুক্তিসঙ্গত কারণ ব্যতিরেকে গোপনীয় অনুবেদন দাখিল, লিখনসহ অনুস্বাক্ষরের ব্যর্থতা, প্রযোজ্য ক্ষেত্রে সংশ্লিষ্ট অনুবেদনাধীন কর্মকর্তা বা অনুবেদনকারী বা প্রতিস্বাক্ষরকারী কর্মকর্তার অসদাচরণ হিসাবে গণ্য হইবে এবং তাহার বিরুদ্ধে বিভাগীয় ব্যবস্থা গ্রহণ করা যাইবে।

১.৭.৩ অনুচ্ছেদ ১.৬.১ এ উল্লিখিত সময়সীমা অতিবাহিত হওয়ার এক বৎসর পর কোন অনুবেদনাধীন কর্মকর্তা কর্তৃক গোপনীয় অনুবেদন অনুবেদনকারী কর্তৃপক্ষের নিকট দাখিল করা হইলে তাহা সরাসরি বাতিল হিসাবে গণ্য হইবে। অনুবেদনাধীন কর্মকর্তার এইরূপ আচরণ অসদাচরণ হিসাবে গণ্য হইবে এবং তাঁহার বিরুদ্ধে বিভাগীয় ব্যবস্থা গ্রহণ করা যাইবে। এইরূপ দাখিলকৃত গোপনীয় অনুবেদন অনুস্বাক্ষর বা প্রতিস্বাক্ষর করা যাইবে না এবং অনুবেদনকারী/প্রতিস্বাক্ষরকারী কর্তৃপক্ষ কর্তৃক বিষয়টি উল্লেখ করিয়া অনুস্বাক্ষর/প্রতিস্বাক্ষর বিহীন অবস্থায় ডোসিয়ার হেফাজতকারী কর্তৃপক্ষের নিকট প্রেরণ করিতে

হইবে। ইচ্ছাকৃতভাবে গোপনীয় অনুবেদন দাখিল না করিলে ইহা অসদাচরণ হিসাবে গণ্য হইবে এবং সংশ্লিষ্ট কর্মকর্তার বিরুদ্ধে বিভাগীয় ব্যবস্থা গ্রহণ করা যাইবে।

১.৭.৪ অনুচ্ছেদ ১.৬.১ এ উল্লিখিত সময়সীমার মধ্যে অনুবেদনাধীন কর্মকর্তা গোপনীয় অনুবেদন দাখিল করিবার পর অনুস্বাক্ষরকারী বা প্রতিস্বাক্ষরকারী কর্তৃপক্ষ কর্তৃক যথাক্রমে অনুচ্ছেদ ১.৬.২ ও ১.৬.৩ এ তাঁহাদের জন্য নির্ধারিত সময়ের ১ (এক) বৎসর অতিবাহিত হওয়ার পর ডোসিয়ার হেফাজতকারী কর্তৃপক্ষের নিকট প্রেরণ করা হইলে তাহা সরাসরি বাতিল হিসাবে গণ্য হইবে। তবে এই ক্ষেত্রে অনুবেদনাধীন কমকর্তাকে অব্যাহতি প্রদানপূর্বক গড় নম্বর প্রদান করিতে হইবে।

১.৮ গোপনীয় অনুবেদন এর বিভিন্ন অংশের বর্ণনা

গোপনীয় অনুবেদন ফরমটি ০৮ (আট) টি অংশে বিভক্ত। গোপনীয় অনুবেদনের বিভিন্ন অংশের বর্ণনা এবং উহা যথাযথভাবে পূরণ ও দাখিলের ক্ষেত্রে অনুবেদনাধীন কর্মকর্তা, অনুবেদনকারী কর্তৃপক্ষ ও প্রতিস্বাক্ষরকারী কর্তৃপক্ষের করণীয় নিম্নের ছকে উল্লেখ করা হইল ঃ

গোপনীয় অনুবেদন ফরমের অংশ	বিষয়বস্তু	পূরণকারী কর্মকর্তা/কর্তৃপক্ষ
কভার পৃষ্ঠা	গোপনীয় অনুবেদনের সময়কাল, কর্মকর্তার নাম, উক্ত সময়কালের পদবী, চাকুরী/ক্যাডার /পদ, পরিচিতি নম্বর (আইডি নং)	অনুবেদনাধীন কর্মকর্তা
১ম অংশ	স্বাস্থ্য পরীক্ষা প্রতিবেদন	অনুমোদিত স্বাস্থ্য কর্মকর্তা
২য় অংশ	অনুবেদনাধীন কর্মকর্তার জীবন বৃত্তান্ত	অনুবেদনাধীন কর্মকর্তা
৩য় অংশ	অনুবেদনাধীন কর্মকর্তার ব্যক্তিগত বৈশিষ্ট্য।	অনুবেদনাধীন কর্তৃপক্ষ।
৪র্থ অংশ	অনুবেদনাধীন কর্মকর্তার কার্যসম্পাদন সম্পর্কিত তথ্যাদি।	অনুবেদনকারী কর্তৃপক্ষ।
৫ম অংশ	লেখচিত্র (গোপনীয় অনুবেদন এর ৩য় ও ৪র্থ অংশে বিধৃত হয় নাই এমন গুরুত্বপূর্ণ তথ্যাদি)।	অনুবেদনকারী কর্তৃপক্ষ।
৬ষ্ঠ অংশ	অনুবেদনাধীন কর্মকর্তার বিশেষ প্রবণতা, যোগ্যতা, সততা ও সুনাম, চাকরীকালীন প্রশিক্ষণ, পদোন্নতি, পদায়ন সংক্রান্ত তথ্য/সুপারিশ।	অনুবেদনকারী কর্তৃপক্ষ।
৭ম অংশ	অনুবেদনাধীন কর্মকর্তা সম্পর্কে অনুবেদনকারী কর্মকর্তার মূল্যায়ন বিষয়ক মতামত প্রদান এবং অনুবেদনাধীন	প্রতিস্বাক্ষরকারী কর্তৃপক্ষ।

গোপনীয় অনুবেদন ফরমের অংশ	বিষয়বস্তু	পূরণকারী কর্মকর্তা/কর্তৃপক্ষ
	কর্মকর্তা সম্পর্কে সার্বিক ও চূড়ান্ত মূল্যায়ন।	
৮ম অংশ	মন্ত্রণালয়/বিভাগ/দপ্তর কর্তৃক পূরণীয়।	সংশ্লিষ্ট প্রশাসনিক মন্ত্রণালয়/বিভাগ/অধিদপ্তর/ দপ্তর এর সংশ্লিষ্ট দায়িত্ব প্রাপ্ত কর্মকর্তা।

১.৯ গোপনীয় অনুবেদন ফরম পূরণ, লিখনসহ অনুস্বাক্ষর ও প্রতিস্বাক্ষরকরণ সংক্রান্ত সাধারণ নিয়মাবলী

১.৯.১ গোপনীয় অনুবেদন ফরমে কোন অবস্থাতেই কাঁটাছেঁড়া, ঘষামাজা বা ফ্লুইড ব্যবহার করা যাইবে না। একান্ত প্রয়োজনে সংশ্লিষ্ট অংশ একটানে কাঁটিয়া সংশোধনপূর্বক অনুস্বাক্ষর করিতে হইবে।

১.৯.২ এক পঞ্জিকা বৎসরে কোন অনুবেদনাধীন কর্মকর্তার কর্মস্থল একাধিক হইলে বা অনুবেদনকারী কর্তৃপক্ষ পরিবর্তিত হইলে এবং কর্মকাল ন্যূনতম ০৩ (তিন) মাস হইলে, উক্ত ক্ষেত্রে অনুবেদনাধীন কর্মকর্তাকে প্রত্যেক অনুবেদনকারীর নিকট হইতে বা প্রত্যেক কর্মস্থলের জন্য পৃথক আংশিক গোপনীয় অনুবেদন আবশ্যিকভাবে দাখিল করিতে হইবে। এক পঞ্জিকা বৎসরে প্রযোজ্য সকল আংশিক গোপনীয় অনুবেদনের নম্বরের গড়ই হইবে সংশ্লিষ্ট বৎসরের গোপনীয় অনুবেদনের নম্বর।

১.৯.৩ সরকারের নির্দেশে প্রয়োজনে বিশেষ গোপনীয় অনুবেদন বৎসরের যে কোন সময় দাখিল করা যাইবে। তবে এই ক্ষেত্রে অনুবেদনকারী কর্তৃপক্ষের নিয়ন্ত্রণে অনুবেদনাধীন কর্মকর্তার চাকুরীকাল ন্যূনতম ০৩ (তিন) মাস হইতে হইবে।

১.৯.৪ অনুবেদনাধীন কর্মকর্তা নিজ দপ্তরের (প্রয়োজনে সংযুক্ত মন্ত্রণালয়/বিভাগ/ দপ্তরের) স্মারক সংখ্যা, যথাযথ তারিখ ও স্বাক্ষর সম্বলিত অগ্রগামী পত্রের মাধ্যমে আবশ্যিকভাবে ১.৬ নং অনুচ্ছেদে উল্লিখিত সময়ের মধ্যে অনুবেদনকারী কর্তৃপক্ষের নিকট গোপনীয় অনুবেদন দাখিল করিবেন। অগ্রায়ন পত্রের অনুলিপি সংশ্লিষ্ট প্রতিস্বাক্ষরকারী কর্তৃপক্ষ ও ডোসিয়ার হেফাজতকারী কর্তৃপক্ষের নিকট প্রেরণ করিবেন। সরাসরি দাখিলের ক্ষেত্রেও গ্রহণকারী কর্তৃক গ্রহণের প্রমাণপত্র এবং ডাকযোগ প্রেরণ করিবার ক্ষেত্রে ডাক রেজিস্ট্রির কপি ভবিষ্যত প্রয়োজনের জন্য নিজ হেফাজতে সংরক্ষণ করিবেন। অগ্রায়ন পত্রে অবশ্যই টেলিফোন/মোবাইল নম্বর উল্লেখ করিতে হইবে।

১.৯.৫ অনুবেদনকারী কর্তৃপক্ষ গোপনীয় অনুবেদন এর ৩য় হইতে ৬ষ্ঠ অংশ পূরণপূর্বক অনুস্বাক্ষর ও স্বাক্ষর করিয়া ১.৬ নং অনুচ্ছেদে নির্ধারিত সময়ের মধ্যে আবশ্যিকভাবে সীলগালাকৃত খামে 'গোপনীয়' শব্দটি লিখিয়া অগ্রগামীপত্রে টেলিফোন/মোবাইল নম্বর উল্লেখসহ প্রতিস্বাক্ষর-কারী কর্তৃপক্ষের নিকট প্রতিস্বাক্ষরের জন্য প্রেরণ করিবেন এবং অনুলিপি অনুবেদনাধীন কর্মকর্তা ও ডোসিয়ার হেফাজতকারী কর্তৃপক্ষের বরাবরে প্রেরণ করিবেন। তবে শর্ত থাকে যে, যে সকল ক্ষেত্রে গোপনীয় অনুবেদন প্রতিস্বাক্ষরের প্রয়োজন নাই, উক্ত ক্ষেত্রে প্রতিস্বাক্ষর হইতে অব্যাহতির বিষয় উল্লেখপূর্বক অনুবেদনকারী কর্মকর্তা গোপনীয় অনুবেদন সরাসরি ডোসিয়ার হেফাজতকারী কর্তৃপক্ষের নিকট প্রেরণ করিবেন।

১.৯.৬ অনুবেদনকারী কর্তৃপক্ষ কর্তৃক গোপনীয় অনুবেদন এর ৫ম অংশ পূরণ করিবার ক্ষেত্রে অস্পষ্ট/ অসামঞ্জস্যসপূর্ণ মন্তব্য লিপিবদ্ধ করা যাইবে না। সঠিক শব্দ চয়ন/প্রয়োগ বা ব্যবহার করিতে হইবে। যেমন-একজন কর্মকর্তার লেখচিত্রে "নির্ভরশীল কর্মকর্তা" মন্তব্য করা হইয়াছে অথব তাঁহাকে অসাধারণ বা অত্যুত্তেম গ্রেডে নম্বর প্রদান করা হইয়াছে, এইক্ষেত্রে মন্তব্য হওয়া উচিত ছিল "নির্ভরযোগ্য কর্মকর্তা"। কেননা নির্ভরশীল শব্দটি দ্বারা অদক্ষতা বুঝায়।

১.৯.৭ প্রতিস্বাক্ষরকারী কর্তৃপক্ষ কর্তৃক প্রতি বৎসর ১.৬নং অনুচ্ছেদে নির্ধারিত সময়ের মধ্যে আবশ্যিকভাবে গোপনীয় অনুবেদন প্রতিস্বাক্ষরপূর্বক সংশ্লিষ্ট কর্মকর্তার ডোসিয়ার হেফাজতকারীর দপ্তরে প্রেরণ করিবার সময় অবশ্যই সীরগালাকৃত খামে 'গোপনীয়' শব্দটি লিখিয়া অগ্রগামী পত্রে টেলিফোন/ মোবাইল নম্বর উল্লেখ করিয়া প্রেরণ করিতে হইবে। অনুবেদনাধীন কর্মকর্তা ও অনুবেদনকারী কর্তৃপক্ষকে অগ্রগামী পত্রের অনুলিপি প্রেরণ করিতে হইবে।

১.৯.৮ অনুবেদনাধীন কর্মকর্তা, অনুবেদনকারী ও প্রতিস্বাক্ষরকারী কর্তৃপক্ষ কর্তৃক গোপনীয় অনুবেদন এর যথাস্থানে স্বাক্ষরের পর নাম ও পদবীর সীলমোহর ও পরিচিতি নম্বর (যদি থাকে) আবশ্যিকভাবে উল্লেখ করিতে হইবে (প্রযোজ্য ক্ষেত্রে প্রাক্তন পদবী ও কর্মস্থল লিখিতে হইবে) এবং দিন, মাস ও বৎসরসহ সুনির্দিষ্ট তারিখ লিখিত হইবে।

১.৯.৯ কোন অবস্থাতেই অনুবেদনাধীন কর্মকর্তার মাধ্যমে (হাতে হাতে) অনুস্বাক্ষরিত/প্রতিস্বাক্ষরিত গোপনীয় অনুবেদন প্রেরণ করা যাইবে না।

২. গোপনীয় অনুবেদন সর্ম্পকিত প্রশাসনিক সোপান ঃ

২.১ সংশ্লিষ্ট মন্ত্রণালয়/বিভাগ/দপ্তর/অধিদপ্তর/সংস্থায় তাঁহাদের প্রশাসনিক নিয়ন্ত্রণাধীন কর্মস্থলে/প্রতিষ্ঠানে কর্মরত বিভিন্ন পর্যায়ের প্রথম শ্রেণীর

কর্মকর্তাদের অনুবেদনকারী কর্তৃপক্ষ, প্রতিস্বাক্ষরকারী কর্তৃপক্ষ নির্ধারণপূর্বক আদেশ জারীর ক্ষেত্রে নিম্নোক্ত উদাহরণ অনুসরণ করা যাইতে পারে ঃ

অনুবেদনাধীন কর্মকর্তা	অনুবেদনকারী কর্তৃপক্ষ	প্রতিস্বাক্ষরকারী কর্তৃপক্ষ
অতিরিক্ত সচিব/যুগ্মসচিব (ভারপ্রাপ্ত সচিব)	মন্ত্রণালয়ের দায়িত্বপ্রাপ্ত মন্ত্রী/প্রতিমন্ত্রী/উপমন্ত্রী	প্রতিস্বাক্ষরের প্রয়োজন নাই
অতিরিক্ত সচিব	সচিব/ভারপ্রাপ্ত সচিব	মন্ত্রণালয়ের দায়িত্বপ্রাপ্ত মন্ত্রী/প্রতিমন্ত্রী /উপমন্ত্রী
যুগ্মসচিব	সচিব/ভারপ্রাপ্ত সচিব/ অতিরিক্ত সচিব	মন্ত্রণালয়/বিভাগের দায়িত্বপ্রাপ্ত মন্ত্রী/ প্রতিমন্ত্রী/ উপমন্ত্রী এবং মন্ত্রণালয়/ বিভাগের সচিব/ভারপ্রাপ্ত সচিব
উপসচিব	অতিরিক্ত সচিব/যুগ্মসচিব	সচিব/ভারপ্রাপ্ত সচিব
সিনিয়র সহকারী সচিব/ সহকারী সচিব	উপসচিব	অতিরিক্ত সচিব/যুগ্মসচিব
সিনিয়র সহকারী প্রধান/ সহকারী প্রধান/ গবেষণা কর্মকর্তা	উপসচিব/উপ-প্রধান	অতিরিক্ত সচিব/যুগ্ম সচিব/যুগ্ম প্রধান
বিভাগীয় কমিশনার	মন্ত্রিপরিষদ সচিব	প্রতিস্বাক্ষরের প্রয়োজন নাই
জেলা প্রশাসক	বিভাগীয় কমিশনার	মন্ত্রিপরিষদ সচিব
অতিরিক্ত জেলা প্রশাসক	জেলা প্রশাসক	বিভাগীয় কমিশনার
উপজেলা নির্বাহী অফিসার	জেলা প্রশাসক	বিভাগীয় কমিশনার
উপ-পরিচালক	অতিঃ পরিচালক/ পরিচালক	অতিঃমহাপরিচালক/মহাপরিচালক
সিনিয়র সহকারী কমিশনার/সহকারী কমিশনার	অতিরিক্ত জেলা প্রশাসক	জেলা প্রশাসক
সহকারী কমিশনার (ভূমি)	উপজেলা নির্বাহী অফিসার	অতিরিক্ত জেলা প্রশাসক (রাজস্ব)
সহকারী পরিচালক	উপ পরিচালক	অতিঃ পরিচালক/পরিচালক/অতিরিক্ত মহাপরিচালক

২.২ একান্ত সচিব ও সহকারী একান্ত সচিবগণের গোপনীয় অনুবেদন লিখনসহ অনুস্বাক্ষর ও প্রতিস্বাক্ষরকরণঃ

২.২.১ মন্ত্রী/প্রতিমন্ত্রী/উপমন্ত্রী/সমমর্যাদা সম্পন্ন ব্যক্তিবর্গের একান্ত সচিবগণের গোপনীয় অনুবেদন সংশ্লিষ্ট মন্ত্রী/প্রতিমন্ত্রী/উপমন্ত্রী/সমমর্যাদা সম্পন্ন ব্যক্তিবর্গ লিখনসহ অনুস্বাক্ষর করিবেন এবং উহাতে প্রতিস্বাক্ষরের প্রয়োজন হইবে না।

২.২.২ মন্ত্রী/প্রতিমন্ত্রী/উপমন্ত্রী/সমমর্যাদা সম্পন্ন ব্যক্তিবর্গের সহকারী একান্ত সচিব যদি কোন ক্যাডারভূক্ত বা সরকারী প্রথম শ্রেণীর কর্মকর্তা হইয়া থাকেন তবে সেই ক্ষেত্রে সংশ্লিষ্ট মন্ত্রী/প্রতিমন্ত্রী/উপমন্ত্রী/সমমর্যাদা সম্পন্ন ব্যক্তিবর্গের একান্ত সচিবগণ সহকারী একান্ত সচিবদের গোপনীয় অনুবেদন লিখনসহ অনুস্বাক্ষর করিবেন এবং সংশ্লিষ্ট মন্ত্রী/প্রতিমন্ত্রী/ উপমন্ত্রী/সমমর্যাদা সম্পন্ন ব্যক্তিবর্গ উহা প্রতিস্বাক্ষর করিবেন।

২.২.৩ মন্ত্রিপরিষদ সচিব/মুখ্যসচিব/সিনিয়র সচিব/সচিব/ভারপ্রাপ্ত সচিব/একান্ত সচিব এর প্রাধিকারপ্রাপ্ত ব্যক্তিবর্গের একান্ত সচিব এর গোপনীয় অনুবেদন তাঁহার নিজে লিখিবেন এবং এই ক্ষেত্রে প্রতিস্বাক্ষর প্রয়োজন হইবে না।

২.৩ অনুবেদনকারী কর্তৃপক্ষ এবং প্রতিস্বাক্ষরকারী কর্তৃপক্ষ নির্ধারণ ঃ

২.৩.১ অনুবেদনাধীন কর্মকর্তার সরাসরি নিয়ন্ত্রণকারী কর্তৃপক্ষ বা দৈনন্দিন কর্মকান্ড যিনি সরাসরি তত্ত্বাবধান করিয়া থাকেন তিনিই ঐ কর্মকর্তার অনুবেদনকারী কর্তৃপক্ষ। তদ্রুপ প্রশাসনিক সোপানে অনুবেদনকারী কর্তৃপক্ষের সরাসরি নিয়ন্ত্রণকারী/তত্ত্বাবধানকারী কর্তৃপক্ষই অনুবেদ-নাধীন কর্মকর্তার প্রতিস্বাক্ষরকারী কর্তৃপক্ষ।

২.৩.২ অনুবেদনকারী কর্তৃপক্ষ এবং প্রতিস্বাক্ষরকারী কর্তৃপক্ষ নির্ধারণে কোন জটিলতা দেখা দিলে প্রশাসনিক মন্ত্রণালয় স্ব-স্ব অধিক্ষেত্রের মধ্যে অনুবেদনকারী এবং প্রতিস্বাক্ষরকারী কর্তৃপক্ষ নির্ধারণ করিয়া প্রশাসনিক আদেশ জারী করিবে এবং তাহা সংশ্লিষ্ট মন্ত্রণালয়সহ ডোসিয়ার হেফাজতকারী কর্তৃপক্ষকে অবশ্যই অবহিত করিতে হইবে।

২.৪ অনুবেদনকারী/প্রতিস্বাক্ষরকারী কর্তৃপক্ষের অবর্তমানে গোপনীয় অনুবেদন লিখনঃ

২.৪.১ গোপনীয় অনুবেদন অনুস্বাক্ষর এর জন্য নির্ধারিত সময়ের মধ্যে অনুবেদনকারী কর্তৃপক্ষের ক্ষেত্রে নিম্নলিখিত কারণসমূহ বিদ্যমান থাকিলে বা নিম্নরূপ ঘটনার উদ্ভব হইলে প্রতিস্বাক্ষরকারী কর্তৃপক্ষ অনুবেদনাধীন কর্মকর্তার গোপনীয় অনুবেদন লিখিতে পারিবেন। এই ক্ষেত্রে প্রতিস্বাক্ষরের প্রয়োজন হইবে না। যথা ঃ

ক. মৃত্যুবরণ করিলে;

খ. কারাগারে আটক থাকিলে;

গ. সাময়িকভাবে বরখাস্ত বা অপসারিত হইলে;

ঘ. চাকরী হইতে বরাখাস্ত হইলে;

ঙ. চাকরী হইতে পদত্যাগ করিলে;

চ. নিরুদ্দেশ থাকিলে; এবং

ছ. গোপনীয় অনুবেদন দাখিলের জন্য নির্ধারিত সময়ের সর্বশেষ তারিখের পরবর্তী ০৩ (তিন) মাসের অধিককাল বিদেশে অবস্থান করিলে।

২.৪.২ অনুচ্ছেদ ২.৪.১ এ উল্লিখিত কারণসমূহ প্রতিস্বাক্ষরকারী কর্তৃপক্ষের ক্ষেত্রে ঘটিলে বা দেখা দিলে বা বিদ্যমান থাকিলে অনুবেদনকারী কর্তৃপক্ষ অনুবেদনাধীন কর্মকর্তার গোপনীয় অনুবেদন অনুস্বাক্ষর করিবেন। এই ক্ষেত্রে প্রতিস্বাক্ষর প্রয়োজন হইবে না।

২.৪.৩ অনুচ্ছেদ ২.৪.১ এ উল্লিখিত কারণসমূহ অনুস্বাক্ষরকারী ও প্রতিস্বাক্ষরকারী উভয় কর্তৃপক্ষের ক্ষেত্রে ঘটিলে বা দেখা দিলে বা বিদ্যমান থাকিলে অনুবেদনাধীন কর্মকর্তা গোপনীয় অনুবেদন দাখিল হইতে অব্যাহতি পাইবেন। তবে এইরূপ ক্ষেত্রে অনুবেদনাধীন কর্মকর্তাকে যথাযথ তথ্যসহ ডোসিয়ার হেফাজতকারী কর্তৃপক্ষকে লিখিতভাবে জানাইতে হইবে। অব্যাহতি প্রাপ্ত বৎসরে বা সময়ের জন্য গড় নম্বর প্রদান করা যাইবে বা প্রধান করিতে হইবে।

২.৪.৪ একই পঞ্জিকা বৎসরে কোন কর্মস্থলে একাধিক অনুবেদনকারী কর্তৃপক্ষের নিয়ন্ত্রণে কর্মরত থাকিবার ক্ষেত্রে কোন অনুবেদনকারীর নিয়ন্ত্রণেই কর্মকাল ৩ মাস না হইলে এবং প্রতিস্বাক্ষরকারী কর্মকর্তার নিয়ন্ত্রণে ৩ (তিন) মাস হইলে (যথোপযুক্ত প্রমাণসহ) আবশ্যকিভাবে প্রতিস্বাক্ষরকারী কর্মকর্তার নিকট গোপনীয় অনুবেদন দাখিল করিতে হইবে। উক্ত ক্ষেত্রে প্রতিস্বাক্ষরকারী কর্তপক্ষই অনুবেদনাধীন কর্মকর্তার গোপনীয় অনুবেদন অনুস্বাক্ষর করিবেন। এই ক্ষেত্রে প্রতিস্বাক্ষর প্রয়োজন হইবে না।

২.৪.৫ তবে ২.৪ অনুচ্ছেদে উল্লিখিত কারণ বিদ্যমান থাকার ক্ষেত্রে গোপনীয় অনুবেদন এর ৬ষ্ঠ বা ৭ম অংশে আবশ্যিকভাবে উক্ত কারণ উল্লেখ করিতে হইবে।

২.৫ যে সকল ক্ষেত্রে গোপনীয় অনুবেদন প্রতিস্বাক্ষরের প্রয়োজন হইবে নাঃ

২.৫.১ অনুস্বাক্ষরকারী কর্তৃপক্ষ রাষ্ট্র প্রধান বা সরকার প্রধান হওয়ার ক্ষেত্রে বার্ষিক/আংশিক/বিশেষ গোপনীয় অনুবেদন প্রতিস্বাক্ষরের প্রয়োজন হইবে না।

২.৫.২ অনুস্বাক্ষরকারী কর্তৃপক্ষ কোন সাংবিধানিক পদে নিয়োজিত ব্যক্তি হইলে বার্ষিক/আংশিক/বিশেষ গোপনীয় অনুবেদন প্রতিস্বাক্ষরের প্রয়োজন হইবে না।

২.৫.৩ সচিব/ভারপ্রাপ্ত সচিব/একান্ত সচিব এর প্রাধিকারপ্রাপ্ত ব্যক্তিবর্গের একান্ত সচিব এর গোপনীয় অনুবেদন তাঁহারা নিজে লিখনসহ অনুস্বাক্ষর করিবেন। উহাতে প্রতিস্বাক্ষর প্রয়োজন হইবে না।

২.৫.৪ মন্ত্রী/প্রতিমন্ত্রী/উপমন্ত্রী/সমপর্যায়ের ব্যক্তিবর্গের একান্ত সচিবদের গোপনীয় অনুবেদন সংশ্লিষ্ট মন্ত্রী/প্রতিমন্ত্রী/উপমন্ত্রী/সমপর্যায়ের ব্যক্তিবর্গ লিখনসহ অনুস্বাক্ষর করিবেন। এই ক্ষেত্রে প্রতিস্বাক্ষর প্রয়োজন হইবে না।

২.৫.৫ বিভাগীয় কমিশনারগণের গোপনীয় অনুবেদন মন্ত্রীপরিষদ সচিব অনুস্বাক্ষরসহ লিখিবেন। ইহাতে প্রতিস্বাক্ষরের প্রয়োজন হইবে না। ইহা ছাড়াও মন্ত্রীপরিষদ সচিব/মুখ্য সচিব কর্তৃক অনুস্বাক্ষরিত গোপনীয় অনুবেদন প্রতিস্বাক্ষরের প্রয়োজন হইবে না।

২.৬ গোপনীয় অনুবেদন লিখিবার কতিপয় বিশেষ বিধানঃ

২.৬.১ প্রধানমন্ত্রীর কার্যালয় এবং অধীনস্থ সংস্থায় (যেখানে সংস্থা প্রধান সচিব পদ মর্যাদার নীচে) কর্মরত যুগ্মসচিব ও তর্দুদ্ধ পর্যায়ের কর্মকর্তাদের গোপনীয় অনুবেদন প্রতিস্বাক্ষর করিবেন প্রধানমন্ত্রীর পক্ষে তাঁহার কার্যালয়ের মুখ্য সচিব।

২.৬.২ রাষ্ট্রপতি/প্রধানমন্ত্রীর অধীনস্থ মন্ত্রণালয়/বিভাগ/এবং এর অধীনস্থ সংস্থায় কর্মরত যুগ্মসচিব ও তর্দুদ্ধ পর্যায়ের কর্মকর্তাদের গোপনীয় অনুবেদন অনুস্বাক্ষর/প্রতিস্বাক্ষর করিবেন স্ব-স্ব মন্ত্রণালয়/বিভাগের সচিব।

২.৬.৩ রাষ্ট্রপতি/প্রধানমন্ত্রীর একান্ত সচিবদের গোপনীয় অনুবেদন রাষ্ট্রপতি/ প্রধানমন্ত্রী নিজেই অনুস্বাক্ষর করিবেন। এই ক্ষেত্রে প্রতিস্বাক্ষরের প্রয়োজন হইবে না।

২.৬.৪ প্রধানমন্ত্রীর কার্যালয়ের প্রটোকল অফিসার এর গোপনীয় অনুবেদন প্রধানমন্ত্রীর কার্যালয়ের সচিব অনুস্বাক্ষর করিয়া প্রধানমন্ত্রীর প্রতিস্বাক্ষরের জন্য উপস্থাপন করিবেন।

২.৬.৫ রাষ্ট্রপতির সহকারী একান্ত সচিব এর গোপনীয় অনুবেদন রাষ্ট্রপতির একান্ত সচিব অনুস্বাক্ষর করিবেন এবং রাষ্ট্রপতির প্রতিস্বাক্ষরের জন্য উপস্থাপন করিবেন।

২.৬.৬ প্রধানমন্ত্রীর সহকারী একান্ত সচিব ও এসাইনমেন্ট অপিসার এর গোপনীয় অনুবেদন প্রধানমন্ত্রীর একান্ত সচিব-১ অনুস্বাক্ষরপূর্বক প্রধানমন্ত্রীর প্রতিস্বাক্ষরের জন্য উপস্থাপন করিবেন।

২.৬.৭ অবসর গ্রহণ/চুক্তিভিত্তিক নিয়োজিত কোন কর্মকর্তা অবসর গ্রহণ বা চুক্তির মেয়াদ শেষ হইবার দিন হইতে পরবর্তী এক বৎসর পর্যন্ত কোন কর্মকর্তার গোপনীয় অনুবেদন অনুস্বাক্ষর/প্রতিস্বাক্ষর করিতে পারিবেন।

অনুরূপভাবে কর্মকাল শেষে রাষ্ট্রপতি/প্রধানমন্ত্রী/মন্ত্রী/প্রতিমন্ত্রী/উপমন্ত্রী/ সমপদমর্যাদা সম্পন্ন ব্যক্তিবর্গের এবং সাংবিধানিক পদে কর্মরত ব্যক্তির ক্ষেত্রেও একই বিধান প্রযোজ্য হইবে।

২.৬.৮ বিদেশে বাংলাদেশ দূতাবাস সমূহের বিভিন্ন উইং-এ কর্মরত পররাষ্ট্র ক্যাডার ব্যতীত অন্যান্য ক্যাডারের কর্মকর্তাদের গোপনীয় অনুবেদন দূতাবাস/মিশন প্রধান অনুস্বাক্ষর করিবেন এবং সংশ্লিষ্ট মন্ত্রণালয়ের সচিব/ভারপ্রাপ্ত সচিব উক্ত গোপনীয় অনুবেদন প্রতিস্বাক্ষর করিবেন। যেই সকল মিশন বা দূতাবাসে চার্জ দ্যা এ্যাফেয়ার্স দায়িত্বে থাকিবেন তাঁহারা কোন গোপনীয় অনুবেদন লিখিবেন না। সেই ক্ষেত্রে সংশ্লিষ্ট মন্ত্রণালয়ের সচিব/ভারপ্রাপ্ত সচিব কর্মকর্তাগণের গোপনীয় অনুবেদনে কারণ উল্লেখ করিয়া অনুস্বাক্ষর করিবেন এবং এই ক্ষেত্রে প্রতিস্বাক্ষর প্রয়োজন হইবে না।

২.৬.৯ বিদেশে বাংলাদেশ মিশন/দূতাবাস সমূহের বিভিন্ন উইং এ কর্মরত পররাষ্ট্র ক্যাডার ব্যতীত অন্যান্য ক্যাডারের কর্মকর্তাদের গোপনীয় অনুবেদন অনুস্বাক্ষরকারী দূতাবাস/মিশন প্রধান যদি অনুবেদনাধীন কর্মকর্তার কনিষ্ঠ হইয়া থাকেন, সেই ক্ষেত্রে উক্ত কর্মকর্তার প্রশাসনিক মন্ত্রণালয়ের সচিব গোপনীয় অনুবেদন অনুস্বাক্ষর করিবেন এবং এই ক্ষেত্রে প্রতিস্বাক্ষর এর প্রয়োজন হইবে না।

২.৬.১০ মন্ত্রণালয় বা বিভাগের নিয়ন্ত্রণাধীন অধিদপ্তর/দপ্তর/পরিদপ্তর/সংস্থা/ প্রকল্পের প্রধানগণের গোপনীয় অনুবেদন মন্ত্রণালয়/বিভাগের সচিব/ ভারপ্রাপ্ত সচিব অনুস্বাক্ষরসহ লিখিবেন এবং প্রতিস্বাক্ষর করিবেন মন্ত্রণালয়/বিভাগের দায়িত্বপ্রাপ্ত মন্ত্রী/প্রতিমন্ত্রী/উপমন্ত্রী/বা সম পদমর্যাদা সম্পন্ন ব্যক্তিবর্গ।

২.৬.১১ বিশেষ ভারপ্রাপ্ত কর্মকর্তা (সংযুক্ত) এর ক্ষেত্রে সাধারণভাবে কর্মরত কর্মকর্তাগণের মতই গোপনীয় অনুবেদন প্রযোজ্য হইবে। সেই ক্ষেত্রে প্রশাসনিক আদেশ সংযুক্ত করিতে হইবে।

২.৭ যে সকল ক্ষেত্রে গোপনীয় অনুবেদন প্রযোজ্য হইবে না ঃ

নিম্নবর্ণিত ক্ষেত্রে গোপনীয় অনুবেদন প্রযোজ্য হইবে না। তবে সংশ্লিষ্ট কর্মকর্তা কর্তৃক বিষয়গুলি লিখিতভাবে অফিস আদেশের কপিসহ ডোসিয়ার হেফাজতকারী কর্তৃপক্ষকে আবশ্যিকভাবে অবহিত করিতে হইবে। যথা-

২.৭.১ বুনিয়াদি এবং বিভাগীয় প্রশিক্ষণকালীন গোপনীয় অনুবেদন প্রযোজ্য হইবে না।

২.৭.২ বিশেষ ভারপ্রাপ্ত কর্মকর্তা (সংযুক্ত নয়) থাকাকালীন গোপনীয় অনুবেদন প্রযোজ্য হইবে না।

২.৭.৩ লিয়েন এ থাকাকালীন গোপনীয় অনুবেদন প্রযোজ্য হইবে না।

২.৭.৪ সাময়িক বরখাস্ত থাকাকালীন গোপনীয় অনুবেদন প্রযোজ্য হইবে না।

২.৭.৫ দেশের অভ্যন্তরে বা বিদেশে শিক্ষা ছুটিতে থাকাকালীন গোপনীয় অনুবেদন প্রযোজ্য হইবে না।

২.৭.৬ দেশের অভ্যন্তরে বা বিদেশে প্রেষণে প্রশিক্ষণ/অধ্যয়নকালীন গোপনীয় অনুবেদনু প্রযোজ্য হইবে না।

৩. গোপনীয় অনুবেদন ফরম পূরণ, লিখনসহ অনুস্বাক্ষর ও প্রতিস্বাক্ষরের ক্ষেত্রে সংশ্লিষ্টদের করণীয়ঃ

৩.১ অনুবেদনাধীন কর্মকর্তার জন্য অনুসরণীয় (কভার পৃষ্ঠা, ১ম ও ২য় অংশ)ঃ

৩.১.১ বার্ষিক গোপনীয় অনুবেদন একজন অনুবেদনাধীন কর্মকর্তার ক্ষেত্রে পঞ্জিকা বৎসরে একবার দুই ফর্দ দাখিল করিতে হইবে। তবে প্রযোজ্য ক্ষেত্রে দুই ফর্দ করিয়া এক বা একাধিক আংশিক/বিশেষ গোপনীয় অনুবেদন দাখিল করিতে হইবে। একই পঞ্জিকা বৎসরে একাধিক আংশিক গোপনীয় অনুবেদন হওয়ার ক্ষেত্রে একই মেয়াদকে একাধিক গোপনীয় অনুবেদনের অন্তর্ভুক্ত করা যাইবে না। তারিখ লিখিবার সময় সুনির্দিষ্টভাবে দিন/মাস/বৎসর উল্লেখসহ তারিখ লিখিতে হইবে।

৩.১.২ গোপনীয় অনুবেদন ফরমের কভার পৃষ্ঠায় বার্ষিক এর ক্ষেত্রে বৎসর এবং আংশিক বা বিশেষ এর ক্ষেত্রে সময় সুনির্দিষ্টভাবে লিখিতে হইবে। অনুবেদনাধীন কর্মকর্তার নাম, গোপনীয় অনুবেদন সময়ের পদবী, চাকুরী/ক্যাডার/পদের নাম এবং পরিচিতি নম্বর (যদি থাকে) আবশ্যিকভাবে লিখিতে হইবে।

৩.১.৩ দ্বিতীয় পৃষ্ঠার প্রথম অংশে স্বাস্থ্য পরীক্ষা প্রতিবেদন অনুমোদিত স্বাস্থ্য কর্মকর্তার নিকট হইতে গ্রহণ করিয়া ৩১ জানুয়ারির মধ্যে অনুবেদনকারী কর্তৃপক্ষের নিকট দাখিল করিতে হইবে।

৩.১.৪ অনুবেদনাধীন কর্মকর্তা স্বাস্থ্য পরীক্ষা প্রতিবেদনের বিষয়ে আপত্তি উত্থাপন করিলে মহাপরিচালক, স্বাস্থ্য অধিদপ্তর কর্তৃক তদুদ্দেশ্যে গঠিত স্বাস্থ্য বোর্ডের নিকট উক্ত প্রতিবেদন উপস্থাপন করা যাইবে।

৩.১.৫ তৃতীয় পৃষ্ঠায় ২য় অংশের উপরে গোপনীয় অনুবেদন মেয়াদের কর্মস্থলের নাম ও মেয়াদ সুনির্দিষ্টভাবে উল্লেখ করিতে হইবে।

৩.১.৬ তৃতীয় পৃষ্ঠায় ২য় অংশে বর্ণিত ১ হইতে ১৫ নং ক্রমিকের তথ্যাদি যথাযথভাবে পূরণ করিতে হইবে। কোন ঘর অপূর্ণ রাখা যাইবে না। কোন ক্রমিকেরা তথ্য প্রযোজ্য না হওয়ার ক্ষেত্রে 'প্রযোজ্য নয়' লিখিতে হইবে।

৩.১.৭ গোপনীয় অনুবেদন ফরমের ১৪নং ক্রমিকের তথ্য অত্যন্ত গুরুত্বপূর্ণ। এইখানে অনুবেদনকারী কর্তৃপক্ষের নিয়ন্ত্রণে অনুবেদনাধীন কর্মকর্তার প্রকৃত কর্মকাল সুনির্দিষ্টভাবে লিখিতে হইবে।

৩.১.৮ পনের (১৫) নং ক্রমিকে গোপনীয় অনুবেদনের মেয়াদে অনুবেদনাধীন কর্মকর্তার সম্পাদিত কাজের সংক্ষিপ্ত বিবরণ আবশ্যিকভাবে লিপিবদ্ধ করিতে হইবে।

৩.১.৯ গোপনীয় অনুবেদন ফরমের ২য় অংশের সর্বনিম্নে ডানে আবশ্যিকভাবে অনুবেদনাধীন কর্মকর্তার স্বাক্ষর ও নাম পদবীসহ সীলমোহর দিতে হইবে এবং বামে তারিখ লিখিতে হইবে যাহা গোপনীয় অনুবেদন দাখিলের তারিখ হিসাবে গণ্য হইবে। ইতিমধ্যে অনুবেদনাধীন কর্মকর্তার কর্মস্থল/পদবী পরিবর্তন হইয়া থাকিলে বর্তমান পদবী ও কর্মস্থলের সাথে আবশ্যিকভাবে প্রাক্ত পদবী ও কর্মস্থল লিখিতে হইবে। অসম্পূর্ণ গোপনীয় অনুবেদন সরাসরি বাতিল বলিয়া গণ্য হইবে।

৩.২ অনুবেদনকারী কর্তৃপক্ষের জন্য অনুসরণীয় (৩য়, ৪র্থ, ৫ম ও ৬ষ্ঠ অংশ) ঃ

৩.২.১ অনুবেদনকারী কর্তৃপক্ষ গোপনীয় অনুবেদন ফরমের তৃতীয় পৃষ্ঠার ২য় অংশের ১৪ নং ক্রমিকে তাঁহার নিয়ন্ত্রণে অনুবেদনাধীন কর্মকর্তার প্রকৃত কর্মমেয়াদ এবং অন্যান্য তথ্য সঠিকভাবে সন্নিবেশিত করা হইয়াছে কিনা তাহা নিশ্চিত হইয়া অনুস্বাক্ষর করিবেন।

৩.২.২ অনুবেদনকারী কর্তৃপক্ষ গোপনীয় অনুবেদন ফরমের ৪র্থ পৃষ্ঠায় ৩য় ও ৪র্থ অংশ পূরণের সময় অত্যন্ত সতর্কতার সহিত প্রতিটি ক্রমিকের (মূল্যায়নের বিষয়ের) বিপরীতে নম্বর প্রদানের ক্ষেত্রে প্রযোজ্য ঘরে অনুস্বাক্ষর করিবেন। অনুস্বাক্ষরিত ঘরগুলির নম্বরের যোগফলই হবে মোট প্রাপ্ত নম্বর।

৩.২.৩ অনুবেদনকারী কর্তৃপক্ষ কর্তৃক গোপনীয় অনুবেদন ফরমের ৪র্থ পৃষ্ঠায় ৩য় ও ৪র্থ অংশ পূরণের সময় কোন ক্রমিকের (মূল্যায়নের বিষয়ের) বিপরীতে মান ১ (এক) এর ঘরে অনুস্বাক্ষর করিলে তাহা বিরূপ হিসাবে গণ্য হইবে। তবে এইক্ষেত্রে কারণ ও প্রয়োজনীয় তথ্যপ্রমাণ সংযুক্ত/ লিপিবদ্ধ করিতে হইবে।

৩.২.৪ তৃতীয় ও চতুর্থ অংশে প্রাপ্ত মোট নম্বরের যোগফলের ভিত্তিতে ০৫(পাঁচ)টি ঘরের (অসাধারণ/অত্যুত্তম/উত্তম/চলতিমান/চলতিমানের নিম্নে) প্রযোজ্য ঘরে মোট প্রাপ্ত নম্বর অংকে এবং কথায় লিখিয়া অনুস্বাক্ষর করিতে হইবে।

৩.২.৫ পঞ্চম পৃষ্ঠার ৫ম অংশের লেখচিত্রে অনুবেদনাধীন কর্মকর্তা সম্পর্কে ৩য় ও ৪র্থ অংশে বর্ণিত হয় নাই এমন বিষয়ের (যদি থাকে) উল্লেখ করিতে হইবে।

৩.২.৬ ষষ্ঠ অংশে অনুবেদনাধীন কর্মকর্তা সম্পর্কে মূল্যায়নের ক্ষেত্রে সর্বোচ্চ সতর্কতা ও নিরপেক্ষতা অবলম্বন করিতে হইবে। ষষ্ঠ অংশের ১নং ক্রমিকের 'ক অনুচ্ছেদে' অনুবেদনকারী কর্তৃপক্ষ অনুবেদনাধীন কর্মকর্তার যোগ্যতা, প্রবণতা ও বিশেষ দক্ষতার উপর ভিত্তি করিয়া কোন নির্দিষ্ট ধরনের কাজের বিষয়ে তাঁহার উপযুক্ততা বা আগ্রহ রহিয়াছে সেই সম্পর্কে মন্তব্য করিবেন। 'খ অনুচ্ছেদ' এর ১নং উপানুচ্ছেদে 'নৈতিক' বলিতে কর্মকর্তার চারিত্রিক বৈশিষ্ট্য সংশ্লিষ্ট, ২নং উপানুচ্ছেদে 'বুদ্ধিবৃত্তিক' বলিতে মেধা ও যোগ্যতা সংশ্লিষ্ট এবং ৩নং উপানুচ্ছেদে 'বৈষয়িক' বলিতে আর্থিক ও বিষয়-সম্পদ সংশ্লিষ্ট সততা ও সুনাম উল্লেখ করিতে হইবে। 'অনুচ্ছেদ গ'-এর ক্ষেত্রে প্রয়োজন মনে করিলে দেশে বা বিদেশে সুনির্দিষ্ট প্রশিক্ষণ কোর্সের জন্য সুপারিশ করা যাইতে পারে।

৩.২.৭ পঞ্চম পৃষ্ঠার ৬ষ্ঠ অংশের শেষে নির্ধারিত স্থানে আবশ্যিকভাবে অনুবেদনকারীর নাম, পদবী, সীলমোহর, স্বাক্ষর, পরিচিতি নম্বর (যদি থাকে) এবং প্রযোজ্য ক্ষেত্রে প্রাক্তন পদবী অর্থাৎ যেই সময়ের গোপনীয় অনুবেদন অনুস্বাক্ষর করিতেছেন সেই সময়ের পদবী উল্লেখ করিতে হইবে।

৩.২.৮ অনুবেদনকারী কর্তৃপক্ষ গোপনীয় অনুবেদনের ৩য় হইতে ৬ষ্ঠ অংশ পূরণ করিয়া প্রতি বৎসর ২৮ ফেব্রুয়ারির মধ্যে আবশ্যিকভাবে সীলগালাকৃত খামে 'গোপনীয়' শব্দটি লিখিয়া অগ্রগামীপত্রসহ প্রতিস্বাক্ষরকারী কর্তৃপক্ষের নিকট প্রতিস্বাক্ষরের জন্য প্রেরণ করিবেন এবং অগ্রগামী পত্রের অনুলিপি অনুবেদনাধীন কর্মকর্তা ও ডোসিয়ার হেফাজতকারী কর্তৃপক্ষ বরাবর প্রেরণ করিবেন।

৩.২.৯ অনুবেদনকারী কর্তৃপক্ষ কোন অবস্থাতেই অনুবেদনাধীন কর্মকর্তার মাধ্যমে (হাতে হাতে) অনুস্বাক্ষরিত গোপনীয় অনুবেদন প্রেরণ করিবেন না।

৩.২.১০ অনুবেদনকারী কর্তৃপক্ষকে গোপনীয় অনুবেদন লিখিবার সময় যথাসম্ভব বস্তুনিষ্ঠ, নিরপেক্ষ ও সুনির্দিষ্ট হইতে হইবে।

৩.২.১১ সুস্পষ্ট ও প্রত্যক্ষ মন্তব্য করিতে হইবে। অস্পষ্ট, দ্ব্যর্থক মন্তব্য প্রদান হইতে বিরত থাকিতে হইবে এবং মন্তব্য এড়াইয়া যাইবার প্রবণতা অবশ্যই পরিহার করিতে হইবে।

৩.৩ প্রতিস্বাক্ষরকারী কর্তৃপক্ষের জন্য অনুসরণীয় (ষষ্ঠ পৃষ্ঠার সপ্তম অংশ)

৩.৩.১ প্রতিস্বাক্ষরকারী কর্তৃপক্ষ ৪র্থ ও ৫ম পৃষ্ঠায় অনুবেদনকারী কর্তৃপক্ষ কর্তৃক অনুবেদনাধীন কর্মকর্তাকে যথাযথভাবে মূল্যায়ন করা হইয়াছে

কিনা তাহা সতর্কতার সহিত পর্যালোচনা করিবেন এবং ৭ম অংশে অনুবেদনকারীর মূল্যায়ন সম্পর্কে প্রযোজ্য ক্ষেত্রে টিক চিহ্ন দিয়া নিজের মন্তব্য লিপিবদ্ধ করিবেন।

৩.৩.২ প্রতিস্বাক্ষরকারী কর্তৃপক্ষ কর্তৃক প্রদত্ত নম্বর অংকে ও কথায় লিখিতে হইবে এবং এই নম্বর চূড়ান্ত নম্বর হিসাবে গণ্য হইবে। অন্যথায় অনুবেদনকারী কর্তৃক প্রদত্ত মোট নম্বর গণনায় আসিবে।

৩.৩.৩ প্রতিস্বাক্ষরকারী কর্তৃপক্ষ কর্তৃক ৭ম অংশের শেষে নির্ধারিত স্থানে আবশ্যিকভাবে নাম, পদবী, পরিচিতি নম্বর (যদি থাকে) ও সীলমোহর (প্রযোজ্য ক্ষেত্রে অবশ্যই প্রাক্তন পদবী) এবং তারিখ উল্লেখ করিতে হইবে।

৩.৩.৪ অনুবেদনাধীন কর্মকর্তার গোপনীয় অনুবেদন প্রতিস্বাক্ষরপূর্বক আবশ্যিকভাবে সীলগালাকৃত খামে 'গোপনীয়' শব্দটি লিখিয়া অগ্রগামী পত্রসহ প্রতি বৎসর ৩১ মার্চের মধ্যে ডোসিয়ার হেফাজতকারী কর্তৃপক্ষ বরাবর প্রেরণ নিশ্চিত করিতে হইবে। অনুবেদনাধীন কর্মকর্তা ও অনুবেদনকারী কর্তৃপক্ষকে অগ্রগামী পত্রের অনুলিপি প্রদানপূর্বক অবহিত করিতে হইবে।

৪. বিরূপ মন্তব্য সংক্রান্ত নির্দেশাবলী

৪.১ বিরূপ মন্তব্য

অনুবেদনাধীন কর্মকর্তার সততা, নৈতিকতা, নিষ্ঠা, দক্ষতা, দায়িত্ব ও কর্তব্য, ব্যক্তিগত আচার-আচরণ ইত্যাদি সম্পর্কে অনুবেদনকারী/ প্রতিস্বাক্ষরকারী কর্তৃপক্ষের অসন্তোষজনক মন্তব্যই বিরূপ মন্তব্য হিসাবে বিবেচিত হইবে। যেমন- তাঁহার মধ্যে আত্ম-বিশ্বাসের অভাব রহিয়াছে, সহকর্মীদের সহিত আচরণ ভাল নহে, আর্থিক দুর্নাম রহিয়াছে, দায়িত্ব জ্ঞানের অভাব রহিয়াছে, সময় সচেতন নহেন, শৃঙ্খলার প্রতি শ্রদ্ধাশীল নহেন, উর্দ্ধতন কর্তৃপক্ষের আইনানুগ আদেশ অমান্য করেন, কাজের প্রতি আন্তরিক নহেন, আচরণ উচ্ছৃঙ্খল, নির্ভরযোগ্য নহেন, নির্ভরশীল কর্মকর্তা, সততার অভাব রহিয়াছে, সুনামের অভাব রহিয়াছে, যথেষ্ট সততার সুনাম নেই ইত্যাদি।

৪.২ গোপনীয় অনুবেদন ফরমের ৪র্থ পৃষ্ঠায় ৩য় ও ৪র্থ অংশের কোন ক্রমিকের (মূল্যায়নের বিষয়ের) বিপরীতে প্রাপ্ত মান ১ (এক) এর ঘরে থাকিলে তাহা বিরূপ হিসাবে গণ্য হইবে। মোট প্রাপ্ত নম্বর ৪০ বা তদ্‌নিম্ন অর্থাৎ চলতি মানের নিম্নে হইলে তাহা বিরূপ হিসাবে গণ্য হইবে। তবে এই ক্ষেত্রে কারণ ও প্রয়োজনীয় তথ্যপ্রমাণ সংযুক্ত করিতে হইবে।

৪.৩ বিরূপ মন্তব্যের গুরুত্ব

অনুবেদনাধীন কর্মকর্তার বিরুদ্ধে বিরূপ মন্তব্য বহাল থাকিলে বিরূপ মন্তব্যের গুরুত্বানুসারে চাকুরী স্থায়ীকরণ, সিলেকশন গ্রেড প্রদান, পদোন্নতি, পদায়ন, বৈদেশিক নিয়োগ বাধাগ্রস্থ হইবে/স্থগিত থাকিবে।

৪.৪ বিরূপ মন্তব্য প্রদানের পূর্বে অনুবেদনকারী/প্রতিস্বাক্ষরকারী কর্তৃপক্ষের করণীয়

অনুবেদনকারী/প্রতিস্বাক্ষরকারী কর্তৃপক্ষ কর্তৃক অনুবেদনাধীন কর্মকর্তাকে তাঁহার দায়িত্ব ও কর্তব্য সম্পর্কে অব্যাহতভাবে মৌখিক/লিখিত নির্দেশনা ও পরামর্শ প্রদান আবশ্যকীয় কর্তব্য।

৪.৪.১ এই ক্ষেত্রে প্রথমে অনুবেদনাধীন কর্মকর্তার আচরণ বা কার্যধারায় কোন ত্রুটি পরিলক্ষিত হইলে অনুবেদনকারী/প্রতিস্বাক্ষরকারী কর্তৃপক্ষ তাৎক্ষণিকভাবে তাঁহাকে প্রথমে মৌখিকভাবে সংশোধনের পরামর্শ প্রদান করিবেন।

৪.৪.২ মৌখিক পরামর্শে সংশোধন না হইলে লিখিতভাবে সংশোধনের জন্য আদেশ করিবেন এবং উক্ত পত্রের অনুলিপি আবশ্যিকভাবে কর্মকর্তার ব্যক্তিগত নথিতে সংরক্ষণ করিতে হইবে।

৪.৪.৩ লিখিত আদেশের পরেও সংশোধন না হইলে বার্ষিক গোপনীয় অনুবেদনের বিরূপ মন্তব্য প্রদান করিতে পারিবেন। বিরূপ মন্তব্য সুস্পষ্ট ও সুনির্দিষ্ট হইতে হইবে।

৪.৪.৪ অনুবেদনকারী কর্তৃপক্ষ কর্তৃক প্রদত্ত বিরূপ মন্তব্যের বিষয়ে প্রতিস্বাক্ষরকারী কর্তৃপক্ষ যদি অনুবেদনকারী কর্তৃপক্ষের সহিত একমত পোষণ না করেন তবে তিনি কারণ উল্লেখপূর্বক তাহা খন্ডন করিতে পারিবেন এবং এই ক্ষেত্রে প্রতিস্বাক্ষরকারী কর্তৃপক্ষের মন্তব্য ও প্রদত্ত নম্বর-ই চূড়ান্ত হিসাবে গণ্য হইবে।

৪.৪.৫ বিরূপ মন্তব্য প্রদানের ক্ষেত্রে অনুবেদনকারী ও প্রতিস্বাক্ষরকারী কর্তৃপক্ষ নিরপেক্ষতা, বস্তুনিষ্ঠতা ও সংগতি বজায় রাখিবেন।

৪.৪.৬ উপরিউক্ত নির্দেশনা অনুসরণপূর্বক বিরূপ মন্তব্য করিতে হইবে। অন্যথায় তাহা কার্যকর হইবে না।

৪.৫ বিরূপ মন্তব্যের বিষয়ে সিদ্ধান্ত গ্রহণ

৪.৫.১ ডোসিয়ার হেফাজতকারী কর্তৃপক্ষ কর্মকর্তাগণের গোপনীয় অনুবেদন প্রাপ্তির পর তাহা যাচাই-বাছাই করিবেন এবং উপসচিব/সমপর্যায় বা তদনিম্ন/সমপর্যায়ের অনুবেদনাধীন কর্মকর্তা সম্পর্কে বিরূপ মন্তব্য নির্ধারণপূর্বক তাহা প্রক্রিয়াকরণ করিবেন।

৪.৫.২ যুগ্মসচিব/সমপর্যায়ে ও তদুর্দ্ধ/সমপর্যায়ের কর্মকর্তাগণের গোপনীয় অনুবেদনে বিরূপ হিসাবে প্রাথমিকভাবে চিহ্নিত মন্তব্য প্রকৃতই বিরূপ হিসাবে গণ্য করা হইবে কিনা তাহা সুপিরিয়র সিলেকশন বোর্ড (এসএসবি) নির্ধারণ করিবে। এসএসবি'র সিদ্ধান্তের ভিত্তিতে সংশ্লিষ্ট মন্ত্রণালয়/বিভাগ বিরূপ মন্তব্য অবলোপন বা বহাল রাখিবে।

৪.৬ বিরূপ মন্তব্য প্রক্রিয়াকরণের ক্ষেত্রে অনুসরণীয় নির্দেশাবলী ঃ

৪.৬.১ গোপনীয় অনুবেদন প্রাপ্তির ০৩ (তিন) মাসের মধ্যে সংশ্লিষ্ট মন্ত্রণালয়/বিভাগ/নিয়োগকারী কর্তৃপক্ষ কর্তৃক বিরূপ মন্তব্য নির্ধারণপূর্বক উপসচিব বা সমপদমর্যাদার একজন কর্মকর্তার স্বাক্ষরে শুধু বিরূপ মন্তব্য সংশ্লিষ্ট অংশ উদ্ধৃত করিয়া আধা সরকারী (ডিও) পত্রের মাধ্যমে লিখিতভাবে সংশ্লিষ্ট অনুবেদনাধীন কর্মকর্তাকে জানাইতে হইবে।

৪.৬.২ সংশ্লিষ্ট অনুবেদনাধীন কর্মকর্তা বিরূপ মন্তব্য সম্বলিত পত্র প্রাপ্তির তারিখ হইতে ৩০ দিনের মধ্যে লিখিত জবাব দাখিল করিবেন। নির্ধারিত সময়ের মধ্যে জবাব দাখিল করা না হইলে বিরূপ মন্তব্যের বিষয়ে সংশ্লিষ্ট মন্ত্রণালয়/বিভাগের সচিব চূড়ান্ত সিদ্ধান্ত গ্রহণ করিবেন।

৪.৬.৩ মন্ত্রণালয়/বিভাগ/নিয়োগকারী কর্তৃপক্ষ সর্বোচ্চ ১৫ দিনের মধ্যে অনুবেদনাধীন কর্মকর্তার জবাবের উপর বিরূপ মন্তব্য প্রদানকারী কর্তৃপক্ষের মন্তব্য/মতামতের জন্য পত্র প্রেরণ করিবে।

৪.৬.৪ বিরূপ মন্তব্য প্রদানকারী কর্তৃপক্ষ পত্র প্রাপ্তির ৩০ দিনের মধ্যে বিরূপ মন্তব্যের বিষয়ে তাঁহার মতামত দাখিল করিবেন।

৪.৬.৫ যথাযথভাবে মতামত প্রাপ্তির ৩০ দিনের মধ্যে অথবা মতামত না পাওয়ার ক্ষেত্রে ৪.৬.৪ অনুচ্ছেদে বর্ণিত সময়সীমা অতিবাহিত হওয়ার ৩০ দিনের মধ্যে মন্ত্রণালয়/বিভাগ এর প্রধানের অনুমোদনক্রমে বিরূপ মন্তব্য বহাল/অবলোপনের বিষয়ে চূড়ান্ত সিদ্ধান্ত গ্রহণ করিতে হইবে। তবে একই অনুবেদনকারী/প্রতিস্বাক্ষরকারী কর্তৃপক্ষের নিয়ন্ত্রণে কর্মরত থাকিবার ক্ষেত্রে পরপর একাধিক গোপনীয় অনুবেদনে বিরূপ মন্তব্য করা হইলে বিরূপ মন্তব্যের বিষয়ে সিদ্ধান্ত গ্রহণের ক্ষেত্রে যথাযথ কর্তৃপক্ষ কর্তৃক তদন্ত করিতে হইবে।

৪.৬.৬ চূড়ান্ত সিদ্ধান্ত সংশ্লিষ্ট অনুবেদনাধীন কর্মকর্তাকে ০৭ (সাত) কর্মদিবসের মধ্যে অবহিত করিতে হইবে এবং তাহা তাঁহার ডোসিয়ারে অন্তর্ভুক্ত করিতে হইবে।

৪.৭ বিরূপ মন্তব্যের স্থায়ীত্ব ও নম্বর গণণা ঃ

পদোন্নতি বা অন্য কোন বিধিমালাতে বিরূপ মন্তব্য সংক্রান্ত বিষয়ে অন্যরূপ কোন বিধান থাকিলে সেইক্ষেত্রে উক্ত বিধানই কার্যকর হইবে। বিরূপ মন্তব্য

সংক্রান্ত কোন বিধান না থাকিলে বা বিদ্যমান বিধিমালার কোন বিধানের সাথে সাংঘর্ষিক না হওয়ার শর্তে বিরূপ মন্তব্য বহালের ক্ষেত্রে উহা বহালের তারিখ হইতে নিম্নরূপভাবে কার্যকর থাকিবে ঃ

৪.৭.১ বিরূপ মন্তব্য সততা ও সুনাম সম্পর্কিত হইলে এবং বহাল থাকিলে তাহা বহালের তারিখ হইতে পরবর্তী ০৫ (পাঁচ) বৎসর পর্যন্ত কার্যকর থাকিবে।

৪.৭.২ অন্যান্য ক্ষেত্রে বিরূপ মন্তব্য বহালের তারিখ হইতে পরবর্তী ০৩ (তিন) বৎসর পর্যন্ত কার্যকর থাকিবে।

৪.৮ গোপনীয় অনুবেদনের ৮ম (শেষ) অংশ পূরণঃ

মন্ত্রণালয়/বিভাগ/দপ্তরের সংশ্লিষ্ট শাখায় গোপনীয় অনুবেদন প্রাপ্তির পর উহা যাচাই অন্তে দায়িত্বপ্রাপ্ত কর্মকর্তার স্বাক্ষর ও সীলমোহরসহ ৮ম অংশ আবশ্যিকভাবে পূরণ করিতে হইবে।

৪.৯ গোপনীয় অনুবেদন সংক্রান্ত গোপনীয়তা ও ব্যাখ্যা

৪.৯.১ গোপনীয় অনুবেদন সম্পর্কিত এই অনুশাসনমালার ব্যাখ্যা প্রদানের যথাযথ কর্তৃপক্ষ জনপ্রশাসন মন্ত্রণালয়।

৪.৯.৩ ইতিপূর্বে জারিকৃত গোপনীয় অনুবেদন সম্পর্কিত যেই সকল নির্দেশনা, আদেশ, পরিপত্র ইত্যাদি এই অনুশাসনমালার সহিত সাংঘষিক তাহা বাতিল বলিয়া গণ্য হইবে। ইহা অবিলম্বে কার্যকর হইবে।

(আবদুস সোবহান সিকদার)
সিনিয়র সচিব

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
জনপ্রশাসন মন্ত্রণালয়
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বিতরণ (জ্যেষ্ঠতার ক্রমানুষারে নয়)ঃ

(অধীনস্থ/সংশ্লিষ্ট সকল সংস্থা/দপ্তরকে অবহিত করণ এবং স্ব-স্ব দপ্তরের ওয়েবসাইটে প্রকাশের অনুরোধসহ)

১. মন্ত্রিপরিষদ সচিব, মন্ত্রিপরিষদ বিভাগ/মুখ্য সচিব, প্রধানমন্ত্রীর কার্যালয়।
২. সিনিয়র সচিব, প্রধানমন্ত্রীর কার্যালয়/সিনিয়র সচিব (সকল মন্ত্রণালয়/বিভাগ)।
৩. সচিব, জনবিভাগ/আপনবিভাগ, রাষ্ট্রপতির কার্যালয়/সচিব/ভারপ্রাপ্ত সচিব (সকল মন্ত্রণালয়/বিভাগ)।
৪. সিএন্ডএজি, অডিট ভবন, ৭৭/৭ কাকরাইল, ঢাকা।
৫. চেয়ারম্যান/সদস্য, বিপিএসসি, তেজগাঁও, ঢাকা।
৬. সিইসি/ইসি, নির্বাচন কমিশন সচিবালয়, প্লানিং কমিশন চত্বর, ব্লক ৫ ও ৬, শেরে বাংলা নগর, ঢাকা।
৭. চেয়ারম্যান, দুদক, সেগুনবাগিচা, ঢাকা।
৮. চেয়ারম্যান, জাতীয় মানবাধিকার কমিশন, ৬/৩, ব্লক-ডি, লালমাটিয়া, ঢাকা।
৯. চেয়ারম্যান, আইন কমিশন, পুরাতন হাইকোর্ট ভবন, ঢাকা।
১০. চেয়ারম্যান, তথ্য কমিশন বাংলাদেশ, ১-৪/এ, আগারগাঁও প্রশাসনিক এলাকা, শেরে বাংলা নগর, ঢাকা।
১১. চেয়ারম্যান, ট্যারিফ কমিশন, ১ম ১২তলা সরকারি অফিস ভবন (১০ম তলা), সেগুনবাগিচা, ঢাকা।
১২. চেয়ারম্যান, বিটিআরসি, আইইবি ভবন (৬ষ্ঠ-৮ম তলা), রমনা, ঢাকা।
১৩. চেয়ারম্যান, বিইআরসি, টিসিবি ভবন (৪র্থ তলা), ১ কাওরান বাজার, ঢাকা।
১৪. রেক্টর, বিপিএটিসি, সাভার, ঢাকা।
১৫. মহাপরিচালক, বিসিএস (প্রশাসন) একাডেমী, শাহবাগ, ঢাকা।
১৬. সিনিয়র সিস্টেম্স এনালিস্ট, পিএসিসি, জনপ্রশাসন মন্ত্রণালয় (ওয়েবসাইটে প্রকাশের অনুরোধসহ)।
১৭. গার্ড ফাইল কপি।

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নং-০৫.১০২.২২.০১.০০.০০১.২০১২-৮৪ তারিখ: ১০ ডিসেম্বর, ২০১২ / ১০ পৌষ, ১৪১৯

বিষয়ঃ গোপনীয় অনুবেদন লিখনে অনুবেদনাধীন কর্মকর্তা (ORU) অনুবেদনকারী কর্মকর্তা, (RIO) প্রতিস্বাক্ষরকারী কর্মকর্তা (CSO) কর্তৃক আবশ্যিকভাবে অনুসরণীয় বিশেষ নির্দেশনাবলী।

গোপনীয় অনুবেদন ফরম যথাযথভাবে পূরণ, অনুস্বাক্ষরসহ লিখন, প্রতিস্বাক্ষরকরণ এবং নির্ধারিত সময়ের মধ্যে জনপ্রশাসন মন্ত্রণালয়ের সিআর অধিশাখায় প্রেরণ নিশ্চিত করতে বিভিন্ন সময়ে এ মন্ত্রলালয় থেকে পত্র/পরিপত্র/নির্দেশনা জারি করা হয়। তথালি অনেক ক্ষেত্রে বিলম্ব গোপনীয় অনুবেদন দাখিল, লিখনসহ অনুস্বাক্ষর, প্রতিস্বাক্ষরের প্রবণতাসহ নানা ধরনের ক্রুটি-বিচ্যুতি পরিলক্ষিত হচ্ছে। এতে অনুবেদনাধীন কর্মকর্তাদের ডোসিয়ার সংরক্ষণ চাকুরি স্থায়ীকরণ, বিভিন্ন পদে পদায়ন, পদোন্নতি সিলেকশন গ্রেড প্রদান, বৈদেশিক নিয়োগ ইত্যাদি ক্ষেত্রে সিদ্ধান্ত গ্রহণ কার্যক্রম ব্যাবহ হয় এবং এতে করে অনেক ক্ষেত্রে অনুবেদনাধীন কর্মকর্তা ক্ষতিগ্রস্থ হতে পারেন, যা কোন ভাবেই কাম্য নয়। উপরন্ত এটা শৃংখলা পরিপন্থী।

২। এমতাবস্থায় গোপনীয় অনুবেদন ফরম পূরণ, অণুস্বাক্ষরকরণসহ লিখন, প্রতিস্বাক্ষরকরণ, বিরূপ মন্তব্য প্রক্রিয়াকরণ ও সংরক্ষণ সংক্রান্ত বিষয়ে বিদ্যাম্যান পরিপত্র ও নির্দেশনাসমূহ সমন্বিত করে ২৩ সেপ্টেবর, ২০১২ তারিখে গোপনীয় অনুবেদন ফরম পূরণ, অনুস্বাক্ষরসহ লিখন, প্রতিস্বাক্ষর ও সংরক্ষণ সংক্রান্ত অনুশাসনমালা যথাযথভাবে অনুসরণের জন্য জারী করা হয়। অধিকন্ত গোপনীয় অনুবেদন ফরম যথাযথভাবে এবং যথাসময়ে পূরণপূর্বক দাখিল, অনুস্বাক্ষর ও প্রতিস্বাক্ষরের ক্ষেত্রে নিম্নবর্ণিত নির্দেশবলী কঠোরভাবে অনুসরনের জন্য নির্দেশক্রমে অনুরোধ করা হলোঃ

৩। গোপনীয় অনুবেদন ফরম ও লিখন সংশ্লিষ্ট প্রত্যেক কর্মবকর্তাকে স্পষ্টভাবে নাম, পদবী, পরিচিতি ও দিন, মাস, বছর উল্লেখসহ তারিখ লিখতে হবে এবং আবশ্যিকভাবে সীল ব্যবহার করতে হবে (সীল না থাকলে নাম, পদবী, পরিচিতি নম্বর হাতে লিখে দিতে হবে) বদবী/পদোন্নতির ক্ষেত্রে অবশ্যই সংশ্লিষ্ট অনুবেদনাধীন/অনুবেদনকারী/প্রতিস্বাক্ষরকারী কর্মকর্তার পূর্ববর্তী পদবীসহ বর্তমান পদবী উল্লেখ করতে হবে।অনুস্বাক্ষর/প্রতিস্বাক্ষর শেষে অনুবেদনকারী/ প্রতিস্বাক্ষরকারী কর্মকর্তার পরিচিতি নম্বর (যদি থাকে) আবশ্যিকভাবে লিখতে হবে;

৪। গোপনীয় অনুবেদন ফরম পূরণ লিখনে কোন প্রকার ওডার রাইটিং/কাটাকাটি/ মোছামুছি/ফ্লুইড ব্যবহার করা যাবে না। বিশেষ প্রয়োজন সংশ্লিষ্ট অংশটুকু একটানে কেটে অণুস্বাক্ষরসহ নতুন করে লিখতে হবে;

৫। অনুবেদনাধীন/প্রতিস্বাক্ষকারী উভয় কর্মকর্তাকে প্রদত্ত নম্বর অংকে লেখার পাশাপাশি আবশ্যিকভাবে কথায় লেখা নিশ্চিত করতে হবে;

৬। অনুবেদনাধীন কর্মকর্তা গোপনীয় অনুবেদন ফরম এর ১৪ ক্রমিকে অনুবেদনকারী কর্মকর্তার অধীনে প্রকৃত কর্মকাল দিন, মাস, বছরের তারিখসহ সঠিকভাবে করবেন এবং অনুবেদনকারী কর্মকর্তা বিষয়টি নিশ্চিত হয়ে অনুস্বাক্ষর করবেন;

৭। অনুবেদনাধীন কর্মকর্তা স্বাস্থ্য পরীক্ষাসহ প্রতিবছর ৩১ জানুয়ারীর মধ্যে গোপনীয় অনুবেদন ফরমের সংশ্লিষ্ট অংশে যথাযথভাবে পূরণ করে অনুবেদনকারী কর্মকর্তার নিকট দাখিল করবেন। যে কোন ভাবেই হোক অসম্পর্ণ গোপনীয় অনুবেদন বাতিল বলে গণ্য হবে;

৮। অনুবেদনকারী কর্মকর্তা প্রতিবছর আবশ্যিকভাবে ২৮ ফেব্রয়ারির মধ্যে গোপনীয় অনুবেদন ফরম যাচাইপূর্বক নিশ্চিত হয়ে যথাযথভাবে অনুস্বাক্ষর করে প্রতিস্বাক্ষরকারী কর্মকর্তার নিকট সীলগালা বা গোপনীয়তা নিশ্চিত করে প্রেরণ করবেন;

৯। প্রতিস্বাক্ষরকারী কর্মকর্তা প্রাপ্ত গোপনীয় অনুবেদন ফরম যাচাইপূর্বক নিশ্চিত হয়ে যথাযথভাবে প্রতিস্বাক্ষর শেষে সীলগালা বা গোপনীয়তা নিশ্চিত করে আবশ্যিকভাবে ৩১ মার্চের মধ্যে জনপ্রশাসন মন্ত্রণালয়ের সিআর অধিশাখায় প্রেরণ নিশ্চিত করবেন।

১০। নির্ধারিত সময়ের ১ (এক) বছর অতিবাহিত হয়ে যাওয়ার পর কোন কর্মকর্তার গোপনীয় অনুবেদন ডোসিয়ার হেফাজতকারী কর্তৃপক্ষের নিকট প্রেরণ করে হলে তা কোন প্রকার কারণ দর্শানো ব্যাতিরেকে সরাসরি বাতিল হিসেবে গণ্য হবে। তবে এ ক্ষেত্রে অনুবেনাধীন কর্মকর্তা যথাসময়ে গোপনী অনুবেদন দাখিল করে থাকলে এবং তাঁর কোন ক্রটি না থাকলে তাঁকে কোনভাবেই ক্ষতিগ্রস্থ করা যাবে না;

১১। অনুবেদনকারী কর্মকর্তার প্রদত্ত নম্বরহ্রাস-বৃদ্ধির ক্ষেত্রে পত্রিস্বাক্ষরকারী কর্মকর্তা ৭ম অংশে মন্তব্য কলামে নম্বর হ্রাস-বৃদ্ধির স্বপক্ষে যৌক্তিক কারণ অবশ্যই লিপিবদ্ধ করবেন;

১২। অনুবেদনাধীন কর্মকর্তা সম্পর্কে বিরূপ মন্তব্য প্রদানের পূর্বে তাঁকে অবশ্যই পর্যাপ্ত সময় দিয়ে লিখিতভাবে সতর্ক করে সংশোধনের সুযোগ দিতে হবে। বিরূপ মন্তব্যের স্বপক্ষে যৌক্তিকতা উল্লেখ করতে হবে এবং বিরূপ মন্তব্য প্রদানের পূর্বে আবশ্যিকভাবে যথাযথ প্রক্রিয়া অনুসরণ করতে হবে;

১৩। কোন অনুবেদনাধীন কর্মকর্তাকে মূল্যায়নের ক্ষেত্রে গোপনীয় অনুবেদন ফরমের ৪র্থ পুষ্ঠায় ৩য় ও ৪র্থ অংশে কোন ক্রমিকের (মূল্যায়নের বিষয়ে) বিপরীতে মান ১ (এক) এর ঘরে প্রদান করা হলে তা বিরূপ হিসেবে গণ্য হবে। মোট প্রাপ্ত নম্বর ৪০ বা তদনিম্ন অর্থাৎ মূল্যায়ন চলতি মানের নিম্নে হলে তা বিরূপ হিসেবে গণ্য হবে। তবে এ সকল ক্ষেত্রে কারণ ও প্রয়োজনীয় তথ্যাপ্রমাণ সংযুক্ত/লিপিবদ্ধ করতে হবে;

১৪। কোন কর্মস্থলে/কোন অনুবেদনকারী কর্মকর্তার অধীনে কর্মকাল ০৩ (তিন) মাস না হলে গোপনীয় অনুবেদন প্রযোজ্য হবে না। এমন কাউকে দিয়ে গোপনীয় অনুবেদন লেখানো যাবে না যার অধীনে কর্মকর্তার তিন মাস কাজ করার সুযোগ হয়নি। এ ধরনের গোপনীয় অনুবেদন বাতিল বলে গণ্য হবে। তবে একই পঞ্জিকা বৎসরে কোন কর্মস্থলে একাধিক অনুবেদকারী কর্তৃপক্ষের নিয়ন্ত্রেণে ৩ (তিন) মাস হলে (যথাপযুক্ত প্রমাণসহ) আবশ্যিকভাবে প্রতিস্বাক্ষরকারী কর্মকর্তার নিকট গোপনীয় অনুবেদন দাখিল করতে হবে। উক্ত ক্ষেত্রে প্রতিস্বাক্ষর-কারী কর্তৃপক্ষই অনুবেদনাধীন কর্মকর্তার গোপনীয় অনুবেদন অনুস্বাক্ষর করবেন। এ ক্ষেত্রে প্রতিস্বাক্ষর প্রয়োজন হবে না;

১৫। বদলী/শাখা বা দপ্তর পরিবর্তন ইত্যাদি জনিত কারণে একাধিক অনুবেদনকারী কর্মকর্তার অধীনে কাজ করলে সেক্ষেত্রে পত্যেক তিনমাস বা তদূর্দ্ধ সময়ের জন্য আংশিক গোপনীয় অনুবেদন প্রয়োজন হবে। এরূপ ক্ষেত্রে একজন কর্মকর্তাকে একবছরের একাধিক আংশিক গোপনীয় অনুবেদন দাখিল করতে হবে। ঐ বছরের জন্য পযোজ্য সকল আংশিক গোপনীয় অনুবেদনের নম্বরের গড়ই হবে সংশ্লিষ্ট কর্মকর্তার উক্ত বছরের প্রাপ্ত নম্বরন। তবে প্রতিস্বাক্ষরকারী কর্মকর্তা একাধিক হলে যার তত্ত্বধানে অনুবেদনকারী অধিককাল কর্মরত ছিলেন তিনিই গোপনীয় অনুবেদন প্রতিস্বাক্ষর করবেন;

১৬। যে সকল বিশেষ ভারপ্রাপ্ত (ওসিডি) কর্মকর্তা বিভিন্ন মন্ত্রণালয়/বিভাগ/দপ্তর/অধিপ্তর/পরিদপ্তর ও সংযুক্ত রয়েছেন তাঁদেরকে সংযুক্ত থাকাকালীন যার তত্ত্বাবধানে দায়িত্ব পালন করেছেন তাঁর নিকট গোপনীয় অনুবেদন দাখিল করতে হবে;

১৭। কোন অনুবেদনকারী কর্মকর্তা মৃত্যুবরণ করণে/কারাগারে থাকলে/বরখাস্ত হলে/পদত্যাগ করণে/অপসারিত হলে/দীর্ঘ সময়ের জন্য তিন মাসের বেশী বিদেশে অবস্থান করলে প্রতিস্বাক্ষরকারী কর্মকর্তাই অনুবেদনাধীন কর্মকর্তার গোপনীয় অনুবেদনের ৭ম অংশে মন্তব্য কলামে উল্লেখপূর্বক অনুস্বাক্ষর ও প্রতিস্বাক্ষরপূর্বক ডোসিয়ার হেফাজতকারী কর্তৃপক্ষের নিকট প্রেরণ করবেন;

১৮। অনুবেদনকারী কর্তৃপক্ষ এবং প্রতিস্বাক্ষরকারী কর্তৃপক্ষ নির্ধারণে কোন জটিলতা দেখা দিলে প্রশাসনিক মন্ত্রণালয়/বিভাগ স্ব-স্ব অধিক্ষেত্রের মধ্যে অনুবেদনকারী এবং প্রতিস্বাক্ষরকারী কর্তৃপক্ষ নির্ধারণ করে প্রশাসনিক আদেশ জারী করবে এবং

সংশ্লিষ্ট মন্ত্রণালয়সহ ডোসিয়ার হেফাজতকারী কর্তৃপক্ষেকে অবশ্যই রাখতে/ করতে হবে। সাধারণভাবে অনুবেদনাধীন কর্মকর্তার কাজ যিনি সরাসির তত্ত্বধানেকরেন তিনিই হবেন অনুবেদনকারী কর্তৃপক্ষ/কর্মকর্তা;

১৯। চুক্তিভিত্তিক নিয়োগের ক্ষেত্রে চুক্তির মেয়াদ শেষ হওয়ার পরদিন হতে ০১ বছর পর্যন্ত চুক্তিভিত্তিক নিয়োজিত কর্মকর্তা অনুবেদনধীন কর্মকর্তার গোপনীয় অনুবেদন অনুস্বাক্ষর/প্রতিস্বাক্ষর করতে পারবেন;

২০। পিআরি এল ভোগরত কর্মকর্তা পি আর এল ভোগকতালীন সময়ে অনুবেদনধীন কর্মখর্তার গোপনীয় অণুবেদন অনুস্বাক্ষর/প্রতিস্বাক্ষর করতে পারবেন; তবে নির্ধারিত সময়ের পরে অনুস্বাক্ষর/প্রতিস্বাক্ষর করা হলে তা আর গ্রহণযোগ্য হবে না;

২১। সহকারী সচিব থেকে শুরু করে ভারপ্রাপ্ত সচিব ও সমপদর্যাদা সম্পন্ন পর্যায়ে পর্যন্ত সকল কর্মকর্তাগণের জন্য গোপনীয় অনুবেদন প্রযোজ্য;

২২। সুপারনিউমারারী পদ সৃজনের ফলে অধিশাখাসমূহের ক্ষেত্রে সংশ্লিষ্ট উপসচিবগণ তাঁদের অধীনস্থ প্রশাসনিক কর্মকর্তা/সহায়ক কর্মচারীদের গোপনীয় অনুবেদন অনুস্বাক্ষর করার পাশাপাশি প্রতিস্বাক্ষরও করতে পারবেন;

২৩। মহামান্য রাষ্ট্রপতি/মাননীয় প্রধানমন্ত্রীর অধীন মন্ত্রণালয়/বিভাগের অধীনে কর্মলত সংস্থা প্রধানকে তাঁর অধীনস্থ কর্মকর্তাগণের গোপনীয় অনুবেদন অনুস্বাক্ষরপূর্বক প্রতিস্বাক্ষরের জন্য সংশ্লিষ্ট মন্ত্রণালয়/বিভাগের দায়িত্বপ্রাপ্ত সচিবের নিকট প্রেরণ করতে হবে;

২৪। সাংবিধানিক পদে অধিষ্ঠিত সদস্যগণ তাঁদের সরাসরি অধীনস্থ কর্মকর্তাদের গোপনীয় অনুবেদন অনুস্বাক্ষরের পাশাপাশি প্রতিস্বাক্ষরও করবেন এবং স্বাভাবিক নিয়মে দায়িত্ব পালন শেষে পরবর্তী এক বছর পর্যন্ত অধীনস্থদের গোপনীয় অনুবেদন অনুস্বাক্ষর/প্রতিস্বাক্ষর করতে পারবেন;

২৫। অন্যন্য কমিশন/সংস্থাসমূহের ক্ষেত্রে, যেখানে কমিশন/সংস্থার প্রধান সচিব পদমর্যাদার সেক্ষেত্রে তৎকর্তৃক অনুস্বাক্ষরিত অধীনস্থদের গোপনীয় অনুবেদন প্রতিস্বাক্ষরের জন্য সংশ্লিষ্ট মন্ত্রণালয়/বিভাগের দায়িত্বপ্রাপ্ত মন্ত্রী/উপদেষ্ঠা/প্রতিমন্ত্রী /উপমন্ত্রীর নিকট উপস্থাপন করতে হবে। কমিশনের প্রধান সচিব পদমর্যাদার নিম্নের হলে তৎকর্তৃক অনুস্বক্ষরিত অধীনস্থদের গোপনীয় অনুবেদন প্রতিস্বাক্ষরের জন্য সংশ্লিষ্ট মন্ত্রণালয়/বিভাগের সচিবের নিকেট উপস্থাপন করতে হবে। তবে যে সকল কশিন/সংস্থায় ব্যক্তিবর্গকে মন্ত্রী/প্রতিমন্ত্রী/উপমন্ত্রীর সমমর্যাদা দেয়া হয়েছে সে সকল ক্ষেত্রে তৎকর্তৃক অনুস্বাক্ষরিক গোপনীয় অনুবেদন প্রতিস্বাক্ষরের প্রয়োজন হবে না;

২৬। সবশেষে, যথাসময়ে গোপনীয় অনুবেদন দাখিল/অনুস্বাক্ষর/প্রতিস্বাক্ষর এর নির্দেশনা থাকা সত্ত্বেও অনুস্বাক্ষরকারী/প্রতিস্বাক্ষর করে সিআর অধিশাখার প্রেরণ নিশ্চিত করা জন্য সর্বশেষে অনুরোধ করা হলো। নতুবা গোপনীয় অনুবেদনগুলো বিলম্বের কারণে বাতিল হয়ে যাবে। এক্ষেত্রে অনুবেদনাধীন কর্মকর্তা ক্ষতিগ্রস্থ হবেন না-যদি তিনি যথাসময়ে গোপনীয় অনুদেবন দাখিল করে থাকেন;

২৭। গোপনীয় অনুবেদন ডোসিয়ার হেফাজতকারী কর্তৃপক্ষের নিকট প্রেরণের সময় ফরোরাডির্ং সংযুক্ত করে সংশ্লিষ্ট অফিসের সীলগালাসহ অর্থাৎ গোপনীয়তা রক্ষা করে পিয়নবুকে এন্ট্রি দিয়ে যখাসময়ে প্রেরণ করতে হবে।

সর্বোপরি, ২৩ সেপ্টেবর, ২০১২ তারিখে ০৫.১০২.২২.০১.০০.০০১.২০১২-৫৮ নং স্মারকে গোপনীয় অনুবেদন ফরম পূরণ. অনুস্বাক্ষর ও প্রতিস্বাক্ষর সংক্রান্ত বিষয়ে জারিকৃত সমন্বিত অনুশাসনমালা ইতিপূর্বে সকল মন্ত্রণালয়/বিভাগ/বিভাগীয় ও জেলা প্রশাসনকে কপি দিয়ে যথাযথভাবে অনুসরেণর জন্য অবহিত করা হয়েছে। উক্ত অনুশাসনমালা প্রয়োজনে ব্যবহারের জন্য অত্র মন্ত্রণালয়ের web site (www.mopa.gov.bd) এ সন্নিবেশিত রাখা হয়েছে।

(ড. কাজী লিয়াকত আলী)
যুগ্মসচিব
ফোনঃ ৯৫৪৫৯৭১

বিতরণঃ (জ্যেষ্ঠতার ক্রমানুষারে নয়)

(অধীনস্থ/সংশ্লিষ্ট সকল দপ্তরকে অবহিত করার অনুরোধসহ)।

১. মন্ত্রিপরিষদ সচিব, মন্ত্রিপরিষদ বিভাগ/মূখ্য সচিব, প্রধানমন্ত্রীর কার্যালয়।
২. সিনিয়ল সচিব, প্রধানমন্ত্রীর কার্যালয়/সিনিয়র সচিব,..... মন্ত্রণালয়/বিভাগ।
৩. সচিব, জনবিভাগ/আপনবিভাগ, রাষ্ট্রপতিরকার্বালয়/সচিব/ভারপ্রাপ্ত সচিব, ... মন্ত্রণালয়/বিভাগ। ..... মন্ত্রণালয়/বিভাগ।
৪. বিভাগীয় কমিশনার, ... মন্ত্রণালয়/বিভাগ।
৫. সিনিয়র সিস্টেমস্ এনালিস্ট,পিএসিসি, জনপ্রশাসন মন্ত্রণালয় (ওয়েব সাইটে প্রকাশের অনুরোধসহ)।

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
জনপ্রশাসন মন্ত্রণালয়
সিআর-৩ শাখা
(www.mopa.gov.bd)

নং-০৫.১০২.২২.০১.০০.০০১.২০১২-০৪ তারিখ: ২৯ জানুয়ারি, ২০১৩ / ১৬ মাঘ, ১৪১৯

বিষয়ঃ জনপ্রশাসন মন্ত্রণালয় প্রণীত এসিআর সংক্রান্ত নতুন অনুশাসনমালার বিষয়ে পর্যবেক্ষেণ।

সূত্রঃ নং-এসএস (এ)/গার্ড ফাইল/এসিআর অনুশাসনমালা/২০১২;
তারিখ ঃ ০৫.১২.২০১২ খ্রিঃ।

উপর্যক্ত বিষয় ও সূত্রের প্রেক্ষিতে নির্দেশক্রমে মহোদয়ের সদয় অবগতি ও প্রয়োজনীয় কার্যার্থে জানানো যাচ্ছে যে, ইতিপূর্বে পররাষ্ট্র মন্ত্রণালয় কর্তৃক প্রেরিত ডিও পত্রের প্রেক্ষিতে বিদেশস্থ বাংলাদেশ দূতাবাসসমূহের বিভিন্ন উইং এ কর্মরত অন্যান্য ক্যাডারের (পরাষ্ট্র ক্যাডার ব্যবতীত) কর্মকর্তাগণের বার্ষিক গোপনীয় অনবেদন (এসিআর) লেখার ব্যাপারে অনুবেদনকারী কর্তকর্তা ও পতিস্বাক্ষরকারী কর্মকর্তা নিধারর্ণ এর বিষয় ০৮.০১.২০১৩ তারিখে একটি আন্তঃমন্ত্রণালয় সভা হয়। সভায় পররাষ্ট্র, বাণিজ্য, অর্থনৈতিক সম্পর্ক বিভাগ, প্রবাসী কণ্যাণ ও বৈদেশিক কর্মসংস্থান মন্ত্রণালয় এবং ধর্ম বিষয়ক মন্ত্রণালয়ের প্রতিনিধিগণের উপস্থিতিতে সিদ্ধান্ত হয় যে, "(ক) বিদেশেস্থ বাংলাদেশ মিশনসমূহের বিভিন উইং-এ কর্মরত পররাষ্ট্র ক্যাডার ব্যতীত অন্যান্য ক্যাডারের কর্মকর্তাগণের এসিআর মিশন প্রধান/দূতাবাস প্রধান অনুবেদনকারী কর্মকর্তা হিসেবে স্বাক্ষর করবেন। প্রতিস্বাক্ষরকারী কর্মকর্তা হবেন সংশ্লিষ্ট মন্ত্রণা য়ের সচিব যেমনঃ- কাউন্সেলর (শ্রম), প্রথম সচিব (শ্রম), দ্বিতীয় সচিব (শ্রম) এর ক্ষেত্রে সচিব, প্রবাসী কল্যাণ ও বৈদিশিক কর্মসংস্থান মন্ত্রণালয়। এরূপ অন্যান্য পদের ক্ষেত্রেও একই নিয়ম অনুসৃত (খ) যে সমস্ত মিশন বা দূতাবাসে চার্জ দ্য এ্যাফেয়ার্স (সিডি) দায়িত্ব থাকবেন তাঁরা কোন এসিআর লিখবেন না (গ) প্রকৃত অনুদেনকারী কর্মকর্তা (আরআই ও) ও প্রতিস্বাক্ষকারী কর্মকর্তা (সিও) ব্যতিরেকে নিজ পছন্দমত অন্য কোন অনুবেদনকারী কর্মকর্তা (আরই) ও প্রতিস্বাক্ষরকারী কর্মকর্তা (সিইও) থেকে এসিআর গ্রহণের কোন বিষয় মিশন/দূতাবাস লক্ষ্য করে বিষয়টি সংস্থাপন মন্ত্রণালয়কে অবহিত করবেন। সংস্থাপন মন্ত্রণালয় এতদবিষয়ে প্রযোজনীয় ব্যবস্থা গ্রহণ করবে।" ০৬ ফেব্রয়ারী, ২০৩২ তারিখে সম (সিআরসিপি-৩) ০৬/২০১২-১১৬নং স্মারকে উক্ত সিদ্ধান্ত সম্বলিক পরিপত্র জারী করা হয়, যা বর্তমানেও প্রচলিত রয়েছে (কপি সংযুক্ত) ও

অনুশাসনমালা ২.৬.৮ নং অনুচ্ছেদে সন্নিবেশিত রয়েছে এবং তা বহাল থাকবে। আন্তংমন্ত্রালয় সভার সিদ্ধান্ত না থাকায় ২৩ সেপ্টবর, ২০১২ তারিখে জারীকৃত অনুশাসনমালার ২.৬.৯ নং অনুচ্ছেদ বাতিল করা হল।

(শেলিনা খানম)
সিনিয়র সহকারী সচিব
ফোনঃ ৯৫৫০৩৯৩

পররাষ্ট্র সচিব
পররাষ্ট্র মন্ত্রণালয়
অনুলিপিঃ (সদয় অবগতি ও কার্যার্থে)

১. সচিব, প্রবাসী কল্যাণ ও বৈদেশিক কর্মসংস্থান মন্ত্রণালয়/বাণিজ্য অর্থনৈতিক সম্পর্ক বিভাগ/ধর্ম বিষয়ক মন্ত্রণালয়।
২. অতিরিক্ত সচিব, জনপ্রশাসন মন্ত্রণালয়।
৩. সিনিয়র সচিব, মহোদেয়র একান্ত সচিব, জনপ্রশাসন মন্ত্রণালয়।
৪. সিনিয়র সিস্টেমস্ এনালিস্ট, জনপ্রশাসন মন্ত্রণালয় (ওয়েব সাইটে প্রকাশের অনুরোধসহ

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নং-০৫.১০২.২২.০১.০০.০০১.১৩-০৬ তারিখ: ৩১ জানুয়ারি, ২০১৩ / ১৮ মাঘ, ১৪১৯

বিষয়ঃ গোপনীয় অনুবেদন সংক্রান্ত কতিপয় বিশেষ নির্দেশনা।

গোপনীয় অনুবেদন ফরম পূরণ, অনুস্বাক্ষরকরণ, প্রতিস্বাক্ষরকরসহ বিরূপ মন্তব্য প্রক্রিয়াকণ ও সংরক্ষণ সংক্রান্ত বিদ্যমান পরিপত্রও নির্দেশনাসমূহ সমন্বিত করে ২৩ সেপ্টেবর, ২০১২ তারিখে একটি অনুশাসনমালা যথাযথভাবে অনুসণের জন্য জারী করা হয়, যা ২০১২ সনের গোপনীয় অনুবেদন থেকে কার্যকর হবে। অনুশাসনমালা সকল নির্দেশনাসহ নিম্নবর্ণিত বিষয়গুলি প্রতি বিশেষভাবে গুরুত্ব দেয়ার জন্য নির্দেশক্রমে অনুরোধ করা হলঃ

১. অনুবেদনাধীন কর্মকর্তা অথবা অনুবেদনকারী কর্মকর্তা বদলী/শাখা দপ্তর পরিবর্তন ইত্যাদি জনিত কারণে এতকাধিক অনুবেদনকারী কর্মকর্তার অধীনে কাজ করলে, সেক্ষেত্রে প্রতি তিনমাস (একজন অনুবেদনকারী কর্মকর্তার অধীনে কর্মকাল) বা তদূর্দ্ধ সময়ের জন্য আংশিক গোপনীয় অনুবেদন প্রয়োজন হবে। এরূপ ক্ষেত্রে একজন আংশিক গোপনীয় অনুবেদনের নম্বরের গড়ই হবে সংশ্লিষ্ট উক্ত বছরের প্রাপ্ত নম্বর;

২. একই পঞ্জিকা বছরেরকোন কর্মস্থলে/কোন অনুবেদনকারী কর্মকর্তার অধীনে একাদিক্রমে কর্মকাল ০৩ (তিন) মাস না হলে গোপনীয় অনবেদন প্রযোজ্য হবে না। তবে কোন কর্মস্থলে একাধিক অনুবেদনকারী কর্তৃপক্ষের নিয়ন্ত্রেণে কর্মরত থাকার ক্ষেত্রে কোন অনুবেদনকারীর নিয়ন্ত্রণেই কর্মকাল ৩ মাস না হলে এবং প্রতিস্বাক্ষরকারী কর্মকর্তার নিয়ন্ত্রেণে ৩ তিন মাস হলে (যথোপযুক্ত প্রমাণসহ) আবশ্যিকভাবে প্রতিস্বাক্ষকারী কর্মকর্তার নিকট গোপনীয় অনুবেদন দাখিল করতে হবে। উক্ত ক্ষেত্রে প্রতিস্বাক্ষরকারী কর্তৃপক্ষই গোপনীয় অনুবেদনের ৭ম অংশে বিষয়টি উল্লেখপূর্বক অনুবেদনাধীন কর্মকর্তার গোপনীয় অনুবেদন অনুস্বাক্ষর প্রয়োজন হবে না;

৩. একই পঞ্জিকা বছরে একই কর্মস্থলে প্রতিস্বাক্ষকারী কর্মকর্তা একাধিক হলে যাঁর তত্ত্বাবধানে অনুবেদনকারী অধিককাল কর্মরত ছিলেন তিনিই গোপনীয় অনুবেদন প্রতিস্বাক্ষর করবেন' তবে একাধিক প্রতিস্বাক্ষরকারীর অধীনে কর্মকাল হলে সমান হলে কর্মকালের শেষাংশে যাঁর অধীনে ছিলেন তিনিই গোপনীয় অনুবেদন প্রতিস্বাক্ষর করবেন।

৪. কোন অনুবেদনাধীন কর্মকর্তাকে মূল্যয়নের ক্ষেত্রে গোপনীয় ফরমের ৪র্থ পৃষ্ঠীয় ৩য় ৪র্থ অংশে কোন ক্রমিকের (মূণ্যায়নের বিষয়ের) বিপরীতে মান ১ (এক)এর ঘরে প্রদান করা হলে তা বিরূপ হিসেবে গণ্য হবে। মোট প্রাপ্ত নম্বর ৪০ বা তদূনিম্ন অর্থ্যাৎ মূল্যায়ণ চলতি মানের হলে তা বিরূপ হিসেবে গণ্য হবে। তবে এ সকল মূল্যায়নের ক্ষেত্রে কারণ ও প্রয়োজনীয় তথ্যাপ্রমাণ সংযুক্ত/লিপিবদ্ধ করতে হবে;

৫. কোন পঞ্জিকা বছরের গোপনীয় অনুবেদন আবশ্যিকভাবে ডোসিয়ার হেফাজকারী কর্তৃপক্ষের নিকট পৌঁছানোর নির্ধারিত সময় হচ্ছে তার অব্যবহিত পরবর্তী বছরের ৩১ মার্চ । নির্ধারিত সময়ের ১ (এক) বছর অতিবাহিত হয়ে যাওয়ার পর কোন কর্মকর্তার গোপনীয় অনুবেদন ডোসিয়ার হেফাজতকারী কর্তৃপক্ষের নিকট প্রেরণ করা হলে তা কোন প্রকার কারণ দর্শানো ব্যতিরেকে সরাসরি বাতিল হিসেবে গণ্য হবে। তবে এ ক্ষেত্রে অনুবেদনাধীন কর্মকর্তা যথাসময়ে গোপনীয় অনুবেদন দাখিল করেছেন মর্মে প্রমাণ থাকলে এবং তাঁর কোন ত্রুটি না থাকলে তাঁকে কোনভাইে ক্ষতিগ্রস্থ করা যাবে না;

গত ২৩ সেপ্টেবর, ২০১২ তারিখে ০৫.১০২.২২.০১.০০.০০১.২০১২-৫৮ নং স্মারকে গোপনীয় অনুবেদন ফরম পূরণ, অনুস্বাক্ষর ও প্রতিস্বাক্ষর সংক্রান্ত বিষয়ে জারিকৃত সমন্বিত অনুশাসনমালা ইতিপূর্বে সকল মন্ত্রণালয়/বিভাগ/বিভাগীয় ও জেলা প্রশাসনকে কপি দিয়ে যথাযথভাবে অনুসরণের জন্য অবহিত করা হয়েছে। উক্ত অনুশাসমালা প্রয়োজন ব্যবহারের জন্য অত্র মন্ত্রণালয়ের..... এ সন্নিবেশিত করা হয়েছে।

(শেলিনা খানম)
সিনিয়র সহকারী সচিব
ফোনঃ ৯৫৫০৩৯৩

বিতরণ ঃ (জ্যেষ্ঠতার ক্রমানুসারে নয়)

(অধীনস্থ/সংশ্লিষ্ট সকল দপ্তরকে অবহিত করার অনুরোধসহ)।

১. মন্ত্রিপরিষদ সচিব, মন্ত্রিপরিষদ বিভাগ/মূখ্য সচিব, প্রধানমন্ত্রীর কার্যালয়।

২. সিনিয়র.....মন্ত্রণালয়/বিভাগ।

৩. সচিব/ভারপ্রাপ্ত সচিব,..... মন্ত্রাণালয় বিভাগ।

৪. বিভাগীয় কমিশার,....., সংশ্লিষ্ট সকল দপ্তককে অবহিত করার অনুরোধসহ।

৫. সিনিয়র সিস্টেমস্ এনালিস্ট, পিএসিসি, জনপ্রশাসন মন্ত্রণালয় (ওয়েব সাইটে প্রকাশের অনুরোধসহ)।

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
জনপ্রশাসন মন্ত্রণালয়
সিআর-৩ শাখা
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নং-০৫.১০২.২২.০১.০০.০০১.২০১৩-১৫ তারিখ: ০১ এপ্রিল, ২০১৩ / ১৮ চৈত্র, ১৪১৯

বিষয়ঃ গোপনীর অনুবেদন সংক্রান্ত কতিপয় জরুরী নির্দেশনা।

পর্যক্ত বিষয়ে নির্দেশক্রমে জানানো যাচ্ছে যে, যথাসময়ে গোপনীয় অনুবেদন দাখিল অনুস্বাক্ষর/প্রতিস্বাক্ষর সংক্রান্ত প্রয়োজনীয় নির্দেশনা এবং বার বার তাগিদ দেয়া সত্ত্বেও কোন কর্মকর্তার ২০১০,২০১১ও২০১২ সনের গোপনীয় অনুবেদন এখনও সিআর অধিশাখায় পাওয়া যায়নী। নিয়মানুযায়ী ২০১২ সনের গোপনীয় অনুবেদন ৩১ মার্চ, ২০১৩ এর সিআর অধিশাখায় পৌঁছানো আবশ্যক। অনুস্বাক্ষরকারী। প্রতিস্বাক্ষকারী পর্যায়ে ২০১০ থেকে ২০১২ সাল পর্যন্ত যে সকল গোপনীয় অনুবেদন এখনও পেন্ডিং রয়েছে সেগুলো বিলম্বে প্রেরণের ব্যাখ্যাসহ অতি দ্রুত অনুস্বাক্ষর/প্রতিস্বাক্ষর করে সিআর অধিশাখায় প্রেরণ নিশ্চিত করার জন্য সবিশেষে অনুরোধ করা হলো। নতুবা গোপনীয় অনুবেদনগুলো বিলম্বে প্রেরণের কারণে বাতিল হয়ে যাবে।

এছাড়াও গোপনীয় অনুবেদন ব্যবস্থাপনা সংক্রান্ত ব২৩ সেপ্টেবর, ২০১২ তারিখে জারীকৃত (২০১২ সনের অনুসরণের জন্য পূনরায় অনুরোধ করা হলোঃ

১. অনুবেদনাধীন কর্মকর্তা অথবা অনুবেদনকারী কর্মকর্তার বদলী/শাখা বা দপ্তর পরিবর্তন ইত্যাদি জনিত কারণে একধিক অনুবেদনকারী কর্মকর্তার অধীনে কর্মরত থাকলে, সেক্ষেত্রে প্রতি তিনমাস (একজন অনুবেদনকারী কর্মকর্তার অধীনে কর্মকাল।) বা তদূর্দ্ধ সময়ের জন্য আংশিক গোপনীয় অনবেদন প্রয়োজন হবে। এরূপ ক্ষেত্রে একজনকর্মকর্তাকে একবছরের একাধিক আংশিক গোপনী অনুবেদন দাখিল করতে হবে। ঐ বছরের জন্য প্রযোজ্য সকল আংশিক গোপনীয় অনুবেদনের নম্বরে গড়ই হবে সংশ্লিষ্ট কর্মকর্তার উক্ত বছরের প্রাপ্ত নম্বর;

২. একই পঞ্জিকা বছরের কোন কর্মস্থলে/কোন অনুবেদনকারী কর্মকর্তার অধীনে একাদিক্রমে কর্মকাল ০৩ (তিন) মাস না হলে গোপনীয় অনুবেদন প্রযোজ্য হবে না। তবে কোন কর্মস্থলে একাধিক অনুবেদনকারী কর্তৃপক্ষের নিয়ন্ত্রেণে ৩ (তিন) মাস হলে (যথোপযুক্ত প্রমাণসহ) আবশ্যিকভাবে প্রতিস্বাক্ষকারী কর্মকর্তার নিকট গোপনীয় অনুবেদন দাখিল করতে হবে। উক্ত ক্ষেত্রে প্রতিস্বাক্ষকারী কর্তৃপক্ষই গোপনীয় অনুবেদনের ৭ম অংশে বিষয় উল্লেখপূর্বক অনুবেদনাধীন কর্মকর্তার গোপনীয় অনুস্বাক্ষর করবেন। এ ক্ষেত্রে প্রতিস্বাক্ষর প্রয়োজন হবে না;ৎ

৩. একই পঞ্জিকা বছরের একই প্রতিস্বাক্ষরকারী কর্মকর্তা একাধিক হলে যার তত্ত্বাবধানে অধিকাল কর্মরত ছিলেন তিনিই গোপনীয় অনুবেদন প্রতিস্বাক্ষর করবেন; তবে একাধিক পতিস্বাক্ষরকারীর অধীনে সমান গলে কর্মকালের শেষাংশে যার অধীনে কর্মরত ছিলেন তিনিই গোপনীয় অনুবেদন প্রতিস্বাক্ষর করবেন;

৪. কোন অনুবেদনাধীন কর্মকর্তাকে মূল্যায়নের ক্ষেত্রে গোপনীয় অনুবেদন ফরমের ৪র্থ পৃষ্ঠায় ৩য় ৪র্থ অংশে কোন ক্রমিকের (মূল্যায়নের বিষয়ের) বিপরীতে মান ১ (এক) এক ঘরে প্রদান করা হলে তকা বিরূপ হিসেবে গণ্য গবে। মোট প্রাপ্ত নম্বর ৪০ বা তদ্‌নিম্ন অর্থাৎ মূল্যায়ন চলতি মানের নিম্নে হলে তা বিরূপ হিগসেবে গণ্য হবে তবে এ সকল মূল্যালয়ওনের ক্ষেত্রে কারণ ও প্রয়োজনীয় তথ্যপ্রমাণ সংযুক্ত/ লিপিবদ্ধ করতে হবে;

৫. কোন পঞ্জিকা বছরের গোপনীয় অনুবেদন আবশ্যকিভাবে ডোসিয়ার হেফাজতকারী কর্তৃপক্ষের নকিট পৌছানোর নির্ধারিত সময় হচ্ছে তার অব্যবহিত পরবর্তী বছরের ৩১ মার্চ। নির্ধারিত সময়ের ১ (এক) বছর অতিবাহিত হয়ে যাওয়ার পর কোন কর্মকর্তার গোপনীয় অনুবেদন ডোসিয়ার হেফাজতকারী কর্তৃপক্ষের নিকট প্রেরণ করা হলে তা কোন প্রকার করাণ দর্শানো ব্যতিরেকে সরাসরি বাতিল হিসেবে গণ্য হবে। তবে এ ক্ষেত্রে অনুবেদনাধীন কর্মকর্তা যথাসময়ে গোপনীয় অনুবেদন দাখিল করেছেন মর্মে প্রমাণ খাকলে এবং তাঁর কোন ত্রুটি না থাকলে তাঁকে কোনভাবেই ক্ষতিগ্রস্ত করা যাবে না;

উল্লেখ্য, গত ২৩ সেপ্টেবর, ২০১২ তারিখে ০৫.১০২.২২.০১.০০.০০১.২০১২-৫৮ নং স্মারকে জারিকৃত অনুশাসনমালা প্রয়োজন ব্যবহারের জন্য অত্র মন্ত্রণালয়ের..... এ সন্নিবেশিত করা হয়েছে।

(শেলিনা খানম)
সিনিয়র সহকারী সচিব
ফোনঃ ৯৫৫০৩৯৩

বিতরণ ঃ (জ্যেষ্ঠতার ক্রমানুসারে নয়)

(অধীনস্থ/সংশ্লিষ্ট সকল দপ্তরকে অবহিত করার অনুরোধসহ)।

১. মন্ত্রীপরিষদ সচিব, মন্ত্রিপরিষদ বিভাগ/মূখ্য সচিব, প্রধানমন্ত্রীর কার্যালয়।

২. সিনিয়র সচিব, প্রধানমন্ত্রীর কার্যালয়/সিনিয়র সচিব.....মন্ত্রণালয়/ বিভাগ)।

৩. সচিব, জনবিভাগ/আপনবিভাগ, রাষ্ট্রপতিরকার্যলয়/সচিব/ভারপ্রাপ্তসচিব ..... মন্ত্রণালয়/বিভাগ)।

৪. বিভাগীয় কমিশনা,.....সংশ্লিষ্ট সকল দপ্তরকে অবহিত করার অনুরোধসহ।

সিনিয়র সিস্টেমস্ এললিস্ট, পিএসিসি, জনপ্রশাসন মন্ত্রাণালয় (ওয়েবসাইটে প্রকাশের অনুরোধসহ)।

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
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নং-০৫.১০২.২২.০১.০০.০০১.২০১৩-২০ তারিখ: ০৬ মে, ২০১৩ / ২৩ বৈশাখ, ১৪২০

বিষয়ঃ গোপীনয় অনুবেদন দাখিলে/অনুস্বাক্ষর/প্রতি স্বাক্ষরকরণের ক্ষেত্রে আবশ্যিকভাবে অনুসরনীয় কতিপয় বিশেষ নির্দেশনা।

সিআর অধিশাখায় প্রাপ্ত গোপনীয় অনুবেদসমূহ পর্যালোচনায় ফরম যথাযথভাবে পূরণপূর্বক থাখিল, অনুস্বাক্ষরসহ লিখন, প্রতিস্বাক্ষরকরণ এবং নির্ধারিত সময়ের মধ্যে জনপ্রশাসন মন্ত্রণালয়ের সিআর অধিশাখায় প্রেরণ করা বিষয়ে নানা। ধরনের ক্রটি বিচ্যতি পরিলক্ষিত হচ্ছে এ সকল পরিহার করার লক্ষ্যে ২৩ সেপ্টেবর, ২০১২ তারিখে জারীকৃত (২০১২ সনের গোপনীয় অনুবেদন থেখে কার্যকর) অনুশাসনমালার সকল নির্দেশনাসহ নিম্নবর্ণিত বিষয়গুলি বিশেষ গুরুত্ব সহকারে ও কঠোরভাবে অনুসরণের জন্য নির্দেশক্রমে পূণরায় অনুরোধ করা হল:

১. গোপানীয় অনুবেদন ফরমে অনুবেদনাধীন/অনুবেদনকারী/প্রতিস্বাক্ষরকারী প্রত্যেক কর্মকর্তাকে স্পষ্টভাবে নাম, পদবী, পরিচিতি নম্বর ও সুনির্দিষ্টভাবে দিন, মাস, বছর উল্লেখসহ তারিখ লিখতে হবে এবং সীল ব্যবহার করতে হবে (সীল না থাকলে নাম, পদবী, পরিচিতি নম্বর হাতে লিকে দিতে হবে)। শাখা বা কর্ম অধিক্ষেত্র পরিবর্তন কিংবা বদলী/পদোন্নতির ক্ষেত্রে অবশ্যই সংশ্লিষ্ট অনুবেদনাধীন/ অনুবেদনকারী/প্রতিস্বাক্ষরকারী কর্মকর্তার পূর্ববতী পদবীসহ বর্তমান পদবী এবং শাখা বা কর্ম অধিক্ষেত্র ও কর্মস্থল উল্লেখ করতে হবে;

২. অনুবেদনাধীন কর্মর্তাকে গোপনীয় অনুবেদন ফরম এর ৩য় পৃষ্ঠার ১৪ নং ক্রমিকে অনুবেদনকারী কর্মকর্তার অধীনে প্রকৃত কর্মকাল সনির্দিষ্টভাবে দিন, মাস, বছর উল্লেখসহ সঠিকভাবে তারিখ লিখতে হবে (যেমন-০১ জানুয়ারি হতে ৩১ মার্চ, ২০১২ হতে পারে কিন্তু জানুয়ারি হতে মার্চ, ২০১২ লেখা সঠিক নয়) এবং অনুবেদকারী কর্মকর্তা কর্মকালের এ বিষয়টি যাচাইপূর্বক নিশ্চিত হয়ে অনুস্বাক্ষর করবেন। অনুবেদনকারী কর্মকর্তার অধীনে প্রকৃত কর্মকালেই হবে সংশ্লিষ্ট গোপনীয় অনুবেদন সময়ঃ

৩. কোন অনুবেদনকারী কর্মকর্তার সরাসরি নিয়ন্ত্রেণে বা নিয়ন্ত্রণাধীন শাখায় কর্মরত না থাকলে তাঁর নিকট গোপনীয় অনুবেদন লিখনের জন্য দাখিল করা যাবে না।

অনুবেদনকারীর সরাসরি নিয়ন্ত্রণে বা নিয়ন্ত্রনাধীন শাখায় কর্মরত না থাকলে বা তাঁর নিয়ন্ত্রণে কর্মকাল ০৩ মাস না হলে অনুবেদনকারী কর্মকর্তা কোন অনুবেদনধীন কর্মকর্তার অনুবেদন লিখতে ও অসুস্বাক্ষর করতে পারবেন না;

৪. কোন কর্মস্থলে/কোন অনুবেদনকারী কর্মকর্তার অধীনে কর্মকাল ০৩ মাস না হলে গোপনীয় অনুবেদন প্রযোজ্য হবে না। বদলী/শাখা বা দপ্তর পরিবর্তন ইত্যাদি জনিত কারণে একাধিক অনুবেদকারী কর্মকর্তার অধীনে কর্মরত থাকার ক্ষেত্রে কর্মকাল নূন্যতম ০৩ মাস/০৩ মাসের অধিক হরে সেক্ষেত্রে অনুবেদনকারী কর্মকর্তার নিয়ন্ত্রাণাধীন কর্মকালের জন্য অবশ্যিকভাবে আংশিক গোপনীয় অনুবেদন দাখিল করতে হবে। ঐ বছরের জন্য প্রযোজ্য সকল আংশিক গোপনী অনুবেদনের নম্বরের গড়ই হবে সংশ্লিষ্ট কর্মকর্তার উক্ত বছরে প্রাপ্ত নম্বর। তবে প্রতিস্বাক্ষরকারী কর্মকর্তা একাধিক হলে তত্ত্বাবধানে অনুবেদনধীন কর্মকর্তা অধিককাল কর্মরত ছিলেন তিনিই গোপনীয় অনুবেদন প্রতিস্বাক্ষর করবেন;

৫. একই পঞ্জিকা বৎসরের কোন কর্মস্থলে একাধিক অনুবেদনকারী কর্তৃপক্ষের নিয়ন্ত্রেণে কর্মরত থাকার ক্ষেত্রে কোন অনুবেদনকারীর নিয়ন্ত্রণেই কর্মকাল ০৩ মাস না হলে এবং প্রতিস্বাক্ষরকারী কর্মকর্তার নিয়ন্ত্রণে ০৩ মাস/০৩ মাসের অধিক হলে (যথোপযুক্ত প্রমাণসহ) আবষ্যিকভাবে প্রতিস্বাক্ষরকারী নিকট গোপনীয় অনবেদন দাখিল করতে হবে। উত্ত ক্ষেত্রে প্রতিস্বাক্ষরকারী কর্তৃপক্ষেই অনুবেদনকারী কর্মকর্তার গোপনীয় অনুবেদনের ৭ম অংশে মন্তব্য কলামে বিষয়টি উল্লেখপূর্বখ অনুস্বাক্ষর করবেন। এ ক্ষেত্রে প্রতিস্বাক্ষর প্রয়োজন হবে না;

৬. একই পঞ্জিকা বৎসরে কোন কর্মস্থলে একাধিক অনুবেদনকারী ও প্রতিস্বাক্ষরকারী কর্তৃপক্ষের নিয়ন্ত্রণে কর্মরত থাকার ক্ষেত্রে কোন অনুবেদনকারী ও প্রতিস্বাক্ষরকারী কারও নিয়ন্ত্রণেই কর্মকাল ০৩ মাস কিংবা কোন কর্মস্থলেই কর্মকাল মাস না হলে (যথোপযুক্ত প্রমাণসহ) আবষ্যিকভাবে ডোসিয়ার ফোজতকারী কর্তৃপক্ষকে যথাসময়ে সরাসরি লিখিতভাবে বিষয়টি জানাতে হবে;

৭. শিক্ষানবীস কর্মকর্তা কোন শাখার দায়িত্বপ্রাপ্ত উক্ত শাখার নিয়ন্ত্রণকারী কর্মকর্তার নিকট গোপনীয় অনবেদন দাখিল করবন । কোন শাখার দায়িত্বপ্রাপ্ত না হলে শিক্ষানবীস হিসেবে তাঁর নিয়ন্ত্রণকারী (যেমন-জেলা প্রশাসরে ক্ষেত্রে অতিরিক্ত জেলা প্রশাসক, সার্বিক) কর্মকর্তার নিকট গোপনীয় অনুবেদন দাখিল করতে হবে;

৮. নির্ধারতি সময়ের ১ (এক) বছর অতিবাহিত হয়ে যাওয়ার পর কোন কর্মকর্তার গোপনীয় অনবেদন ডোসিয়ার হেফাজতকারী কর্তৃপক্ষের নিকট প্রেরণ করা হলে তা কোন প্রকার কারণ দর্শানো ব্যাতিরেকে সরাসরি বাতিল হিসেবে গণ্য হবে।

তবে এ ক্ষেত্রে অনুবেদনধীন কর্মকর্তা যথাসময়ে গোপনীয় অনুবেদন দাখিল করে থাকলে এবং তাঁর কোন ত্রুটি না থাকলে তাঁকে কোনভাবেই ক্ষতিগ্রস্থ করা যাবে ন।

উল্লেখ্য, গত ২৩ সেপ্টেবর, ২০১২ তারিখে ০৫.১০২.২২.১.০০.০০১.২০১২ নং স্মারক জারিকৃত অনুশাসনমালা প্রয়োজন ব্যবহারের জন্য অত্র মন্ত্রাণালয়ে ..... এ সন্নিবেশিত করা হয়েছে।

(শেলিনা খানম)
সিনিয়র সহকারী সচিব
ফোনঃ ৯৫৫০৩৯৩

বিতরণ ঃ (জ্যেষ্ঠতার ক্রমানুসারে নয়)

(অধীনস্থ/সংশ্লিষ্ট সকল দপ্তরকে অবহিত করার অনুরোধসহ।

১. মন্ত্রীপরিষদ সচিব, মন্ত্রিপরিষদ বিভাগ/মূখ্য সচিব, প্রধানমন্ত্রীর কার্যালয়।
২. সিনিয়র সচিব, প্রধানমন্ত্রীর কার্যালয়/সিনিয়র সচিব..... মন্ত্রণালয়/ বিভাগ)।
৩. সচিব, জনবিভাগ/আপনবিভাগ, রাষ্ট্রপতিরকার্যলয়/সচিব/ভারপ্রাপ্তসচিব..... মন্ত্রণালয়/বিভাগ)।
৪. বিভাগীয় কমিশনা,.....সংশ্লিষ্ট সকল দপ্তরকে অবহিত করার অনুরোধসহ।
৫. সিনিয়র সিস্টেমস্ এললিস্ট, পিএসিসি, জনপ্রশাসন মন্ত্রাণালয় (ওয়েবসাইটে প্রকাশের অনুরোধসহ)।

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
জনপ্রশাসন মন্ত্রণালয়
সিআর-৩ শাখা
(www.mopa.gov.bd)

নং-০৫.১০২.২২.০১.০০.০০১.১৩-৪৮ তারিখ: ০৫ নভেম্বর, ২০১৩ / ২১ কার্তক, ১৪২০

বিষয়ঃ গোপনীয় অনুবেদন সংক্রান্ত অনুশাসনমালার বিশেষ করে ১.৯.২.১.৯.৮.২.৩.১. ২.৪.১.৩.১.৭. হতে ৩.১.৯, ৩.২.১.৩.২.৭ এবং ৩.৩.১.ও.৩.৩.৩ নং নির্দেশনাসহ সকল নির্দেশনা যথাযথভাবে অনুসরণ সংক্রান্ত।

সূত্র ঃ নং-০৫.১০২.২২.১২.০০.০০১.২০১২-৫৮; তারিখঃ ২৩.০৯.২০১২ খ্রিঃ।

সিআর অধিশাখার প্রাপ্ত গোপনীয় অনুবেদনসমূহ পর্যালোচনায় দেখা যাচ্ছে যে, অনেক ক্ষেত্রে সূত্রে বর্ণিত অনুশাসনমালা (যা অত্র মন্ত্রণালযের (ww.mopa.gov.bd) এ সন্নিবেশিত করা আছে এবং সকল তপ্তরে অনুলিপি প্রেরণ করা হয়েছে) সংশ্লিষ্ট কর্মকর্তাগণ কর্তৃক যথাযথভাবে অনুসরণ করা হচ্ছে না। ফলে গোপনীয় অনুবেদনসমূহে নানা ধরনের ত্রুটি-বিচ্যুতি ও অস্পষ্ঠতা পরিলক্ষিত হচ্ছে। যেমনঃ-

১. একই পঞ্জিকা বছরে একাধিক অনুবেদনকারী কর্মকর্তার নিয়ন্ত্রধীন ০৩ মাস বা তদুর্দ্ধ সমসয়ব্যাপী কর্মকালের জন্য গোপনীয় অনুবেদন দাখিল করা হচ্ছে না।

২. গোপনীয় অনুবেদন ফরমের ১৪ নং কলামে বর্ণিত কর্মকালের মেয়াদে সাথে গোপনীয় অনুবেদনর ৩য় পৃষ্ঠার উপরের অংশে বর্ণিত মেযাদে সামঞ্জস্য থাকছে না।

৩. গোপনীয় অনুবেদন ফরমের ১৪ নং কলামে কর্মকালের মেয়াদ সুনিদির্ষ্ট তারিখসহ উল্লেখ করা হয় না; যেমন-অক্টোবর হতে ডিসেম্বর, ২০১২ লেখা হয়। এতে প্রকৃত কর্মকাল নিশ্চিত হওয়া যায় না।

৪. গোপনীয় অনুবেদন ফরমের ১৫ নং কলামে অনুবেদনধীন কর্মকর্তা কর্তৃক বর্ণিত কর্মকালীন কার্যবিবরনী সাথে নিয়ন্ত্রণকারী কর্মকর্তা অর্থাৎ অনুবেদনকারী কর্মকর্তার সামঞ্জস্য থাকছে না। যেমন-জেলা প্রশাসনের ক্ষেত্রে কোন অনুবেদনধীন কর্মকর্তা ১৫ নং কলামে বর্ণিতমতে কাজ করেছেন রেভিনিউ শাখায়; কাজেই তাঁর অনুবেদনকারী কর্মকর্তা হবেন অতিরিক্ত জেলা প্রশাসক (রাজস্ব)। কিন্তু দেখা যাচ্ছে তাঁর অনুবেদনকারী কর্মকর্তা হিসেবে গোপনীয় অনুবেদন অনুস্বাক্ষর করেছেন অতিরিক্ত জেলা প্রশাসক (সার্বিক) অথবা অতিরিক্ত জেলা ম্যাজিস্টেট, যা সঠিক নয়।

৫. অনুবেদনাধীন কর্মকর্তা কর্তৃক পদত্ত অসম্পূর্ণ তথ্য, ভুল তথ্য বা অসামঞ্জস্যপূর্ণ তথ্যসমূহ যাচাই করেই এবং কোন কোন ক্ষেত্রে অনুবেনাধীন কর্মর্কর্তার স্বাক্ষর, তারিখ, সীল ব্যবিতই অনুবেদনসমূহ অনুস্বাক্ষর/প্রতিস্বাক্ষরপূর্বক প্রেরণ করা হয়ে থাকে।

৬. বদলী/শাখা বা দপ্তর পরিবর্তনজনিত ক্ষেত্রে প্রাক্তন পদবী ও কর্মস্থল/কর্মপরিধি উল্লেখ না করার কারণে অনুস্বাক্ষরকারী/প্রতিস্বাক্ষরকারী যথাযথ কিনা তা নিশ্চিত হওয়া যায় না।

৭. গোপনীয় অনুবেদন একই কর্তৃপক্ষ কর্তৃক অনুস্বাক্ষর ও প্রতিস্বাক্ষর উভয়ই হওয়ার ক্ষেত্রে ৭ম অংশে কারণ উল্লেখ করা হয়না বিধায় বিষয়টির যথার্থতা নিশ্চিত হওয়া যায় না।

৮. এছাড়া অনেক ক্ষেত্রে গোপনীয় অনুবেদন ফরমের নির্ধারিত স্থানে অনুস্বাক্ষকারী বা প্রতিস্বাক্ষরকারী কর্তৃক স্বাক্ষল পর তারিখ সীল ও পরিচিতি নম্বর (যাদের রয়েছে) উল্লেখ করা হচ্ছে না বিধায় অস্পষ্টতা নিরসনে জটিলতা সৃষ্টি হচ্ছে।

এমতাবস্থায় উপরে বর্ণিত বিষয় সংশ্লিষ্ট গোপনী অনুবেদন সংক্রান্ত অনুশাসনমালার ১.৯.২.১.৯.৮.২.৩.১.২.৪.১.৩.১.৭ হতে ৩.১.৯.৩.২.১.৩.২.৭. এবং ৩.৩.১.৩.৩.৩ নং নির্দেশনাসহ সকল নির্দেশনা যথাযথভাবে অনুসরণ করার জন্য নিদের্শক্রমে অনুরোধ করা হল।

(শেলিনা খানম)
সিনিয়র সহকারী সচিব
ফোনঃ ৯৫৫০৩৯৩

বিতরণ ঃ (জ্যেষ্ঠতার ক্রমানুসারে নয়)

(অধীনস্থ/সংশ্লিষ্ট সকল দপ্তরকে অবহিত করার অনুরোধসহ)।

১. মন্ত্রীপরিষদ সচিব, মন্ত্রিপরিষদ বিভাগ/মূখ্য সচিব, প্রধানমন্ত্রীর কার্যালয়।
২. সিনিয়র সচিব, প্রধানমন্ত্রীর কার্যালয়/সিনিয়র সচিব ..... মন্ত্রণালয়/ বিভাগ)।
৩. সচিব, জনবিভাগ/আপনবিভাগ, রাষ্ট্রপতিরকার্যলয়/সচিব/ভারপ্রাপ্তসচিব..... মন্ত্রণালয়/ বিভাগ)।
৪. বিভাগীয় কমিশনার.....সংশ্লিষ্ট সকল দপ্তরকে অবহিত করার অনুরোধসহ।
৫. জেলা প্রশাসক, ... জেলা/উপজেলা পর্যায়ের সকল ক্যাড্যার/ দপ্তর সকল সিনিয়র সিস্টেমস্ এললিস্ট, পিএসিসি, জনপ্রশাসন মন্ত্রাণালয় (ওয়েবসাইটে প্রকাশের অনুরোধসহ)।

10.03 The tale of a connoisseur and his interview

The subject matter of the interview was releating to various matters of the subordinate judiciary as to indepence of the said judiciary. The said judge is depicted as 'Judge Rad'and the interview between the author and the Judge is narrated below:

Author: Why have you joined in the subordinate judiciary?

Judge Rad: If I say, I have joined in the subordinate judiciary, this will defitely be a mistake of realization from my part. That is, I did not imagine that I will come here. The almighty Allah has infiltrated the realization that it may be better to try to help some people in trying to establish the justice and for this I am here.

Author: Do you think that subordinate judiciary is independent?

Judge Rad: Yes. To some extent, I do think so. But there is a problem of the system i.e. the distributive problem and supervisory lacuna in respect of evaluation of the judges of the subordinate judiciary. It can be explained that is to say, the budget and its expense of Magistracy and the Judgship are not checked and balanced or counterbalanced and the evaluation in the so called Annual Confidential Report is highly defective and helpful for creating the the judges without guts and application of any rational reason.

Author: Is there any incidence for your narretd fact?

Judge Rad: Yes. One of my controlling officers allowed the application of section 528 of the code of criminal procedure in respect of an offender who was in fact fugitive and according to the law declared by the Appellate Division of the Supreme Court of Bangladesh reported in 55 DLR (AD) 131; a fugitive has no right to seek any redress or remedy. An offender who was fugitive in my Court and he did not take the bail from any Court but he without taking the bail invoked section 528 of the said code and the said controlling Chief Judicial Magistrate allowed the said application submitted by a fugitive and then enlarged him on bail. The fact was then submitted before the Hon'ble High Court Division in the following way under section 526 (3) of the code of criminal procedure:

From
Judge Rad,
Senior Judicial Magistrate of
Xyz District

To
The Register
High Court Division
Supreme Court of Bangladesh

Subject: A report under section 526(3) of the Code of Criminal Procedure

Sir,

With due respect, I the undersigned would like to state that the ***Xyz*** Chief Judicial Magistrate of ***Pqr*** District has invoked section 528 of the code of criminal procedure in respect of entertaining the application for bail and granted the same against an accused who was in fact a fugitive from the proceedings of this Court. This Court is of the position to seek the opinion of the High Court Division as to the fact that whether the fugitive can get the relief from the Court of law?

Judge Rad,
Senior Judicial Magistrate of
Xyz District

Author: What was the decision from the said report?

Judge Rad: No decision has yet got till today. In fact my thinking and duty was to send a report and I did the same.

Author: What was the impact of sending your report in respect of the aforesaid fact of allowing the application under section 528 of CrPC by a fugitive?

Judge Rad: High Court Division asked me under what authority can send such report without the report of the reporting officer. I replied very politely in stating that actually I tried to hold and uphold the law declared by the Appellate Division of the Supreme Court of Bangladesh rep[orted in 55 DLR (AD) 151 and thereafter no more information or update was given to me.

Author: Is there any impact sans you have stated now?

Judge Rad: Yes. The Chief Judicial Magistarte who was in fact did entertain the application of a fugitive gave some adverse remarks in two phases in my Annual Confedential Report. In getting the Extract I submitted the following representation for the first adverse remarks and the High Court Division being satisfied with my representation set aside or cut the adverse remarks though the rule 420(5) of CrRO-2009 was not complied.

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
সিনিয়র জুডিসিয়াল ম্যাজিস্ট্রেটের কার্যালয়

স্মারক নম্বরঃ তারিখঃ .....

বরাবর
মাননীয় রেজিষ্টার
হাইকোর্ট বিভাগ
বাংলাদেশ সুপ্রীম কোর্ট
ঢাকা।

মাধ্যমঃ মাননীয় চীফ জুডিসিয়াল ম্যাজিস্ট্রেট।

বিষয়ঃ গত ০৪.০৪.২০১০ইং তারিখের ৭১৫৪ অ নম্বর স্মারক মূলে গত ১১.০৪.২০১০ইং তারিখে প্রাপ্ত "Extract" এর Representation প্রসংগে।

মহোদয়

যথাবিহীত সম্মান প্রদর্শন পূর্বক বিনীত নিবেদন গত ০৪.০৪.২০১০ইং তারিখের ৭১৫৪ অ. নম্বর স্মারক মূলে গত ১১.০৪.২০১০ইং তারিখে প্রাপ্ত "Extract" এর Representation হিসাবে আমার সবিনয় মূল বক্তব্য হলো-

আমার বার্ষিক গোপনীয় অনুবেদন এর অনুবেদনকারী অফিসার হিসাবে Xyz জেলার সাবেক চীফ জুডিসিয়াল জুডিসিয়াল ম্যাজিস্ট্রেট জনাব Pqr আমার গত ২২.০৫.২০০৮ইং হতে ৩১.১২.২০০৮ইং পর্যন্ত সময়ের বার্ষিক গোপনীয় অনুবেদন-এ তিনি নিজে দুর্নীতিপরায়ণ কর্মকর্তা হিসাবে বিভাগীয় ০৮/২০০৯নং মোকদ্দমায় অভিযুক্ত হয়ে তার উক্তরুপের বিপরীতে আমার অবস্থান হওয়ায় ব্যক্তিগত শত্রুতা ভেবে আমার সম্পর্কে যে চরম অসত্য তথ্য সন্নিবেশ করেছেন তা নিম্নোক্ত কারণগুলির বিবেচনায় সন্দেহাতীত ভাবে প্রতীয়মান হবে।

কারণ ঃ ১ ঃ বার্ষিক গোপনীয় অনুবেদন পূরণ সংক্রান্ত নির্দেশিকা অনুযায়ী বিরূপ মন্তব্য করার পূর্বে আমার অনুবেদনকারী অফিসার হিসাবে Xyz জেলার সাবেক চীফ জুডিসিয়াল ম্যাজিস্ট্রেট জনাব Pqr আমার সম্পর্কে সন্নিবেশিত বিরূপ মন্তব্য-এর যে কোন একটি বা সকল বিষয় নিয়ে মৌখিকভাবে আমার সামনে তুলে ধরেন নাই কিংবা লিখিতভাবে আমাকে সতর্ক করেন নাই।

কারণ ঃ ২ ঃ Xyz জেলার চীফ জুডিসিয়াল ম্যাজিস্ট্রেসি এর জন্য বিভিন্ন মালামাল ক্রয় না করে আমার অনুবেদনকারী অফিসার Xyz সাবেক চীফ *জুডিসিয়াল* ম্যাজিস্ট্রেট

জনাব Pqr তার দুর্নীতিপরায়ণ কাজের অংশ হিসাবে সিনিয়র জুডিসিয়াল ম্যাজিস্ট্রেট জনাব Mno কোন প্রকার মিটিং না করে কমিটির চেয়ারম্যান হিসাবে দেখানো ক্রয় সংক্রান্ত কাগজে গত ২৬.০১.২০১০ইং তারিখে আমি সাক্ষর করতে অপারগতা প্রকাশ করলে তিনি ২৭.০১.২০০৯ইং তারিখে পরের দিন ক্রয় কমিটির সদস্য পদ হতে আমাকে বাদ দিয়ে নিজেই ক্রয় কমিটির চেয়ারম্যান হিসাবে নিজেকে রেখে ক্রয় কমিটি গঠন করেন। (Annexure- A and B)

কারণ ঃ ৩ ঃ অনুবেদনকারী অফিসার হিসাবে সাবেক চীফ জুডিসিয়াল ম্যাজিস্ট্রেট জনাব চয়ৎ তার অধীনে চাকুরীকালীন সময়ে ফৌজদারী মিসকেস ০১/২০০৯ ও দ্রুত জি.আর ০৯/২০০৯ নম্বর মামলা দুইটিতে দুইবার যেভাবে ও যে কারণে আমার নিকট হতে ব্যাখ্যা চেয়েছিলেন সেই ব্যাখ্যা দুইটিই সন্দেহাতীতভাবে প্রকাশ করে যে তিনি-আমার প্রতি কতটা প্রতিহিংসাপরায়ণ ছিলেন জন্য বিনা কারণে ব্যাখ্যা চেয়েছিলেন এবং সেই ব্যাখ্যা দুইটি না পেয়ে আমার কোন ভুল ধরতে না পেরে পরবর্তীতে আর কোন প্রকার পদক্ষেপ নেননি। (Annexure- C and D)

কারণ ঃ ৪ ঃ আমার অনুবেদনকারী অফিসার হিসাবে সাবেক চীফ জুডিসিয়াল ম্যাজিস্ট্রেট জনাব চয়ৎ যে বাংলাদেশ বিচার বিভাগের একজন দুর্নীতি পরায়ন কর্মকর্তা হিসাবে অভিযুক্ত হয়েছিলেন তার প্রমাণ হলো তারই বিরুদ্ধে রুজুকৃত ০৮/২০০৯ নম্বর বিভাগীয় মোকদ্দমা যা অনপ জেলার মাননীয় জেলা ও দায়রা জজ জনাব Cba তদন্ত করেছিলেন। (Annexure- E)

কারণঃ ৫ ঃ আমি গত ০৫.০২.২০০৯ইং তারিখে আমার অনুবেদনকারী ও নিয়ন্ত্রণকারী অফিসার হিসাবে গাইবান্ধা জেলার সাবেক চীফ জুডিসিয়াল ম্যাজিস্ট্রেট জনাব চয়ৎ-এর মাধ্যম ব্যতীত ফৌজদারী মিসকেস ০১/২০০৯ মামলায় পলাতক আসামী কর্তৃক জামিন না নিয়ে সরাসরি ফৌজদারী কার্যবিধির ৫২৮ ধারা ইনভৌক করতে পারে কি না এই বিষয়ের আইনগত বিষয়ে দিক নির্দেশনার জন্য ফৌজদারী কার্যবিধি-এর ৫২৬(৩) ধারার অধীনে মহামান্য সুপ্রীম কোর্ট অব বাংলাদেশ-এর হাইকোর্ট বিভাগের নিকট মাননীয় রেজিষ্ট্রার-এর বরাবরে আবেদন করেছিলাম যার ফলে তিনি (আমার উপরোক্ত অনুবেদনকারী অফিসার) আমার প্রতি ক্ষুব্ধ হয়েছিলেন। (Annexure- "F Series")

কারণ ঃ ৬ ঃ আমার সাক্ষ্য পর্যালোচনা ও রায় লিখন সম্পর্কে আমার অনুবেদনকারী অফিসার হিসাবে Xyz জেলার সাবেক চীফ জুডিসিয়াল ম্যাজিস্ট্রেট জনাব Pqr কর্তৃক আনীত বিরূপ মন্তব্য ও বাস্তবতা উপলব্ধির জন্য আমার দুইটি মামলার রায় এখানে Annexure-এ and ঐ হিসাবে সংযুক্ত করিলাম।

অতএব, উপরোক্ত কারণে আমার গত ২২.০৫.২০০৮ইং হতে ৩১.১২.২০০৮ইং পর্যন্ত সময়ের বার্ষিক গোপনীয় অনুবেদন হতে সংশ্লিষ্ট সকল বিরূপ মন্তব্যের সমর্থনে

প্রমাণ উপস্থাপনের জন্য প্রয়োজনীয় ব্যবস্থা গ্রহণ করতে কিংবা সংশ্লিষ্ট সকল বিরূপ মন্তব্য কর্তন করতে আপনার মহানুভবতার মর্জি হয়।

বিনীত-
Judge Rad
সিনিয়র জুডিসিয়াল ম্যাজিস্ট্রেট

Author: What was the position of your second adverse remarks and consequence?

Judge Rad: Very unfortunate**.**

Author: Why is very unfortunate**?**

Judge Rad: The same person gave two adverse remarks against me and one adverse remark which was about 22 points was set aside and another adverse remark containing only 13 points was not set aside or cut. Moreover, rule 420(5) of CrRO-2009 deals with the necessity of calling for the data as to the adverse remark from the concerned Chief Judicial Magistrate by the High Court Division of the Supreme Court of Bangladesh in the form of Genneral Administration Committee but no data was called for by the said Court before disposing of the application for cutting or setting aside the second adverse remark. The said rule was made by the Supreme Court of Bangladesh under the authority of article 107 of the Constitution of the People's Republic of Bangladesh. The rule maker has appeared the rule breaker which is definitely very unfortunate and this indicates that a Judge is not getting justice from the apex Court. I do find the satisfaction that the Almighty Allah will do justice in the last judgment day because of his iota observation and justification.

Author: What was your second representation?

Judge Rad: The following was my second representation-

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
সিনিয়র জুডিসিয়াল ম্যাজিস্ট্রেটের কার্যালয়

স্মারক নম্বরঃ তারিখঃ .....

বরাবর
মাননীয় রেজিষ্টার
হাইকোর্ট বিভাগ
বাংলাদেশ সুপ্রীম কোর্ট
ঢাকা।

মাধ্যমঃ মাননীয় চীফ জুডিসিয়াল ম্যাজিস্ট্রেট।
বিষয়ঃ গত ২৬.১০.২০১০ইং তারিখের ২১৭৭৭ অ নম্বর স্মারক মূলে গত ০১.১১.২০১০ইং তারিখে প্রাপ্ত "Extract" এর Representation প্রসংগে।

মহোদয়,

যথাবিহীত সম্মান প্রদর্শন পূর্বক নিবেদন গত ২৬.১০.২০১০ইং তারিখের ২১৭৭৭ অ নম্বর স্মারক মূলে গত ০১.১১.২০১০ইং তারিখে প্রাপ্ত "Extract" এর Representation হিসাবে আমার সবিনয় বক্তব্য এই যে,

১. আমি নিম্ন স্বাক্ষরকারী বিগত ২২.০৫.২০০৮ইং তারিখে জুডিসিয়াল ম্যাজিস্ট্রেট হিসাবে Xyz চীফ জুডিসিয়াল ম্যাজিস্ট্রেট আদালতে যোগদান করি। (Annexure-A) বিগত ২২.০৫.২০০৮ হতে ২৫.১১.২০০৯ইং তারিখ পর্যন্ত মহোদয়ের অধীনে কর্মরত ছিলাম এবং উক্ত ২৫.১১.২০০৯ইং তারিখে মহোদয় আপনার দায়িত্বভার আমার উপর অর্পণ করেন। (Annexure-B) উক্ত সময়ের মধ্যে বিগত ০১.০১.২০০৯ থেকে ২০.০৭.২০০৯ইং পর্যন্ত সময়ের বার্ষিক গোপনীয় অনুবেদনে মহোদয় আমার সম্পর্কে ১৪টি কলামে বিরুপ মন্তব্য করেছেন। (Annexure- C)

২. উল্লেখিত বার্ষিক গোপনীয় অনুবেদন আমার জীবনের প্রথম অনুবেদন। উল্লেখিত ০৭ মাস ৯ দিন সময়ের মধ্যে ২২.০৫.২০০৮ইং তারিখ হতে ০৭ (সাত) কর্মদিবস জুডিসিয়াল ম্যাজিস্ট্রেট, শিক্ষানবিশ হিসাবে সন্তোষজনকভাবে প্রশিক্ষণ শেষ করতে পারায় মহোদয় আমাকে ১২ দিন পর বিগত ০৩.০৬.২০০৮ইং তারিখ হতে বিচার কাজ শুরু করার জন্য গত ০২.০৬.২০০৮ইং তারিখে ২৭২ (৫) স্বারক মূলে আদেশ প্রদান করেন। (Annexure-D) তারপর উলেখিত ০৭ মাস ০৯ দিন সময়ের মধ্যে জুডিসিয়াল অ্যাডমিনিসট্রেশন ট্রেইনিং ইনিস্টিটিউট এ বিগত ০৯.০৮.২০০৮ হতে ২৮.০৮.২০০৮ইং তারিখ পর্যন্ত ২২ দিন ধরে ৮১ তম বেসিক ট্রেনিক কোর্স সফল ভাবে সম্পন্ন করি। (Annexure- E)

৩. আমি ঢাকা বিশ্ববিদ্যালয়ের আইন বিভাগ হতে এল.এল.বি (অনার্স) ও এল.এল.এম দ্বিতীয় শ্রেণীতে সফলভাবে উত্তীর্ণ হই এবং একই বিশ্ববিদ্যালয়ের লোকপ্রশাসন বিভাগ হতে এম ফিল প্রথম বর্ষ সফলভাবে উত্তীর্ন হই ও দ্বিতীয় বর্ষে ভর্তি হয়ে সময়ের অভাবে তা সমাপ্ত করতে না পেরে আমি আমার বর্তমান চাকরিতে যোগদান করি। (Annexure-F Series) উক্ত চাকুরীকালীন সময়েই জুডিসিয়াল অ্যাডমিনিসট্রেশন ট্রেইনিং ইনিস্টিটিউট হতে ৮১তম বেসিক কোর্সে যোগদান করে শতকরা ৬০ ভাগের উপর নম্বর পেয়ে Good ফলাফল অর্জন করি। (Annexure-G)। চাকুরিতে যোগদানের পূর্বেই আইনের বিভিন্ন বিষয় নিয়ে আমার ৬ (ছয়)টি পুস্তক প্রকাশিত হয়েছে। ইহা ছাড়াও আমি বাংলাদেশ সুপ্রীম কোর্টের হাইকোট বিভাগে এনরোলড হয়ে আইন পেশায় নিয়োজিত ছিলাম (Annexure-H) উল্লেখ্য আমি চাকুরিতে যোগদান করে ইতোমধ্যে বিভাগীয় পরীক্ষায় প্রথম ও দ্বিতীয় সুযোগে অংশ গ্রহণ করে কোন বিষয়ে ফেল না করে সকল বিষয় বা পত্র সফলভাক্ষে উত্তীর্ন হয়েছি। (Annexure-I and J)।

৪. বার্ষিক গোপনীয় অনুবেদন পূরণ সংক্রান্ত নির্দেশিকা অনুযায়ী বিরুপ মন্তব্য করার পূর্বে আমার অনুবেদনকারী অফিসার হিসাবে Xyz জেলার চীফ জুডিসিয়াল ম্যাজিস্ট্রেট জনাব অনপ (অবঃ) মহোদয় আমার সম্পর্কে সন্নিবেশিত বিরুপ মন্তব্য এর যে কোন একটি বা সকল বিষয় নিয়ে মৌখিকভাবে আমার সামনে তুলে ধরেন নাই কিংবা লিখিতভাবে আমাকে সতর্ক করেন নাই।

৫. অনুবেদনকারী অফিসার হিসাবে চীফ জুডিসিয়াল ম্যাজিস্ট্রেট জনাব অনপ (অবঃ) মহোদয়ের অধীনে চাকুরীকালীন সময়ে ফৌজদারী মিসকেস ০১/২০০৯ ও দ্রুত জি আর ০৯/২০০৯ নম্বর মামলা দুইটিতে দুইবার যেভাবে ও যে কারণে আমার নিকট হতে শোকজ ও ব্যাখ্যা চেয়েছিলেন তাহা ও সেই দর্শানো কারণ এবং ব্যাখ্যা দুইটিই সন্দেহাতীতভাবে প্রকাশ করে যে মহোদয় আমার প্রতি কতটা প্রতিহিংসাপরায়ণ ছিলেন। মহোদয় সেই দর্শানো কারণ ও ব্যাখা পেয়ে আমার কোন ভুল ধরতে না পেরে পরবর্তীতে আর কোন প্রকার পদক্ষেপ নেন নাই। (Annexure-'K' and 'K-1' 'L' and 'L-1')

৬. আমি গত ০৫.০২.২০০৯ইং তারিখে আমার অনুবেদনকারী ও নিয়ন্ত্রণকারী অফিসার হিসাবে Xyz জেলার চীফ জুডিসিয়াল ম্যাজিস্ট্রেট জনাব অনপ (অবঃ) মহোদয়ের মাধ্যম ব্যতীত ফৌজদারী মিসকেস ০১/২০০৯ মামলায় পলাতক আসামী কর্তৃক জামিন না নিয়ে সরাসরি ফৌজদারী কার্যবিধির ৫২৮ ধারা ইনভৌক করতে পারে কি না এই বিষয়ের আইনগত বিষয়ে দিক নির্দেশনার জন্য ফৌজদারী কার্যবিধি এর ৫২৬(৩) ধারার অধীনে সরল বিশ্বাসে মহামান্য সুপ্রীম কোর্ট অব বাংলাদেশ-এর হাইকোর্ট বিভাগের নিকট মাননীয় রেজিষ্ট্রার এর বরাবরে আবেদন করেছিলাম যার ফলে মহোদয় (আমার উপরোক্ত অনুবেদনকারী অফিসার) আমার প্রতি ক্ষুব্ধ হয়েছিলেন। (Annexure- "M Series") কারণ উক্ত পলাতক আসামী আমার

আদালতে বিচারাধীন মামলা হতে জ্যামিন না নিয়ে মহোদয়ের আদালতে ফৌজদারী কার্যবিধীর ৫২৮ ধারা ইনভোক করেছিলেন এবং সেই পলাতক আসামী ছিলেন একজন এস আই যিনি ইচ্ছাকৃতভাবে আদালতের রায়কে অবজ্ঞা ও লঙ্ঘন করে আদালতের প্রতিই মূলতঃ অবজ্ঞা প্রদর্শন করেছিলেন। মহোদয় আমার উক্ত বার্ষিক গোপনীয় অনুবেদনে উল্লেখ করেছেন "কর্তৃপক্ষের বিরুদ্ধে লেখেন যাহা গুরুত্বর অসদাচারণ" অর্থাৎ আমি কর্তৃপক্ষের বিরুদ্ধে লিখেছি। কিন্তু তা নয়, কেননা আমি সরল বিশ্বাসে শুধুমাত্র মহোদয়ের মাধ্যম ব্যতীত বাংলাদেশ সুপ্রীম কোর্ট এর হাইকোট বিভাগের নিকট, একজন পলাতক আসামী জামিন না নিয়ে ফৌজদারী কার্যবিধীর ৫২৮ ধারা ইনভৌক করতে পারে কি না সেই বিষয়ে দিক নির্দেশনার জন্য আবেদন করেছিলাম। আর ইহাই আমার উপর মহোদয়ের ক্ষুব্ধতার প্রধান কারণ।

৭. এমতাবস্থা চলাকালীন আমি তারপর বার্ষিক গোপনীয় অনুবেদন ফরম পূরণ করে জমা দিলে মহোদয় ক্ষুব্ধ চিত্তে কখনই প্রমাণ করতে পারবেন না জেনেও আমার উপরোক্ত সময়ের অনুবেদনের ১৪টি কলামে যে সকল বিরুপ মন্তব্য করেছেন তাহা আমার প্রকৃত অবস্থার পরিচায়ক নহে। অধিকন্তু আমি জ্ঞাত আয় সীমার মধ্যে বাস করে নিষ্ঠার সাথে বিচারিক কার্য পরিচালনা করে যাচ্ছি।

৮. আমার সাক্ষ্য পর্যালোচনা ও রায় লিখন সম্পর্কে আমার অনুবেদনকারী অফিসার হিসাবে Xyz জেলার চীফ জুডিসিয়াল ম্যাজিস্ট্রেট জনাব অনপ (অবঃ) মহোদয় কর্তৃক আনীত বিরুপ মন্তব্য ও বাস্তবতা উপলব্ধির জন্য আমার দুইটি মামলার রায় এখানে Annexure- ঘ and ঙ হিসাবে সংযুক্ত করিলাম।

অতএব, উপরোক্ত কারণে আমার গত ০১.০১.২০০৯ইং হতে ২০.০৭.২০০৯ইং পর্যন্ত সময়ের বার্ষিক গোপনীয় অনুবেদন হতে সংশ্লিষ্ট সকল বিরুপ মন্তব্য কর্তন করতে মহোদয়ের মহানুভবতার মর্জি হয়।

বিনীত-
Judge Rad
সিনিয়র জুডিসিয়াল ম্যাজিস্ট্রেট

Author: What is your opinion regarding the service in the judiciary?

Judge Rad: One should do his service independently in the judiciary in thinking a position of a headmaster of a school whose appointing position is generally fixed and by thinking this, he can get more satisfaction.

Author: Have you brought any application before the Administrative Tribunal concerned?

Judge Rad: Yes

Author: Can you give the copy of the said application?

Judge Rad: Yes, here is the copy mentioned below:

BEFORE THE ADMINISTRATIVE TRIBUNAL, BOGRA

Administrative Tribunal Case Noumber of 2011

IN THE MATTER OF:

An application under section 4(2) of the Administrative Tribunals Act, 1980

AND

IN THE MATTER OF:

Rad

Senior Judicial Magistrate,

Xyz District.

...Petitioner

-VERSUS-

1.Government of Bangladesh, represented by the Secretary, Ministry of Law, Justice and Parliamentary Affairs, Bangladesh Secretariat, Ramna, Dhaka-1000.

2. The Registrar, High Court Division,

Supreme Court of Bangladesh, Dhaka

3. Md. Abdus Salam, Former Chief Judicial Magistrate, Gaibandha (now retired) at present 68/C, Green Road, Dhaka

…Respondents

-AND-

IN THE MATTER OF

Letter dated 26.05.2011 vide Memo No. 9909 dated 06.06.2011 Communicated by the First Assistant Registrar Mohammad Anisur Rahman, Bangladesh Supreme Court, High Court Division, Dhaka arising out of the Annual Confidential Report of the period from 01.01.2009 to 20.07.2009 the petitioner made and forwarded by Mr. Md. Abdus Salam, Former Chief Judicial Magistrate, Gaibandha

The humble petition of the aforementioned petitioner most respectfully

SHEWETH

1. That the fact of the case of the petitioner in brief is that the petitioner was appointed in Bangladesh Judicial Service as Judicial Magistrate on 22.05.2008 and accordingly he joined and performed his duty in Gaibandha. Due to successful result in the Departmental all examinations and satisfactory performance he was on 22.05.2011 confirmed in his entry post Assistant Judge and thereafter till today he is working as Senior Judicial Magistrate in Gaibandha. Since joining in the service he worked in different units with utmost sincerity to all concerned.

   Attested photocopy of the said confirmation letter dated 22.05.2011 is annexed herewith and marked as **ANNEXURE-'A'**

2. That while the petitioner was serving in his post of Judicial Magistrate in Gaibandha the respondent No. 3(three) made the adverse remarks in 22 points with ill motive and bad intention in the Annual Confidential Report of the period from 22.05.2008 to 31.12.2008 as the petitioner made a report under section 526(3) of the Code of Criminal Procedure of 1898 by which the said respondent No. 3(three) became angry with the present petitioner of this application.

   Attested photocopy of the said adversed remarks based Extract dated 04.04.2010 and that of the said report dated 05.02.2009 are annexed herewith and marked as **ANNEXURE-'B'and 'C'**

3. That thereafter the petitioner in getting the said Extract dated 04.04.2010 within one month forwarded a representation in writing to the Registrar of the Supreme Court of Bangladesh, High Court Division, Dhaka, Bangladesh and after that the Higher Administrative Authority i.e. the General Administration Committee having no business of Judicial Character and being convinced on the said representation totally cut the said adverse remarks of the aforementioned Annual Confidential Report from the period of 22.05.2008 to 31.12.2008

Attested photocopy of the
said letter dated 28.04.2011
is annexed herewith and
marked as **ANNEXURE-'D'**

4. That while the petitioner was serving in his post of Judicial Magistrate in Gaibandha the same respondent No. 3(three) made again the adverse remarks in 14 points with ill motive and bad intention in the Annual Confidential Report of the period from 01.01.2009 to 20.07.2009 and getting an Extract, the said petitioner again forwarded a representation in writing and from the part of the Higher Administrative Authority of this petitioner i.e. the General Administration Committee having no business of Judicial Character, respondent No. 3 through First Assistant Registrar communicated a letter dated 26.05.2011 of not cutting the said adverse remarks of the Annual Confidential Report of the period from 01.01.2009 to 20.07.2009

Attested photocopy of the
said letter dated 26.05.2011
is annexed herewith and
marked as **ANNEXURE-'E'**

5. That in getting the said letter of not cutting the said adverse remarks, the petitioner again made and forwarded an application for review in respect of the decision or action of said Higher Administrative Authority of this petitioner i.e. the General Administration Committee which does not exercise the Judicial Authority of character and the same was received on 10.07.2011 by the personal officer, Registrar Chamber, Bangladesh Supreme Court, Dhaka but after expiry of two months till today no letter has been communicated to this petitioner in respect of the same. The said Higher Administrative Authority of this petitioner i.e. the General Administration Committee which does not exercise the Judicial Authority of character without mentioning any reasons has rejected the said representation of the petitioner.

Being aggrieved by and dissatisfied with the aforesaid decision or action the petitioner being an appointed person in the service of the Republic begs to prefer this application before Honour on the following amongst other.

G R O U N D S

I. For that the Higher Administrative Authority of this petitioner i.e. the General Administration Committee without calling for the data as to adverse remarks and giving an opportunity of hearing to the petitioner, passed the said decision dated 26.05.2011 and having no compliance with the principle of natural justice and Annual Confidential Report Rules the said impugned decision is liable to be set aside.

II. For that adverse remarks giver is the same person and the previous adverse remarks of the Annual Confidential Report of the period from 22.05.2008 to 31.12.2008 was cut by the same Higher Administrative Authority of the petitioner and later adverse remarks of the Annual Confidential Report of the period from 01.01.2009 to 20.07.2009 was not cut without mentioning any reasons at all and as such the impugned decision is liable to be set aside.

III. For that the Rule 420 (5) of Criminal Rules and Orders-2009 and the Annual Confidential Report Rules has not been considered the Higher Administrative Authority of this petitioner i.e. the General Administration Committee and hence the impugned decision is liable to be set aside.

IV. For that the petitioner in getting the impugned decision submitted an application for review the same but after the expiry of at least two months getting no decision, the petitioner in view of the law reported in 52 DLR (AD) 82 Para 27 and 32, is entitled to prefer this application before this Tribunal and as such the petitioner has the authority to have the remedy from this Tribunal.

V. For that the other grounds shall be submitted verbally at the time of hearing of this application.

Wherefore, it is most humbly prayed that your honour would graciously be pleased to admit this application, notify the respondents and after hearing both the parties set aside impugned decision and adverse remarks of the Annual Confidential Report of the period from 01.01.2009 to 20.07.2009 and be further pleased to pass such other order or orders as your honour may deem fit and proper to meet the ends of justice with compensatory cost.

And for this act of kindness, the petitioner as in duty bound shall ever pray.

Verification

That the statements made above are true to the best of my knowledge and belief, I signed it accordingly sitting...

(Md. Azizur Rahman)
Petitioner

Author: What is the remet of the oforcsaid case?
Judge Rad: The remet is of course positive which is mentioned below:

10.4 **Jurisdiction of Administrative Tribunal**

The judges of the sub-ordinate Courts of Bangladesh are not out of the jurisdiction from the jurisdiction of the administrative Tribunal. The question whether the judges of the sub-ordinate judiciary shall be out of the jurisdiction of the administrative Tribunal was raised at the time of hearing the Masdar Hossain Case before the Appellate Division of the Supreme Court of Bangladesh. The question anwered and very correct submiision of the then learned Attorney General of Bangladesh was accepted by the said Division which is reported in 52 DLR (AD) 82 para- 26, 27, 32and 72 i.e. the definition of "the service of the Republic" uses the word 'Government' in a generic sense. Hence on that ground the members of the judicial service can not be excluded from the ambit of "the service of the Republic" and the administrative tribunals are sanctioned by the constitution and in our view, the independence of the subordinate judiciary will in no way be compromised if the members of the judicial service are to seek relief before the administrative tribunal in respect of matters relating to or arising out of their terms and conditions of service, including the matters provided for in Part IX and in respect of the award of penalties or punishments meted out to them.

10.5 **The way of solution for Judicial Independence**

At present, in our subordinate judiciary, the power of purchasing, for example, the registers and necessary papers and etc. belongs to the Chief Judicial Magistrate and District Judge they can form a committee for purchasing the said required things. They can opt which Magistrates Judges shall be members and chairman in the committee. They can direct the committee to purchase the requirements according to their desire; the members are opted generally on the basis of loyalty as there is no legal framework of forming the committee. Besides this, the members are well awakened that if they do not purchase in accordance with the desire of the Chief Judicial Magistarte or District Judge they will be dissatisfied and adverse remarks will be given in their Annual Confidential Report. So many occurrences may be happened here and

hence I do suggest for cancelling the Annual Confidentail Report system in respect of a judge what ever may his level. Although a rule 420(5) of CrRO-2009 has been adopted at least for ensuring the check and balance but the said rule is not complied or exercised. However, for internal independence of the judges in the sub-ordinate judiciary, a lottery system will be perfect in forming any committee members sans the chairman in respect of purchasing the required things. The chairman may be structurised either by the legal framework or by the discretionary power of the Chief Judicial Magistarte and there must have the principles of using the the said discretionary power. It may one i.e. the chairman must be opted from the senior judges and whenever, there will be more judges, and again the lottery system among them only will be exercised. If it is not done, the indepence of judges in the sub-ordinate judiciary will never see the light of independence and the government can, in appointing the qualityless judges as has been said by Mahmudul Islam in the preface of his book the law of civil procedure vol. 1 page iii, control the other sub-ordinate Judges and Magistartes in a District. The same thing is applicable in respect of the Chief Metropolitan Magistracy and Judgeship of any District. For getting the relief from the result or consequence of the scope of abuse of the discretionary power, lottery system to my mind, will be perfect solution giver.

Chapter– 11

Some questions and answers:

Here some questions and answers are given in dialectical method among Judicial Magistrates Mr Moniruzzaman, Mr. Ariful Islam and the author of this book:

Moniruzzanman: Guru:

1. Whether the Statement of a witness recorded u/s. 161 of CrPC in one particular crime could be used against that witness in any other trial enquiry or proceedings by the accused.
2. Whether the learned Sessions Judge can call for the police diaries of a case which is not under inquiry or trial before him and permit it to be used by the accused for contradicting a witness examined in another case under trial before him.
3. Whether Section 162 of the CrPC. permit the use of statement recorded under Section 161 of CrPC. in any other proceeding other than the inquiry or trial in respect of the offence for which the investigation was conducted.

Author: The language of Section 91 is much wider than the language of Section 172 and by no stretch of imagination it could be contended that the case diary maintained under Section 172 of the Code is not a document as contemplated under Section 91(1) of the Code. If that be so and if the court comes to the conclusion that the production of such document is necessary or desirable then, in our opinion, the court is entitled to summon the case diary of another case under Section 91 of the Code de hors the provisions of Section 172 of the Code for the purpose of using the statements made in the said diary, for contradicting a witness. When a case diary, as stated above, is summoned under Section 91(1) of the Code then the restrictions imposed under sub-sections (2) and (3) of Section 172 would not apply to the use of such case diary but we hasten to add that while using a previous statement recorded in the said case diary, the court should bear in mind the restrictions imposed under Section 162 of the Code and Section 145 of the Evidence Act because what is sought to be used from the case dairy so produced, are the previous statements recorded under Section 161 of the Code. [*Ref. State of Kerala vs Babu& Ors on 4 May, 1999: see also: http://indiankanoon.org /doc/1435252/]*

Ariful Islam:

Brother, what is the periphery of using the case diary?

Author: Only section 172 of the code of criminal procedure is the periphery of using the case diary i.e. Section 172 of the Code of Criminal Procedure does not give a criminal court an unfettered right to make such use of a case diary. Sub-clause (2) of Section 172 says that any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial. [*Ref. State vs Fateh Bahadur and Ors. on 18 April, 1957: AIR 1958 All 1, 1958 CriLJ 1*]

Moniruzzanman: Guru: Is there any basic distinction between informant and complainant?

Author: Basically there is no difference *between* informant and complainant in view of sections 154, 170 and 244(2) of the code of criminal procedure and regulations 243 and 244 of police regulations 1943.

Ariful Islam:

Brother, whether any property (during police investigation) in respect of which any offence is committed, is not produced before Court for physical inspection, whether the Court can pass an order under section 516A of the Code of Criminal Procedure?

Author: Yes, the Court can pass the order as for example, if the property is a building, the video of that building can be shown to the Court and in seeing the same the Court can pass the order in respect of that property. Ref. 21 DLR 807

Moniruzzanman: Guru: What is the scope of section 173(3B) of the Code of Criminal Procedure?

Author: The scope of sub- section 8 of the said section gives power to the Judicial Magistrate to order further investigation, after filing of the report by the police, if there is any further report or reports regarding such further evidence in the form prescribed, which needs further investigation. However, the Hon'ble Supreme Court has categorically ruled in Reeta Nag's case that the Judicial Magistrate is not empowered to suo moto order further investigation under Section 173 (8) CrPC. Similarly, the provision is not applicable to the defacto-complainant to seek further investigation. Under the said provision of law, the Magistrate is empowered to order further investigation only based on the subsequent report of the Investigating Office, in other words, the officer in-charge of the police station, collecting further evidence, either oral or

document shall forward the same to the concerned Magistrate, by way of additional report and if the Magistrate is satisfied that further investigation is needed, based on such report, he can order for further investigation, to meet the ends of justice. [*Ref. A.Mohan vs State Rep. By on 22 December, 2011;Madras High Court, see: http://indiankanoon. org / doc /199675194/*]

Ariful Islam:

Brother, when an accused shall be discharged or a charge can be quashed?

Author: According to section 241A of the Code of Criminal Procedure if the Magistrate, upon consideration of record of the case and documents submitted therewith and making such examination, if any, of the accused as the Magistarte thinks necessary and after giving the prosecution and the accused an opportunity of being heard considers the cgarge be groundless, he shall discharge the accused and record his reasons for so doing. Again in accordance with the provision of section 242 of the said Code, if, after such consideration and hearing as aforesaid, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence, the Magistrate shall frame a formal charge] relating to the offence of which he is accused. In *State of Madhya Pradesh v. S.B.Johari and Others [(2000) 2* ***SCC 57***] it was held that the charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted, cannot show that the accused committed the particular offence. In that case, there would be no sufficient ground for proceeding with the trial.

Moniruzzanman: Guru: What next after the independence of judiciary?

Author: People generally may think that the separation of judiciary from the executive organ of the state has been done and theer is no necessity of anythings but this is not correct as after the independence of judiciary we need to think that every court should have a separate budget and the tenure of cognizance power and trial power should be fixed for the fixed time either by lottery or on the basis of seniority and capacity. The ACR system should be abolished and the promotion should be on the basis of only written examination as under article 94(4) and 116A of the constitution of the People's Republic of Bangladesh there is no difference between the apex and sub-ordinate judiciary independence law.

Chapter– 12

Some Useful Model Orders:

01 **Model Order for disposal of the property of vehicle during the investigation:**

DISTRICT: GAIBANDHA

IN THE 2nd COURT OF SENIOR JUDICAL MAGISTRATE, GAIBANDHA
Present: Md. Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing order: - 27.05.2012
General Register Case Number 38 of 2012
Under sections 379/380 of the of Penal Code
The State …Prosecution
-Versus-
No person's name is mentioned …Unknown accused

Order Number…

…ধার্য্য তারিখে নথি উপস্থাপন করা হলো। অত্র মামলার জব্দকৃত ট্রাক, যাহার নং-ঢাকা মেট্রো-ট-১৪৮৮৪২১-এর মালিক ১) IFLC ব্যাংক-এর কাগজপত্র, BRTA, NITOL MOTORS LIMITED/TATA দাখিল করিয়াছেন। Seen the aforementioned note and heard the learned advocate on behalf of the applicant and Court sub-inspector on behalf of the State and after perusal of the record and the submitted documents, particularly, the letter of authority dated 07/05/2012 of IFIC BANK LTD and that of NITOL MOTORS LIMITED, dated 24.05.2012 where it has been written that Mr. Md. Jobed Ali Akonda (as addressed therein) is authorized to deal with any lawful act and there is the entitlement of the property seized in this case subject to approval of the aforesaid two companies.

In view of the aforesaid reasons and the procedural direction of the High Court Division of the Supreme Court of Bangladesh declared in Criminal Revision No. 510 of 2011 arising out General Register (GR) Case No. 286 of 2012 (Sadullapur) corresponding to Criminal Miscelleneous Case No. 809 of 2010 of Sessions Court of Gaibandha, the officer-in-charge of Fulchori Police station is directed to handover the alleged and seized property i.e vehicle Dhaka Metro-TA-14-8421 and the chasis and Engine No. which are mentioned in the letter of authorization dated 24.05.2012 of NITOL MOTORS LIMTED on

receiving either the bank guarantee of taka five lacs or any Government Promissory note of the same amount and to submit the same along with a report of delivery within three working days from the date of receving the aforesaid bank guarantee or Government Promissory note.

Let a copy of this order be communicated to the officer-in-charge of Fulchori Police station and Court Inspector of Gaibandha. The office is directed accordingly.

Name…
Senior Judicial Magistrate Court 2nd
Gaibandha

02. Model Order for an arrestee without grounds

DISTRICT: GAIBANDHA

IN THE 2nd COURT OF SENIOR JUDICAL MAGISTRATE, GAIBANDHA
Present: - Md. Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing order: - 01.04.2012
General Register Case Number 344 of 2012
Under sections 379/380 of the of Penal Code
The State …Prosecution
-Versus-
No person's name is mentioned …Unknown accused

Order Number...

Seen the aforementioned note and heard the learned advocate Mr. Nironjan Kumar Ghose and no CSI is present. After perusal of this record, it appears to this court that the record of this case does not contain the case diary containing the facts and circumstances got through the investigation within and beyond twenty four hours without which this Court is not in a position to determine the grounds of authorizing the detention of the accused in jail custody. The first information and the 2nd column of the first information report do not contain the name of this arrested person. The alleged offence does not provide the punishment of either death sentence or life imprisonment. Moreover, the learned legal practitioners Mr. NironjanKumar Ghose appearing on behalf of this arrested person submits that the investigation officer of this case without informing and mentioning the grounds and violating the fundamental right of this arrestee under article-33 of our Constitution, has forwarded mechanically the said arrested person before this Court. There is no chance of being absconder as the arrestee is a reputed farmer of this District and permanent citizen of this state.

In view of the aforementioned reasons, the application for bail of this arrested person is allowed subject to furnishing a bond of TK 500/- (five hundred) only with two sureties of when one must be the engaged legal practitioner for a period of two weeks from today. Mean while the investigation officer of this case is directed under the authority of regulation No 21. of Police regulation- 1943 and the supervisory authority according to the law declared in the case of *Serajuddowla v.Abdul Kader reported in 45 DLR (AD) 101*, to submit the copy of the case diary within two seeks containing the facts and circumstances of this case got through the investigation within twenty four hours and later on and failing which the arrested person's interim bail shall be extended

and the liability of non-compliance with the order of this Court shall be incurred accordingly.

Let a copy of this order be communicated to the District Superintendent of police of Gaibandha and the investigation officer of this case through the officer in- charge of the police station immediately by a special messenger for taking steps.

Name…
Senior Judicial Magistrate Court 2nd
Gaibandha

03. Model Order for recording the confession of an accused.

DISTRICT: GAIBANDHA
IN THE 2nd COURT OF SENIOR JUDICAL MAGISTRATE, GAIBANDHA
Present: Md. Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing order: - 17.05.2012
General Register Case Number 38 of 2012
Under sections 9(1) Nari o Shishu Nirjatan Daman Ain 2000 and sections 313/109 of the of Penal Code
The State …Prosecution
-Versus-
No person's name is mentioned …Unknown accused

Order Number...

…অদ্য মামলার তদন্তকারী অফিসার মামলার এজাহার নামীয় আসামী (১) মোছাঃ কুলসুম বেগম স্বামী মোঃ আবুল কাশেম, সাং মুন্সিপাড়পাড়া (উত্তর বানিয়ার জান) এবং মামলার ঘটনার সহিত জড়িত (তদন্তে প্রাপ্ত) আসামী (২) মোছাঃ মর্জিনা স্বামী আমিরুল ইসলাম সাং খাঁপাড়া মাতৃসদন রোড়, উভয় থানাও জেলা গাইবান্ধা দ্বয়কে গ্রেফতার করিয়া চালান ফরোয়াডিংসহ পুলিশ স্কটের মাধ্যমে বিজ্ঞ আদালতে সোপর্দ করিয়াছেন এবং মামলার সুষ্ঠু তদন্তের স্বার্থে গ্রেফতারকৃত আসামী কুলসুম এর কোড অব প্রসিডিওর ১৬১ ধারার জবানবন্দিসহ আসামী মোছাঃ কুলসুম বেগম-এর কোড অব প্রসিডিওর ১৬৪ ধারার জবানবন্দি লিপিবদ্ধের জন্য আবেদন দাখিল করিয়াছেন। Seen the aforementioned note and two arrested persons (woman) and after perusal of this record it appears clearly to this court that the investigating officer of this case has not complied with regulation 283 of Police Regulation 1943 with out which this court finds no reason of recording judicially the confession of the aforesaid two arrestee.

In view of the abovementioned vital reason and the facts and circumstances of this case, the investigating officer of this case is directed to comply with regulation No 283 of Police Regulation 1943 and submit a verification report accordingly within 07 days. Keep the application dated 17.05.2012 with this record for passing order subject to having the said verification report within orbit of the aforementioned regulation.

For the non compliance with the said regulation 283, within the above noted time, the application dated 17.05.2012 submitted by the investigating officer of this case, shall stand cancelled.

Let a copy of this order be communicated to the District superintendent of Police of Gaibandha and the investigating officer at once for necessary steps.

Send the two arrestees meanwhile to the jail hajat as there is over acts against them. Next date 23.05.2012 and the office is directed accordingly.

Name…
Senior Judicial Magistrate Court 2nd
Gaibandha

04. Model Order for getting report as to earlier issued arrest warrant.

DISTRICT: GAIBANDHA
IN THE 2nd COURT OF SENIOR JUDICAL MAGISTRATE, GAIBANDHA
Present: - Md. Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing order: - 17.03.2012
General Register Case Number 318 of 2012
Under sections 302/34 of the of Penal Code
The State …Prosecution
-Versus-
No person's name is mentioned …Unknown accused

Order Number…

Seen the aforementioned note and after perusal of the record it appears to this court that the arrests warrant (WA) was issued by the order being No... Dated...Vide memo No...Dated... But unfortunately till today the aforesaid issued arrest warrant has not been either executed or returned to this court. In accordance with Regulation No. 315 (b) of Police Regulations 1943, at the time of receiving the said arrest warrant you holding the office of the officer in charge of police station were informed from the date mentioned in the said arrest warrant on which day the arrest warrant shall be returned in respect of the execution of the same under regulation 323(C) of PR-143, an arrest warrant report should be submitted before this court. Moreover, Rule 65 of the Criminal Rules and Orders (Practice and Procedure of Sub-ordinate Court.), 2009 Provides that:

1. All process sent to the police for service of execution shall be served or executed within the time fixed by the Court and if for any reasons, the same is not possible, the process should be returned to the Court with short notes stating the cause for delay before the date fixed so that those can be re-issued fixing new dates.

2. In no case, the police should retain a process without service or execution beyond the date fixed without informing the Court of the reason for non service or non –execution of the process concerned.

3. The Superintendent of police or the Commissioner of police, as the case may be, shall make necessary arrangements so that process sent to the police for service or execution are served or executed with utmost expedition and may for this purpose make an order for special arrangement for serving and execution processes in each police station".

In view of the aforementioned reasons, the officer in charge of... Police Station... is directed for the execution or submit a report under regulation 323 of PR 1943 as to the issued arrest warrant on or before the next date and hence let a copy of this order be sent to the officer in charge of... Police station...by Guarantted Express Post (GEP) with registered acknowledgement due (AD) and next date... is fixed for getting report as to the earlier issued arrest warrant. The office is directed accordingly.

Name…
Senior Judicial Magistrate Court 2nd
Gaibandha

05. Model Order for getting sanction for Union Chairman

DISTRICT: GAIBANDHA
IN THE COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing Order: 23rd *September, 2010*
General Register Case *Number 660 of 2004*
Arising out of: Sundergonj Police Station Case Number: 16 dated 19.09.2004
The State ... Prosecution
-Versus-
Zakir Hosen and others ... Accused
Under section: 147, 448, 323, 354, 427 506 and 506 of the Penal Code

Order No. 47
…

Seen the aforementioned note and though today was fixed for the pronouncement of the judgment but after perusal of the entire recorded evidence it appears to this court that the accused Zakir Hossain at the time of committing the alleged transgression was the Chairman of Sonaroy Union Parishad, Sundergonj, Gaibandha.

It also appears to this court that neither the First Information (FI) in writing dated 09.08.2004 nor the police report dated 29.11.2010 contained the intelligence as to the working position of the accused Zakir Hossain and accordingly no sanction was sought before the time of taking cognisance under section 190 (1) (b) of the code of criminal procedure of 1898. Again at the time of considering the charges mentioned in the police report dated 29.11.2004 under section 241A of the code of criminal procedure no step of seeking sanction was taken neither on the basis of the concerned learned legal practitioner nor in making examination of the accused under section 241A of the said code. However, at the time of performing the duty of this court in respect of reviewing the entire evidence of this case including the statements in wring dated 25.08.2010 and its supported submitted documents, it further appears to this court that the facts of the allegation as well as the statements of the accused Zakir Hossain indicates or relates to the periphery of " purporting to act in the discharge of his official duty" under section 197 of the code of criminal procedure to the extent of the facts of the complaint dated 26.07.2004 submitted by Most. Hasina Khatun as it appears from the same, in the case record of Sonaroy Union Parishad Case Number 16 of 2004.

In view of the aforementioned reasons and the law reported in 12 DLR (SC) 103 Para 9 and 10, this court is of the opinion to seek the

sanction from the sanction according authority and hence as per Criminal Amendment (sanction for prosecution) Rules, 1977 derived under section 12 of the Criminal Law Amendment Act 1958 (XL of 1958) [SRO- 253- Ain/92], let a copy of this order along with the photocopy of the First Information (FI) in writing dated 09.08.2004 and the statements in writing dated 25.08.2010 of the accused Zakir Hossain be communicated to the Divisional Committee through Commissioner, Rajshahi Division Office, Rajshahi, Bangladesh Guaranteed Express Post (GEP) so that the said committe can inform duly this court as to the matter sanction (whether it is given or not) on or before the next date 7th October 2010 and failing which sans informing the reasonable cause it shall be deemed to be accorded. The office is directed accordingly.

06. Model Order for granting bail under section 86 of the code of criminal procedure:

DISTRICT: GAIBANDHA
IN THE COURT OF ACTING CHIEF JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md. Azizur Rahman, Acting Chief Judicial Magistrate, Gaibandha
Date of passing order…
General Register Case Number…
Arising out of…
Under sections…
The State ... Prosecution
-Versus-
...Accused

Order No...

Seen the aforementioned note and heard the learned advocate on behalf of the accused in respect of interim bail. The learned advocate appearing on behalf of the accused submits that they have been falsely implicated in this case and they are willing to appear within short times before the arrest warrant issuing Court. Moreover, they are not involved with the transgression of death sentence or life imprisonment. Section 86 of the Code of Criminal procedure empowers this Court to grant an interim bail and in view of aforementioned reasons the accused is enlarged on an interim bail subject to furnishing a bond of Tk, 20,000.00 where one surety shall be the President/Secretary/engaged of this Bar.

Furnish the same immediately. The accused are also directed to appear within one week from this date before the concerned Court of learned Chief Metropolitan Magistrate Dhaka.

The office is directed also to send the bond furnished duly along with other papers to the aforesaid Court immediately. Next date… is fixed for having the information in respect of the compliance with the direction of this Court. The office is allowed to keep a photocopy of this order along with other papers of this sub record for the same**.**

07. Model Order for contempt under section 485 of the code of criminal procedure:

DISTRICT: GAIBANDHA

IN THE COURT OF SENIOR JUDICAL MAGISTRATE, GAIBANDHA

Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Criminal Miscellaneous Case No. 15 of 2010
Offence of *suo moto* cgnizance
Date of knowledge: 30th December, 2009
Arising out of: General Register Case Number 442 of 2010
Gobindagonj Police Station case number 01 dated 01.08.2010
The State ...Prosecution

-Versus-

Mithu Miah,

V Aid Road, Gaibandha ...accused

...In pursuant to the facts mentioned in the complaint of suo moto cognisance dated 30.12.2010 the aforesaid accused being responsible under section 485 of the code of criminal procedure to submit the injury certificate which is popularly known as Medical Certificate (MC) or injury certificate in respect of the order dated... which was communicated to and received by... of your office on... at... You the director Mr. xyz was directed to submit the injury certificate within... but you have not submitted the said required injury certificate and in not giving the same have declined to submit said injury certificate. This decline to not submit the injury certificate is in fact nothing but the refusal of producing or submitting the injury certificate and hence Director Xyz of... Hospital is directed to explain in writing as to why the proceeding and action under section 485 of CrPC shall not be taken against you on the next date... Next date... is fixed for submitting the explanation.

Next text of order of passing sentence

After perusal of the facts mentioned in the complaint of suo moto cognisance dated 30.12.2010 and the explanation in writing dated... it appears to this court that the aforesaid accused has declined to submit the injury certificate knowingly and deliberately. The steps for getting the injury certificate which were taken earlier are...

In view of the facts and reasons of non compliance with the order of this court dated... and the law reported in 19 DLR (SC) 198 there are

sufficient grounds to impose the sentence of simple imprisonment and hence three days simple imprisonment is announced against the accused. Issue a warrant of commitment and send the accused to jail. The office is directed accordingly.

Name…
Senior Judicial Magistrate Court 2nd
Gaibandha

08. Model Order for issuance of levy warrant under section 386 of the code of criminal procedure:

DISTRICT: GAIBANDHA
IN THE COURT OF ACTING CHIEF JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md. Azizur Rahman, Acting Chief Judicial Magistrate, Gaibandha
Date of passing order…
Miscelleneous Case Number…
Arising out of…
Under section 7(A) of the Telegraph Act 1885
Firoz al hossain ...Applicant
-Versus-
…defaulter

Order No...

দাখিলকৃত ফাইলিংটি Entry করা হইল। ফরিয়াদী ফিরোজ আল হোসাইন... -এর বিরুদ্ধে Telegraph Act ১৮৮৫ এর ৭(অ) ধারার অধীন বকেয়া বিল... টাকা আদায়ের জন্য নালিশ/আবেদন করিয়াছেন। Seen the aforementioned note and after perusal of the record it appears to this court that the due mentioned in the application dated 18.10.2010 submitted by the telephone authority is realisable under section 386 (1) (a) of the Code of Criminal Procedure and hence issue a warrant to levy a fine by attachment and sale to the officer mentioned in the said warrant to levy the fine who in complying with the same shall deposit the due either in the concerned fund of the telephone authority or before this Court along with a report in writing on or before the next date of 15th April, 2011. Let a copy of this order along with the said issued a warrant to levy a fine. The office is directed accordingly.

Name…
Senior Judicial Magistrate Court 2nd
Gaibandha

WARRANT TO LEVY A FINE BY ATTACHMENT AND SALE

(See section 386 [(1) (a)] of CrPC)

To

The Upazila Nirbahi Officer of Sadullapur of Gaibandha District

WHEREAS Hossain al firoz, son of late Riaz Uddin Khan of village- Bhatgram, Upazila- Sadullapur, District- Gaibandha was on the day of 2nd March, 2011 liable to pay arrear bill of taka… and whereas the said Khachu Khan, although required to pay the said bill, has not paid the same or any part thereof;

This is to authorise and require you to attach any movable property belonging to the said Hossain al firoz which may be found within the district of Gaibandha if within 12 (twelve) hours next after such attachment the said sum shall not be paid, to sell the movable property attached, or so much thereof as shall sufficient to satisfy the said bill, returning this warrant, with an endorsement certifying what you have done under it immediately upon its execution.

Given under my hand and the seal of the Court,

this day of 2nd March, 2011

(Seal)

Name…
Senior Judicial Magistrate Court 2nd
Gaibandha

OR

DISTRICT: GAIBANDHA
IN THE COURT OF ACTING CHIEF JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md. Azizur Rahman, Acting Chief Judicial Magistrate, Gaibandha
Date of passing order…
Miscelleneous Case Number…
Under section 7(A) of the Telegraph Act 1885
Firoz al hossain ...Applicant
-Versus-
... …defaulter

Order No...

দাখিলকৃত ফাইলিংটি Entry করা হইল। ফরিয়াদী ফিরোজ আল হোসাইন... এর বিরুদ্ধে Telegraph অপঃ ১৮৮৫-এর ৭(অ) ধারার অধীন বকেয়া বিল... টাকা আদায়ের জন্য নালিশ/আবেদন করিয়াছেন। Seen the aforementioned note and after perusal of the record it appears to this court that the due mentioned in the application dated 18.10.2010 submitted by the telephone authority is realisable under section 386 (1) (a) of the Code of Criminal Procedure and hence the Deputy Collector of this District is authorized to realise the due in accordance with section 386 of the Code of Criminal Procedure. Let the application dated 18.10.2010 be sent to the Deputy Collector of Gaibandha District immediately.

Name…
Senior Judicial Magistrate Court 2nd
Gaibandha

09. Model Order for bail of the accused under section 513 of the code of criminal procedure:

DISTRICT: GAIBANDHA
IN THE 2ND COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: - Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing order:
Complaint/General Register Case Noumber…
Arising out of... Police station case No... Date....
Under sections…
The State ... Prosecution
-Versus-
Xyz … Arrestee

Order Number...

Seen the aforementioned note and heard the learned legal practitioner Mr. Sharifuzzaman Babu and the Court sub-inspector Anisur Rahman. After Perusal of the record it appears that the offence does not provide punishment of either the death sentence or life imprisonment in view of section 497(1) of the code of criminal procedure. The first information in writing does not containg the specific intelligence for which this Court can draw the opinion of sufficient grounds of sending the arrestee in the jail hazat. Moreover, there is no chance of being absconder as the arrestee is a businessman and a permanent citizen of the jurisdiction of this Court and hence the application for bail of the arrestee is allowed till submission of the police report subject to furnishing a bond of taka 10,000.00 with two sureties of whom one must be the engaged legalpractitioner and another must the local chairman.

Next text of order of section 513 of the code of criminal procedure:

…The learned legal practitioner appearing on of the accused later in respect of the bail also submits that the accused has the ability to deposit any sum of money or Government promissory note under section 513 of the code of Criminal procedure in lieu of executing the conventional bond of taka 10,000.00 only. He further submits that there shall be no difficulty or excuse in depositing the same to such amount as this court has fixed the amount of the bond and he seeks the permission for the same.

It also appears to this Court that after misusing the condition of bail, if the bail is cancelled, the court is to follow the procedure of section

514 of the code of criminal procedure which is of course difficult rather that confiscating the money or Government promissory note within the orbit of law.

In view of the aforementioned reasons, this Court is of the opinionto pass the order i.e. Releases the accused subject to depositing Government promissory note that is to say, a pay order of taka 10,000.00 only either in the of this Senior Judicial Magistrate Court 2nd or Chief Judicial Magistrate Court of Gaibandha under section 513 of the code of criminal procedure in lieu of executing the conventional bond. It is noted that before the expiration of 1(one) year or the general duration o the validity of the said pay order, the accused shall if he does not misuse the condition of the bail for appearing before the court concerned on every date, shall exchange the said instrument so that the same can be confiscated and encashed easily in favour of the state due to the misuse of the condition of the bail. The office is directed to give all kinds cautions in respect of keeping the said to be deposited Government promissory note. Next date…

Name…
Senior Judicial Magistrate Court 2nd
Gaibandha

10. Model Order for investigation of the complaint under section 202 of the code of criminal procedure:

DISTRICT: GAIBANDHA
IN THE 2ND COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: - Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing order:
Complaint Register Case Noumber…
Under sections…
The State ... Prosecution
-Versus-
Xyz … Arrestee

Order Number...

অদ্য দাখিলকৃত ফাইলটি Entry করা হলো। ফরিয়াদি... ...এর বিরদ্ধে দন্ড বিধির... ধারায় নালিশ আনায়ন করতঃ বিচার প্রার্থনা করেন। Seen the complainant and examined him under section 200 of the Code of Criminal Procedure upon oath. The substance of the said examination has been recorded duly and there after the same has been signed by the complainant and also by this court. After perusal of the same and this complaint in writing, it evinces that for the purpose of ascertaining the truth or falsehood of this complaint it is indispensable to have an inquiry report. For this reason, the issue of process for compelling the attendance of the persons complained against is postponed and accordingly under section 202 of the Code of Criminal Procedure local Chairman/Headmaster of Xyz, Gaibandha is directed, after making an investigation for the purpose of ascertaining for the truth or falsehood of this complaint, to submit the investigation report along with the statements of the witnesses on or before the next date. Next date... is fixed for the same. Let acopy of this order along with the photocopy of the submitted complaint in writing be communicated to the concerned local Chairman/Headmaster of Xyz, Gaibandha immediately by a special messenger and submit a receipt copy before this Court within reasonable time.The office is directed accordingly.

Name…
Senior Judicial Magistrate Court 2nd
Gaibandha

11. Model Order for injury certificate under regulation No. 21 of police regulations 1943:

DISTRICT: GAIBANDHA
IN THE 2ND COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing order:
General Register Case Noumber…
Arising out of... Police station case No... Date....
Under sections…
The State ... Prosecution
-Versus-
Xyz … Arrestee

Order Number...

Seen the aforementioned note and after perusal of the record, it appears to this court that the First Information (FI) and the First Information Report (FIR) contain the allegation of sections 326/307 of the Penal Code along with some other sections of the same Code which definitely requires the injury certificate to consider the hurt and hence under the authority of regulation 21(a) of PR-1943, the investigating officer of this case is directed to submit the injury certificate of the victim/(s) of this case within... and failing which he will have to submit the photocopy of the documents of the steps taken by him along with the proper intelligence of the victim's/victims' admission and treatment within the same date. Let a copy of this order be communicated to the investigating officer of this case immediately.

Name…
Senior Judicial Magistrate Court 2nd
Gaibandha

12. Model Order, after submission of final report, under regulation No. 21 of police regulations 1943 and 165 of the Evidence Act 1872:

DISTRICT: GAIBANDHA
IN THE 2ND COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA.
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing Judgment…
General Register Case Number…
Arising out of… Police Station Case Number… dated…
The State ... Prosecution
-Versus-
Xyz and others ... Accused
Under sections … of the Penal Code

Order Number…

Seen the aforementioned note and after perusal of the record it appears to this court that the police report (final report) dated... under section 173 of the code of criminal procedure has been submitted in recommending the... accused to discharge from the alleged charge of the first information. This court having the power of taking the cognisance of police cases is under responsibility according to regulation 21 of the Police Regulation-1943 to watch the function of the police officer in respect of the investigation from the sections 154 to 176 of the code of criminal procedure.

Section 165 of the Evidence Act 1872 provides the authority to ask any question in order to discover or to obtain proper proof of relevant facts, in any form, at any time of any witnesses, or the parties and this purpose section 540 of the code of criminal procedure provides the authority to the court at any stage of any inquiry, trial or other proceeding under this code, to summon any person as witness.

In view of the aforementioned reasons and for the ends of justice, issue summons upon the informant and the next date ... is fixed for the appearance of the summoned informant.The office is directed to serve the said summons by any process server accordingly.

or

Model Order for DNA Test:

DISTRICT: GAIBANDHA
IN THE 2ND COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: - Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing Judgment…
General Register Case Number…
Arising out of… Police Station Case Number… dated…
The State ... Prosecution
-Versus-
Xyz and others ...Accused
Under sections … of the Penal Code

Order Number…

অদ্য ডি.এন.এ টেষ্ট-এর ব্যাপারে রিপোর্ট প্রাপ্তির জন্য আছে। ফরিয়াদী হাজিরা দিয়াছেন। জামিনপ্রাপ্ত একমাত্র আসামী হাজিরা দিয়াছেন। Seen the aforementioned note and heard both sides. After perusal of the record, it appears to this Court it is necessary for completing the DNA test to enlarge the accused. Both parties are directed to appear before the Director or Head of National Forensic DNA Profiling Laboratory (NFDPL), National Forensic Department Dhaka, Dhaka Medical College, Dhaka for the said DNA Test. The accused side will bear all expenses of DNA Test of the accused, Complainant and the children for which this order is passed.

The main subject matter is to know through DNA Test whether the breast feeding child is the generation of the accused. Both sides are directed to appear their accordingly on...

Let a copy of this order be communicated to the director or Head of the said NFDPL by General Express Post (GEP) and also to both sides legal practitioners.

Name…
Senior Judicial Magistrate Court 2nd
Gaibandha

13. Model Order for cognizance upon naraji

DISTRICT: GAIBANDHA
IN THE 2ND COURT OF SENIOR JUDICIAL MAGISTRATE,GAIBANDHA.
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing Judgment: 3rd November 2010
General Register Case No 118 of 2010 (Sadullapur)
Arising out of Sadullapur Police Station Case Number 23 dated 23.04.2010
The State ... Prosecution
-Versus-
Mezbaul Islam and others ... Accused

Under sections 302/34 of the Penal Code of 1860

…

Seen the aforementioned note and after perusal of the record it appears that the date of occurrence was 23.04.2010 at 8.30 pm at night and the First Information (FI) was lodged with Sadullapur Police Station on 23.04.2010 by the informant Md. Samsul Haque against Mezbaul Islam and some unknown persons. Thereafter the lodged First Information (FI) being No. 23 dated 23.04.2010 of Sadullapur police station which was then numbered as General Register (GR) case being No. 118 of 2010. The informant being aggrieved with the investigating officer of this case at the investigation stage on 15.07.2010 through a legal practitioner submitted an application for recording the statements of the witnesses which are important in the case but the investigating officer is not inclined and having no bar in section 164 of the code criminal procedure the said application was allowed and next date 22.07.2010 was fixed for recording the same. Meanwhile the investigating officer of this case in understanding the same also submits an application for recording the statements of the witnesses and accordingly the statements of the witnesses on 22.07.2010 and 09.08.2010 were taken and recorded duly. Then the investigating officer after investigating into the matter submitted a report dated 07.10.2010 against accused Mezbaul and Ghutu only and recommended them to be prosecuted for the allegation. But the police report dated 24.11.2008 does not provide sufficient intelligence in respect of other persons whose names have been mentioned in the statements given by the witnesses who are recorded under section 164 of the code of criminal procedure and hence it is necessary to consider about their position in the allegation. There after the informant Md. Samsul Haque being aggrieved with the said police report dated 07.10.2010 filed a narajee petition of complaint today (03.11.2010) and

the informant cum complainant is examined under section 200 of the code of criminal procedure and the substance of the said examination is recorded duly.

The inquest report dated 23.04.2010 and the post-mortem report dated 24.04.2010 contain the sufficient intelligence in respect of the alleged allegation. Now the matter of consideration is that as per police report dated 07.10.2010 contains that… Moreover, the statements of the other witnesses who have not been produced before this court, recorded by the investigating officer in respect of the intelligence of escaping the responsibility within the purview of section 106 of the Evidence Act of 1872 is not determinable without appreciating the evidence before the trial of this case. Another legal point is that the investigating officer at the time of recording the statements of the witnesses has not followed section 162 of the code of criminal procedure. He has not mentioned that the statements of the witnesses have been recorded as reduced into writing.

According to section 162(1) of the code of criminal procedure if the statement of any witnesses is recorded as reduced into writing there is no necessity of taking signature of the person making the statement and the said section 162 (1) of the said Code provides that

"No statement made by any person to a police officer in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it..."

In view of this section 162(1) of the code of criminal procedure, reversely, if the statement of any witnesses is not recorded as reduced into writing, the same shall be signed by the person making the statement. In this case, as the investigating officer has not recorded the statement of the witnesses as reduced into writing, he was under responsibility under the said provision of law to take signature duly and hence the non-compliance with this section gives a scope excluding some one or some persons from the alleged allegation.

According to the statements of the witnesses recorded by this court within the purview of section 164 of the code of criminal procedure and the substance of the examination recorded today on the basis of the narajee petition of complaint, accused Mahmud Miah, Shain, Rana Miah, Md. Khalil Miah and Ful Miah in total five, taken the deceased Serajul Islam from the house of the informant Md. Samsul Haque and thereafter he was killed in the place of occurrence. Here is clear that responsibility of giving the explanation as to the death of the deceased goes to these five persons as the fact of the death of the deceased is

especially within the knowledge of them. In this connection, the law declared by the Supreme Court of Bangladesh reported in 43 DLR 336 para- 25(a) is as follows:

"Section 106 (of the Evidence Act) fixes the liability of proving the facts on the accused when the same is especially within his knowledge."

In view of the aforementioned reasons and the law declared by the Supreme Court of Bangladesh reported in 31 DLR (AD) 70 Para-14, cognisance is taken against sent up 2(two) accused namely (1) Mezbaul Islam (2) Bazlul Hoq Sarker @ Ghutu and (3) Mahmud Miah, (4) Shain, (5) Rana Miah, (6) Md. Khalil Miah and (7) Ful Miah under section 302/34 of the penal code and hence issue arrest warrant (WA) against the aforesaid seven accused only and in respect of other accused 7, 8, 9 and 10, the narajee petion of complaint as well as other documents of this case do not provide sufficient grounds for proceeding against them and accordingly the cognisance against them is not taken. Next date 19.12.2010 is fixed for report of issued arrest warrant. The office is directed accordingly.

Name…
Senior Judicial Magistrate Court 2nd
Gaibandha

14. Model Order for producing the property before the Court

DISTRICT: GAIBANDHA
IN THE COURT OF JUDICAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Judicial Magistrate, Gaibandha
Date of passing order:-24th May, 2009
General Register Case Number 274 of 2006
Arising out of: Gaibandha Police Station Case Number: 10 dated 09.09.2009
The State ... Prosecution
-Versus-
Md. Abdus Sobhan and others ... Accused
Under section: 143,447,323,354 and 379 of the Penal Code
…

Seen the appeared eight accused and heard the learned advocate on behalf of them. After perusal of the case record it appears to me that the *Zimmanama* dated 12.01.2005 contains the seizure of (1). Rain tree 1 (one) piece with its two branches (length 11 ft) (2), Rain tree another 1 (one) piece (length 12 ft) with two branches and (3) Jack fruit with branches (length 9 ft 6 inches) and the same will be produced before the court whenever the court will instruct. The learned advocate submits to produce the said two pieces of Rain tree and one jack fruit tree with its branches for the ends of justice.

In view of the aforementioned reasons it is necessary to see the said two pieces of Rain tree and one jack fruit tree with its branches in respect of considering the charges against the accused and accordingly the zimmader Md. Saidur Rahman son of late Mother box of village-Baroboldia, Howrapara, police station-Gaibandha, District: Gaibandha is directed to produce the same on the next date. Next date 25.06.2009 is fixed for production of the said two pieces of Rain tree and one jack fruit tree with its branches and charge consideration. The office is directed to send through the officer in charge, the copy of this order to the said zimmader immediately.

Name…
Senior Judicial Magistrate Court 2nd
Gaibandha

Memo Number… Date….....
Copy of the order is sent for necessary step
Officer in charge of Gaibandha Police station, Gaibandha

Name…
Senior Judicial Magistrate Court 2nd
Gaibandha

15. Model Order for treating the complaint as first information

Seen the aforementioned note and the Officer in charg of… police station, Gaibandha is directed to treat this complaint as first information directly. After lodging in B.P. Form No. 27 in connection with Regulation 243 and 244 of Police Regulations-1943, send the said first information and the first information report to the concerned learned court on the next working day in getting this order. Maintaining all procedural formalities any special messenger is permitted to communicate this to the concerned officer-in-charge. Next date… is under regulation 245 of police regulations 1943 fixed for police report.

Name…
Senior Judicial Magistrate Court 2nd
Gaibandha

16. Model Order for granting the remand of the accused in police custody:

DISTRICT: GAIBANDHA
IN THE COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md. Azizur Rahman, Senior, Judicial Magistrate, Gaibandha.
Date of passing Order…
General Register Case…
Arising out of: ... Police Station Case Number... dated...
The State ...Prosecution
-Versus-
Xyz …Accused

Under sections:

Order Number…

Seen the aforementioned note and heard the learned advocate and court inspector in the presence of the arrestee.After perusal of the record, it appears to this Court that there are sufficient grounds for allowing the application for police remand of the arrestee which are… In view of the aforesaid reasons, the application for police remand of the arrestee is allowed for… days subject to submitting a full health examination report of the arrestee by a Board of doctors consisiting at least three members of… District. The investigating officer of this case is directed to produce the arrestee before the office of the Civil Surgeon or concerned doctor for the same in showing the copy of this order. The office is directed accordingly.

Name…
Senior Judicial Magistrate Court 2nd
Gaibandha

17. Model Order for keeping the victim in the custody of Upazila Nirbahi Officer:

DISTRICT:-GAIBANDHA
IN THE COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: - Md. Azizur Rahman, Senior, Judicial Magistrate, Gaibandha.
Date of passing Order…
General Register Case…
Arising out of: ... Police Station Case Number... dated...
The State ...Prosecution
-Versus-
Xyz …Accused
Under sections:

Order Number…
…

Seen the aforementioned note and after perusal of the record it appears that the victim of this case has given her statement which is recorded duly.Section 31 of Nari-o-Shishu Nirjatan Damon Ain 2000 (amended in 2003) provides that ...এই আইনের অধীন কোন অপরাধের বিচার চলাকালে যদি ট্রাইবুনাল মনে করে যে, কোন নারী বা শিশুকে নিরাপত্তামূলক হেফাজতে রাখা প্রয়োজন তাহা হইলে ট্রাইবুনাল উক্ত নারী বা শিশুকে কারাগারের বাহিরে ও সরকার কর্তৃক এতদুদ্দেশ্যে নির্ধারিত স্থানে সরকারী কর্তৃপক্ষের হেফাজতে বা ট্রাইবুনালের বিবেচনায় যথাযথ অন্যকোন ব্যক্তি বা সংস্থার হেফাজতে রাখার নির্দেশ দিতে পারিবেন।"

Here this section deals with the matter of giving direction in respect of Nirapattamulak Hefajat (নিরাপত্তামূলক হেফাজত) of the victim during trial and the place of the said Nirapattamulak Hefajat (নিরাপত্তামূলক হেফাজত) must be outside of the jail. However, before the phase of trial or during investigation stage or period within the purview of section 25 of the said Ain 2000 (amended in 2003), it is the duty of the concerned Court of Magistrate to give direction in respect of keeping the victim in a place outside the jail which shall reasonably be Nirapattamulak Hefajat (নিরাপত্তামূলক হেফাজত) for her. The investigating officer has already been directed to complete the medical examination of the victim for determining the age and submit a report for the same.

In view of the aforementioned reasons and section 31 of the said Ain 2000, (amended in 2003) in connection with section 10 of the Code of Criminal Procedure the Upazila Nirbahi Officer of... Upazila is directed to keep the victim... in a reasonable place outside the jail which shall be Nirapattamulak Hefajat (নিরাপত্তামূলক হেফাজত) for her.

The investigating officer of this case is also directed to take the victim in accordance with the provision of law and produce her before the already directed Upazila Nirbahi Officer of... Upazila, Gaibandha so that he can manage and keep the victim in a place which has already been mentioned. The investigating officer is further directed to communicate the copy of this order with the aforesaid Upazila Nirbahi Officer of...Upazila. Let a copy of this order be communicated to the investigating officer of this case immediately and also to the Superintendent of the jail, Gaibandha. The office is directed accordingly.

Name…
Senior Judicial Magistrate Court 2nd
Gaibandha

OR

Model Order for an arrestee under section 151 of CrPC whose address is not known.

DISTRICT: GAIBANDHA
IN THE COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md. Azizur Rahman, Senior, Judicial Magistrate, Gaibandha.
Date of passing Order…
General Diary Number…
The State ...Prosecution
-Versus-
Xyz …Accused

Under section:

Order Number…

Seen the aforementioned note and after perusal of the record it appears that the arrestee is a woman and she has given her statement which is recorded duly. Section 31 of Nari-o-Shishu Nirjatan Damon Ain 2000 (amended in 2003) provides that ...এই আইনের অধীন কোন অপরাধের বিচার চলাকালে যদি ট্রাইবুনাল মনে করে যে, কোন নারী বা শিশুকে নিরাপত্তামূলক হেফাজতে রাখা প্রয়োজন তাহা হইলে ট্রাইবুনাল উক্ত নারী বা শিশুকে কারাগারের বাহিরে ও সরকার কর্তৃক এতদুদ্দেশ্যে নির্ধারিত স্থানে সরকারী কর্তৃপক্ষের হেফাজতে বা ট্রাইবুনালের বিবেচনায় যথাযথ অন্যকোন ব্যক্তি বা সংস্থার হেফাজতে রাখার নির্দেশ দিতে পারিবেন।"

Though the arrestee is not an accused but she can not be sent to jail. Because where the woman victim under Nari o Shishu NirtjatanDaman-Ain 2000 is not to be sent in Jail, the general victim or arrestee shall not be sent to jail also. Here this section deals with the matter of giving direction in respect of Nirapattamulak Hefajat (নিরাপত্তামূলক হেফাজত) of the arrestee during trial and the place of the said Nirapattamulak Hefajat (নিরাপত্তামূলক হেফাজত) must be outside of the jail.

However, before the phase of trial or during investigation stage or period within the purview of section 25 of the said Ain 2000 (amended in 2003), it is the duty of the concerned Court of Magistrate to give direction in respect of keeping the victim in a place outside the jail which shall reasonably be Nirapattamulak Hefajat (নিরাপত্তামূলক হেফাজত) for her.

The officer in charge is directed to complete the investigation of the arrestee for determining the address in making announcement.

In view of the aforementioned reasons and section 31 of the said Ain 2000, (amended in 2003) in connection with section 10 of the Code of

Criminal Procedure the Upazila Nirbahi Officer of Shaghata Upazila is directed to keep the arrestee in a reasonable place outside the jail which shall be Nirapattamulak Hefajat (নিরাপত্তামূলক হেফাজত) for her.

The officer in charge of this case is also directed to take the arrestee in accordance with the provision of law and produce her before the already directed Upazila Nirbahi Officer of Shaghata Upazila, Gaibandha so that he can manage and keep the arrestee in a place which has already been mentioned. The officer in charge is further directed to communicate the copy of this order with the aforesaid Upazila Nirbahi Officer of Shaghata Upazila.

Let a copy of this order be communicated to the officer in charge of Shaghata immediately and also to the Superintendent of the police, Gaibandha. The office is directed accordingly.

Name…
Senior Judicial Magistrate Court 2nd
Gaibandha

Next model order when the address of the arrestee is got:

DISTRICT: GAIBANDHA
IN THE COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md. Azizur Rahman, Senior, Judicial Magistrate, Gaibandha.
Date of passing Order…
General Diary Number…
The State ...Prosecution
-Versus-
Xyz …Accused

Under section:

Order Number…

Seen the aforementioned note and after perusal of the record and the submitted investigation dated… and it appears to this Court that the address of the arrestee is got and now it is necessary to hand over her in the custody of her guardian or relatives. The address of the arrestee is out of this District.

In view of the aforementioned facts and circumstances, the officer in charge of Saghata police station of Gaibandha is directed to handover the arrestee in the custody of her guardian or relatives and if her guardian or relative is not available here, he is for this further directed to handover the arrestee in the custody of the officer in charge of Xyz Police station of Pabna so that he can handover the arrestee through the local chairman in the aforesaid custody. The officer in charge of Saghata police station is also directed to submit a report in compling with this order before this Court.

Let a copy of this order be communicated to the officer in charge of Saghata police station of Gaibandha immediately. The office is directed accordingly.

Name…
Senior Judicial Magistrate Court 2nd
Gaibandha

18. Model Order for sending the complaint to the Gram Adalat:

DISTRICT: GAIBANDHA
IN THE COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md. Azizur Rahman, Senior, Judicial Magistrate, Gaibandha.
Date of passing Order…
General Register Case…
Arising out of: ... Police Station Case Number... dated...
The State ...Prosecution
-Versus-
Xyz …Accused

Under sections:

Order Number…

অদ্য দাখিল হইল। রেজিষ্ট্রিভূক্ত করা হোক। ফরিয়াদি মোঃ মকবুল হোসেন আসামী অফাত আলীসহ ২০ (বিশ) জনের বিরুদ্ধে দন্ড বিধির ১৪৭/৪৪৭/৩৭৯/৩০৭/৩২৩ /৫০৬ (ii) ধারায় অভিযোগ থানায় আনায়ন করিয়াছেন। Seen the aforementioned note and examined the complaint under section 200 of the code of criminal procedure and the substance of the said examination is recorded duly. After perusal of the said recorded substance and the complaint, it appears to this court that the facts in fact constitute the offence under section 447/323/379/34 of the penal code. This complaint in writing does not contain the allegation of section 143 of the penal code.

The number of total accused is more than 10 (ten) persons and hence this is a question whether this case shall be within the jurisdiction of Gram Adalat or not? The complainant himself in his examination in chief stated that the value of the stolen property is about Tk 12,000/- only which is within the jurisdiction of Gram Adalat.

In respect of the number of the accused, the general conception is that the number of the accused must be not exceeding 10 (ten) But this conception is not true for all appears. That is the schedule first part provide that-

"১) পেনালকোড ধারা ৩২৩ বা ৪২৬ বা ৪৪৭ মোতাবেক কোন অপরাধ সংগঠন করা, বেআইনী জনসমাবেশে সাধারণ উদ্দেশ্যে হইলে এবং উক্ত বে-আইনী জনসমাবেশে জড়িত ব্যক্তির সংখ্যা দশের অধিক না হইলে পেনালকোড ১৪৩ ও ১৪৭ ধারা ১৪১ এর তৃতীয় বা চতুর্থ দফার সহিত পঠিতব্য"। Here this part above mentioned provides two things, i) পেনালকোড ৩২৩ বা ৪২৬ বা ৪৪৭ মোতাবেক কোন অপরাধ সংঘঠন করা and ii) বেআইনী জনসমাবেশে সাধারণ উদ্দেশ্যে হইলে এবং উক্ত বেআইনী জনসমাবেশে জড়িত ব্যক্তির সংখ্যা দশের অধিক না হইলে...

Here the record part provides that where there is an unlawful assembly, there is the necessity of counting the number of the accused i.e. not exceeding ten accused reversely. Where there is no offence of unlawful assembly there is no necessity of counting the number of the accused in respect of us standing the jurisdiction of the Gram adalat or Mimangsa Board.

In this complaint, though the number of the accused person is more than 10 (ten) but having no the allegation u/s 143 of the penal code, the jurisdiction of this complaint lies to the concerned Gram Adalat or Mimangsa Board.

The place of occurrence of this complaint is out of Paurashava and hence sends this complaint within the purview of section 3 and the Law reported in 44 DLR (HCD) 77 to the concerned Gram Adalat immediately. The office is directed accordingly.

Name…
Senior Judicial Magistrate Court 2nd
Gaibandha

19. Model Order for show cause for not submitting injury certificate:

DISTRICT: GAIBANDHA
IN THE COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md. Azizur Rahman, Senior, Judicial Magistrate, Gaibandha.
Date of passing Order…
General Register Case…
Arising out of: ... Police Station Case Number... dated...
The State ...Prosecution
-Versus-
Xyz …Accused
Under sections:
Order Number…

ধার্য্য তারিখে নথি পেশ করা হইল। মামলা তদন্তে আছে। মামলার তদন্তকারী অফিসার এস আই মোঃ ইসমাইল হোসেন গোবিন্দগঞ্জ থানা গাইবান্ধা, অত্র মামলার ০৬ জন জখমী শহীদ জিয়াউর রহমান মেডিকেল কলেজ হাসপাতাল বগুড়ায় ভর্তি হইয়া চিকিৎসা গ্রহণ করিয়াছে মর্মে তিনি উক্ত হাসপাতালে পরিচালক মহোদয় বরাবরে বারবার আবেদন করিয়াও জখমীদের চিকিৎসা সনদপত্র না পাইয়া নিজে স্ব-শরীরে উপস্থিত হইয়া ০৪ (চার) জন জখমীর সনদপত্র সংগ্রহ করিয়াছেন। কিন্তু অপর জখমী ০১) সেকেন্দার ২) ইউনুস দ্বয়কে ডাক্তার মোঃ নুরুল আলম চিকিৎসা প্রদান করা সত্ত্বেও বারবার তাগিদ দেওয়ার পরেও জখমীদ্বয়ের সনদপত্র সরবরাহ করিতেছে না। বিধায়, জখমী সনদপত্র না পাওয়ার কারণে দীর্ঘদিন মূলতবি থাকায় সরকারী শ্রম ও সময় অপচয় হইতেছে। এমতাবস্থায়, মামলার সুষ্ঠু ও নিরপেক্ষ তদন্ত এবং বাদীকে ন্যায় বিচার প্রদানের স্বার্থে, জখমী সনদপত্র সংগ্রহের নিমিত্তে বিজ্ঞ আদালতের হস্তক্ষেপ কামনায় প্রতিবেদন দাখিল করিয়াছেন। জামিনে মুক্ত আসামী সকল ৩৩ (তেত্রিশ) জন এর পক্ষে সময়ের আবেদন পাওয়া গেল। Seen the aforementioned note and after perusal of the record it appears that on different date the investigating officer of this case, S.I Md. Ismail Hosen took different attempts but the Director of shaheed Ziaur Rahman Medical College Hospital, Bogra has not delivered the ingury certifacates of two victims namely 1) Sekender and 2) Yunus till today.

In view of the aforementioned reasons, the Director of Shaheed Ziaur Rahman Medical College and Hospital Bogra, is directed to submit the injury certificate of two victims aforementioned before this Court on or before the next date of 10th May 2011.

The investigation officer of this case is also directed to communicate the copy of this order along with the Photocopies of all the attempts taken by him to the said director and to submit a receipt copy before this

just after making the communication along with a report in writing containing the name of the person who holds the officer of the said Director. The office is directed accordingly.

Name…
Senior Judicial Magistrate Court 2nd
Gaibandha

Or

DISTRICT: GAIBANDHA
IN THE COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md. Azizur Rahman, Senior, Judicial Magistrate, Gaibandha.
Date of passing Order…
General Register Case…
Arising out of: ... Police Station Case Number... dated...
The State ...Prosecution
-Versus-
Xyz …Accused

Under sections:

Order Number…

ধার্য্য তারিখে নথি পেশ করা হলো। মামলা তদন্তে আছে। গত ১২.০৪.১১ইং তারিখের আদেশের প্রেক্ষিতে মামলার তদন্তকারী অফিসার বিজ্ঞ আদালতের সরবরাহকৃত আদেশ নামা ও জখমীদের চিকিৎসা সনদপত্র সংগ্রহের নিমিত্তে প্রেরীত আবেদন ও তাগিদ পত্রসহ পরিচালক জনাব, মোঃ শফিকুল ইসলাম ব্রিগেডিয়ার জেনারেল শহীদ জিয়াউর রহমান মেডিকেল কলেজ হাসপাতাল, বগুড়া সাহেবের বরাবরে প্রেরণ করিলে উক্ত পরিচালকের পক্ষে বর্ণিত হাসপাতালের অফিস সহকারী এমরল কয়েস বর্ণিত সমুদয় কাগজ পত্র গ্রহণ পূর্বক আদেশ নামার ছায়ালিপিতে স্পষ্ট অক্ষরে নিজ নাম ও পদবী উল্লেখ করিয়াছেন মর্মে ০২ পাতা প্রতিবেদন দাখিল করিয়াছেন। অদ্যবধী জখমী সনসপত্র পাওয়া যায় নাই। Seen the aforementioned note and after perusal of the record and the receipt copy of the order dated 12.04.2011 it appears that the sub-inspector of Gobindaganj police station Ismail Hosen communicated the said order dated 12.04.2011 of this court and the office Assistant Emrul Kayes of Director Md. Shafiqul Islam, Brigadier General of shaheed Ziaur Rahman Medical College and Hospital, Bogra, But no injury certificate popularly Known as medical certificate (M/C) of the victims mentioned in the said order dated 12.04.2011 has been submitted till today and hence the said Director Md. Shafiqul Islam is directed to submit the explanation in writing as to the non submission of the injury certificates mentioned in the order dated 12.04.2011 on or before the next date of 31.05.2011 and he is at the same time also directed as to why the action under section 485 of the code of criminal procedure shall not be taken against him. The office is directed accordingly.

Name…
Senior Judicial Magistrate Court 2nd
Gaibandha

20. **Model Order for show cause for not submitting injury certificate:**

DISTRICT: GAIBANDHA
IN THE COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md. Azizur Rahman, Senior, Judicial Magistrate, Gaibandha.
Date of passing Order…
General Register Case…
Arising out of: ... Police Station Case Number... dated...
The State ...Prosecution
-Versus-
Xyz …Accused

Under sections:

Order Number…

অদ্য অনুসন্ধান প্রতিবেদন প্রাপ্তির জন্য আছে। ফরিয়াদী হাজিরা দিয়াছেন। প্রতিবেদন পাওয়া যায় নাই। Seen the aforementioned note and it appears, after perusal of this record that the injury making officer has not complied with the earlier order and even his teleassurance which was informed the Bench Assistance of this court. The facts of non-complaince is that on 25.09.2011 the Court of Senior Judicial Magisrtate Mr. Forhad Mamun passed an order for making inquiry and 31.10.2011 was fixed for submission of inquiry report and in Upazila Samaj Sheba Officer Mr. M.S Akram Hosen's office received on 18.10.2011 the required copy of this record in giving the cell number i.e. 01711-065532 and thereafter 26/12/2011 and 15/02/2012 were refixed for getting the inquiry report but till today no report has been submitted by him and even he has not shown any reasons before this court.

Moreover, the assurance given to Bench Assistant of this Court by him through his cell has also been not complied and hence it appears to this court that the non- submission of the inquiry report is completely a refusal to submit an report which attracts the authority of section 485 of the code of criminal procedure.

In view of the aforementioned reasons and the facts and circumstances, let a miscellaneous case under section 485 of the code of Criminal Procedure be started against that officer immediately, along with all relevant documents. Next date for this case is 19.03.2012.

Name…
Senior Judicial Magistrate Court 2nd
Gaibandha

21. **Model Order for probation or probation order:**

DISTRICT: GAIBANDHA
IN THE COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md. Azizur Rahman, Senior, Judicial Magistrate, Gaibandha.
Date of passing Order…
General Register Case…
Arising out of: ... Police Station Case Number... dated...
The State ...Prosecution
-Versus-
Xyz …Accused

Under sections:

Order Number…

অদ্য নথি উপস্থাপন করা হইল। সাজাপ্রাপ্ত আসামী মোঃ মাহমুদুল ইসলাম-এর পক্ষে দি প্রবেশন অব অফেন্ডার্স অর্ডিন্যান্স ১৯৬০-এর ৪/৫ ধারা মোতাবেক অব্যাহতির আবেদন করিয়াছেন। Seen the aforementioned note and the record is taken up for consideration of the subject matter whether an order under section 5 of the probation of offenders ordinance-1960 can be passed for this convicted and sentenced accused md. Mahmudul Islam. Heard the ld. advocate and after perusal of the order of imprisonment dated 19.03.2012 passed by this 2nd court of senior Judicial Magistrate, Gaibandha it appears to this Court that the convicted accused is a regular legal practitioner of this Bar and he has not been previously convicted for any offence and convicted in this case for an offence not being an offence under chapter VI or chapter VII of the penal code or under the sections 216A, 328, 382,386,387,388,389,392, 455, or 458 of that code or an offence punishable with death or imprisonment for life. His character and antecedents are nil as per the police report dated, 31.10.2009 to the extent of committing the offence.

It is inexpedient to inflict punushment having his future public related function and the probation order is appropriate here. The above mentioned offender being the regular legal practitioner has fixed place of abode within the Local limits of this court and it also appears that he is likely to continue in such place of abode during the period of the bond and hence the said offender Md. Mahmudul Islam is ordered to go on probation subject to entering into a bond of tk 10,000/- with one or two sureties of whom one must be the District social welfare officer who will submit a report in writing as to complaince with the condition of committing no offence or remaining good behavior before this court and also subject to performing the duties under section 13 to the probation of offenders ordinance 1960, The bond shall also contain the condition of

not taking any intoxicating thing and not changing his residence without informing this court so that the offender may rehabilitate him as an honest, industrious and law abiding citizens. The offender shall be under supervision of the probation officer for a period of three years and within this period the said social welfare officer being the probation officer shall visit or receive visits from the offender every after 6(six) months and he will submit a report as to the same. Give the copy of this order to all concerned persons. The officer is directed accordingly.

Name…
Senior Judicial Magistrate Court 2nd
Gaibandha

22. **Model Order for disposal of the dead body:**

DISTRICT: GAIBANDHA
IN THE 2ND COURT OF SENIOR JUDICAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha
Date of passing order…
Unnatural Death Case Number…
The State ... Prosecution
-Versus-
Md. Zahurul Islam ... Accused

Order No… dated…

The produced record is taken up for order and seen the submitted inquest report and the chalan which are produced and hereby these are seen.

In respect of this matter, it appears after the perusal of the record particularly the inquest report to me that the officer in charge has disposed of the dead body i.e. the dead body has been handed over in the custody of the relatives of the deceased without any permission of this court. But "the law of dead bodies has had a most singular history. The earliest American case on the subject of the interest that relatives have in the remains of their deceased, is ln re Widening of Beekman Street, (4 Bradf. (N.Y.) 503), where the history of the law applicable was fully considered and which settled the law that the relative had an interest sufficient to entitle him to the re-interment and settling the propositions:

1. That neither the corpse, nor its burial, is legally subject, in any way, to ecclesiastical cognizance or to sacerdotal power of any kind.
2. That the right to bury a corpse and to preserve its remains is a legal right, which the courts of law will recognize and protect.
3. That such right in the absence of any testamentary disposition belongs to the next of kin.
4. That the right to protect the remains includes the right to preserve them by separate burial, to select the place of sepulture and change it at pleasure.
5. That if the place of burial be taken for public use, the next of kin may claim to be indemnified for the expense of removing and suitably reinterring their remains."

Inview of the aforesaid discussion it is clear that the dead body is definitely a property and hence the general authority of the property is applicable here and hence under Chapter XLIII of the code of criminal

procedure, the concerned Judicial Magistarte Court is entitled to handover the dead body of the deceased to his relatives." The Supreme Court of Bangladesh in a case of SIDDIQUE AHMED SAWDAGAR v. THE STATE reported in 40 DLR (HCD) 268 para-6 that-

"The act of the investigating officer to give custody of the property on the basis of the practice in vogue in the police Department without any support of the statutory provisions of law to that effect in violation of section 523 of the code of criminal procedure is without any lawful authority and is illegal. Section 516A empowers a criminal court to pass an order for custody and disposal of property during any enquiry or trial and it does not empower an investigating officer to give any property in the custody of any person. Only under the order of the Magistrate the investigating officer can give property into the custody of a person on taking from him a surety bond." According to the law reported in 21 DLR (1969) 807 para-11 the court, in a fit case without the physical production of the property, can give the custody of the said property. Moreover, in accordance with regulation 310 of police regulations the final disposal of the dead body rests with the Mgaitrate.

In view of the above reasons, the officer in charge of Fulsari police station and other officers of the police stations of this District are directed to comply with the aforementioned law declared by our apex court and not to dispose of the dead body without the order of the oncerned court even without the physical production of the same.

Let the copy of this order be communicated to the District Superintendent of Police, all officers in charge of all police stations, Gaibandha immediately.

Name…
Senior Judicial Magistrate Court 2nd
Gaibandha

Memo Number Date: .....

Copy of the order is sent for necessary steps
1. District Superintendent of police, Gaibandha
2. All officer in charge of Gaibandha District

Name…
Senior Judicial Magistrate Court 2nd
Gaibandha

23. Model Discharge Order and use of section 250 of CrPC

DISTRICT: GAIBANDHA
IN THE COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing Judgment…
General Register Case…
Abdul Kader Complainant
-Versus-
Md. Rafiqul Islam and others Accused petitioner
Under sections 430,406,418,323/34 of the Penal Code
Advocate Md. Akbar Ali for the complainant
Advocate Nironjan Kumer Ghose ... For the accused petitioner

Order No.12

23.06.2010

Seen the aforementioned note and the time petition is rejected as being not moved. The non-attendance of the complainant indicates no response in respect of the earlier show cause order dated 14.06.2010. The complainant did not appear on 20.06.2010 for showing cause after submitting the hazira.

In view of the aforementioned reasons and the findings mentioned in the order dated 14.06.2010, the complainant of this case under section 250(2) of the code of criminal procedure is directed to give taka 900.00(nine hundred) only to the accused as compensation. The complainant of this case under section 250(2A) of the code of criminal procedure is further directed to suffer simple imprisonment for a period of 10 (ten) days in default of payment of the said amount of compensation.

In addition to the order directing the payment of the aforesaid compensation under sub-section (2) of section 250 of Code of criminal procedure the complainant shall also suffer simple imprisonment for a period of 3 (three) months only.

Let a copy of this order along with a warrant for commitment be sent to the office of the Superintendent of Police of Gaibandha. The imprisonment shall be started from the date of arrest or surrender.

The office is directed accordingly.

Name…
Senior Judicial Magistrate Court 2nd
Gaibandha

24. Model Order against an accused of rape and when he is forwared under section 151 of the code of criminal procedure:

DISTRICT: GAIBANDHA
IN THE 2ND COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing order 19.08.2010
Ref. Palashbari Police Station General Diary Entry No. 816 dated 18.08.2010

Order Number…

Seen the aforementioned note including two arrestees arrested and produced under section 151 of the code of criminal procedure and heard both of them. The statement of the produced arrestee Most Shirin Begum constitutes the offence of rape and similarly in respect of the statements of allegation of Most. Shirin Begum when the arrestee Mahabub @ Maha Alom is asked he made his confession voluntarily. The statements of allegation of Most Shirin Begum and the voluntary confession of Mahabub @ Maha Alom are recorded duly as section 164 of the code of criminal procedure and section 22 of Nari o Shishu Nirjatan Daman Ain 2000 (amended in 2003) do not provide the matter of exclusive jurisdiction of the police officer for making the application in order to record either the statement or the confession.

Moreover, as per the abovementioned two sections the matter of application by the police officer concerned for recording either the statement or the confession is not mandatory rather directory only. For the failure to comply with the procedure of making the application for recording the statements and the confession are not visited with any consequence and accordingly the same is directory only. In respect of this, the Supreme Court of Bangladesh has declared the following law in the case of KOHINOOR CHEMICAL CO. LTD vs EASTERTN SHIPPERS & TRADERS, reported in 41 DLR (HCD) 387

"If failure to comply with a legal provision is not visited with any consequence, the provision is generally treated as directory." For the aforementioned reasons, both the statements and the confession are recorded duly. The production of the arrestee before the nearest Magistrate means from the part of the Magistrate to see the same.

Here the word 'to see' does not mean mere to see and put signature but as per Oxford dictionary 'to see' means 'to understand something and to express an opinion as to that something.' For this reason, within

the orbit of 'seen' it is necessary take proper steps through the proper order.

After perusal of both the statements and the confession it appears to this court that the statements of the arrestee of Most Shirin Begum within the purview of section of 4 (h) of the code of criminal procedure is completely a complaint of rape committed by the arrestee Mahabub @ Maha Alom which can be proceeded either by this court in the nature of complaint case or by the police station in the nature of General Register Case. It also appears from the facts to this court that the arrestee Mahabub @ Maha Alom is a veteran or seasoned criminal according to the available intelligence and for this reason and the law declared by the Supreme Court of Bangladesh reported in 61 DLR (HCD) Page 743 para-23 the officer-in- charge of Palashbari Police Station is directed to treat the recorded statements of the arrestee Most Shirin Begum as the First Information (FI) under section 9(1) of Nari o Shishu Nirjatan Daman Ain 2000 (amended in 2003) and after lodging in B.P. Form No. 27 in connection with Regulation 243 and 244 of PR-1943, send the said first information and the first information report to the concerned learned court on the next working day in getting this order. Maintaining all procedural formalities any special messenger is permitted to communicate this to the concerned officer-in-charge.

Let the copy of this order, the photocopies of Palashbari Police Station GD Entry No. 816 dated 18.08.2010 under section 151 of the code of criminal procedure and the original recorded statements of the arrestee Most Shirin Begum of two pages and the confession of the arrestee of five pages shall be the part of the documents of the case which has been directed already to lodge as first information. After lodging the first information accordingly the investigating officer shall take the step for medical examination of the arrestee Most Shirin Begum cum victim immediately in accordance with the provision of law. Send the arrestee Mahabub @ Maha Alom cum accused to jail hajat. Next date 02.09.2010 is fixed for the production or arrest under section 351 of the code of criminal procedure in respect of the sent arrestee Mahabub @ Maha Alom cum accused. Let the the arrestee Most Shirin Begum cum victim be handed over in the custody of her husband in taking a zimmanama. The office is directed accordingly.

Name…
Senior Judicial Magistrate Court 2nd
Gaibandha

25. Model Order under section 245(1) of the code of criminal procedure:

DISTRICT: GAIBANDHA
IN THE COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing Judgment…
General Register Case…
Abdul Kader Complainant
-Versus-
Md. Rafiqul Islam and others Accused petitioner
Under sections 430,406,418,323/34 of the Penal Code
Advocate Md. Akbar Ali for the complainant
Advocate Nironjan Kumer Ghose... For the accused petitioner

OrderNumber...
Seen the aforementioned note and heard the learned advocate on be half of the accused in respect of the acquittal under section 245(1) of the code of criminal procedure. After perusal of the record, it appears that this is a General Register case which was lodged on... with... police station, Gaibandha. Thereafter the investigating officer of this case after investigating into the matter on 30.09.2004 submitted the police report.

On... the learned Magistrate of the concerned court/ this court framed charges against the accused and issued summonses vide memo No... Dated... upon the prosecution witnesses. On... the learned Magistrate of the concerned court/ this court issued bailable arrest warrant against the prosecution witnesses who were earlier summoned vide memo Number… dated... and thereafter on ... for the last attempt Non bailable arrest warrant was issued. The prosecution being responsible failed to produce the witnesses.

The Learned Assistant Public Prosecutor Md. Ayub Ali Prodhan appearing on behalf of the state submits that this is of course the failure for the state to produce the witnesses. In respect of this matter, it has been declared by the Appellate Division of the Supreme Court of Bangladesh in the case of Mobarak Ali and others Vs Mobaswir Ali and others reported in 49 DLR (AD) 36 and also in 1 MLR (AD) 23 that

“Sub-section 2 of section 171 of the code provides that it shall be the responsibility of the police officer to ensure that the complainant or the witnesses appear before the court at the time of hearing of the case. It is the primary responsibility of the conducting police prosecutor or the public prosecutor to produce the witnesses in a case. There is nothing on the record to show that any step was taken by the prosecution through

the police officer to secure the attendance of any witnesses in the case. The prosecution having not taken any steps the Learned Magistrate rightly acquitted the respondents under section 245 (1) of the code of criminal procedure."

In view of the aforementioned reasons I am of the opinion to pass the order that the accused are acquitted under section 245 (1) of the code of criminal procedure and accordingly the case is disposed of. The office is directed accordingly.

Name…
Senior Judicial Magistrate Court 2nd
Gaibandha

26. Model Order under section 345 of the code of criminal procedure:

DISTRICT: GAIBANDHA
IN THE COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing Order…
General Register Case…
Abdul Kader Complainant
-Versus-
Md. Rafiqul Islam and others Accused petitioner
Under sections 143, 147, 323,324/34 of the Penal Code
Advocate Md. Akbar Ali for the complainant
Advocate Nironjan Kumer Ghose... For the accused petitioner

OrderNumber...

Seen the aforementioned note and heard the learned legal practitioner on behalf of the accused. All sections are compoundable with and without the sanction of the court and in the light of the law declared by the Supreme Court of Bangladesh in the case of Joinal vs Rutom Ali Miah reported in 36 DLR (AD) 240 i.e. "Compounding of certain class of offence. Law encourage compounding of such offence by panchayet or by arbitration or by way of compromise and if it is a criminal offence the offence can be compounded within the limit of section 345 of CrPC. The categories of offences compoundable have been enlarged by Law Reform Ordinance and at the time of offences under sections 380, 379, 143, 148 and 448 of penal code are compoundable."

In view of the aforementioned reasons, the statements or the examination in chief of the Informant along with the victim of this case have been recorded duly and upon the same they/he put/puts their/ his signature and thump impression. There is legal bar in respect of disposing this case under section 345(6) of the code of criminal procedure and accordingly the accused are acquitted and the case thus disposed of. Recall arrest warrant (WA) if any. The concerned police officer is directed to destroy/confiscate/ deliver the seized alamot of this case in accordance with the provision of law (if any). The office is directed accordingly.

27. Model Order under section 344 of the code of criminal procedure for an accused out of jurisdiction:

DISTRICT: GAIBANDHA
IN THE COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing Order…
Complaint Register Case…
Abdul Kader Complainant
-Versus-
Md. Rafiqul Islam and others Accused petitioner
Under sections 143, 147, 323,326/34 of the Penal Code
Advocate Md. Akbar Ali for the complainant
Advocate Nironjan Kumer Ghose ... For the accused petitioner

OrderNumber...

Seen the aforementioned note and after perusal of the record it appears to this court that the arrested accused is out of Gaibandha District and hence send him to jail hajat by CW for sending him to the arrest warrant (AW) issuing court in accordance with the provision of law. However the jail authority of Gaibandha jail is directed not to produce this accused on… if he is taken by the arrest warrant (AW) issuing Court and if he is not taken within produce him before this Court on the next date… in view of section 344 of the penal code of criminal procedure.

Let a copy of this order be communicated to the Superintendent of Jail of Gaibandha.

Let this sub-record be communicated to the arrest warrant issuing Court immediately in keeping a photocopy of the same.

Name…
Senior Judicial Magistrate Court 2nd
Gaibandha

28. Model Order under section 497 of the code of criminal procedure for the bail of an accused:

DISTRICT: GAIBANDHA
IN THE COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing Order…
Complaint Register Case…
Abdul Kader Complainant
-Versus-
Md. Rafiqul Islam and others accused
Under sections 7/30 of Nari o Shishu Nirjatan Daman Ain 2000
Advocate Md. Akbar Ali for the complainant
Advocate Nironjan Kumer Ghose ... For the accused petitioner

OrderNumber...

Seen the aforementioned note and voluntarily surrendered three accused persons who have been identified by the learned advocate Mr. Xyz and one arrestee. Heard the learned advocate on behalf of the accused and Court inspector on behalf of the State and after perusal of the record of this case and the statement in writing of the rescued victim Most Xyz and it appears to this Court that the offence does not provide the punishment of either death sentence or life imprisonment in view of section 497(1) of the code of criminal procedure. Aaording to the recorded statement of the victim, it also appears that the age of the victim is more than 18 years and thus she is capable of giving the consent. The first information in writing dated… does not contain the intelligence of the involvement against the parents of the main alleged accused Xyz. Moreover, the learned advocate on behalf of the accused submits that the investigating officer has not submitted the sufficient evidence at the time of forwarding another accused… who is in jail hazat.

Inview of the aforementioned reasons and the facts and circumstances of this case and the law declared by our apex Court reported in 17 BLT (HCD) 192 and reported in 61 DLR (HCD) 743 Para-23, the application for bail of the accused is allowed till submission of the police report subject to furnishing a bond of taka 1000.00 only.

29. Model Suo moto record of statement and order under section 202 and invesrtgation for torture of the arrestee:

DISTRICT: GAIBANDHA
IN THE COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing order 27/12/2010
General Register Case No. 703 of 201 (Gobindagonj)
Arising out of Gobindhogonj police Station 41 dated 26.12.2010
Under sections 328/379 of the penal Code
The State ... Prosecution
-Versus-
Ranju Miah and another ... accused

আদেশ নং-০১

তাং- ২৭.১২.২০১০

গোবিন্দগঞ্জ থানার মামলা নং- ৪১ তাং ২৬.০১.২০১০ ধারা ৩২৮/৩৭৯ পেনালকোড সংক্রান্তে আসামী ১) রঞ্জু মিয়া ২) শাকিল দ্বয়ের বিরুদ্ধে বাদীর অভিযোগসহ প্রাথমিক তথ্য বিবরণী পাওয়া গেল। তৎসহ অত্র মামলার তদন্তকারী অফিসার মামলার এজাহার নামীয় আসামী ১) রঞ্জু মিয়া ২) শাকিল দ্বয়কে গ্রেফতার করিয়া আসামীর চালান ফরোয়াডিং কোর্ট পুলিশ মাধ্যমে আদালতে সোপর্দ করিয়াছেন। ধৃত আসামীদ্বয়কে মামলা সুষ্ঠু তদন্তের স্বার্থে ০৫ (পাঁচ) দিনের পুলিশ রিমান্ডের আবেদনসহ সিডি প্রেরণ করিয়াছেন। Seen the aforementioned note including two arrestees and heard both of them. The confessional statements of the produced two arrestees are recorded duly as section 164 of the code of criminal procedure does not provide the matter of exclusive jurisdiction of the police officer for making the application in order to record either the statements or the confession.

Moreover, as per the aforementioned section the matter of application by the police officer concerned for recording either the statement or confession is not mandatory rather directory only. For the failure to comply with the procedure of making the application for recording the statements and the confession are not visited with any consequence and accordingly the same is directory only. In respect of this the Supreme Court of Bangladesh has declared the following law in the case of KOHINOOR CHEMICAL CO. LTD. – VS- EASTERN SHIPPERS & TRADERS reported in 41 DLR (HCD) 387. "If failure to comply with a legal provision is not visited with any consequence the provision is generally treated as directory."

For the aforementioned reasons the statements of both accused are recorded duly and having no necessity of police remand of the accused, the application for remand is hereby rejected.

The recorded confessions of the accused speaks the torture against the accused Ronju Miah by the Police in the Police station of Gobindaganj and hence it is necessary to makes an investigation as to this facts of torture and accordingly let a copy of this order along with the photocopies of the recorded confessions, and first information report (FIR) and first information (FI) of this case be communicated to the superintended of police of Gaibandha District so that he can depute a Police officer reasonably fit for making an investigation and submitting a report on or before the next date of 26.01.2011.

Let the arrestee Ronju Miah be produced before the concerned doctor of Gaibandha Hospital who after examining the accused aforesaid shall submit an injury certificate on before the next date of 26th January 2011 before this court send the accused to Jail hajat. Next date 10.07.2010 is fixed under section 344 of the code of criminal procedure. The office is directed accordingly.

Name…
Senior Judicial Magistrate Court 2nd
Gaibandha

30. Model Order when the service of summons is defective:

DISTRICT: GAIBANDHA
IN THE 2ND COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing order…
General Register Case No…
Arising out of Sundorgonj police Station
Under sections 447, 188, 411 and 323 of the penal Code
The State ...Prosecution
-Versus-
Xyz …Accused

Order No...

বিজ্ঞ সিনিয়র জুডিসিয়াল ম্যাজিস্ট্রেট আদালত হতে বিচার নিষ্পত্তির জন্য মামলার নথি পাওয়া গেল। অদ্য সাক্ষ্যের জন্য আছে। মোট আসামী ২৫ জন পূর্বের আদালত হতে জামিনে আছেন। জামিনে মুক্ত আসামী ১৫ জন হাজিরা দিয়াছেন। ০৪ জন গড় হাজির থাকিয়া সময়ের প্রার্থনা করিয়াছেন। অপর এক দরখাস্তে বিজ্ঞ কৌশুলী ফৌজদারী কার্যবিধি ৫৪০-এ ধারায় আবেদন করিয়াছেন। Seen the aforementioned note and heard the Learned Advocate and Court Sub Inspector. After perusal of the record, it appears that the summons was issued against witness Md. Shahjahan Mondol of son of late Ibrahim Mondol of village Hura via kha, Police Station-Sundorgonj, District –Gaibandha. But the return of summons dated 09.06.2003 contains the information that the summons has been delivered to the younger brother of Md. Monjurul Islam (Hiru) of the summoned witness and the informant Md. Shahjahan Mondol. But as per the said return of summons dated 09.06.2003 contains that the father of Md. Monjurul Islam (Hiru) is different person than that of the summoned informant witness Md. Shahjahan Mondol. Moreover the accused have voluntarily stated that Md. Monjurul Islam (Hiru) is unknown to them.

In addition to the aforementioned fact, it is also important matter that, the return of summons does not contain the particulars of one or more persons before whom the summons was delivered. In continuation of this return of summons though the further procedure was adopted but no witness has yet been produced. It is noted that this kind defective service of summons is also seen in many cases.

In view of the aforementioned reasons, the police officer… who served the summonses is directed to submit the explanation as to defective service of summons on the next date.

Let a copy of this order be forwarded to officer in- charge of Sundergonj police station of Gaibandha and to the Superintendent of police, Gaibandha.

The application under section 540A of CrPC and the time petition for four accused are allowed due to the grounds mentioned therein. Next date 21.12.2009 is fixed for explanation.

Name…
Senior Judicial Magistrate 2nd Court
Gaibandha

31. Model Order when the application under cvwievwiK mwnsmv (প্রতিরোধ ও সুরক্ষা) আইন ২০১০ is submitted:

IN THE 2ND COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing order…
Miscelleneous Register Case Number…
Under sections…
The State ...Prosecution
-Versus-
Xyz …Accused

Order Number 01:

ফরিয়াদী মোছাঃ লিজা বেগম আসামী মোঃ আতিকুর হোসেনসহ ০৩ জনের বিরুদ্ধে পারিবারিক সহিংসতা প্রতিরোধ ও সুরক্ষা/১০-এর (ক) (খ) (ঘ) এর অ, আ, ই ও ৩০ ধারার নালিশ আনায়ন করিয়াছেন। Seen the aforementioned note and examined the applicant and the substance of the said examination is recorded duly. Perused the application in writhing dated 16.08.2011 submitted today and it appears to this court that in view of the facts mentioned in the application it is expedient and necessary for the interest of justice to pass an ad-interim protection order under section 13 of cvwievwiK mwnsmv (প্রতিরোধ ও সুরক্ষা) AvBb 2010 and hence the persons against whom this application has been filed and are directed to give all entitled rights in view of the application in writing dated 16.08.2011 submitted on 18.08.2011 and they are farther directed to show cause as to why the ad-interim order shall not be permanent on the next date 29.09.2011. Issue a show cause notice upon the persons against whom this application has been filed.

Let a copy of this order be communicated to the officer-in-charge concerned immediately so that he can take legal steps for the compliance with the aforesaid ad-interim order. The office is directed accordingly.

Name…
Senior Judicial Magistrate 2nd Court
Gaibandha

32. Model Order when the doctor does not mention the stiches:

IN THE 2ND COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing order…
Miscelleneous Register Case Number…
Under sections…
The State ...Prosecution
-Versus-
Xyz …Accused

Order Number 19

মাননীয় চীফ জুডিসিয়াল ম্যাজিস্ট্রেট আদালত হতে ফৌঃ মিস কেস ২৪/১১ (গোবিঃ) মামলায় অত্র মামলায় আসামী ১) মোঃ রেজাউল ২) জুয়েল ৩) সাজু মিয়া ৪) বাদশা মিয়া ৫) রফিকুল ইসলাম ৬) মোঃ আনোয়ারা এর জামিন-এর আদেশসহ অত্র মামলার মুলনথি পাওয়া গেল। ফরিয়াদী হাজিরা দিয়াছেন। আসামী আজাদুল সহ ১১ জন আত্মসমর্পণ পূর্বক জামিনের আবেদন করিয়াছেন। জখমী মোঃ মোতালেব এর এম/সি পাওয়া গিয়াছে। জামিনে প্রাপ্ত আসামী মোঃ রোজউল হকসহ ০৬ জন হাজিরা দিয়াছেন। জখমী আলতাফ ২) আঃ সামাদ-এর এম/সি পাওয়া যায় নাই। এম/সি তলব পত্রের ডকুমেন্ট নথিতে সামিল আছে। Seen the aforementioned note and heard both sides. After perusal of the record it appears that the accused against whom arrest warrant was issued, have been enlarged on bail from the court of learned chief Judicial Magistrate, Gaibandha and hence the application for bail of other 11(eleven) accused are allowed subject to furnishing a bond of Tk 500/- only or under co-accued terms and conditions which one is more favourable. The learned advocate on be-half of the complainant submits that the concerned Dr. Most xyz has not mentioned the stitches in the injury certificate dated 17.09.11 and hence the said doctor is directed to be present on the next date 28.09.11 along with the register and treatment documents. The office is directed to collect the photocopy of the necessary documents in respect of calling for the injury certificate from Rangpur Medical College Hospital, Rangpur from Nezarat office.

Let a copy of this order be communicated to the said doctor immediately by a special messenger.

Name…
Senior Judicial Magistrate 2nd Court
Gaibandha

Next text of the order

অদ্য জামিনে প্রাপ্ত আসামীগণের হাজিরার জন্য আছে ও ডাঃ মোছাঃ কমলিকা রেজিস্ট্রারসহ হাজির জন্য আছে। মোট আসামী ১৭ জন জামিনে আছেন। ডাঃ মোছাঃ কমলিকা হাজির হয়ে একখানা দরখাস্ত দাখিল করিয়াছেন। ফরিয়াদী হাজিরা দিয়াছেন। সকল আসামী হাজিরা দিয়াছেন রংপুর মেডিকেল কলেজ হাসপাতাল এর এম/সি পাওয়া গিয়াছে।

Seen the aforementioned note and heard the learned advocate Mr. Ayub Ali Prodhan and perused the submitted medical certificate that is, the injury certificate dated 10.09.2011 submitted by Dr. Bhupal Chandra Barman, Assistant Register, Surgery Unit 2 and 3, Rangpur Medical College Hospital, Rangpur After perusal of the same, it appears that the aforesaid injury certificate dated 13.09.2011 does not contain the nature of the injury which is in fact the main matter in aiding a court for taking a decision and hence the said doctor is directed to be present and give the explanation in writing before this court on 10.10.2011 as to the same. He is further directed to submit the attested photocopy of the treatment sheets and the concerned registers which contain the note of description of injury of the victims. The mercy petition of the concerned doctor is allowed due to the grounds mentioned therein and she is thereby discharged from show cause liability as she has mentioned that she will describe the treatment i.e stitches, if the same is given in the injury certificate in future.

Let a copy of this order be communicated to him by General Express Post (GEP) immediately along with the photocopy of the said submitted injury certificate having no nature of the injury.

Name…
Senior Judicial Magistrate 2nd Court
Gaibandha

33. Model Order of cognizance and issuance of arrest warrant under section 92 of CrPC:

IN THE 2ND COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing order…
Miscelleneous Register Case Number…
Under sections…
The State ...Prosecution
-Versus-
Xyz …Accused

ধার্য্য তারিখে নথি পেশ করা হলো। মামলার সিএসভুক্ত আসামী ২১ জন। অব্যাহতির প্রার্থনা আছে ০৩ জনার। জামিনমুক্ত আসামীগণ গত ২০.০৬.১১ইং তারিখ হইতে মহামান্য হাইকোর্ট বিভাগ হইতে ০৪ মাসের জন্য জামিনে ছিল। জামিনেমুক্ত আসামীগণ গড় হাজির। এজাহারকারীর নারাজির আবেদন নথিতে শামিল আছে। যাহা অদ্য শুনানীর জন্য দিন ধার্য্য আছে। এজাহারকারীর হাজিরা পাওয়া গেল। Seen the aforementioned note and examined the informant cum complainant as to the narajee in writing dated 20.10.2011. The substance of the examination under section 200 of the Criminal Procedure Code of 1898 is recorded duly. After perusal of the same and the facts mentioned in the said narajee, it appears to this court that there are sufficient grounds to proceed this case against the not sent up 3 (three) accused also. Moreover, the informant shall get an opportunity to adduce evidence before the trial court against them.

In view of the aforementioned reasons and the law reported in 31 DLR (AD) 70 para-14- the cognisance of the offences of the sections of the penal code mentioned in the police report dated 31.08.2011 against all the sent up and not sent up accused is taken and accordingly due to non-appearance of the accused, their bail is canceled and issue arrest warrant (AW) under section 92 of CrPC against the accused who being enlarged on bail are not present today and under section 90 of CrPC against the three not sent up accused for whom cognisance is also taken. Next date under regulation 323(C) of PR-1943 is fixed for report as to the issued arrest warrant.

Let a copy of this order be communicated to the learned Chief Judicial Magistrate, Gaibandha and District Superintendent of police, Gaibandha for necessary steps so that the said regulation 323 of PR-1943 can be maintained or complied.

Name…
Senior Judicial Magistrate 2nd Court,
Gaibandha

34. Model Order of cognizance and send for trial under section 205CC of CrPC:

IN THE 2ND COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing order…
Miscelleneous Register Case Number…
Under sections…
The State ...Prosecution
-Versus-
Xyz …Accused

Seen the aforementioned note and after perusal of the police report dated… submitted by investigation officer of this case and it appears that there are sufficient grounds to proceed with this case and hence cognisance by dint of the authority of section 190 of the code of criminal procedure is taken against all the sent up accused under sections 143/448/326/307/34 of the penal code. This case having the allegation of section 326/307 of the penal code along with other sections of the said code is sent under section 205CC of the code of criminal procedure of 1898 to the court of learned Chief Judicial Magistrate, Gaibandha. Next date...

Name…
Senior Judicial Magistrate 2nd Court
Gaibandha

35. Model Order of cognizance and send for trial under section 205C of CrPC:

IN THE 2ND COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: - Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing order…
Miscelleneous Register Case Number…
Under sections…
The State ...Prosecution
-Versus-
Xyz …Accused

Seen the aforementioned note and after perusal of the police report dated… submitted by investigation officer of this case and it appears that there are sufficient grounds to proceed with this case and hence cognisance by dint of the authority of section 190 of the code of criminal procedure is taken against all the sent up accused under sections 143/448/302/34 of the penal code. This case having the allegation of section 302/34 of the penal code along with other sections of the said code is sent under section 205C of the code of criminal procedure of 1898 to the court of learned Court of Sessions of Gaibandha. Notify the public prosecutor in accordance with the provision of law immediately. Next date...

Name…
Senior Judicial Magistrate 2nd Court,
Gaibandha

36. Model Order of show cause when the order of the Court is not complied by officer in charge:

IN THE 2ND COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: - Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing order…
Miscelleneous Register Case Number…
Under sections…
The State ...Prosecution
-Versus-
Xyz …Accused

সুন্দরগঞ্জ থানার মামলা ৪০, তাং ২২.০২.১২ ধারা ৪৪৮/৩৮০/৩২৩/৫০৬ (ওও)/৪৯৮ পেনালকোড মোতাবেক আসামী ১) হাফিজুর রহমান ২) মরিয়ম বেগম তৈমুর বিরদ্ধে বাদীর কোর্ট পিটিশন নং ১৯/১২সহ প্রাথমিক তথ্য বিবরণী পাওয়া গেল। Seen the aforementioned note and after perusal of this record it appears to this court that the informent of this case on 12.01.2012 made a complaint in writing before this court and in getting the same this Court passed the order to treat the same as First Information (FI) and to send the First Information Report (FIR) and First Information (FI) on the next day in getting the said order. Officer-in-charge of Sundorgonj Police station has made a delay of 15 days to lodge this case although the said order and the complaint were received in Sundorgonj Police station on 06.02.2012 but the date of lodging the same is 22.02.2012 and thus he has caused the delay of 15 days and hence the officer in –charge of sundorgong Police station is directed to submit an explanation in writhing on 06.03.2012 before this Court as to the non-compliance with the order dated 12.01.2012 and as to why the action under section 29 of the Police Act of 1898 shall not be taken against him. It is also necessary for him to appear before this Court on the next date of 06.03.2012.

Let a copy of this order along with the photocopy of this or the recipt copy dated 06.02.2012 be communicated to District Superintendent of Police & Officer in Charge of Sundergonj police station of Gaibandha immediatly.

Name…
Senior Judicial Magistrate 2nd Court,
Gaibandha

37. Model Order of show cause when the order of the Court is not complied by any person:

IN THE 2ND COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: - Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing order…
General Register Case Number…
Under sections…
The State ...Prosecution
-Versus-
Xyz …Accused

অদ্য অনুসন্ধান প্রতিবেদন প্রাপ্তির জন্য আছে। ফরিয়াদী হাজিরা দিয়াছেন। প্রতিবেদন পাওয়া যায় নাই। Seen the aforementioned note and it appears, after perusal of this record that the injury making officer has not complied with the earlier order and even his teleassurance which was informed the Bench Assistance of this court. The facts of non-complaince is that on 25.09.2011 the Court of Senior Judicial Magisrtate Mr. Forhad Mamun passed an order for making inquiry and 31.10.2011 was fixed for submission of inquiry report and in Upazila Samaj Sheba Officer Mr. M.S Akram Hosen's office received on 18.10.2011 the required copy of this record in giving the cell number i.e. 01711-065532 and thereafter 26/12/2011 and 15/02/2012 were refixed for getting the inquiry report but till today no report has been submitted by him and even he has not shown any reasons before this court.

Moreover, the assurance given to Bench Assistant of this Court by him through his cell has also been not complied and hence it appears to this court that the non- submission of the inquiry report is completely a refusal to submit an report which attracts the authority of section 485 of the code of criminal procedure.

In view of the aforementioned reasons and the facts and circumstances, let a miscellaneous case under section 485 of the code of Criminal Procedure be started against that officer immediately, along with all relevant documents. Next date for this case is 19.03.2012.

Name…
Senior Judicial Magistrate 2nd Court
Gaibandha

38. Model Order when the address of IO is not known:

IN THE 2ND COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing order…
Miscelleneous Register Case Number…
Under sections…
The State ...Prosecution
-Versus-
Xyz …Accused

অদ্য বাকী সাক্ষ্যের জন্য আছে। মোট আসামী ০২ জন জামিনে আছেন। Seen the aforementioned note and after perusal of the record, it appears that the summons has been issued vide memo No. 410 dated 19.12.2010. But till today no return of summons has been submitted before this court.

In view of the aforementioned reasons, the officer-in-charge of Polashbari Police station is directed to submit a report as to the earlier issued summons on or before the next date.

He is further directed to submit a report as to the present working or residential place of the investigating officer SI Md. Sarwar Alom before the next date.

Let a copy of this order be communicated to him by a special messenger. Next date 13. 01. 2011. The office is directed accordingly.

Name…
Senior Judicial Magistrate 2nd Court
Gaibandha

39. Model Order of cognizance and isuue of processes along with the complaint under section 204(1B) of CrPC:

DISTRICT GAIBANDHA
IN THE 2ND COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: - Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing order…
General Register Case Number…
Under sections…
The State ...Prosecution
-Versus-
Xyz …Accused

অদ্য দাখিলকৃত Complaint টি Entry করা হলো। ফরিয়াদি... আসামী... এর বিরুদ্ধে দন্ড বিধির... ধারায় নালিশ আনায়ন করতঃ বিচার প্রার্থনা করেন। Seen the complainant and examined him under section 200 of the Code of Criminal Procedure upon oath. The substance of the said examination has been recorded duly and there after the same has been signed by the complainant and also by this court. After perusal of the same as well as this complaint in writing it evinces that there are sufficient grounds for proceeding. It also appears to this court that the facts of the complaint in writing and the said substance of the examination constitute the cognisable offences and hence cognisance is taken against accused... under sections... of Penal Code and issue arrest warrants (WA) against accused *Xyz* and *Opq* and issue summonses upon them for thei appearance.

Let the arrest warrant be accompanied by a copy of such complaint under section 204(1B) of the code of criminal procedure.

Next date… is fixed for the report as to the issued arrest warrant under regulation 323 of PR-1943 and issued summonses. The office is directed accordingly.

Name…
Senior Judicial Magistrate 2nd Court
Gaibandha

40. Model Order under regulation No. 276 of police regulations 1943:

DISTRICT GAIBANDHA
IN THE 2ND COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing order…
General Register Case Number…
Under sections…
The State ...Prosecution
-Versus-
Xyz …Accused

Seen the aforementioned note and after perusal of this record it appears to this court that the informent of this case has been informed and he states before this Court that he has no objection against the police report i.e. the final report and the there is no ground to proceed with this case and hence the police findings of the final report dated… is accepted under regulation 276 of police regulations 1943 and it is declared that the not sent up accused are hereby discharged from the case. This case thus is disposed of.

Name…
Senior Judicial Magistrate 2nd Court
Gaibandha

41. Model common bail granting order under section 497 of the code of criminal procedure for an accused:

DISTRICT: GAIBANDHA
IN THE COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing Order…
Complaint Register Case…
Abdul Kader Complainant
-Versus-
Md. Rafiqul Islam and others accused
Under sections 143/448/326/307/114 of the penal code
Advocate Md. Akbar Ali for the complainant
Advocate Nironjan Kumer Ghose ... For the accused petitioner

OrderNumber...

Seen the aforementioned note and voluntarily surrendered three accused persons who have been identified by the learned advocate Mr. Xyz and one arrestee. Heard the learned advocate on behalf of the accused and Court inspector on behalf of the State and after perusal of the record of this case, it appears to this Court that the offence does not provide the punishment of either death sentence or life imprisonment in view of section 497(1) of the code of criminal procedure. The first information in writing dated… does not contain the intelligence of the involvement against the arrestees of this case. Moreover, the learned advocate on behalf of the accused submits that the investigating officer has not submitted the sufficient evidence at the time of forwarding them which are in fact needed in view of section 170 of the code of criminal procedure. Moreover, the investigating officer and the officer in charge of the police station has not complied with sections 157(1) and 167(1) of the code of criminal procedure. Besides these, according to article 33 of the Constitution of the People's Republic of Bangladesh, this Court, can not detain the abovementioned volunatarily surrendered three persons without grounds as such grounds are pre-condition to be informed to the arrestee for making the arrest.

Inview of the aforementioned reasons and the facts and circumstances of this, the application for bail of the accused is allowed till submission of the police report or the injury certificate which ever is earlier subject to furnishing a bond of taka 1000.00 only.

Name…
Senior Judicial Magistrate 2nd Court
Gaibandha

42. Model common rejection order under section 497 of the code of criminal procedure in respect of the bail of an accused:

DISTRICT: GAIBANDHA
IN THE COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing Order…
Complaint Register Case…
Abdul Kader Complainant
-Versus-
Md. Rafiqul Islam and others accused
Under sections 302/34 of the penal code
Advocate Md. Akbar Ali for the complainant
Advocate Nironjan Kumer Ghose ... For the accused petitioner

OrderNumber...

Seen the aforementioned note and voluntarily surrendered three accused persons who have been identified by the learned advocate Mr. Xyz and one arrestee. Heard the learned advocate on behalf of the accused and Court inspector on behalf of the State and after perusal of the record of this case, it appears to this Court that the offence does provide the punishment of either death sentence or life imprisonment in view of section 497(1) of the code of criminal procedure and there appear reasonable grounds for believing that they have been guilty of an offence punishable with the aforesaid punishment. The first information in writing dated… does contain the intelligence of the involvement against the arrestees of this case. Moreover, the learned advocate on behalf of the accused submits that the investigating officer has not submitted the sufficient evidence at the time of forwarding them which are in fact needed in view of section 170 of the code of criminal procedure. Moreover, the learned advocate appearing on behalf of the arrestees submits that the overt acts of this case is very clear and hence there is no apparently cause of disclosing the facts.

Inview of the aforementioned reasons and the facts and circumstances of this, the application for bail of the accused is hereby rejected. Send them to jail hazat and the next date… under section 344 of the code of criminal procedure is fixed for the production of them and police report.

Name…
Senior Judicial Magistrate 2nd Court
Gaibandha

43. Model common bail granting order under sections 496 and 499 of the code of criminal procedure for an accused of bailable offence:

DISTRICT: GAIBANDHA
IN THE COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing Order…
General Register Case…
The State Prosecution
-Versus-
Md. Rafiqul Islam and others accused
Under sections 143/448/324/506/114 of the penal code

OrderNumber...

Seen the aforementioned note and the arrestee brought before this Court. Heard no learned advocate on behalf of the accused but Court inspector on behalf of the State and after perusal of the record of this case, it appears to this Court that the offence is bailable and the arrestee seeks bail in his plain language in stating the facts that he has no involvement with the offence and having civil dispute the informant has lodged this case. In view of the abovementioned facts and circumstances, enlarge the arrestee on bail onhis own bond of taka 200 only. The office is directed to follow and provide the form number XLII under schedule V of the code of criminal procedure where the arrestee shall give his signatuture duly.

Name…
Senior Judicial Magistrate 2nd Court
Gaibandha

44. Model order under section 346 of the code of criminal procedure:

DISTRICT: GAIBANDHA
IN THE COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing Order…
General Register Case…
The State Prosecution
-Versus-
Md. Rafiqul Islam and others accused
Under sections 143/448/325/506/114 of the penal code

OrderNumber...

Seen the aforementioned note and after perusal of the record it appears this Court that the evidence of pw-1 discloses the fact that a General Register case for the same fact is pending before Chief Judicial Magistrate Court of Rangpur and that case was lodged before this case and the addresses of the witnesses is within the jurisdiction of Rangpur Chief Judicial Magistrate. The evidence warrants a presumption that this case should be tried by the said Court of Rangpur.

In view of the aforementioned facts and circumstances, the proceedings of this case is stayed and the record of this case is submitted before the Court of Chief Judicial Magistrate of Gaibandha for taking the necessary steps under section 346 of the code of criminal procedure.

Name…
Senior Judicial Magistrate 2nd Court
Gaibandha

45. Model order under section 347 of the code of criminal procedure:

DISTRICT: GAIBANDHA
IN THE COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing Order…
General Register Case…
The State Prosecution
-Versus-
Md. Rafiqul Islam and others accused
Under sections 143/448/325/506/114 of the penal code

OrderNumber...

Seen the aforementioned note and after perusal of the record it appears this Court that the evidence of pw-1 and 2 discloses the fact that the evidence warrants a presumption that the accused of this case should receive a punishment more severe than that which this Court empowered to inflict. This Court holds the opinion that the offenders like these should be severely punished.

In view of the aforementioned facts and circumstances, the proceedings of this case is submitted andtheaccused are forwarded before the Court of learned Sessions Judge of Gaibandha of Gaibandha for taking the necessary steps under section 347 of the code of criminal procedure.

Name…
Senior Judicial Magistrate 2nd Court
Gaibandha

46. Model order under section 349 of the code of criminal procedure:

DISTRICT: GAIBANDHA
IN THE COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing Order…
General Register Case…
The State Prosecution
-Versus-
Md. Rafiqul Islam and others accused
Under sections 143/448/35/506/114 of the penal code

OrderNumber...

Seen the aforementioned note and after perusal of the record it appears this Court that the evidence of pw-1 and 2 discloses the fact that the evidence warrants a presumption that the accused of this case should receive a punishment more severe than that which this Court empowered to inflict. This Court holds the opinion that the offenders like these should be severely punished.

In view of the aforementioned facts and circumstances, the proceedings of this case is submitted and the accused are forwarded before the Court of learned Chief JudicialMagistarte of Gaibandha for taking the necessary steps under section 349 of the code of criminal procedure.

Name…
Senior Judicial Magistrate 2nd Court
Gaibandha

47. **Order under the Motor Vehicles Ordinance 1983**

DISTRICT: GAIBANDHA
IN THE COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing order 03.08.2009
Non General Register Case No. 75 of 2009
Arising out of Gaibandha Town Vehicles prosecution No. 117/09 dated 24.05.2009
Under sections 137,149,155,138, and 159 of the Motor Vehicles Ordinance,1983.
The State ... Prosecution
-Versus
... …Accused
Order No...03dated...03.08.2009

ধার্য্য তারিখে নথি পেশ করা হলো। মামলার আসামীর প্রতি সমন জারির প্রতিবেদন পাওয়া যায় নাই। অত্র মামলার আসামী (১) মোঃ জাহাঙ্গীর বিজ্ঞ কৌশুলীর মাধ্যমে আদালতে হাজির হইয়া দোষ স্বীকার-এর আবেদন করিয়াছেন। Seen the aforementioned note and heard the Learned advocate. Who thereafter submits another application for bail of the accused. After perusal of the record it appears that the alleged transgression is- as follows "...চালকের হেলমেট, DL, IC নাই।" But the care paper bearing Serial No. 2762 Contains the marks in repect of Section 137, 149 and 155 of the Motor Vehicles Ordinance, 1983 In fact, Section 138 of the said Ordinance deals with the offence of driving without license which has not been marked by the concerned police officer. It has also been marked the section 149 of the said Act but the offence of that section is not evinced in the fact of the alleged offence. More over, the concerned police officer has given a date of 28.02.2009 for appearing before Traffic office, Gaibandha in the said case paper. He has not mentioned anything else in respect of the appearance of the accused.

In view of the aforementioned reasons, the accused in as the offence is bail able, is enlarged on bail subject to furnishing a bond of TK. 3000/= with two Conventional sureties.

The concerned police officer Bikorna Kumer Chawdhury, Police Inspector, Traffic officer, Gaibandha is directed to show cause on the next date being present as to why he has marked section 149 and not marked section 138 of the said Ordinance 1983. He is also directed to show cause being Present physically on the next date as to why without complying with section 159 of the said Ordinance 1983 has given a date to appear before the traffic office of Gaibandha.

The case is ready for trial and hence the same is transferred to the court of Learned 2nd Court of Senior judicial Magistrate Gaibandha and the next date 30.08.2009 is fixed for trial and response.

The office is directed to send a copy of this order to the concerned show –caused police officer and the office is directed accordingly.

Name…
Senior Judicial Magistrate 2nd Court
Gaibandha

Chapter– 13

Some Model Miscelleneous Cases

1. When a doctor is not attended before the Court after getting summons duly.

DISTRICT: GAIBANDHA
IN THE COURT OF SENIOR JUDICAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing order:-8th September, 2010
Criminal Miscellaneous Case Number... of 2010
Connected with General Registrar Case Number 46 of 2006
Arising out of: Gaibandha Police Station Case Number: 05 dated 11.03.2006
The State ... Prosecution
-Versus-
Dr. Md. Humayun Kabir ... Accused
Under section: 485A of the Code of Criminal Procedure

Order No. 01dated 08.09.2010

Seen the aforementioned note and perused the order dated 08.09.2010 of General Registrar (GR) Case 46 of 2006 and it appears to me that the summoned witness Dr. Md. Humayun Kabir, at present Emergency Medical Officer, Emergency Department, Rangpur Medical Officer College Hospital, Rangpur mentioned in the summons issued on 10.08.2010 vide Memo No. 224 and served on 17.08.2010 by Guaranteed Express Post (GEP) with Acknowledgement Due (AD) was legally bound to appear before this court today. But he has not appeared before this court and even shown any excuses or reasons for his non-attendance. In view of the aforementioned reasons this Court is satisfied that it is expedient in the interest of justice that, the abovementioned witness should be tried summarily under section 485A of the code of criminal procedure and accordingly the cognisance of the offence is taken against him. In this criminal miscellaneous case, he will be treated as the accused. In the light of the Principle of natural justice as well as the spirit of the section 485A of the Code of criminal procedure it is necessary to give an opportunity of showing cause in respect of the offence of non-attendance.

Hence it is ordered that

the above mentioned accused whose address was mentioned earlier in the Police report of GR Case No 46 of 2006 as witness and who is at

present working as Emergency Medical Officer in Emergency Department, Rangpur Medical Officer College Hospital, Rangpur is directed to show cause as to why he should not be punished under section 485A of the Code of Criminal Procedure on the next date of 23rd September 2010. He is also directed to be present before the court at the time of showing cause.

Let the copy of this be order be communicated to him through the Guaranteed Express Post (GEP) with Acknowledgement Due (AD) immediately. Next date 23.09.2010 is fixed for showing cause.

Name…
Senior Judicial Magistrate 2nd Court
Gaibandha

Next order:

Seen the aforementioned note and after perusal of this record it appears to this Court that the concerned doctor who has been show caused earlier has not appeared to day and he has not shown any excuse by any advocate. Moreover, the Acknowledgement Due (AD) has been annexed with this record. It is clear from the record of this case that the concerned doctor has made the oofence of section 485A of the code criminal procedure.

In view of the aforesaid facts and circumstances, the said doctor

Dr. Md. Humayun Kabir, at present Emergency Medical Officer, Emergency Department, Rangpur Medical Officer College Hospital, Rangpur is convicted under section 485A of the code of criminal procedure for payment of the fine of taka 199 and in default to payment the same within 6 hours, the convicted accused shall suffer the simple imprisonment for a period of 30 days. Isue arrest warrant after six hours.

Name…
Senior Judicial Magistrate 2nd Court
Gaibandha

ii. *When a person at the time of lodging the First Information (FI) in writing mentioned the age 18 years of the accused Abdur Razzak and concealed the facts of actual age of the accused about 09/10 years and committed the offence of cheating punishable under section 417 of the Penal Code.*

DISTRICT: GAIBANDHA

In the court of Senior Judicial Magistrate, Gaibandha

(Summary Trial under Chapter XXII of the Code of Criminal Procedure)

Present: Mr. Md. Azizur Rahman*, Senior Judicial Magistrate, Gaibandha*

i. Serial Number: Criminal Miscellaneous Case No. 12 of 2010

ii. The date of commission of offence: 03.11.2010

i. **The date of the report or complaint:** 23rd November, 2010

ii. **The name of the complainant (if any):** M. M. Shafiqul Alom

iii. **The name of parentage and residence of the accused:** Shahin, son of Hasen Ali of Village; Nizam Khan, Sundergonj, Gaibandha

iv. **The offence complained of and the offence (if any) proved, (in cases coming under clause (d)/(e)/(f)/(g) of sub-section (1) of section 260 the value of the property in respect of which the offence has been committed:** The offence complaint in writing in the form of statement recorded under section 164 of the code of criminal procedure has been annexed with the record.

v. **Charge:**

vi. **I, Md. Azizur Rahman, Senior Judicial Magistrate, Gaibandha, hereby charge you name: :** Shahin, son of Hasen Ali of Village; Nizam Khan, Sundergonj, Gaibandha as hereunder:

vii. That you, on 03.11.2010 at 21.05 p m in the Sundergonj Police station District Gaibandha at the time of lodging the First Information (FI) in writing mentioned the age 18 years of the accused Abdur Razzak and concealed the facts of actual age of the accused about 09/10 years and committed the offence of cheating punishable under section 417 of the Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge at once.

However, the charge is read over to the accused person in Bengali words and then the accused pleaded in writing himself as guilty and prayed for justice.

Signature of Magistrate

viii. **The plea of the accused and his examination(if any):**

The above mentioned complainant submitted a complaint in writing against the accused person instantly on the commission of offence to the extent of knowing the same and the charge was read over to the accused person where he has not claimed himself as innocent in respect of the committed offence. Finally, the facts of the complaint as constitute the offence and hence cognisance of the offence of section 417 of the penal code is taken under section 190(1)(c) of the Code of Criminal Procedure and the accused was not examined under section 342 of the Code, as the accused admitted his guilty and prayed for justice as a first offender and he again stated that his mercy based recorded statements dated 23.11.2010 is to be considered.

Memorandum of substance of evidence of each witness:

In presence of Summary Trial Court the witnesses namely learned advocate Md. Rafiqul Islam (Rafiq), Ahsanul Karim Lasu and Md. Anisur Rahman of this Bar stated orally that the offence was committed by the accused.

ix. **The finding, and, in the case of a conviction, a brief statement of the reasons therefore:**

The complaint in writing dated 23.11.2010 in the form of the statement has been perused. On examining the complaint it is found that the accused person, on 03.11.2010 at 21.05 p m in the Sundergonj Police station District Gaibandha at the time of lodging the First Information (FI) in writing mentioned the age 18 years of the accused Abdur Razzak and concealed the facts of actual age of the accused about 09/10 years and committed the offence of cheating punishable under section 417 of the Penal Code. The accused himself admits his guilty. The depositions of other witnesses are not recorded as the accused himself admitted his guilty and prayed for justice.

Considering the above facts and circumstances as well as the proper application for law, I am of the view that the accused petitioner has committed offence under section 417 of the Penal Code and he is to have minimum punishment considering him as a first offender.

x. **The sentence or other final order:**

Hence
It is ordered,

xi. that the accused **Shahin, son of Hasen Ali of Village; Nizam Khan, Sundergonj, Gaibandha** is found guilty under section 417 of the Penal Code as the offence has been committed under the charge labeled against him beyond any reasonable doubts and he is convicted and sentenced to suffer a simple imprisonment of 10 (ten) days only. Send the accused to jail hajat through a warrant of commitment.

Signature of the Magistrate

xii. **The date on which the proceedings terminated: 5th December 2010.**

Signature of the Magistrate

xiii. **When** on 05.12.2010 at 01.50 p m in the Ejlash of Senior Judicial Magistrate Court No. 2 Gaibandha, at the time of hearing the application for bail in the General Register Case No. 521 of 2010 (Sundergonj) through Sree Proshanto Kumer Sarker, Advocate's Assistant and the learned advocate Md. Rafiqul Islam submitted two documents namely (i) one day casual leave granting application dated 04.12.2010 and (ii) the attestation letter dated 04.12.2010 bearing the signatures and seal of Md. Abul Kalam Azad, Assistant Upazila Education Officer, Sundergonj, Gaibandha who in fact had been transferred from Sundergonj before the period of more than about one month from today and committed the offence of forgery punishable under section 465 of the Penal Code.

DISTRICT: GAIBANDHA

In the court of Senior Judicial Magistrate, Gaibandha

(Summary Trial under Chapter XXII of the Code of Criminal Procedure)

Present: Mr. Md. Azizur Rahman, *Senior Judicial Magistrate, Gaibandha*

(i) **Serial Number:** Criminal Miscellaneous Case No. 13 of 2010

(ii) **The date of commission of offence:** 5th December, 2010

(iii) **The date of the report or complaint:** 5th December, 2010

d) The name of the complainant (if any): Order being No. 02 dated 05.12.2010 passed by the Senior Judicial Magistrate Court No. 2, Gaibandha in General Register Case Number: 521 of 2010 (Sundergonj).

(iv) **The name of parentage and residence of the accused:** Md. Ataur Rahman, son of Late Efaj Uddin Sarker of Village; Satir Jan, Police Station: Sundergonj, District: Gaibandha

(v) **The offence complained of and the offence (if any) proved, (in cases coming under clause (d)/(e)/(f)/(g) of sub-section (1) of section 260 the value of the property in respect of which the offence has been committed:** The offence in view of the order being No. 02 dated 05.12.2010 passed by the Senior Judicial Magistrate Court No. 2, Gaibandha.

(vi) **Charge:**

(vii) I, Md. Azizur Rahman, Senior Judicial Magistrate, Gaibandha, hereby charge you name**:** Md. Ataur Rahman, son of Late Efaj Uddin Sarker of Village; Satir Jan, Police Station: Sundergonj, District: Gaibandha as hereunder:

(viii) That you, on 05.12.2010 at 01.50 p m in the Ejlash of Senior Judicial Magistrate Court No. 2 Gaibandha, at the time of hearing the application for bail in the General Register Case No. 521 of 2010 (Sundergonj) through Sree Proshanto Kumer Sarker, Advocate's Assistant and the learned advocate Md. Rafiqul Islam submitted two documents namely (i) one day casual leave granting application dated 04.12.2010 and (ii) the attestation letter dated 04.12.2010 bearing the signatures and seal of Md. Abul Kalam Azad, Assistant Upazila Education Officer, Sundergonj, Gaibandha who in fact had been transferred from Sundergonj before the period of more than about one month from today and committed the offence of

forgery punishable under section 465 of the Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge at once.

However, the charge is read over to the accused person in Bengali words and then the accused pleaded himself as guilty which has been duly recorded and signed by this court and thereafter the accused gives his signature and left thump impression for more accuracy and prayed for justice seeking pardon. Here the formal charge has not been framed due to the following law reported in 14 DLR 595 Para- 8

"...the language of section 264 and 265 when read with sections 262 and 263 makes it clear that in no summary trial whether it be appealable or non-appealable, need a formal charge in writing be framed."

Signature of Magistrate

(ix) **The plea of the accused and his examination(if any):**

The above mentioned offence in view of the order being No. 02 dated 05.12.2010 passed by the Senior Judicial Magistrate Court No. 2, Gaibandha in General Register Case No. 521 of 2010 (Sundergonj) the accused person instantly on the commission of said offence to the extent of making false document i.e. forgery, the charge was read over to the accused person where he has not claimed himself as innocent in respect of the committed offence. Finally, the facts disclosing the offence in view of the said order being No. 02 dated 05.12.2010 passed by the Senior Judicial Magistrate Court No. 2, Gaibandha as constitute the offence and hence cognisance of the offence of section 465 of the penal code is taken under section 190(1)(c) of the Code of Criminal Procedure as the accused is not removable from his office save by or with the sanction of the government and moreover the alleged offence has not committed by him while acting or purporting to act in the discharge of his official duty and the accused was examined under section 342 of the Code, where he prayed orally for justice as a first offender and he stated his mercy based recorded statements dated 05.12.2010 which is to be considered. Section 263 of the code of criminal procedure provides that "In cases where no appeal lies, the Magistrate need not record the evidence of the witnesses or frame a formal charge and within the purview of section 412 of the said code it is true that where an accused person has pleaded guilty and has been convicted by a Court of Sessions or any Metropolitan Magistrate or Magistrate of the First Class on such plea there shall be no appeal except as to the extent or legality of the sentence and making no infringement or violation of the 'extent which as per http://www.thefreedictionary.com/extent means the range over

which something extends; scope, of the sentence' or 'legality which according to http://www.thefreedictionary.com/legality means lawfulness by virtue of conformity to a legal statute, of the sentence' and in view of the law reported in 14 DLR 595 Para-8, the formal examination under section 342 of the code of criminal procedure is not done as in accordance with section 263 of the said code there is no necessity of recording the evidence of the witnesses and the same is not done accordingly.

Memorandum of substance of evidence of each witness:

In presence of Summary Trial Court the witnesses namely learned advocate Md. Rafiqul Islam (Rafiq), Ahsanul Karim Lasu and Md. Anisur Rahman of this bar the deposition of Sree Proshanto Kumer Sarker along with the same of the accused Ataur Rahman is recorded duly.

(x) **The finding, and, in the case of a conviction, a brief statement of the reasons therefore:**

The complaint in writing dated 05.12.2010 in the form of the statement has been perused. On 05.12.2010 at 01.50 p m in the open Ejlash of Senior Judicial Magistrate Court No. 2 Gaibandha, at the time of hearing the application for bail in respect of the General Register Case No. 521 of 2010 (Sundergonj) through Sree Proshanto Kumer Sarker, Advocate's Assistant and the learned advocate Md. Rafiqul Islam submitted two documents namely (i) one day casual leave granting application dated 04.12.2010 and (ii) the attestation letter dated 04.12.2010 bearing the signatures and seal of Md. Abul Kalam Azad, Assistant Upazila Education Officer, Sundergonj, Gaibandha. This court at the time of knowing as to the fact of submitting the original casual leave granting application dated 04.12.2010 without any Memo numbers of the office relating to the signature and seal of Md. Abul Kalam Azad, Assistant Upazila Education Officer, Sundergonj, Gaibandha the accused Ataur Rahman admits that the said Md. Abul Kalam Azad, Assistant Upazila Education Officer, Sundergonj, Gaibandha does not work now in Sundergonj and he had been transferred from Sundergonj before the period of more than about one month from today and hence the admission of the accused is recorded duly which in fact committed the offence of forgery punishable under section 465 of the Penal Code. The accused himself admits his guilty. The deposition of the accused is recorded duly. The deposition of PW 1 Sree Proshanto Kumer Sarker, Advocate's Assistant is also recorded duly and in response to that the accused did not put any question either by himself or his appointed said advocate. The depositions of other witnesses are not recorded as the

accused himself admitted his guilty and for the aforementioned laws and reasons and thereafter he prayed for justice seeking pardon. Considering the above facts and circumstances as well as the proper application of law, this court is of the view that the accused petitioner has committed offence under section 465 of the Penal Code and he is to have punishment considering him as a first offender also.

(xi) **The sentence or other final order:**

Hence

It is ordered,

(xii) that the accused Md. Ataur Rahman, son of Late Efaj Uddin Sarker of Village; Satir Jan, Police Station: Sundergonj, District: Gaibandha is found guilty under section 465 of the Penal Code as the offence has been committed under the charge labeled against him beyond any reasonable doubts and he is convicted and sentenced to suffer a simple imprisonment of 6 (months) only. Send the accused to jail hajat through a warrant of commitment. Let the copy of this order be communicated to following authorities for taking proper and necessary steps:

(i) District Education Officer, Gaibandha

(xiii) Upazila Education Officer, Sundergonj, Gaibandha

Signature of the Magistrate

(xiv) **The date on which the proceedings terminated: 5th December 2010**

Signature of the Magistrate

Next Order:

DISTRICT: GAIBANDHA
IN THE COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing Order: 5th *December, 2010*
General Register Case Number: 521 of 2010
The State ...Prosecution
-Versus-
Ataur Rahman and others ...Accused
Under sections: 143, 341, 323, 379, 365, 342, 506 /34 of Penal Code

Order No. 02

Seen the aforementioned note and heard both sides. The learned advocate Mr. Md. Rafiqul Islam appearing for the accused in their presence producing and submitting two documents namely (i) one day casual leave granting application dated 04.12.2010 and (ii) the attestation letter dated 04.12.2010 bearing the signatures and seal of Md. Abul Kalam Azad, Assistant Upazila Education Officer, Sundergonj, Gaibandha who in fact had been transferred from Sundergonj before the period of more than about one month from today, submits that there is a civil dispute between the parties and this case is a false accusation and hence he seeks bail for the accused. On the other hand CSI Md. Merajul Islam appearing on behalf of the State submits that the accused had made the offence and the police of Kanchibari Investigation Centre after hearing the information went to the place of occurrence and recovered the victim and he strongly objects for granting the bail of the accused.

After perusal of the record and the submitted documents it appears to this court that the victim of this case had been compelled to go in the place of occurrence from the road and thereafter the police authority Kanchibari Investigation Centre had recovered the said victim from the said place of occurrence. As the victim had been compelled to go to the place from where the police recovered him, within the purview of section 362 of the penal code there exist the ingredients of the allegation of section 365 along with other sections of the said code.

In view of the aforesaid reasons, the application for bail of the accused sans 2(two), 3(three), 11(eleven) and 13(thirteen) is hereby rejected and send them to jail hajat by C/W. Next date for them is 19.12.2010.

Having the old age of two accused, an woman and being a teacher of a Registered High School the said four accused are enlarged on bail subject to furnishing a bond of taka 1000 with two usual sureties and in

case of the teacher with the surety of the headmaster of his School immediately.

It also appears to this court at the time of knowing as to the fact of submitting the original casual leave granting application dated 04.12.2010 without any Memo numbers of the office relating to the signatures and seal of Md. Abul Kalam Azad, Assistant Upazila Education Officer, Sundergonj, Gaibandha the accused Ataur Rahman admits that the said Md. Abul Kalam Azad, Assistant Upazila Education Officer, Sundergonj, Gaibandha does not work now in Sundergonj and he had been transferred from Sundergonj before the period of more than about one month from today and hence the admission of the accused is recorded duly and the office is directed initiate a Misc. Case in respect of this.

Name…
Senior Judicial Magistrate 2nd Court,
Gaibandha

(iii)When a complainant files a false case and the investigation report shows that he has made the falsification.

DISTRICT: GAIBANDHA
IN THE COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate Court No.2, Gaibandha.
Date of passing Judgment 24.04.2011
Criminal Misc. Case 09 of 2010 (Sadullapur)
The State Prosecution
-Versus-
Md. Jadu Miah @ Masud and another Accused
Under section 406 and 420 of the Penal Code
Mr. Ayub Ali Prodhan APP for the State
No Legal Practitioner is appeared for the accused

JUDGMENT

Md. Jadu Miah @ Masud and another having *been depicted as offender for offence* of section 406 and 420 of the Penal Code faced trial of charges under the section aforementioned of penal code in Criminal Misc. Case being No 09 of 2010.

POINTS FOR DETERMINATION

1. Whether the alleged fact was committed?
2. Whether the fact constituted the alleged offence?
3. Whether this accused person committed the alleged offence?
4. Whether the prosecution (complainant) has been able to prove the alleged transgression beyond all reasonable doubt?

2. The fact of the criminal miscellaneous case in brief is that the accused mentioned in the facts of *suo-moto* cognisance based on the inquiry report dated 22.06.2010, submitted by Upazila Ansar and Gram Protirakkha Bahini Karkmakarta, Palashbari, Gaibandha in pursuant to the complaint in writing 21.07.2009 filed by the accused Most. Rekha Begum, wife of the another accused Md. Jadu Miah @ Masud which discloses that the complainant cum accused Most. Rekha Begum being the wife of another accused Md. Jadu Miah @ Masud of this Criminal Miscellaneous Case, in order to cheat Md. Dulal Miah brought the complaint in writing dated 21.07.2009 that is Md. Dulal Miah gave taka 2, 40,000.00 (two lacs and forty thousand only) to the husband Md. Jadu Miah @ Masud of the complainant cum accused Most. Rekha Begum for the purpose of going abroad but thereafter the said Md Dulal MIah had not been sent to abroad for

which he gave the aforesaid amount of money. The inquiry officer has narrated these facts very clearly along with the documents given by three different chairmen of three concerned areas. The facts stated by the inquiry making person clearly indicates or constitutes the offences under sections 406 and 420 of the penal code against the complainant cum accused Most. Rekha Begum and her husband accused Md. Jadu Miah @ Masud of this case. The said inquiry making officer submitted the inquiry report dated 22.06.2010 before the competent court and the said court after maintaining all required procedures took cognisance under section 190(1)(c) of the code of criminal procedure on the facts disclosing offences of sections 406 and 420 of the penal code mentioned in the said inquiry report dated 22.06.2010 and issued process of summons against the accused of this case.

3. On the basis of such facts of *suo moto* cognisance, Criminal Miscellaneous Case Number 09 of 2010 was started. On 31.01.2011 charges under section 406/420/34 of the penal code was framed against the accused which were not read over and explained to them due to their absence.

DISCUSSION AND DECISION

4. The prosecution (complainant) to bring home charge against the accused produced and examined 7 (seven) witnesses. The testimonies of the witnesses have not been cross examined as the accused are absent in this case from the very first stage.

5. Defense put forward nothing as the accused were not present before this court and there is no general scope of saying that the complaint of *suo mo cognisance* had been falsely initiated and engineered at the instance of the complainant's interest.

6. PW 1 মোঃ মোস্তাফিজার রহমান testified in his examination in chief that আমি পিটিশন ৮৬০/২০০৯ নালিশের অনুসন্ধান/তদন্ত করেছিলাম। তখন আমি পলাশবাড়ী উপজেলায়, উপজেলা আনসার ও ভিডিপি কর্মকর্তা হিসাবে কর্মরত ছিলাম। আমি সেই নালিশের অনুসন্ধান তিনটি ধাপে করি। গত ২৪.০৫.২০১০ইং তারিখে আমি ১ম বার নান্দি শহর বকুল তলা, পলাশবাড়ী থানাধীন এলাকায় অনুসন্ধান করি। আমি সেদিন সকাল ১১.০০ ঘটিকার সময় নালিশে বর্ণিত ১, ২, ৩, ৪ ও ৯ নম্বর সাক্ষীদেরকে পাই ও তাদের জবানবন্দী গ্রহণ করি। অন্য সাক্ষীরা অনুপস্থিত থাকায় তাদের জবানবন্দী নিতে পারিনি। ফরিয়াদির নালিশ অনুসন্ধান করতে গিয়ে জানতে পারি যে, ফরিয়াদির স্বামী সাজু মিয়া @ মাসুদ একজন আদম ব্যবসায়ী। সে নালিমে বর্ণিত ১নং আসামী দুলাল মিয়াকে বিদেশে পাঠানোর আশ্বাস দিয়ে তার নিকট থেকে দুই লক্ষ চল্লিশ হাজার টাকা গ্রহণ করে। সেই

টাকা লেনদেনের ব্যাপারে একটি ডিডও হয়েছিল যাতে তারিখ ২৬.১১.২০০৮ লোখা আছে। আমি ফটোকপি পেয়েছিলাম। এই সেই ফটোকপি প্র-১। সম্ভবত মূল কপিটি নালিশের ১নং আসামী টাকা প্রদানকারী মোঃ দুলাল মিয়া এর নিকট আছে। তারপর আবার ১৫.০৬.২০১০ইং তারিখে ঢোলভাংগা বাস স্ট্যান্ডে থেকে অনু ৩০০/৪০০ গজ দূরে ঢোলভাংগা-সাদুল্যাপুর রোডে তদন্ত/অনুসন্ধান করি। সময় ছিল সকাল ১১.৩০ টার দিকে। এখানে জানতে পারি এনামুল হক, অবসর প্রাপ্ত পোর্ট অফিসার, নৌবাহিনী তার পিতা মৃত: জামাল উদ্দিন সেখ, গ্রাম বড় গোপালপুর, সাদুল্যাপুর উপজেলা, গইবান্ধা-এর নিকট থেকে ১৭.০৭.২০০৯ইং রোজ শুক্রবার অনুমান রাত ৯/১০ টার সময় ধাপের হাট পুলিশ ফাড়ির মাধ্যমে তাকে জানানো হয় যে, তার এলাকার নান্দিশহর গ্রামে যাদু মিয়া নামের এক ব্যক্তির সংগে বিদেশে পাঠানোর নামে টাকা পয়সা সমস্যার সৃষ্টি হয়েছে। বিষয়টি জানার জন্য তাকে মোবাইলে জানায়। এ সংবাদের প্রেক্ষিতে তিনি ঘটনাস্থলে গিয়ে দেখতে পান যে, বড় গোপালপুর গ্রামের খোদ্দ কোমরপুর ইউনিয়নের সদস্য মোখলেসুর রহমান এর বাড়ীতে যাদু মিয়া এবং অত্র এলাকার কিছু লোকজন আলাপ আলোচনা করতেছে। সেই পোর্ট অফিসার এর তদন্ত অনুসন্ধান রিপোর্ট এর সংগে দেয়া আছে। তিনি মূলতঃ কমিউনিটি পুলিশের আহবায়ক ছিলেন। ওখানে একজন মহিলাও ছিল। পরে তিনি জানতে পারেন যে, ঐ মহিলা দুলাল মিয়া-এর স্ত্রী। উক্ত সেই মহিলার নিকট তিনি জানতে পারেন যে, দুলাল মিয়াকে বিদেশের পাঠানোর প্রলোভন দেখিয়ে যাদু মিয়া প্রথমধাপে একলক্ষ চলিশ হাজার টাকা ও পরবর্তীতে আরও এক লক্ষসহ মোট দুই লক্ষ টাকা গ্রহণ করেছে। দীর্ঘদিন যাবৎ বিদেশে পাঠানো কথা বলে টালবাহানা করেছে। উক্ত টাকা আদায়ের জন্য পলাশাবড়ী উপজেলা পরিষদের চেয়ারম্যান জনাব এ কে এম মোখছেদ চৌধুরী বিদ্যুৎ একটি সালিশ করেছেন।

সালিশ বৈঠকে টাকা দেয়ার প্রতিশ্রুতি দেয়ার পরেও অদ্যাবধি সেই টাকা ফেরত দেয়নি। উক্ত উপজেলা চেয়ারম্যান কর্তৃক সংঘঠিত সালিশ নামার ফটোকপি অনুসন্ধান রিপোর্টের সাথে আমি সংযুক্ত করে দিয়েছি। মূল কপি চেয়ারম্যান-এর নিকট আছে হয়ত।

অনুসন্ধানকালে জানতে পারি দুলাল মিয়া টাকা দিয়ে বিদেশ যেতে না পেরে মানসিকভাবে ভারসাম্য হারিয়ে ফেলেন। সে ছবিও অনুসন্ধান রিপোর্টের সাথে দিয়েছি। এই সেই ছবি প্রদ-২। বিষয়টি তারপর সরেজমিনে জানার জন্য খামার হরিপুর গ্রাম (শঠিবাড়ী বাজার) ইউনিয়ন ১৪ নং দুর্গাপুর ইউনিয়ন পরিষদ, মিঠা পুকুর, রংপুরে যাই গত ১৬.০৬.২০১০ইং তারিখে অনুমান সকাল ১০.৩০ টার কিছু পরে। গিয়ে সত্যি দেখলাম যে, দুলাল মিয়া মানসিক ভারসাম্য হারিয়ে ফেলেছেন। সে শুধু কাদে কিন্তু কথা বলতে পারেনা। সেখানে অনুসন্ধান করে ও এলাকার লোকজন যেমন মহঃ শফিউল আলম, প্রধান শিক্ষক জাহিরাপুর উচ্চ বিদ্যালয়, মিঠাপুকুর রংপুরসহ অনেকের সাথে কথা বলে জানতে পারিলাম যে, দুলাল মিয়া টাকা দিয়েছে যাদু মিয়াকে বিদেশ যাওয়ার জন্য কিন্তু বিদেশ পাঠায় না

তাকে। টাকাও দেয়নী ফেরত। তাই সে পাগল হয়ে গেছে। এই সেই প্রধান শিক্ষক কর্তৃক প্রদত্ত কাগজ প্র-৩। ঐ এলাকায় চেয়ারম্যান মোঃ এনামুল হক প্রধান ও এ ব্যাপারে (এই ঘটনার ব্যাপারে) লিখিত প্রত্যয়ন পত্র দিয়েছে। এই সেই প্রত্যয়ন পত্র-৪।

সর্বোপরি অনুসন্ধান করে জানতে পারি যে, দুলাল মিয়া, আগে চায়ের দোকানদারী করত। দুই লক্ষ চলিশ হাজার টাকা দিয়ে বিদেশে যেতে না পেরে ও টাকা ফেরত না পেয়ে মানসিকভাবে ভারসাম্য হারিয়ে ফেলেছে। এই আমার অনুসন্ধান রিপোর্ট প্র-৫ ও আমার স্বাক্ষর প্র-৫/১।

7. PW 2-এ.কে.এম মোখছেদ চৌধুরী testified that "আমাকে মিঠাপুকুর উপজেলা চেয়ারম্যান জাকির হোসেন আমাকে একটি দরখাস্ত যাতে তার সুপারিশ রয়েছে আমার নিকট পাঠিয়ে দেন। পরে আমি উভয় পক্ষকে ডাকি। যাদু মিয়া @ মাসুদ ও দুলাল মিয়া উভয় পক্ষই উপস্থিত হয়েছিল। যাদু মিয়া স্বীকার করে সে টাকা নিয়েছিল। যাদু মিয়া @ মাসুদ তিন মাস সময় নিয়েছিল এ কথা বলে সে দুই লক্ষ চল্লিশ হজাজার টাকা ফেরত দিবেন। পরে ফেরত দেয়না। পরে আমি একটি প্রতিবেদন দেই আইনের আশ্রয় নেয়ার জন্য উহাতে আমার স্বাক্ষর আছে। এই সেই প্রতিবেদন ও আমার স্বাক্ষর প্র-৬। এই আমার জবানবন্দী।

8. PW 3 মোঃ এনামুল হক প্রধান deposed in his examination in chief that আমি বর্তমানে ১৪ নম্বর দুর্গাপুর ইউনিয়ন পরিষভদের চেয়ারম্যান। আমি নিজেই ১৫.০৬.২০১০ইং তারিখের প্রত্যয়নপত্র দিয়েছি। লিখেছে আমার ইউনিয়ন পরিষদের সচিব। তার নাম হলো আশরাফুল ইসলাম বাচ্চু আমি মনে করেছি আমার পরিষদের সঠিক নাম হলো আবু আশরাফ বাচ্চু। আমি দেখেছিলাম দুলাল শঠিবাড়ী উত্তর বাস স্ট্যান্ডে চায়ের দোকান করি ও তার কাছেই শুনেছিলাম যে, সে বিদেশে যাওয়ার জন্য যাদু মিয়া নামক এক লোককে। তারপর সে বিদেশে যাইতে পারেনি। টাকাও ফেরত পায়নি। সেই শোকে সে মানসিকভাবে অসুস্থ হয়ে গেছে। এই আমার জবানবন্দী। আর একটা কথা প্রত্যয়নপত্রের স্বাক্ষর আমার প্রদর্শনী-

9. PW 4 মোঃ আ: হালিম মন্ডল asserted in his examination in chief that আমাদের উপজেলা পষিদের চেয়ারম্যান মোঃ জাকির হোসেন সরকার। গত ১৬.০৬.২০১০ইং তারিখে দুলাল মিয়া এর ক্ষেত্রে প্রদত্ত প্রত্যয়ন পত্রটি আমাদের উপজেলা চেয়ারম্যান মোঃ জাকির হোসেন কর্তৃক প্রদত্ত। আমি তার স্বাক্ষর চিনি। প্রত্যয়ন পত্রের স্বাক্ষর তার। এই আমার জবানবন্দী।

10. PW 5 মোঃ শফিউল আলম asserted in his examination in chief that "গত ১৬.০৬.২০১০ইং তারিখে খামার হরিপুর (শঠিবাড়ী) এলাকার ১১১ (একশত এগার) জন ব্যক্তির স্বাক্ষর সম্মলিত ডকুমেন্টটিতে আমার স্বাক্ষর আছে। মিলও আছে। পলাশবাড়ী উপজেলা আনসার ও ভিডিপি কর্মকর্তার ও স্বাক্ষর আছে। দুলাল মিয়া আমার পড়শী। তাকে বিদেশে পাঠানোর উদ্দেশ্যে পলাশবাড়ী

থানার নান্দি শহরের আসামী যাদু মিয়া স্ট্যাম্প করে এক লক্ষ চলিশ হাজার টাকা গ্রহণ করেন। পরবর্তীতে সেই যাদু মিয়া দুলাল মিয়ার নিকট থেকে আরো প্রায় লক্ষাধিক টাকা গ্রহণ করেন একই উদ্দেশ্যে। টাকা নেয়ার পর দুলাল মিয়াকে বিদেশে পাঠানোর ব্যাপারে টালবাহানা করে। পরবর্তীতে দুলাল মিয়া বুঝতে পারেন যে, তার দেয়া টাকাটা হয়ত মেরে দেয়া হবে। তারপর তিনি (দুলাল মিয়া) সেই টাকা ফেরত পাওয়া অথবা বিদেশে যাওয়া যেকোন একটির জন্য চেয়ারম্যান, উপজেলা পরিষদ, মিঠাকপুকুর এর বরবর আবেদন করেন। তিনি আবার বিষয়টির সরাহার জন্য পলাশবাড়ী উপজেলা চেয়ারম্যান এর বরাবর সুপারিশ করেন। কয়েকবার চেষ্টায় বৈঠক হয় এবং সেই বৈঠকে চেয়ারম্যানকে বলে যে, টাকা ফেরত দিতে চান। সেই টাকা এখনও ফেরত দেয়নি। এর মাঝে দুলাল মিয়াকে সেই আসামী যাদু মিয়া ঢাকায় ও নিয়ে গিয়েছিলেন। তারপর দুলাল মিয়া মানসিক ভারসাম্য হারিয়ে ফেলেন সেই টাকার শোকে। পলাশবাড়ী উপজেলা আনসার ভিডিপি অফিসার এই বিষয়ে তদন্তের জন্য ঐ এলাকায় গেলে আমি বিষয়টি সত্যতা থাকায় তাকে সবকিছু বলি ও উপস্থিত লোকজনের কথা ও শানাই ও তারা এ ব্যাপারে স্বাক্ষর করে দেন। আমি উক্ত উপস্থিত ব্যক্তিবর্গের স্বাক্ষরে সাথে স্বাক্ষর করি। এই সেই আমার প্রদত্ত স্বাক্ষর প্রদর্শনী। এই আমার জবানবন্দী।

11. PW 6 রমেদা বেগম in his examination in chief that আমার স্বামী শঠিবাড়ী বাস স্ট্যান্ডে চায়ের দোকান করত। তারপর যাদু মিয়া ঐ দোকান যাওয়া আসা করতো। চা খাইত। আমিও মাঝে মাঝে দোকানে যাইতাম। সে সময় তাকে দেখি। সেই যাদু মিয়া একদিন আমার স্বামীকে বলে বিদেশে পাঠানোর কথা। তখন আমার স্বামীকে মামা বলে ডাকত। তারপর যাদু মিয়া আমার স্বামীকে বলে যে, ২,৭০,০০০/- টাকা দিতে পারলে সে তাকে দুবাই পাঠাতে পারবে।

আমার স্বামী পরে আমাকে তা জানায়। আমি তখন আমার স্বামীকে বলি যে, তোমার যেটা ভালো সেটা করো। তখন আমার স্বামীর কথায় যাদু মিয়া আর একজন লোক শাহজাহানকে সাথে নিয়ে আমাদের বাড়িতে আসে। তারপর আমাদের বাড়ি ভিটা ছিল ৮$\frac{১}{২}$শতক। প্রথমে ৪$\frac{১}{২}$ শতক জমি বিক্রি করি। ২,৪০,০০০/- টাকায় নূর হোসেন নামক আমাদের বাড়ীর পাশের লোক এর নিকট। সেদিন জমি বিক্রির দিনই, যাদু মিয়াকে আমার স্বামী ১,৪০,০০০/- (এক লক্ষ চলিশ হাজার) টাকা দেই ও একটি স্ট্যাম্প করা হয়। এই সেই স্ট্যাম্পের সত্যায়িত ফটোকপি প্রদর্শণী। মূল কপি বাড়ীতে আছে। আগামী তারিখে নিয়ে আসব। তারপর আরো টাকা চায়। আমাকে ও আমার স্বামীকে নিয়ে ঢাকায় নিয়ে যায়। তারপর আমাকে ঢাকায় এক হোটেলে আর আমার স্বামীকে আর এক হোটেলে রাখে। সন্ধ্যার দিকে এসে বলল যে, রাত ১২.০০ টায় ফ্লাইট আছে। সেদিন ছিল মঙ্গলবার। আমার স্বামীর নিকট আরো একলক্ষ টাকা নিল। তারপর যাদু মিয়া নিয়ে যায়। এয়ারপোর্টে নিয়ে যাওয়ার পর আমার সাথে আর আমার স্বামীর দেখান হয়না। আমার সাথে আমার ছেলে রোকনুজ্জামান রোকন (১০)

বছরের মতো ছিল সে সময় ছিল। আর দেখা হয়না। যাদু বলল যে, আপনারা হোটেলে যান। পরে টাকা না থাকায় আমার কানের ২টি সোনার রিং ৩,০০০/- টাকায় বিক্রি করে আমাকে ৬০০ শত টাকা দিয়ে বাকি টাকা আমার স্বামীকে দেয়ার কথা বলে ঐ দেশের মুদ্রায়। তারপর ওখান থেকে আমি ও আমার ছেলে মিলে হোটেলে এসে পরের দিন বাড়ীতে আসি। আসার সময় যাদু বলেছিল দুবাইতে পৌছার ২/৩ দিন হয়ে গেল, ১০/১২ হয়ে গেল মোবাইল করে না। তখন যাদুর নিকট মোবাইল করে বলি এখনও কেন মোবাইল করে না। তারপর হঠাৎকরে একদিন সন্ধ্যা বেলায় দেখি আমার স্বামী পাগলের মতো হয়ে বাড়ীতে আসল। তারপর সে জানায় যে, আমাকে এয়ারপোর্টের নিকট হাজী হোটেলে রেখে মারধর করেছে। বিদেশ পাঠায়নি। তারপর আমার স্বামী পাগলের মতো হয়ে গেছে। পরে আমি মিঠাপুকুর উপজেলা চেয়ারম্যান জাকির হোসেনকে সকল কথা বলি ও কাগজ দেখাই। সেই ঘটনা শুনে তিনি পলাশবাড়ী উপজেলা চেয়ারম্যানকে ব্যাপারটির মিমাংসার জন্য পাঠায়। পরে তার নিকটও আসি। টাকা দিতে চায়। আজ অবধি দেয়নি। আমার স্বামী গত রমজান ঈদে আজ থেকে ৭/৮ মাস আগে রাড়ী থেকে কোথায় চলে যায়। আর অবধি ফিরে আসেনি। টাকা ফেরত না পেয়ে টাকার শোকে সে মানসিকভাবে আর কিছু বলতে পারে না। খোজাখুঁজি করতেছি। আর পাইতেছিনা। কোন জিডি করিনি। এই আমার জবানবন্দী।

১২. PW 7 Alamgir states in his examination in charge আমি পানের দোকানদারি করি। যা শঠিবাড়ী বাসস্ট্যান্ডে অবস্থিত। দুলাল মিয়া বিদেশে যাওয়ার আশায় যাদু মিয়া ১,৪০,০০০/- টাকা দেয়। সেই যাদু মিয়া মিঠাপুকুর সাব রেজি অফিসে সেই টাকা নিয়েছিল। টাকা দেয়ার সময় আমি উপস্থিত ছিলাম। আরো ছিলা আঃ রাজ্জাক দুলাল মিয়ার স্ত্রী, আমার ভতিজি জামাই নূর হোসেন। স্যাম্প লেখা হয়েছিল নূর হোসেন ও রাজ্জাক সই করেছিল। পরে আর বিদেশে দুলাল মিয়াকে পাঠানো হয়নি। আনসার ভিডিপি কর্মকর্তা তদন্তে গেলে আমি অনেকের সাথে স্বাক্ষর দিয়েছিলাম। টাকাও ফেরত দেয়নি। সেই দুলাল মিয়া টাকার শোকে পাগল হয়ে গেছে। এই আমার জবানবন্দী।

13. The testimonies of all the prosecution witnesses has established and corroborated the alleged allegation of this case. This is a question whether the evidence of prosecution witnesses has been discarded or impeached.

14. Though the accused has not highlighted lot of grievances in bringing home contentions but contentions pressed into service are catalogued there under:

    i. No delay for initiating this case to the extent of date of *suo-moto* cognisance from the time of submission of inquiry report dated 22.06.2010.

ii. Independent witnesses had not been examined in support of the prosecution and adverse presumption under section 114(g) of the Evidence Act 1872 has arisen against the prosecution.

iii. Material witnesses mentioned in the inquiry report dated 22.06.2010, submitted by

Upazila Ansar and Gram Protirakkha Bahini Karkmakarta, Palashbari, Gaibandha had not been produced and examined and adverse inference is drawn against prosecution and by this non production of material listed witnesses prosecution case had become doubtful.

iv. No reliance can be placed on the contradictory evidence of the interested witnesses.

Contention No.1

15. Though the first information report under section 154 of the code criminal procedure in connection with Regulation 243 and 244 of Police Regulations-1943 is not substantive evidence but important in respect of obtaining the early information of alleged criminal activity. It is also necessary for showing reasonable and satisfactory causes of lodging the delayed first information. For this in the case of KARIM Vs STATE reported in 15 DLR (WP) 135 para-14 it was held that the delay of more than 12 hours in making the report to the police makes the prosecution case all the more doubtful. But in this case there is no delay delay for for initiating this case to the extent of date of *suo-moto* cognisance from the time of submission of inquiry report dated 22.06.2010 and having so in this point there is no scope of making any doubt.

16. In the inquiry report dated 22.06.2010 of this case it has been stated that the the accused Most. Rekha Begum, wife of another accused namely Md. Jadu Miah @ Masud which discloses that the complainant cum accused Most. Rekha Begum being the wife of another accused Md. Jadu Miah @ Masud of this Criminal Miscellaneous Case, in order to cheat Md. Dulal Miah brought the complaint in writing dated 21.07.2009 that is Md. Dulal Miah gave taka 2,40,000.00 (two lacs and forty thousand only) to the husband Md. Jadu Miah @ Masud of the complainant cum accused Most. Rekha Begum for the purpose of going abroad but thereafter the said Md Dulal MIah had not been sent to abroad for which he gave the aforesaid amount of money and when the inquiry report dated 22.06.2010 had been submitted the *suo-moto* cognisance was taken and accordingly the contention No.1 having carried no *substance is not accepted.*

17. Contention Nos. 2 and 3:

Contention Nos. 2 and 3 are dealt together. *As per the evidence given by PWs,*. the defence side as after getting the opportunity of making cross examination has done the same and hence the depositions of 7 (seven) prosecution witnesses are admissible in law. The law in this respect is that "cross examination being for the discovery of truth, it is necessary to the admissibility of oral testimony that opportunity to cross-examine the deponent should have been given. Where no opportunity to cross-examine the deponent has been given his testimony would be inadmissible, Baliram Tikaram v. E., 1945 n 1 or M. MONIR, Principles and Digest of the Law of Evidence, Ninth Edition page 1523." For this reason, the oral testimonies of prosecution witnesses of this case are admissible as the defence did not appear from *ab initio* and make cross examination where all procedures were exhausted very correctly. Besides, it is necessary to consider that whether the evidence of the PWs having even minor discrepancy is admissible in law. The answer of this point of consideration has been given by the Supreme Court of Bangladesh by declaring the following law i.e. "... minor discrepancy or variance in evidence will not make the prosecution case doubtful." [56 DLR (HCD) 285]

In this case, the defence has not impeached or discarded the evidence of the PRODUCED WITNESSES as the trial has been conducted under section 339B(1) of the code of criminal procedure.

18. Section 114(g) of the Evidence Act, 1872 postulates that non-examination of independent witnesses raises a presumption against prosecution. Section 134 of the Evidence Act enshrines that no particular number of witnesses shall in any case be required for proof of any fact. Law does not, thus, require particular number of witnesses to prove a case and conviction may be well founded even on testimony of a solitary witness provided his credibility is not shaken by any adverse circumstances against him and at the same time convinced that he is a truthful witness. Evidence on a point is to be judged not by the number of witnesses produced but by its inherent truth. The well known maxim which is a Golden Rule that evidence has to be weighed and not counted has been, thus, given statutory placement in section 134 of the Evidence Act.

19. It is true that prosecution is bound to produce and examine witnesses who are essential to unfolding of narrative on which prosecution case is based but it can not be also laid down as an inflexible Rule that if large number of persons are present at the

time of place of occurrence, prosecution is bound to call and examine each and everyone of persons present at the time of occurrence. There is no good reason for castigating the prosecution for not examining more or all witnesses to speak about the occurrence. It is up to the prosecution to call and examine persons and witnesses in support of prosecution case. Non-examination of vital and necessary witnesses in proof of guilt of accused person shall put prosecution case into peril and prosecution case shall fall to the ground and accordingly contention Nos. 2 and 3 having carried no substance are not accepted as the material and independent witnesses were produced, examined and cross examined also.

Contention No. 4

20. As per the record of this case the date of occurrence of the alleged offence, the time of occurrence the number of the accused and his part in the alleged occurrence are corroborated each other in respect of causing the alleged offence. There is no vital or glaring inconsistency or contradiction between and among the testimonies of the produced witnesses and accordingly this contention is not to be accepted and the same is not accepted.

21. All prosecution witnesses particularly who were acquainted with the facts of this case as eye witnesses has corroborated the fact of taking the money and the non payment of the same and accordingly it proves clearly the alleged allegation against the accused of this case.

22. On a close analysis of testimonies of PWs it appears to this court that the prosecution has proved the charge against the accused beyond all reasonable doubt. Court as a rule of prudence and caution and in order to exclude every possibility of involvement of innocent person in a case by prosecution along with guilty person or persons always look for corroboration by some reliable witnesses to create probable basis for basing conviction. It is though true that on the strength of section 134 of the Evidence Act conviction can be awarded even on the basis of testimony of a single witness and the testimony of PW 1 was such a quality as it was required to be relied upon without sufficient corroboration and he being an inquiry making officer in the case can not be characterised to be an interested witness rather his testimony has been corroborated by other witnesses.

23. The inquiry report dated 22.06.2010 of this case upon which the *suo-moto* cognisance had been taken discloses the fact of criminal

offence and there is no scope of acquitting the accused in considering that this is case of civil nature. Moreover, the fact of this case shows that the accused had initial intention to deceive the complainant and thereby misappropriated the said money. The law in this point declared by the Appellate Division of the Supreme Court of Bangladesh reported in 1998 BLD (AD) 289 is that

"The petition of complaint undoubtedly discloses criminal offence against the accused petitioner. There are allegations made in the petition of complaint that he had initial intention to deceive the complainant and thereby misappropriated the money. It can not be said to be a case of civil nature and as such the Appellate Division held that the High Court Division rightly refused the prayer for quashing the proceedings."

From the above facts and circumstances and evidence on record this court of Senior Judicial Magistrate Court No.-2, Gaibandha is of the opinion that the prosecution (complainant) has been able to prove charges mounted against all the accused and as a result the accused petitioners are liable to be convicted and sentenced.

Hence it is ordered that the accused Md. Jadu Miah @ Masud, son of late Alim Uddin and Most. Rekha Begum wife of Md. Jadu Miah @ Masud both of village- Nandishahor, Upazila- Palashbari, District- Gaibandha each are convicted under section 420 of the Penal Code and sentenced to suffer rigorous imprisonment for a period of 5 (five) years. They each are also convicted and sentenced to pay a fine of taka 10,000.00 (ten thousand) and either in default to pay or failure to realise the said fine under section 386 of the code of criminal procedure, to undergo for a period of three months more. They are also convicted and sentenced to suffer a rigorous imprisonment of 2 (two) years only. Both sentences shall run concurrently. According to section 545 of the code of criminal procedure taka 15,000.00 (fifteen thousand) out of the aforementioned fine of total taka 20,000.00 (twenty thousand) is to be paid to the victim of this case Md. Dulal Miah as compensation to the extent of expenses incurred in the prosecution and the loss or injury caused by the offence.

Issue a warrant for the levy of the amount by attachment and sale of any movable property belonging to the offender and hence the Upazila Nirbahi Officer of Palashbari, Gaibandha District having the more authoritative scope is directed for the same subject to following sub-section 2 of section 545 of the said code and after realising the said fine pay taka 15,000.00 (fifteen thousand) out of the aforementioned fine of total taka 20,000.00 (twenty thousand) to the victim of this case Md. Dulal Miah of this case and the residue amount of fine of taka 5000.00

(five thousand) in favour of the State and in addition to these submit a report as to the same before this court in accordance with the provision of law.

Period of jail shall be counted from the date of arrest or surrender subject to the benefit of section 35A if any, of the Code of Criminal procedure i.e. the custody period of the accused shall be deducted from the sentence.

Let a copy of this judgment along with the photocopy of the inquiry report dated 22.06.2010 for knowing the addresses of the victim of this case Md. Dulal Miah and the convicted accused and the warrant to levy a fine by attachment and sale prescribed in SCHEDULE V under section 386(1) (a) of the code of criminal procedure be communicated to the Upazila Nirbahi Officer of Palashbari of Gaibandha District for necessary steps.

The office is directed to keep this record as disposal record.

Name…
Senior Judicial Magistrate 2nd Court
Gaibandha

(iv)When a person commits the election offence

DISTRICT: GAIBANDHA
In the court of Senior Judicial Magistrate, Gaibandha
(Summary Trial under Chapter XXII of the Code of Criminal Procedure)
Present: Mr. Md. Azizur Rahman, *Senior Judicial Magistrate, Gaibandha*

(i) **Serial Number:** Criminal Miscellaneous Case (UP Election-2011) No. 40 of 2011

(ii) **The date of commission of offence:** 14th June, 2011

(iii) **The date of the report or complaint:** 14th June, 2011

d) The name of the complainant (if any): Md...

UNO, Police Station- Saghata, District, Gaibandha.

(iv) **The name of parentage and residence of the accused:** Khandakar Ataur Rahman son of Md. Ashraf Ali of Village- Uttar Samos, Police Station: Sundergonj, District: Gaibandha

The offence complained of and the offence (if any) proved, (in cases coming under clause (d)/(e)/(f)/(g) of sub-section (1) of section 260 the value of the property in respect of which the offence has been committed: The offence in view of the oral complaint of UNO of Saghata and seizurelist dated 14.06.2011 made by SI Md. Babul Islam, Gobindagonj Police Station, Gaibandha.

(v) **Charge:**

(vi) I, Md. Azizur Rahman, Senior Judicial Magistrate, Gaibandha, hereby charge you name**:** Khandakar Ataur Rahman son of Md. Ashraf Ali of Village- Uttar Samos, Police Station: Sundergonj, District: Gaibandha

(vii) as hereunder:

That you, on 14.06.2011 at about 11.35 am the accused came from the place which is not which beyond the election area with motorbike IN THE VOTE CENTRE and committed the offence of under Rule 5 of , and within my cognizance.

And I hereby direct that you be tried on the said charge at once.

However, the charge is read over to the accused person in Bengali words and then the accused pleaded himself as guilty which has been duly recorded and signed by this court and thereafter the accused gives his signature and left thump impression for more accuracy and prayed

for justice seeking pardon. Here the formal charge has not been framed due to the following law reported in 14 DLR 595 Para- 8

"...the language of section 264 and 265 when read with sections 262 and 263 makes it clear that in no summary trial whether it be appealable or non-appealable, need a formal charge in writing be framed."

Signature of Magistrate

(viii) **The plea of the accused and his examination(if any):**

The above mentioned offence in view of the oral complaint but the seizurelist in writing dated 14.06.2011 filed by SI Md. Babul Islam, Gobindagonj Police Station, Gaibandha, the accused person instantly admitted the commission of said offence which is recorded in the words used by him and the same as constitute the offence, cognisance of the offence of Rule 5 is taken under section 190(1)(c) of the Code of Criminal Procedure and the accused was asked why he shall not be punished under section 243 of the Code of Criminal Procedure , in response to this, he shows no sufficient cause why he should not be convicted and he stated his mercy based recorded statements dated 14.06.2011 which is to be considered. Section 263 of the code of criminal procedure provides that "In cases where no appeal lies, the Magistrate need not record the evidence of the witnesses or frame a formal charge and within the purview of section 412 of the said code it is true that where an accused person has pleaded guilty and has been convicted by a Court of Sessions or any Metropolitan Magistrate or Magistrate of the First Class on such plea there shall be no appeal except as to the extent or legality of the sentence and making no infringement or violation of the 'extent which as per http://www.thefreedictionary.com/extent means the range over which something extends; scope, of the sentence' or 'legality which according to http://www.thefreedictionary.com/legality means lawfulness by virtue of conformity to a legal statute, of the sentence' and in view of the law reported in 14 DLR 595 Para-8, the formal examination under section 342 of the code of criminal procedure is not done as in accordance with section 263 of the said code as there is no necessity of recording the evidence of the witnesses but for more accuracy the evidence of two main witnesses have been taken duly.

Memorandum of substance of evidence of each witness:

In presence of Summary Trial Court the witnesses namely Driver Dablu and SI Md. Babul Islam were present at the time of hearing and their testimonies are taken in accordance with the provision of law.

(ix) **The finding, and, in the case of a conviction, a brief statement of the reasons therefore:**

(x) The complaint is that you, on 14.06.2011 at about 11.35 am came in the vote centre of Tin Daho Govt. Primary School from the place which is not which beyond the election area with motorbike IN THE VOTE CENTRE and committed the offence of under Rule

in the presence of Driver Dablu and SI Md. Babul Islam and hence the admission of the accused is recorded duly which in fact committed the offence of Rule 72 ...

The accused himself admits his guilty. The admission of guilty of the accused is recorded in the language used by the accused himself. The depositions of other witnesses are not recorded as the accused himself admitted his guilty and for the aforementioned laws and reasons and thereafter he prayed for justice seeking pardon. Considering the above facts and circumstances as well as the proper application of law, this court is of the view that the accused petitioner has committed offence and he is to have punishment considering him as offender.

(xi) **The sentence or other final order:**

Hence

It is ordered,

: Khandakar Ataur Rahman son of Md. Ashraf Ali of Village- Uttar Samos, Police Station: Sundergonj, District: Gaibandha is found guilty under section Rule 5 of

as the offence has been committed under the charge labeled against him beyond any reasonable doubts and he is convicted and sentenced to suffer a simple imprisonment of two years only. Send the accused to jail through the warrant of commitment.

Signature of the Magistrate

(xii)**The date on which the proceedings terminated: 14th June 2011.**

Signature of the Magistrate

(V) WHEN A PERSON COMMITS AN OFFENCE DURING THE ELECTION

DISTRICT: GAIBANDHA

In the court of Senior Judicial Magistrate, Gaibandha

(Summary Trial under Chapter XXII of the Code of Criminal Procedure)

Present: Mr. Md. Azizur Rahman, *Senior Judicial Magistrate, Gaibandha*

(i) **Serial Number:** Criminal Miscellaneous Case (UP Election-2011) No. 41 of 2011

(ii) **The date of commission of offence:** 14th June, 2011

(iii) **The date of the report or complaint:** 14th June, 2011

(IV) **The name of the complainant (if any**): Md. Khalilur Rahman, son of late Mokhlesar Rahman, village- Gasabari, Police Station- Saghata Gaibandha, Gaibandha and Assistant Presiding officer of 4 No. Booth, Tulsi ghat Kashinathpur High Scool, Sahapara, Gaibandha.

(v) **The name of parentage and residence of the accused:** Md. Hiru Miah son of Md. Aminul Islam of Village- Tulshighat, Police Station: Gaibandha, District: Gaibandha

The offence complained of and the offence (if any) proved, (in cases coming under clause (d)/(e)/(f)/(g) of sub-section (1) of section 260 the value of the property in respect of which the offence has been committed: The offence in view of the complaint not in writing but seizurelist dated 14.06.2011 made by Md. Khalilur Rahman, son of late Mokhlesar Rahman, village- Gasabari, Police Station- Saghata Gaibandha, Gaibandha and Assistant Presiding officer of 4 No. Booth, Tulsi ghat Kashinathpur High Scool, Sahapara, Gaibandha

(vi) **Charge:**

(vii) I, Md. Azizur Rahman, Senior Judicial Magistrate, Gaibandha, hereby charge you name**:** Md. Hiru Miah son of Md. Aminul Islam of Village- Tulshighat, Police Station: Gaibandha, District: Gaibandha

(viii) as hereunder:

That you, on 14.06.2011 at about 03.30 pm tried to cast vote of another person namely Sree Manik Chandra son of Sree Anil Chandra Mohonta, village of Tulsighat, Police station- Gaibandha, District- Gaibandha and Assistant Presiding officer of 4 No. Booth, Tulsi ghat Kashinathpur High Scool, Sahapara, Gaibandha and committed the offence of under Rule 72 of and within my cognizance.

And I hereby direct that you be tried on the said charge at once.

However, the charge is read over to the accused person in Bengali words and then the accused pleaded himself as guilty which has been duly recorded and signed by this court and thereafter the accused gives his signature and left thump impression for more accuracy and prayed for justice seeking pardon. Here the formal charge has not been framed due to the following law reported in 14 DLR 595 Para- 8

"...the language of section 264 and 265 when read with sections 262 and 263 makes it clear that in no summary trial whether it be appealable or non-appealable, need a formal charge in writing be framed."

Signature of Magistrate

(ix) **The plea of the accused and his examination(if any):**

The above mentioned offence in view of the oral complaint but the seizurelist in writing dated 14.06.2011 filed by Md. Khalilur Rahman, son of late Mokhlesar Rahman, village- Gasabari, Police Station- Saghata Gaibandha, Gaibandha and Assistant Presiding officer of 4 No. Booth, Tulsi ghat Kashinathpur High Scool, Sahapara, Gaibandha, the accused person instantly admitted the commission of said offence which is recorded in the words used by him and the same as constitute the offence, cognisance of the offence of Rule 72 of… is taken under section 190(1)(c) of the Code of Criminal Procedure and the accused was asked why he shall not be punished under section 243 of the Code of Criminal Procedure , in response to this, he shows no sufficient cause why he should not be convicted and he stated his mercy based recorded statements dated 14.06.2011 which is to be considered. Section 263 of the code of criminal procedure provides that "In cases where no appeal lies, the Magistrate need not record the evidence of the witnesses or frame a formal charge and within the purview of section 412 of the said code it is true that where an accused person has pleaded guilty and has been convicted by a Court of Sessions or any Metropolitan Magistrate or Magistrate of the First Class on such plea there shall be no appeal except as to the extent or legality of the sentence and making no infringement or violation of the 'extent which as per http://www.thefreedictionary. com/extent means the range over which something extends; scope, of the sentence' or 'legality which according to http://www. thefreedictionary.com/legality means lawfulness by virtue of conformity to a legal statute, of the sentence' and in view of the law reported in 14

DLR 595 Para-8, the formal examination under section 342 of the code of criminal procedure is not done as in accordance with section 263 of the said code as there is no necessity of recording the evidence of the witnesses but for more accuracy the evidence of two main witnesses have been taken duly.

Memorandum of substance of evidence of each witness:

In presence of Summary Trial Court the witnesses namely Driver Dablu and SI M Ilias Ali were present at the time of hearing and their testimonies are taken in accordance with the provision of law.

(x) **The finding, and, in the case of a conviction, a brief statement of the reasons therefore:**

(xi) The complaint is that you, on 14.06.2011 at about 03.30 pm tried to cast vote of another person namely Sree Manik Chandra son of Sree Anil Chandra Mohonta, village of Tulsighat, Police station

Gaibandha, District- Gaibandha **in the presence of** Md. Khalilur Rahman, son of late Mokhlesar Rahman, village- Gasabari, Police Station- Saghata Gaibandha, Gaibandha and Assistant Presiding officer of 4 No. Booth, Tulsi ghat Kashinathpur High Scool, Sahapara and Gaibandha and hence the admission of the accused is recorded duly which in fact committed the offence of Rule 72 of...

The accused himself admits his guilty. The admission of guilty of the accused is recorded in the language used by the accused himself. The depositions of other witnesses are not recorded as the accused himself admitted his guilty and for the aforementioned laws and reasons and thereafter he prayed for justice seeking pardon. Considering the above facts and circumstances as well as the proper application of law, this court is of the view that the accused petitioner has committed offence 72 of... and he is to have punishment considering him as offender.

(xii) **The sentence or other final order:**

Hence

It is ordered,

Md. Hiru Miah son of Md. Aminul Islam of Village- Tulshighat, Police Station: Gaibandha, District: Gaibandha is found guilty under section Rule 72 of

as the offence has been committed under the charge labeled against him beyond any reasonable doubts and he is convicted and sentenced to

suffer a simple imprisonment of two years only. Send the accused to jail through the warrant of commitment.

Signature of the Magistrate

(xiii) **The date on which the proceedings terminated: 11th June 2011.**

Signature of the Magistrate

VI. WHEN A PERSON COMMITS AN OFFENCE DURING THE ELECTION

DISTRICT: GAIBANDHA

In the court of Senior Judicial Magistrate, Gaibandha

(Summary Trial under Chapter XXII of the Code of Criminal Procedure)

Present: Mr. Md. Azizur Rahman, *Senior Judicial Magistrate, Gaibandha*

(i) **Serial Number:** Criminal Miscellaneous Case (UP Election-2011) No. 34 of 2011

(ii) **The date of commission of offence:** 11th June, 2011

(iii)**The date of the report or complaint:** 11th June, 2011

d) The name of the complainant (if any): Shahidul Islam Mondal, Officer, Agrani Bank, Gaibandha Branch, Gaibandha and Presiding officer of West Komor Noi Vote Centre, Gaibandha.

(iv)The name of parentage and residence of the accused: Md. Delwar Khan Dulu son of Md. Abul Kashem of Village- West Komor Noi, Police Station: Gaibandha, District: Gaibandha

The offence complained of and the offence (if any) proved, (in cases coming under clause (d)/(e)/(f)/(g) of sub-section (1) of section 260 the value of the property in respect of which the offence has been committed: The offence in view of the complaint in writing dated 11.06.2011 made by Shahidul Islam Mondal, Officer, Agrani Bank, Gaibandha Branch, Gaibandha and Presiding officer of West Komor Noi Vote Centre, Gaibandha.

(iv) Charge:

(v) I, Md. Azizur Rahman, Senior Judicial Magistrate, Gaibandha, hereby charge you name**:** Md. Delwar Khan Dulu son of Md. Abul Kashem of Village- West Komor Noi, Police Station: Gaibandha, District: Gaibandha

(i) as hereunder:

That you, on 11.06.2011 at about 09.00 pm forcibly taken away a ballot box from the possession of the Shahidul Islam Mondal, Officer, Agrani Bank, Gaibandha Branch, Gaibandha and Presiding officer of West Komor Noi Vote Centre, Gaibandha and committed the offence of under Rule... of and within my cognizance.

And I hereby direct that you be tried on the said charge at once.

However, the charge is read over to the accused person in Bengali words and then the accused pleaded himself as guilty which has been duly

recorded and signed by this court and thereafter the accused gives his signature and left thump impression for more accuracy and prayed for justice seeking pardon. Here the formal charge has not been framed due to the following law reported in 14 DLR 595 Para- 8

"...the language of section 264 and 265 when read with sections 262 and 263 makes it clear that in no summary trial whether it be appealable or non-appealable, need a formal charge in writing be framed."

Signature of Magistrate

(ii) The plea of the accused and his examination(if any):

The above mentioned offence in view of the complaint in writing dated 11.06.2011 filed by Shahidul Islam Mondal, Officer, Agrani Bank, Gaibandha Branch, Gaibandha and Presiding officer of West Komor Noi Vote Centre, Gaibandha the accused person instantly admitted the commission of said offence which is recorded in the words used by him and the same as constitute the offence, cognisance of the offence of Rule... of is taken under section 190(1)(c) of the Code of Criminal Procedure and the accused was asked why he shall not be punished under section 243 of the Code of Criminal Procedure , in response to this, he shows no sufficient cause why he should not be convicted and he stated his mercy based recorded statements dated 11.06.2011 which is to be considered. Section 263 of the code of criminal procedure provides that "In cases where no appeal lies, the Magistrate need not record the evidence of the witnesses or frame a formal charge and within the purview of section 412 of the said code it is true that where an accused person has pleaded guilty and has been convicted by a Court of Sessions or any Metropolitan Magistrate or Magistrate of the First Class on such plea there shall be no appeal except as to the extent or legality of the sentence and making no infringement or violation of the 'extent which as per http://www.thefreedictionary.com/extent means the range over which something extends; scope, of the sentence' or 'legality which according to http://www.thefreedictionary.com/legality means lawfulness by virtue of conformity to a legal statute, of the sentence' and in view of the law reported in 14 DLR 595 Para-8, the formal examination under section 342 of the code of criminal procedure is not done as in accordance with section 263 of the said code as there is no necessity of recording the evidence of the witnesses but for more accuracy the evidence of two main witnesses have been taken duly.

Memorandum of substance of evidence of each witness:

In presence of Summary Trial Court the witnesses namely APC Md. Abdus Sabur and SI Raihanul Raj Dulal were present at the time of

hearing and their testimonies are taken in accordance with the provision of law.

(iii) The finding, and, in the case of a conviction, a brief statement of the reasons therefore:

(ix)The complaint is that you, on 11.06.2011 at about 09.00 pm forcibly taken away a ballot box from the possession of the Shahidul Islam Mondal, Officer, Agrani Bank, Gaibandha Branch, Gaibandha and Presiding officer of West Komor Noi Vote Centre, Gaibandha and hence the admission of the accused is recorded duly which in fact committed the offence of...

The accused himself admits his guilty. The admission of guilty of the accused is recorded in the language used by the accused himself. The depositions of other two witnesses are recorded though the accused himself admitted his guilty and for the aforementioned laws and reasons and thereafter he prayed for justice seeking pardon. Considering the above facts and circumstances as well as the proper application of law, this court is of the view that the accused petitioner has committed offence...and he is to have punishment considering him as offender.

(iv) The sentence or other final order:

Hence

It is ordered,

Md. Delwar Khan Dulu son of Md. Abul Kashem of Village- West Komor Noi, Police Station: Gaibandha, District: Gaibandha is found guilty under section Rule... as the offence has been committed under the charge labeled against him beyond any reasonable doubts and he is convicted and sentenced to suffer a simple imprisonment of two years only. Send the accused to jail through the warrant of commitment.

Signature of the Magistrate

(v) The date on which the proceedings terminated: 11th June 2011

Signature of the Magistrate

VI. WHEN A PERSON COMMITS AN OFFENCE DURING BAIL HEARING

DISTRICT: GAIBANDHA

IN THE COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing Order: 5th *December, 2010*
General Register Case Number: 521 of 2010
The State ...Prosecution
-Versus-
Ataur Rahman and others ...Accused
Under sections: 143, 341, 323, 379, 365, 342, 506 /34 of Penal Code

Order No. 02

Seen the aforementioned note and heard both sides. The learned advocate Mr. Md. Rafiqul Islam appearing for the accused in their presence producing and submitting two documents namely (i) one day casual leave granting application dated 04.12.2010 and (ii) the attestation letter dated 04.12.2010 bearing the signatures and seal of Md. Abul Kalam Azad, Assistant Upazila Education Officer, Sundergonj, Gaibandha who in fact had been transferred from Sundergonj before the period of more than about one month from today, submits that there is a civil dispute between the parties and this case is a false accusation and hence he seeks bail for the accused. On the other hand CSI Md. Merajul Islam appearing on behalf of the State submits that the accused had made the offence and the police of Kanchibari Investigation Centre after hearing the information went to the place of occurrence and recovered the victim and he strongly objects for granting the bail of the accused. After perusal of the record and the submitted documents it appears to this court that the victim of this case had been compelled to go in the place of occurrence from the road and thereafter the police authority Kanchibari Investigation Centre had recovered the said victim from the said place of occurrence. As the victim had been compelled to go to the place from where the police recovered him, within the purview of section 362 of the penal code there exist the ingredients of the allegation of section 365 along with other sections of the said code.

In view of the aforesaid reasons, the application for bail of the accused sans 2(two), 3(three), 11(eleven) and 13(thirteen) is hereby rejected and send them to jail hajat by C/W. Next date for them is 19.12.2010.

Having the old age of two accused, an woman and being a teacher of a Registered High School the said four accused are enlarged on bail subject to furnishing a bond of taka 1000 with two usual sureties and in

case of the teacher with the surety of the headmaster of his School immediately.

It also appears to this court at the time of knowing as to the fact of submitting the original casual leave granting application dated 04.12.2010 without any Memo numbers of the office relating to the signatures and seal of Md. Abul Kalam Azad, Assistant Upazila Education Officer, Sundergonj, Gaibandha the accused Ataur Rahman admits that the said Md. Abul Kalam Azad, Assistant Upazila Education Officer, Sundergonj, Gaibandha does not work now in Sundergonj and he had been transferred from Sundergonj before the period of more than about one month from today and hence the admission of the accused is recorded duly and the office is directed initiate a Misc. Case in respect of this.

Name…
Senior Judicial Magistrate 2nd Court,
Gaibandha

DISTRICT: GAIBANDHA

In the court of Senior Judicial Magistrate, Gaibandha

(Summary Trial under Chapter XXII of the Code of Criminal Procedure)

Present: Mr. Md. Azizur Rahman, *Senior Judicial Magistrate, Gaibandha*

(i) **Serial Number:** Criminal Miscellaneous Case No. 13 of 2010

(ii) **The date of commission of offence:** 5th December, 2010

(iii) **The date of the report or complaint:** 5th December, 2010

d) The name of the complainant (if any): Order being No. 02 dated 05.12.2010 passed by the Senior Judicial Magistrate Court No. 2, Gaibandha in General Register Case Number: 521 of 2010 (Sundergonj).

(iv) **The name of parentage and residence of the accused:** Md. Ataur Rahman, son of Late Efaj Uddin Sarker of Village; Satir Jan, Police Station: Sundergonj, District: Gaibandha

(v) **The offence complained of and the offence (if any) proved, (in cases coming under clause (d)/(e)/(f)/(g) of sub-section (1) of section 260 the value of the property in respect of which the offence has been committed:** The offence in view of the order being No. 02 dated 05.12.2010 passed by the Senior Judicial Magistrate Court No. 2, Gaibandha.

(vi) **Charge:**

(vii) I, Md. Azizur Rahman, Senior Judicial Magistrate, Gaibandha, hereby charge you name**:** Md. Ataur Rahman, son of Late Efaj Uddin Sarker of Village; Satir Jan, Police Station: Sundergonj, District: Gaibandha as hereunder:

(viii) That you, on 05.12.2010 at 01.50 p m in the Ejlash of Senior Judicial Magistrate Court No. 2 Gaibandha, at the time of hearing the application for bail in the General Register Case No. 521 of 2010 (Sundergonj) through Sree Proshanto Kumer Sarker, Advocate's Assistant and the learned advocate Md. Rafiqul Islam submitted two documents namely (i) one day casual leave granting application dated 04.12.2010 and (ii) the attestation letter dated 04.12.2010 bearing the signatures and seal of Md. Abul Kalam Azad, Assistant Upazila Education Officer, Sundergonj, Gaibandha who in fact had been transferred from Sundergonj before the period of more than about one month from today and committed the offence of forgery punishable under section 465 of the Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge at once.

However, the charge is read over to the accused person in Bengali words and then the accused pleaded himself as guilty which has been duly recorded and signed by this court and thereafter the accused gives his signature and left thump impression for more accuracy and prayed for justice seeking pardon. Here the formal charge has not been framed due to the following law reported in 14 DLR 595 Para- 8

"...the language of section 264 and 265 when read with sections 262 and 263 makes it clear that in no summary trial whether it be appealable or non-appealable, need a formal charge in writing be framed."

Signature of Magistrate

(ix) **The plea of the accused and his examination(if any):**

The above mentioned offence in view of the order being No. 02 dated 05.12.2010 passed by the Senior Judicial Magistrate Court No. 2, Gaibandha in General Register Case No. 521 of 2010 (Sundergonj) the accused person instantly on the commission of said offence to the extent of making false document i.e. forgery, the charge was read over to the accused person where he has not claimed himself as innocent in respect of the committed offence. Finally, the facts disclosing the offence in view of the said order being No. 02 dated 05.12.2010 passed by the Senior Judicial Magistrate Court No. 2, Gaibandha as constitute the offence and hence cognisance of the offence of section 465 of the penal code is taken under section 190(1)(c) of the Code of Criminal Procedure as the accused is not removable from his office save by or with the sanction of the government and moreover the alleged offence has not committed by him while acting or purporting to act in the discharge of his official duty and the accused was examined under section 342 of the Code, where he prayed orally for justice as a first offender and he stated his mercy based recorded statements dated 05.12.2010 which is to be considered. Section 263 of the code of criminal procedure provides that "In cases where no appeal lies, the Magistrate need not record the evidence of the witnesses or frame a formal charge and within the purview of section 412 of the said code it is true that where an accused person has pleaded guilty and has been convicted by a Court of Sessions or any Metropolitan Magistrate or Magistrate of the First Class on such plea there shall be no appeal except as to the extent or legality of the sentence and making no infringement or violation of the 'extent which

as per http://www.thefreedictionary.com/extent means the range over which something extends; scope, of the sentence' or 'legality which according to http://www.thefreedictionary.com/legality means lawfulness by virtue of conformity to a legal statute, of the sentence' and in view of the law reported in 14 DLR 595 Para-8, the formal examination under section 342 of the code of criminal procedure is not done as in accordance with section 263 of the said code there is no necessity of recording the evidence of the witnesses and the same is not done accordingly.

Memorandum of substance of evidence of each witness:

In presence of Summary Trial Court the witnesses namely learned advocate Md. Rafiqul Islam (Rafiq), Ahsanul Karim Lasu and Md. Anisur Rahman of this bar the deposition of Sree Proshanto Kumer Sarker along with the same of the accused Ataur Rahman is recorded duly.

(x) **The finding, and, in the case of a conviction, a brief statement of the reasons therefore:**

The complaint in writing dated 05.12.2010 in the form of the statement has been perused. On 05.12.2010 at 01.50 p m in the open Ejlash of Senior Judicial Magistrate Court No. 2 Gaibandha, at the time of hearing the application for bail in respect of the General Register Case No. 521 of 2010 (Sundergonj) through Sree Proshanto Kumer Sarker, Advocate's Assistant and the learned advocate Md. Rafiqul Islam submitted two documents namely (i) one day casual leave granting application dated 04.12.2010 and (ii) the attestation letter dated 04.12.2010 bearing the signatures and seal of Md. Abul Kalam Azad, Assistant Upazila Education Officer, Sundergonj, Gaibandha. This court at the time of knowing as to the fact of submitting the original casual leave granting application dated 04.12.2010 without any Memo numbers of the office relating to the signature and seal of Md. Abul Kalam Azad, Assistant Upazila Education Officer, Sundergonj,

Gaibandha the accused Ataur Rahman admits that the said Md. Abul Kalam Azad, Assistant Upazila Education Officer, Sundergonj, Gaibandha does not work now in Sundergonj and he had been transferred from Sundergonj before the period of more than about one month from today and hence the admission of the accused is recorded duly which in fact committed the offence of forgery punishable under section 465 of the Penal Code. The accused himself admits his guilty. The deposition of the accused is recorded duly. The deposition of PW 1 Sree Proshanto Kumer Sarker, Advocate's Assistant is also recorded

duly and in response to that the accused did not put any question either by himself or his appointed said advocate. The depositions of other witnesses are not recorded as the accused himself admitted his guilty and for the aforementioned laws and reasons and thereafter he prayed for justice seeking pardon.

Considering the above facts and circumstances as well as the proper application of law, this court is of the view that the accused petitioner has committed offence under section 465 of the Penal Code and he is to have punishment considering him as a first offender also.

(xi) **The sentence or other final order:**

Hence

It is ordered,

(xii) that the accused Md. Ataur Rahman, son of Late Efaj Uddin Sarker of Village; Satir Jan, Police Station: Sundergonj, District: Gaibandha is found guilty under section 465 of the Penal Code as the offence has been committed under the charge labeled against him beyond any reasonable doubts and he is convicted and sentenced to suffer a simple imprisonment of 6 (months) only. Send the accused to jail hajat through a warrant of commitment. Let the copy of this order be communicated to following authorities for taking proper and necessary steps:

(i) District Education Officer, Gaibandha

(xiii) Upazila Education Officer, Sundergonj, Gaibandha

Signature of the Magistrate

(xiv) **The date on which the proceedings terminated: 5th December 2010.**

Signature of the Magistrate

WHEN A CHIEF JUDICIAL MAGISTRATE COMMITS AN OFFENCE IN MAKING ANNUAL CONFIDENTIAL REPORT (ACR)

DISTRICT: GAIBANDHA

IN THE COURT OF SENIOR JUDICAL MAGISTRATE, GAIBANDHA
Present: Mr. Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha
Criminal Miscellaneous Case Number ... of 2011

Offence of *suo moto* cognizance

Date of knowledge: 11th April 2010 and 8th May 2011

Arising out of

Document dated 04.04.2010, 02.05.2010 and 28.04.2011

The State ... Prosecution

-Versus-

1. Md. Abdus Salam, son of late Abdul Karim, Former Chief Judicial Magistrate, Gaibandha at present 68/C, Green Road, Dhaka ...accused

In pursuant to the report dated 04.04.2010 based on from 22.05.2008 to 31.12.2008 of the Annual Confidential Report of Judicial Magistrate Md. Azizur Rahman, Gaibandha the aforesaid alleged accused being responsible to make and send the report in complying with the provision of law but he without complying with the concerned provision of law made and forwarded the report to his own superior officer where he casts an imputation on the character of Judicial Magistrate

Md. Azizur Rahman, Gaibandha and the said imputation is not made in good faith, and for public good which is made clear from the document dated 04.04.2010, 02.05.2010 and 28.04.2011 and thus the alleged aforesaid accused constitutes the offence of section 500/501 of the Penal Code as the said imputation has harmed the reputation of the said Judicial Magistrate Md. Azizur Rahman, Gaibandha. The aforementioned documents, all the advocates, staff and advocates' assistants and litigant persons Gaibandha Judge Courts and Magistrate Courts are the concerned witnesses in respect of the same.

Name…
Senior Judicial Magistrate 2nd Court,
Gaibandha

IN THE COURT OF SENIOR JUDICAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha
Criminal Miscellaneous Case Number ... of 2011
Order No. 01 dated 22.05.2011
***Suo moto* cgnizance of the offence**
Date of knowledge: 11th April 2010 and 8th May 2011
Arising out of
Documents dated 04.04.2010, 02.05.2010 and 28.04.2011
The State ... Prosecution

-Versus-

1. Md. Abdus Salam, son of late Abdul Karim, Former Chief Judicial Magistrate, Gaibandha at present 68/C, Green Road, Dhaka … …accused

Order No. 01dated 22.05.2011

Seen the aforementioned note and perused the complaint of *suo moto* cognisance along with the documents mentioned above and it appears to this court that in pursuant to the facts mentioned in the complaint of *suo moto* cognisance based on from 22.05.2008 to 31.12.2008 of the Annual Confidential Report of Judicial Magistrate Md. Azizur Rahman, Gaibandha the aforesaid accused being responsible to make and send the report in complying with the provision of law, without complying with the concerned provision of law made and forwarded the report to his own superior officer where he casts an imputation on the character of the said Judicial Magistrate Md. Azizur Rahman, Gaibandha and the said imputation is not made in good faith, and for public good which is clear from the documents dated 04.042010, 02.05.2010 and 28.04.2011 and thus the alleged aforesaid accused whether constitutes the offence of sections 500/501 of the Penal Code is the main subject matter of consideration.

It is necessary to examine whether the definition of 'defamation' as enumerated in section 499 of the Penal Code is attracted here. Section 499 of the Penal Code provides that

"Whoever by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe to believe that such imputation will harm, the reputation of such person, is said, except in the case hereinafter excepted, to defame that person.

. . .

Ninth Exception – It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interest of the person making it, or of any other person, or for the public good.

. . .

Illustration

b. A, a Magistrate, in making a report to his own superior officer, casts an imputation on the character of Z. Here, if the imputation is made in good faith, and for the public good, A is within the exception."

Now it is also necessary to see and examine whether the facts based on the document dated 04.04.2010 in connection with the report made and sent by the accused constitutes the alleged transgression. That is, the imputation must be made in good faith and for the public good. The term 'good faith' is defined in section 52 of the Penal Code (XLV of 1860) which provides that

"Good faith- Nothing is said to be done or believed in 'good faith' which is done or believed without due care and attention."

Again the term 'due care and attention' imply a genuine effort to reach the truth, and not the ready acceptance of an ill-natured belief. [Anandro Balkrishno, 17 Bom. L.R. 82: 27 I.C. 657; AIR 1934 Oudh 124 atp 126]

The same term has been declared in the case *Mithuhan –v- State Rajsthan* that

"The public servants who are empowered to take search are presumed to know the law and if the act is done in contravention of the mandatory provisions of law it must be held to have been done without due care and attention and can not be said to be done in good faith. [AIR 1969 Raj. 121 atp. 559] and in the case AHMED -v- CROWN that 'good faith' requires due care and attention as provided by section 52 of the penal code. [6 DLR (WPC) 149]

In this alleged facts of *suo moto* cognisance based on the documents dated 04.04.2010, 02.05.2010 and 28.04.2011 definitely constitutes the offence of sections 500/501 of the penal code as the said report has made without complying with the provision of law which is mentioned in details in the document dated 02.05.2010 and forwarded to the superior officer of the alleged accused.

The said accused is not in the service now and there is no necessity of complying with section 197 of the Code of Criminal Procedure.

It further appears to this Court that the word 'report' according to BLACK'S LAW DICTIONARY, seventh edition, page 1303 means "a formal oral or written presentation of facts" and the above mentioned accused whether has made the said report dated 04.04.2010 in contravention of the mandatory provisions of law. The answer of this question is yes. That is, the concerned law for বার্ষিক গোপনীয় অনুবেদন ফরম পূরণের জন্য অনুশাসন in accordance with Establishment Manual Vol. No. I edited by the Establishment Ministry, printed in February 1996 pages 991 and 1004 is quoted below:

ঘটনা (ইন্সিডেন্ট) নথি ও হুশিয়ারী ঃ

১.১২ বিরুপ মন্তব্য করার পূর্বে অনুবেদনকারী অফিসার অবশ্যইঃ

ক. প্রাথমিক অপরাধের বেলায় প্রথমত ঃ সংশ্লিষ্ট অফিসারেরকৃত ভুল/বিচ্যুতি মৌখিকভাবে তুলিয়া ধরিবেন এবং সংশোধনের জন্য পরামর্শ দিবেন।

খ. পুনরাবৃত অথবা ইচ্ছাকৃত অপরাধ/ত্রুটি/বিচ্যুতির জন্য লিখিতভাবে সতর্ক করিবেন। এই হুশিয়ারী খোলাখুলি, দৃঢ় ও সুস্পষ্ট হইবে।

এবং

৪.৭ অনুবেদনাধীন অফিসার যিনি তাঁহার অনুগত্য অথবা সততার ক্ষেত্রে বিরূপ মন্তব্যের জন্য মর্মাহত হন তাহার অনুবেদনকারী অফিসারের এই মন্তব্যের সমর্থনে প্রমান উপস্থাপনের দাবি করিতে পারিবেন।

Here the abovementioned accused has made the said report dated 04.04.2010 in contravention of the mandatory provisions of law quoted above and it is a valid question whether aforesaid underlined law is mandatory. The answer is given by the Supreme Court of Bangladesh in the case of *Aminul Islam*-v- *James Finley* reported in 26 DLR (AD) 33 in the following way i.e.

"Where a statute requires something to be done or to be done in a particular manner and the consequences of failure to do so are also provided, no difficulty arises and the provision is construed as mandatory" and here the following provision of law i.e.

৪.৭ অনুবেদনাধীন অফিসার যিনি তাঁহার অনুগত্য অথবা সততার ক্ষেত্রে বিরূপ মন্তব্যের জন্য মর্মাহত হন তাহার অনুবেদনকারী অফিসারের এই মন্তব্যের সমর্থনে প্রমান উপস্থাপনের দাবি করিতে পারিবেন indicates clearly that

ঘটনা (ইন্সিডেন্ট) নথি ও হুশিয়ারী ঃ

১.১২ বিরুপ মন্তব্য করার পূর্বে অনুবেদনকারী অফিসার অবশ্যইঃ

ক. প্রাথমিক অপরাধের বেলায় প্রথমত ঃ সংশিষ্ট অফিসারেরকৃত ভুল/বিচ্যুতি মৌখিকভাবে তুলিয়া ধরিবেন এবং সংশোধনের জন্য পরামর্শ দিবেন।

খ. পুনরাবৃত অথবা ইচ্ছাকৃত অপরাধ/ত্রুটি/বিচ্যুতির জন্য লিখিতভাবে সতর্ক করিবেন। এই হুশিয়ারী খোলাখুলি, দৃঢ় ও সুস্পষ্ট হইবে is mandatory provision of law which in making the said report dated 04.04.2010 which has been violated by the said accused. Though the document dated 28.04.2011 does not mean that the said imputation is without good faith and public good but this proceedings for the said imputation requires definitely the proof in view of section 499, ninth exception, illustration (b) of the penal code.

In view of the aforementioned facts, there are sufficient grounds to proceed with this complaint of *suo moto* cognisance and accordingly cognisance is taken against him under sections 500/501 of the penal code. Issue summons along with the copy of the complaint upon accused. Next date 19th July, 2011 is fixed for the appearance of the accused.

Name…
Senior Judicial Magistrate 2nd Court
Gaibandha

WHEN A PERSON COMMITS AN OFFENCE IN MENTIONING INCORRECT INFORMATION AND ACCUSES A CHIELD

DISTRICT: GAIBANDHA

In the court of Senior Judicial Magistrate, Gaibandha

(Summary Trial under Chapter XXII of the Code of Criminal Procedure)

Present: Mr. Md. Azizur Rahman, *Senior Judicial Magistrate, Gaibandha*

i. **Serial Number:** Criminal Miscellaneous Case No. 12 of 2010

ii. **The date of commission of offence:** 03.11.2010

iii. **The date of the report or complaint:** 23rd November, 2010

iv. **The name of the complainant (if any):** M. M. Shafiqul Alom

v. **The name of parentage and residence of the accused: Shahin, son of Hasen Ali of Village; Nizam Khan, Sundergonj, Gaibandha**

vi. **The offence complained of and the offence (if any) proved, (in cases coming under clause (d)/(e)/(f)/(g) of sub-section (1) of section 260 the value of the property in respect of which the offence has been committed:** The offence complaint in writing in the form of statement recorded under section 164 of the code of criminal procedure has been annexed with the record.

vii. **Charge:**

viii. I, Md. Azizur Rahman, Senior Judicial Magistrate, Gaibandha, hereby charge you name**: : Shahin, son of Hasen Ali of Village; Nizam Khan, Sundergonj, Gaibandha** as hereunder:

ix. That you, on 03.11.2010 at 21.05 p m in the Sundergonj Police station District Gaibandha at the time of lodging the First Information (FI) in writing mentioned the age 18 years of the accused Abdur Razzak and concealed the facts of actual age of the accused about 09/10 years and committed the offence of cheating punishable under section 417 of the Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge at once.

However, the charge is read over to the accused person in Bengali words and then the accused pleaded in writing himself as guilty and prayed for justice.

Signature of Magistrate

x. **The plea of the accused and his examination(if any):**

The above mentioned complainant submitted a complaint in writing against the accused person instantly on the commission of offence to the extent of knowing the same and the charge was read over to the accused person where he has not claimed himself as innocent in respect of the committed offence. Finally, the facts of the complaint as constitute the offence and hence cognisance of the offence of section 417 of the penal code is taken under section 190(1)(c) of the Code of Criminal Procedure and the accused was examined under section 342 of the Code, where he prayed orally for justice as a first offender and he again stated that his mercy based recorded statements dated 23.11.2010 is to be considered.

Memorandum of substance of evidence of each witness:

In presence of Summary Trial Court the witnesses namely learned advocate Md. Rafiqul Islam (Rafiq), Ahsanul Karim Lasu and Md. Anisur Rahman of this Bar stated orally that the offence was committed by the accused.

xi. **The finding, and, in the case of a conviction, a brief statement of the reasons therefore:**

The complaint in writing dated 23.11.2010 in the form of the statement has been perused. On examining the complaint it is found that the accused person, on 03.11.2010 at 21.05 p m in the Sundergonj Police station District Gaibandha at the time of lodging the First Information (FI) in writing mentioned the age 18 years of the accused Abdur Razzak and concealed the facts of actual age of the accused about 09/10 years and committed the offence of cheating punishable under section 417 of the Penal Code. The accused himself admits his guilty. The depositions of other witnesses are not recorded as the accused himself admitted his guilty and prayed for justice.

Considering the above facts and circumstances as well as the proper application for law, I am of the view that the accused petitioner has committed offence under section 417 of the Penal Code and he is to have minimum punishment considering him as a first offender.

xii. **The sentence or other final order:**

Hence

It is ordered,

xiii. that the accused **Shahin, son of Hasen Ali of Village; Nizam Khan, Sundergonj, Gaibandha** is found guilty under section 417 of the Penal Code as the offence has been committed under the

charge labeled against him beyond any reasonable doubts and he is convicted and sentenced to suffer a simple imprisonment of 10 (ten) days only. Send the accused to jail hajat through a warrant of commitment.

Signature of the Magistrate

xiv. **The date on which the proceedings terminated: 5th December 2010**

Signature of the Magistrate

WHEN A POLICE OFFICER COMMITS AN OFFENCE OF SECTION 29 OF THE POLICE ACT 1861

DISTRICT: GAIBANDHA

IN THE COURT OF JUDICAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Judicial Magistrate, Gaibandha
Criminal Miscellaneous Case No. 01 of 2009
Offence of *suo moto* cgnizance
Date of knowledge: 11th January, 2009
Arising out of
General Register Case Number 304 of 2008
Sadullapur Police Station case number 22 dated 26.10.2008
The State ... Prosecution
-Versus-
SI ***Gmg*** …Accused

In pursuant to the order dated 15.12.2008 the officer-in-charge of Sadullapur police station was under the responsibility to lodge and send the FIR in complying with the said order on the next working day. But the order dated 15.12.2008 has been violated wilfully. For better understanding I am mentioning the said order below:

"O/C Sadullapur police station, Gaibandha treats this complaint as first information directly. After lodging according to Regulation 243 of PR-1943 in B.P. Form -27, send the FIR to the concerned court on the next working day in getting this order.Maintaining all procedural formalities any special messenger is permitted to communicate this to the concerned officer in charge. Next date 22.01.2009"

The complaint along with the order dated 15.12.2008 was received on 18.12.2008 in the police station as it appears from the concerned record of the court. But the sub-inspector of police G.M. Mizanur Rahman assuming the charge of the police station on 26.12.2008 lodged the FIR in avoiding the charge of section 326 of the penal code which was the main charge of the case.

The aforementioned sub-inspector of Sadullapur police station lodged the FIR after the delay of 7 (seven) days and avoiding the main allegation of section of 326 of the penal code. For this all the accused have had the bail on 05.01.2009 on the ground of bailable sections of the offence. According to section 23 of the Police Act 1861, it was the duty of concerned police officer of Sadullapur police station, Gaibandha to obey and execute the said order promptly. But that duty has not been performed duly and in making the wilful violation of the same the right

to protection of law in respect of the complainant cum informant has been infringed absolutely and thus the offence punishable under section 29 of the Police Act 1861 has been occurred. Documentary evidence is: (i) Record of GR case No. 304 of 2008 and (ii) Peon book of the court and Bench clerk and MLSS Nur Mohammad are concerned persons as witnesses in respect of the same.

Name…
Senior Judicial Magistrate 2nd Court,
Gaibandha

DISTRICT: GAIBANDHA

IN THE COURT OF JUDICAL MAGISTRATE, GAIBANDHA

Present: Mr. Md Azizur Rahman, Judicial Magistrate, Gaibandha
Suo Moto cognisance order No. 01
Criminal Miscellaneous Case No. 01 of 2009
Under section 29 of the Police Act 1861
Date of passing order: 11th January, 2009
Arising out of
General Register Case Number 34 of 2008
Sadullapur Police Station case number 22 dated 26.10.2008
The State ... Prosecution
-Versus-
SI Gmg ... Accused

Dated 01dated 11.01.2009

In pursuant to the order dated 15.12.2008 the officer in charge or the inspector of Sadullapur police station was under the responsibility to lodge and send the FIR in complying with the said order on the next working day. But the order dated 15.12.2008 has been violated wilfully. For better understanding I am mentioning the said order below:

"O/C Sadullapur police station, Gaibandha treats this complaint as first information directly. After lodging according to Regulation 243 of PR-1943 in B.P. Form -27, send the FIR to the concerned court on the next working day in getting this order.Maintaining all procedural formalities any special messenger is permitted to communicate this to the concerned officer in charge. Next date 22.01.2009"

The complaint along with the order dated 15.12.2008 was received on 18.12.2008 in the police station as it appears from the concerned record of the court. But the sub-inspector of police ***Gmg*** assuming the charge of the police station on 26.12.2008 lodged the FIR in avoiding the charge of section 326 of the penal code which was the main charge of the case.

The aforementioned sub-inspector of Sadullapur police station lodged the FIR after the delay of 7 (seven) days and avoiding the main allegation of section of 326 of the penal code. According to section 23 of the Police Act 1861, it was the duty of concerned police officer of Sadullapur police station, Gaibandha to obey and execute the said order promptly. But that duty has not been performed duly and in making the wilful violation of the same the right to protection of law in respect of the complainant cum informant has been infringed absolutely.

It was the fundamental right of the informant to get the protection of law under article 31 of the constitution of the People's Republic of Bangladesh and hence this court lawfully passed the order dated 15.12.2008 in accordance with law.

Seven days delay of lodging the FI after getting the lawful order and avoiding the main charge of section 326 of the penal code is clearly wilful violation and neglect of the lawful order dated 15.12.2008 passed by this court. For this all the accused have had the bail on 05.01.2009 on the ground of bailable sections of offence.

According to Regulation 21(a) of Police Regulations 1943 which is law under article 152 of the constitution of the People's Republic of Bangladesh, this court having jurisdiction and empowered to take cognisance of police cases is under the responsibility for watching the course of police investigations in the manner laid down in chapter XIV of the code of criminal procedure. Here section 154 of chapter XIV of the code of criminal procedure in respect of the information of cognisable cases is very much pertinent for treating complaint as FI directly through the order dated 15.12.2008

In view of the aforementioned reasons particularly for the delay of 7(seven) days to lodge the FIR and the avoidance of the main charge of section 326 of penal code, the recording officer Sub-inspector of police ***Gmg*** assuming the charge of Sadullapur police station has committed the willful violation and neglect of the lawful order dated 15.12.2008 and deprived the informant of having the protection of law and accordingly the cognisance is acceptable.

Before taking the cognizance, it is necessary to see whether SI ***Gmg*** can get the protection of section 197 of the code of criminal procedure. In respect of this the Appellate Division of Supreme Court of Bangladesh has examined section 197 of the said code clearly in the case of *ASI MD. AYUB ALI SARDAR vs. STATE reported in 58 DLR (AD) (2006) page 13 Para 16-21* and for clear understanding I am mentioning the said examination of section 197 of the code of criminal procedure of the Appellate Division of Supreme Court of Bangladesh i.e.

"16. ... let us examine section 197 of the Code of Criminal Procedure which runs as follows:

"197. (1) When any person who is a Judge within the meaning of section 19 of he Penal Code, or when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of the Government, is accused of any offence alleged to have

been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognisance of such offence except with the previous sanction of the Government.

.....

(2) The Government ... may determine the person by whom, the manner in which, the offence or offences for which, the prosecution of such judge, magistrate or public servant is to be conducted and may specify the court before which the trial is to be held.'

17. On perusal of the aforesaid provision of law, it appears that in case of any judge or magistrate or a public servant, not removable from his office save by order or with the sanction of the Government, being an accused of any offence, while action in the discharge of his official duty, no court shall take cognizance of such offence except with the previous sanction of he Government.

18. In this connection the provision of the Police Officers (Special Provisions) Ordinance 1976 (Ordinance No. LXXXIV of 1976) may be referred to. Section 2, 4 and 5 of the Ordinance run as follows:

'**2. Definitions**-In this Ordinance unless there is anything repugnant in the subject or context,

xv. "authority" means an authority specified in column 2 of the schedule;

.....

xvi. "police-officer" means a police officer of, and below, the rank of Inspector mentioned in column 1 of the schedule.'

'**4. Offences**- Where a police-officer is guilty of-

xvii. misconduct,

xviii. dereliction of duty;

xix. act of cowardice and moral turpitude;

xx. corruption or having persistent reputation of being corrupt;

xxi. subversive activity or association with persosn or organisations engaged in subversive activities;

xxii. desertion from service or unauthorised absence from duty without reasonable excuse; or

xxiii. inefficiency

The authority concerned may impose on such police-officer any of the penalties mentioned in section 5.'

"**5. Penalties-** The following shall be the penalties which may be imposed under this Ordinance, namely,

xxiv. dismissal from service;

xxv. removal from service;

xxvi. discharge from service;

xxvii. compulsory retirement; and

xxviii. reduction to lower rank.'

19. It, therefore, appears from the aforesaid provisions of law that the accused petitioner No. 1 Ayub Ali Sarder being an Assistant Sub-Inspector of Police and petitioner No. 2 Sagir Ahmed being a constable, their services are removable by the authority as mentioned in the schedule of the Ordinance which is as follows:

Police-officer	**Authority**	**Appellate Authority**
1	2	3
1. Inspector	Inspector-General of Police	Government
2. Sub-Inspector, Assistant Sub-Inspector, Sergeant, Head Constable	Deputy Inspector-General of Police	Inspector-General of Police
3. Naiks, Constables	Superintendent of Police	Deputy Inspector-General of Police

20. In such view of the matter, it clearly shows that in order to remove the two accused petitioners from service sanction of the Government is not required and hence question of application of section 197 of the Code does not arise.

21. The tow petitioners, being Assistant Sub-Inspector of Police and constable respectively cannot claim that they are public servants not removable from their office except with the previous sanction of the Government. So section 197 of the Code has got no application."

For the aforementioned examination of section 197 of the code of criminal procedure it is absolutely clear that *Gmg* being sub-inspector of police, his service is removable by the authority as mentioned in the schedule of the Ordinance and in such view of the matter, it clearly shows that in order to remove SI *Gmg* from service sanction of the Government is not required hence question of application of section 197 of the code of criminal procedure does not arise and he can not claim that he is a public servant not removable from his office except with the previous sanction of the Government and accordingly cognisance is

taken against him under section 29 of the Police Act 1861. Issue summons along with the copy of the complaint upon accused SI *Gmg* of Sadullapur Police station, Gaibandha. Next date 29th January, 2009 is fixed for the appearance of the accused SI *Gmg*.

Let a copy of this order be forwarded to Deputy Inspector General of Police, Rajshahi Range, Rajshahi, Superintendent of police, Gaibandha immediately.

Name…
Senior Judicial Magistrate 2nd Court

Memo No Date : .....

Copy of the order is sent for necessary steps
1. Deputy Inspector General of Police, Rajshahi Range, Rajshahi
2. District Superintendent of Police, Gaibandha

WHEN A PROCESS SERVER COMMITS AN OFFENCE OF SECTION 417 OF THE PENAL CODE

DISTRICT: GAIBANDHA

In the court of Senior Judicial Magistrate, Gaibandha

(Summary Trial under Chapter XXII of the Code of Criminal Procedure)

Present: Mr. Md. Azizur Rahman, *Senior Judicial Magistrate, Gaibandha*

(i) **Serial Number:** Criminal Miscellaneous Case No. 05 of 2010

(ii) **The date of commission of offence:** 06.08.2010

(iii) **The date of the report or complaint:** 10th August, 2010

(iv) **The name of the complainant (if any):** Md. Zillur Rahman

(v) **The name of parentage and residence of the accused: Md. Mahinur Islam, son of ... Process Server,** Chief Judicial Magistrate Court, District: Gaibandha

(vi) **The offence complained of and the offence (if any) proved, (in cases coming under clause (d)/(e)/(f)/(g) of sub-section (1) of section 260 the value of the property in respect of which the offence has been committed:** The offence complaint in writing in the form of statement recorded under section 164 of the code of criminal procedure has been annexed with the record.

(vii) **Charge:**

(viii) I, Md. Azizur Rahman, Senior Judicial Magistrate, Gaibandha, hereby charge you name**: : Md. Mahinur Islam, son of ... Process Server,** Chief Judicial Magistrate Court, District: Gaibandha as hereunder:

(ix) That you, on 06.08.2010 at 4.00 p m in the house of the complainant located at village- Refaitpur, Union Parishad-Badiakhali, Police station and District Gaibandha either fraudulently or dishonestly induced the complainant to give taka in the interest of the investigation of the Petition (complaint) case being numbered 152 of 2010 and took taka 1000.00 and caused to the complainant the damage of the property of the said taka 1000.00 and thereby committed an offence punishable under section 417 of the Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge at once.

However, the charge is read over to the accused person in Bengali words and then the accused pleaded in writing himself as guilty and prayed for justice.

Signature of Magistrate

(x) **The plea of the accused and his examination (if any):**

The above mentioned complainant submitted a complaint in writing in the form of the statement recorded under section 164 of CrPC against the accused person instantly on the spot of commission of offence to the extent of knowing the same and the charge was read over to the accused person where he has not claimed himself as innocent in respect of the committed offence. Finally, the facts of the complaint as constitute the offence and hence cognisance of the offence of section 417 of the penal code is taken under section 190(1)(c) of the Code of Criminal Procedure as the accused is not removable from his office save by or with the sanction of the government and moreover the alleged offence has not committed by him while acting or purporting to act in the discharge of his official duty and the accused was examined under section 342 of the Code, where he prayed in writing for justice as a first offender and he again stated that his mercy petition dated 10.08.2010 is to be considered.

Memorandum of substance of evidence of each witness:

In presence of Summary Trial Court the witnesses namely. Learned advocate Khandaker Monjurul Islam of this Bar stated orally that the offence was committed by the accused.

(xi) **The finding, and, in the case of a conviction, a brief statement of the reasons therefore:**

The complaint in writing dated 10.08.2010 in the form of the statement recorded under section 164 of CrPC has been perused. On examining the complaint it is found that the accused person, on 06.08.2010 at 4.00 p m near at m in the house of the complainant located at village- Refaitpur, Union Parishad- Badiakhali, Police station and District Gaibandha. The accused himself in giving the mercy petition dated 10.08.2010 admits his guilty. Moreover the Learned advocate Khandaker Monjurul Islam of this Bar also seeks the mercy of the court. The depositions of other witnesses are not recorded as the accused himself admitted his guilty and prayed for justice.

Considering the above facts and circumstances as well as the proper application for law, I am of the view that the accused petitioner has committed offence under section 417 of the Penal Code and he is to have minimum punishment considering him as a first offender.

(xii) **The sentence or other final order:**

Hence

It is ordered,

that the accused **Md. Mahinur Islam, son of...**

Process Server, Chief Judicial Magistrate Court, District: Gaibandha is found guilty under section 417 of the Penal Code as the offence has been committed under the charge labeled against him beyond any reasonable doubts and he is convicted and sentenced to suffer a simple imprisonment of 4 (four) days only. Send the accused to jail hajat through a warrant of commitment.

Signature of the Magistrate

(xiii) **The date on which the proceedings terminated: 10th August 2010.**

Signature of the Magistrate

WHEN A PERSON COMMITS AN OFFENCE OF SECTION 427 OF THE PENAL CODE

DISTRICT: GAIBANDHA

In the court of Senior Judicial Magistrate, Gaibandha

(Summary Trial under Chapter XXII of the Code of Criminal Procedure)

Present: Mr. Md. Azizur Rahman, *Senior Judicial Magistrate, Gaibandha*

(i) **Serial Number:** Criminal Miscellaneous Case No. 01 of 2010

(ii) **The date of commission of offence:** 19th February 2010

(iii) **The date of the report or complaint:** 19th February 2010

(iv) **The name of the complainant (if any):** Md. Ahsan Habib Mukul

(v) **The name of parentage and residence of the accused:** Subhashis Kumaer Sarker, Sone of Sreema Chandra Sarker of Viilage Joyenpur, Post Office: Sadullapur, Police station: Sadullapur, District: Gaibandha

(vi) **The offence complained of and the offence (if any) proved, (in cases coming under clause (d)/(e)/(f)/(g) of sub-section (1) of section 260 the value of the property in respect of which the offence has been committed:** The offence complaint in writing has been annexed with the record and the residue part of this part is not applicable in this case.

(vii) **Charge:**

(viii) I, Md. Azizur Rahman, Senior Judicial Magistrate, Gaibandha, hereby charge you name**:** Subhashis Kumaer Sarker, Sone of Sreema Chandra Sarker of Viilage Joyenpur, Post Office: Sadullapur, Police station: Sadullapur, District: Gaibandha as hereunder:

That you, on the 19th day of February, 2010 at 4.00 p m near at the chamber of the practitioner Doctor Harun-or-Rashid located at Modern Diagnostic,D.B Road, Gaibandha at the time of driving your motorcycle negligently and having no proper skill or efficiency made an accident with the vehicle whose No. Dhaka-Metro-Cha 5300-135/3 and thereby committed an offence punishable under section 427 of the Penal Code, and within my cognizance.

And I hereby direct that you be tried on the said charge at once.

However, the charge is read over to the accused person in Bengali words and then the accused pleaded in writing himself as guilty and prayed for justice.

Signature of Magistrate

(ix) **The plea of the accused and his examination (if any):**

The above mentioned complainant submitted a complaint in writing against the accused person instantly on the spot of commission of offence and the charge was read over to the accused person where he has not claimed himself as innocent in respect of the committed offence. Finally, the facts of the complaint as constitute the offence and hence cognisance is taken under section 190(1)(c) of the Code of Criminal Procedure and the accused was examined under section 342 of the Code, where he prayed for justice as a first offender and he again stated that his mercy petition dated 19.02.2010 is to be considered.

Memorandum of substance of evidence of each witness:

In presence of Summary Trial Court the witnesses namely Noro-uttom Kumer son of Arun Chandra of village Viilage Joyenpur, Post Office: Sadullapur, Police station: Sadullapur, District: Gaibandha gave his deposition in writing and Masud, proprietor of Asif Auto-work shop at Gaibandha, Judicial Peshkar Monirujjaman, MLSS Abdul Wadud of Chief Judicial Magistrate Court, gaibandha stated orally that the offence was committed by the accused.

(x) **The finding, and, in the case of a conviction, a brief statement of the reasons therefore:**

The complaint in writing dated 19.02.2010 has been perused. On examining the complaint it is found that the accused person, on the 19th day of February, 2010 at 4.00 p m near at the chamber of the practitioner Doctor Harun-or-Rashid located at Modern Diagnostic,D.B Road, Gaibandha at the time of driving your motorcycle negligently and having no proper skill or efficiency made an accident with the vehicle whose No. Dhaka-Metro-Cha 5300-135/3 and thereby committed an offence punishable under section 427 of the Penal Code. The accused himself in giving the mercy petition dated 19.02.2010 admits his guilty. Moreover the witness Noro-uttom Kumer son of Arun Chandra of village Viilage Joyenpur, Post Office: Sadullapur, Police station: Sadullapur, District who was behind the said motorcycle with the accused gave also his deposition in writing in seeking mercy of the court. The depositions of other witnesses are not recorded as the accused himself admitted his guilty and prayed for justice.

Considering the above facts and circumstances as well as the proper application for law, I am of the view that the accused petitioner has committed offence under section 427 of the Penal Code and he is to have minimum punishment considering him as a first offender.

(xi) **The sentence or other final order:**

Hence
It is ordered,

that the accused Subhashis Kumaer Sarker, Son of Sreema Chandra Sarker is found guilty under section 427 of the Penal Code as the offence has been committed under the charge labeled against him beyond any reasonable doubts and he is convicted and sentenced to pay a fine of Taka 1000 (one) only. The accused person is hereby directed to submit the aforesaid fine amount within 7 (seven) days from this date under the opportunity of section 388 of the code of criminal procedure before the Court in default to under go a simple imprisonment for a period of 10 (ten) days only. It is also ordered that the whole amount of fine is given to the complainant as expenses or compensation for the repairing of the loss of the said vehicle under section 545 of the said code. This shall be done whenever the said fine will be given by the accused. The complainant is also directed to submit a voucher for the repairing of the loss of the said vehicle before this court.

Signature of the Magistrate

(xii) **The date on which the proceedings terminated: 19th February 2010.**

Signature of the Magistrate

DISTRICT**: GAIBANDHA**
IN THE COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing Order: 24th *April, 2011*
Complaint Register Case *Number 126 of 2011*
Md. Mahiuddin Alamgir complainant
-Versus-
Md. Ariful Haque and others... Accused
Under section: 500/501/34 of the Penal Code
Order No. 01

অদ্য দাখিলকৃত ফাইলটি Entry করা হলো। ফরিয়াদি Md. Mahiuddin Alamgir, Md. Ariful Haque and two others আসামী-এর বিরুদ্ধে দন্ড বিধির 500/501/34 ধারায় নালিশ আনায়ন করতঃ বিচার প্রার্থনা করেন। Seen the aforementioned note and examined him under section 200 of the Code of Criminal Procedure upon oath. The substance of the said examination has been recorded duly and there after the same has been signed by the complainant and also by this court. After perusal of the same as well as this complaint in writing it evinces that there are sufficient grounds for proceeding.

It also appears to this court that the facts of the complaint in writing and the said substance of the examination constitute the cognisable offences and hence cognisance is acceptable.

It further appears to this court that the facts of the allegation as well as the statements of the complainant Md. Mahiuddin Alamgir indicates or relates to the periphery of "act or purporting to act in the discharge of his official duty" under section 197 of the code of criminal procedure to the extent of the facts of the complaint dated 24.05.2011 submitted by complainant Md. Mahiuddin Alamgir as it appears from the complaint.

Now it is also necessary to see and examine whether the facts based on the complaint constitutes the alleged transgression. That is, the imputation must be made in good faith and for the public good. The term 'good faith' is defined in section 52 of the Penal Code (XLV of 1860) which provides that

"Good faith- Nothing is said to be done or believed in 'good faith' which is done or believed without due care and attention."

Again the term 'due care and attention' imply a genuine effort to reach the truth, and not the ready acceptance of an ill-natured belief. [Anandro Balkrishno, 17 Bom. L.R. 82: 27 I.C. 657; AIR 1934 Oudh 124 atp. 126]

The same term has been declared in the case *Mithuhan –v- State Rajsthan* that

"The public servants who are empowered to take search are presumed to know the law and if the act is done in contravention of the mandatory provisions of law it must be held to have been done without due care and attention and can not be said to be done in good faith. [AIR 1969 Raj. 121 atp. 559] and in the case AHMED -v- CROWN that 'good faith' requires due care and attention as provided by section 52 of the penal code. [6 DLR (WPC) 149]

In view of the aforementioned reasons and the law reported in 12 DLR (SC) 103 Para 9 and 10, this court is of the opinion to seek the sanction from the sanction according authority and hence as per Criminal Amendment (sanction for prosecution) Rules, 1977 derived under section 12 of the Criminal Law Amendment Act 1958 (XL of 1958) [SRO- 253- Ain/92], let a copy of this order along with the photocopy of the complaint in writing dated 24.05.2011 be communicated to the Principal Secretary, Prime Minister's Office, Dhaka, Bangladesh by Guaranteed Express Post (GEP) so that the said Secretary can inform duly this court as to the matter of sanction (whether it is given or not) on or before the next date 27th July, 2011 and failing which, sans informing the reasonable cause, it shall be deemed to be accorded.

Name…
Senior Judicial Magistrate 2nd Court
Gaibandha

DISTRICT**: GAIBANDHA**
IN THE COURT OF SENIOR JUDICIAL MAGISTRATE, GAIBANDHA
Present: Md Azizur Rahman, Senior Judicial Magistrate, Gaibandha.
Date of passing Order: 27th *July, 2011*
Complaint Register Case *Number 126 of 2011*
Md. Mahiuddin Alamgir complainant
-Versus-
Md. Ariful Haque and others... Accused
Under section: 500/501/34 of the Penal Code

Order No. 02

Seen the aforementioned note and the photocopy of the concerned register as to sending the copy of the earlier order dated 24.04.2011. After perusal of the substance of the examination done under section 200 of the Code of Criminal Procedure upon oath as well as this complaint in writing it evinces that there are sufficient grounds for proceeding.

It appears to this court that the facts of the complaint in writing and the said substance of the examination constitute the offences and hence cognisance is acceptable.

It further appears to this court that the facts of the allegation as well as the statements of the complainant Md. Mahiuddin Alamgir indicates or relates to the periphery of "act or purporting to act in the discharge of his official duty" under section 197 of the code of criminal procedure to the extent of the facts of the complaint dated 24.05.2011 submitted by complainant Md. Mahiuddin Alamgir as it appears from the complaint and hence as per Criminal Amendment (sanction for prosecution) Rules, 1977 derived under section 12 of the Criminal Law Amendment Act 1958 (XL of 1958) [SRO- 253- Ain/92], the copy of order dated 24.04.2011 along with the photocopy of the complaint in writing dated 24.05.2011 was sent to be communicated to the Principal Secretary, Prime Minister's Office, Dhaka, Bangladesh by Guaranteed Express Post (GEP) so that the said Secretary can inform duly this court as to the matter of sanction (whether it is given or not) on or before the next date 27th July, 2011 and it was also mentioned in the order that 'failing which, sans informing the reasonable cause, it shall be deemed to be accorded.' That is, it also appears to this court from the law reported in 12 DLR (SC) 103 Para 9 that " if a member of the public suffers an injury at the hands of a public servant, and this need not necessarily be by violence, but is much more frequently the result of faulty judgment or even defective outlook in the exercise of powers, it is always possible for the Government to visit the offence of the Public servant within its disciplinary power, and at the same time to compensate the member of

the public for his loss or damage." But unfortunately the sanction according authority of the alleged accused has not had and submitted any steps as to the matter of sanction (whether it is given or not) on or before the next date 27th July, 2011 and it is necessary to proceed to this complaint.

Now it is also necessary to see and examine whether the facts based on the complaint constitutes the alleged transgression. That is, whether the imputation has been made in good faith and for the public good. The term 'good faith' is defined in section 52 of the Penal Code (XLV of 1860) which provides that

"Good faith- Nothing is said to be done or believed in 'good faith' which is done or believed without due care and attention."

Again the term 'due care and attention' imply a genuine effort to reach the truth, and not the ready acceptance of an ill-natured belief. [Anandro Balkrishno, 17 Bom. L.R. 82: 27 I.C. 657; AIR 1934 Oudh 124 atp. 126]

The same term has been declared in the case *Mithuhan –v- State Rajsthan* that

"The public servants who are empowered to take search are presumed to know the law and if the act is done in contravention of the mandatory provisions of law it must be held to have been done without due care and attention and can not be said to be done in good faith. [AIR 1969 Raj. 121 atp. 559] and in the case AHMED -v- CROWN that 'good faith' requires due care and attention as provided by section 52 of the penal code. [6 DLR (WPC) 149] and in this case the alleged accused have not done the acts within the periphery of good faith and public good.

In view of the aforementioned reasons this court is of the opinion to take cognisance in considering it as deemed to be accorded and hence cognisance is taken against the two accused Md. Ariful Haque and Dr. Mominul Islam under the sections of the penal code mentioned in the said complaint in writing dated 22.05.2011 and accordingly issue summonses upon them along with the copy of the said complaint. It is mentionable that Dr. Md. Shamsuzzaman was not the attending physician and he wrote the injury certificate containing the opinion of withdrawal according to the description described by Dr. Mominul Islam for which no cognisance is taken against Dr. Md. Shamsuzzaman. Next date 11.08.2011 is fixed for the appearance of the accused or return of summonses.

Name…
Senior Judicial Magistrate 2nd Court
Gaibandha

Chapter– 14

Three Important Cases and Judgments regarding Annunal Confidential Report

1. Union of India (Uoi) vs Ajitkumar Singh on 30 January, 2004

Gujarat High Court
Gujarat High Court
Union of India (Uoi) vs Ajitkumar Singh on 30 January, 2004
Equivalent citations: (2004) 2 GLR 952
Author: H Rathod
Bench: B Singh, H Rathod
JUDGMENT
H.K. Rathod, J.
H.K. Rathod, J.

1. Present petition is directed by the Union of India challenging the order passed by the Central Administrative Tribunal, Ahmedabad Bench, Ahmedabad in O.A. No.459 / 2002 dated 30th September, 2003 whereby, the tribunal has quashed the orders of competent authority and further directed the petitioner to promote the respondent from 1st December, 1995 from the date his juniors were promoted and further directed to complete the exercise within six weeks from the date of receipt of the order. Thereafter, the petitioner had moved one Misc. Application No.700 / 2003 for extension of time which was also rejected by the Tribunal on 1st December, 2003.

2. The brief facts giving rise to the present petition are as under :

The respondent was recruited on the basis of combined Civil Service Examination 1990 on 1st January, 1992. After undergoing the training period, the respondent was posted as an Assistant Commissioner of Income Tax at Allahabad on 13th April, 1993. Thereafter, he was transferred as Assistant Commissioner of Income Tax, Varanasi on 21st July, 1993. The Deputy Commissioner of Income Tax, Varanasi range and Commissioner of Income Tax are the reporting and reviewing authorities respectively. The Deputy Commissioner of Income Tax of Varanasi Range and Commissioner of Income Tax recorded certain adverse remarks in the Annual Confidential Report of the respondent and those remarks

were communicated to the respondent on 14th July, 1995. Against which, a representation was made by the respondent to the Chief Commissioner of Income Tax on account of malafides on the part of the Deputy Commissioner of Income Tax, Varanasi range and the Commissioner of Income Tax as the respondent had refused to accommodate them by passing certain favourable orders in certain specific cases. The said representation remained pending for more than two years and thereafter, he made request on 4th November, 1997 to expedite the decision on the representation. By letter dated 13th November, 1997 it was informed to the respondent by the authority that his representation has been rejected and authority had declined to interfere with the adverse remarks recorded by the concerned authority. Therefore, the respondent had filed application being O.A. No.755/1997 before the Central Administrative Tribunal challenging the order of adverse remarks. The Central Administrative Tribunal vide order dated 2nd December, 1998 held that the order could not be sustained and the same was quashed and it was directed to the petitioner to re-examine the matter again with application of mind and come to a proper finding in respect of the adverse remarks and to communicate the decision to the respondent by a speaking order. Thereafter, the respondent had received a message from the office of the authority on 10th March, 1999 requesting the respondent to say in support of his representation. Thereafter, the competent authority has passed the order on 12th March, 1999 holding that out of 14 remarks, 9 were expunged, three were retained and one was directed not to be treated as adverse remarks. The said order was challenged by the respondent before the Central Administrative Tribunal by filing O.A. No.369/1999 but the Tribunal has dismissed O.A. vide order dated 2nd February, 2000 sustaining the order of the competent authority dated 12th March, 1999.

2.1 It is relevant to note that when the tribunal has passed an order in O.A.No.755 / 1997 on 2nd December, 1998, the tribunal has quashed the order of Chief Commissioner, Ahmedabad and directed him to consider the matter afresh and to communicate the decision by speaking order. The tribunal further directed that if there was a substantial change in the Annual Confidential Report, the Department was also to take steps for convening the meeting of review DPC for considering his case of promotion to the senior scale from the date on which his juniors were promoted.

2.2 It is also necessary to note that the Chief Commissioner, thereafter vide detailed order dated 12th March, 1999 expunged remarks in respect of nine out of fourteen items and one remark was treated as not adverse.

The Chief Commissioner also held that it will not therefore be proper to term his overall performance inadequate and the said remarks are therefore also expunged. One remark had been dropped because the order was held to have been passed within jurisdiction and not without jurisdiction as mentioned in the Annual Confidential Report. The respondent being aggrieved by non expungement of remaining remarks, he filed O.A. No.369 / 1999 wherein, the tribunal held that no infirmity could be found with the order of the Chief Commissioner, the respondent had filed a writ petition being Special Civil Application before this Court in S.C.A.No.2428 / 2000 and this Court has also dismissed the said Special Civil Application on 29th July, 2002.

2.3 The petitioner, thereafter, convened the meeting of review DPC in forms of the order passed in O.A. No.759 / 1999 and promoted the respondent to the Senior Scale with effect from 1st April, 1999. Then, the respondent filed O.A. No.875 / 1999 challenging the said decision. The tribunal by order dated 5th October, 2000 quashed the recommendations of the review DPC and order of the competent authority and remanded the matter back for fresh consideration. The review DPC which met by circulation has considered the matter and has found no reason to interfere with the earlier decision and the competent authority has also agreed with it. Thereafter, again the respondent has challenged the said order in O.A. No.459 / 2002 which is a subject matter of the present petition.

3. Learned advocate Mrs.Mauna Bhatt has raised contention that once the order passed by the Tribunal in O.A.369 / 1999 and the Tribunal has dismissed the O.A. on 2nd February, 2000, which order has been challenged before this Court and this Court has also dismissed the petition in Special Civil Application No.2428 / 2000, and therefore, the respondent is not entitled to challenge again the same cause of action before the Tribunal. She also submitted that the Central Administrative Tribunal is not an appellate authority and cannot have any jurisdiction to interfere with such orders passed by the petitioner. She also emphasized that afterall, the respondent is entitled to promotion or not, for which, the DPC is final authority

and against which, no further interference is called for on judicial side. She also submitted that this is not punishment imposed by the petitioner and therefore, interference by the Tribunal is also without jurisdiction. Therefore, according to her submission, the tribunal has committed gross error in relying on the decision of the Apex Court in case of B.C.Chaturvedi vs. Union of India, AIR 1996 SC 484.

Except the contentions and submissions noted above, no other and further submission made by the learned advocate Mrs.Mauna Bhatt before us.

4. The respondent who is party-in-person is personally present before us at the time when the hearing is taken place before this Court and he, however, supported the order passed by the tribunal.

5. We have carefully considered submissions made by the learned advocate Mrs.Mauna Bhatt on behalf of the petitioner. We have perused the order passed by the Central Administrative Tribunal. It requires to be appreciated that this is forth round of litigation on the very subject matter based on the different orders passed by the petitioner. The question is that on 12th march, 1999, the Chief Commissioner had passed an order expunging the remarks in respect of nine out of fourteen and one remark was treated as not adverse. The Chief Commissioner also held that it will not therefore be proper to term his overall performance inadequate and the said remarks are also therefore expunged. One remark had been dropped because of the orders were held to have been passed within jurisdiction and not without jurisdiction as mentioned in the ACR. Therefore, considering the said order of the Chief Commissioner, the net effect would be that all the adverse confidential report has to be read in entirely and it was not open to the petitioner to consider unexpunged remarks in isolation and deny promotion to the respondent. The tribunal has considered the decision of Principal Bench of the Administrative Tribunal in S.N.Sharma v. Union of India reported in 1988 [7] ATC 372, wherein the Government instructions regarding evaluation of the ACRs by the DPC has been interpreted. The tribunal has also considered one more decision in case of S.D.Sachdeva v. D.G.BESIC reported in 1988 [8] ATC 93, wherein the Principal Bench has observed in para-11 that normal practice is that overall grading is based on grading for three years out of five years. This is the practice followed by the DPCs with which the Union Public Service Commission is associated. The tribunal has also considered Swamy's compilation on seniority and promotion as well as instructions issued on functioning of the DPC

by the Department of Personnel and Training. The principle which has been decided by the Principal Bench of the Administrative Tribunal in case of S.D.Sachdeva as referred to above, since relevant observations, quoted as under:

"The DPC must have considered the confidential reports of the last five years, as is the normal practice. In the instant case, as the original DPC met in December, 1982, the reports to be considered by it were for the years 1977 to 1981. According to the normal practice, the overall grading of an officer would be based on the same grading for three out of five years. For instance, if an officer has been graded as "Very Good" in three out of five reports, his overall grading will be "Very Good". This is the practice followed by the DPCs with which the Union Public Service Commission is associated."

6. Therefore, the whole purpose is while evaluating ACRs that in case if three ACRs are "very good" out of five reports, then, his overall grading will be "very good". This is the practice being followed by DPC with which UPSC is associated. Similar is the situation in the facts of the case at hands. The order passed by the Chief Commissioner on 12th March, 1999 expunging nine remarks out of fourteen and one remark was treated as not adverse. Not only that but the Chief Commissioner has held that it will not therefore be proper to term his overall performance inadequate and the said remarks are therefore also expunged. One remark had been dropped because the orders held to have been passed within jurisdiction and not without jurisdiction as mentioned in ACR. Looking to the orders passed by the Chief Commissioner on 12th March, 1999, in our opinion, nothing remains adverse against the respondents which disqualify or declare unfit the respondent for being considered for promotion on the date on which his juniors were promoted. Therefore, the view has rightly been taken by the tribunal.

7. It also requires to be appreciated that the tribunal has considered minutes of the DPC wherein, one Member has recorded that 1994-95 report continues to be adverse. He also taken note of the decision of three earlier DPC which held in February and December, 1996 and July, 1998. The other Member has taken note of unexpunged remark in personal treats and general observation that performance of the Officer is considered as inadequate. Bare perusal of the minutes of DPC, seems to be contrary to the order passed by the Chief Commissioner dated 12th March, 1999, wherein such adverse remarks were already expunged. The general observations from

ACRs, then, overall ACR could have been treated as an adverse to the respondent.

8. It is contention raised by the learned advocate Mrs.Mauna Bhatt that the tribunal has no jurisdiction to act an appellate authority and to have interference with such orders passed by the petitioner and this being not a punishment. The respondent in light of the order passed by the Chief Commissioner on 12th March, 1999 entitled to promotion on the basis of the service rules and guidelines and the DPC has applied wrong criteria and observations are contrary to the order of the Chief Commissioner dated 12th March, 1999. If an employee having legal right to be considered for promotion and according to the service rules and guidelines, he entitled to promotion, but the same has been denied without any legal justification by the petitioner, then, certainly it amounts to unjust and unfair action on the part of the petitioner which amounts to punishment to the employee, who is, otherwise, entitled to promotion as per the service rules and guidelines. In such circumstances, when the tribunal has considered the matter after detailed examination including the minutes of the DPC and the order of Chief Commissioner dated 12th March, 1999, according to our considered opinion, the tribunal has rightly considered the matter and relied upon the decisions of the Apex Court in case of B.C.Chaturvedi that if any action of the petitioner has shocked the conscience of the Court being unjust and arbitrary and contrary to the Rules, then, certainly while exercising the powers of judicial review, the tribunal can interfere with such case to shorten the litigation and to pass appropriate orders according to the service rules and guidelines. For that, the tribunal has not committed any error.

9. The concept of punishment has been misunderstood by the learned advocate Mrs.Mauna Bhatt. It is not always linked with the misconduct. Some times, a decision or action of the Department which is contrary to the Service Rules, arbitrary and unjust as well as without justification, then such decision or action normally considered to be punishment imposed by the Department on the concerned employee. For example, in case of transfer, some time, power of transfer is exercised with a view to punish the employee. Similarly, suspension and in this case, denial of legitimate legal right of respondent for promotion on the date on which, the juniors were promoted. Therefore, not to grant a benefit to the concerned employee as per the Service Rules without any justification, can be said to be punishment imposed by the Department without any legal

base. Therefore, in that sense, if such action or decision even shocked the conscience of the Court or the tribunal, then, certainly the tribunal/Court can interfere with such decision or the order either by modification of such decision or order or to remand the matter back to the Department for reconsideration. Looking to the facts of the case at hands, once the Chief Commissioner expunged nine adverse remarks, one was dropped and overall performance is not considered to be inadequate, then, nothing adverse remains against the respondent. In such situation, the DPC ought to have considered the case of the respondent in light of the order passed by the Chief Commissioner on 12th March, 1999. But not to consider the case of the respondent in proper perspective and promotion has been given with effect from 1st April, 1999 and denial of promotion with retrospective effect to the respondent when his juniors were promoted without any legal base, amounts to punishment imposed by the Department, which naturally shocked the conscience of the Tribunal. That has been rightly dealt with and corrected by the Tribunal while passing the order which is impugned in the present petition.

10. The Department has violated the guidelines of evaluating the ACRs which has rightly been appreciated by the Tribunal. Looking to the order of the Chief Commissioner dated 12th March, 1999, nothing adverse remains against the respondent. Therefore, we fail to understand as to why the retrospective effect should not be given for promotion to the respondent. As such, no explanation, nor any reply has come forward from the ends of the petitioner and learned advocate Mrs.Mauna Bhatt has failed to point out so. The method of evaluation of ACRs is well known to DPC. If out of fourteen, nine adverse remarks have been expunged, one was dropped and remaining treated as "inadequate", then the natural result would be that nothing adverse remains against the respondent. Therefore, in given circumstances, obviously, no ground for the petitioner for denying promotion from the date the juniors were given promotion. Therefore, according to our opinion, the tribunal has rightly passed the effective order.

11. The contention that this Court has already decided the writ petition viz. Special Civil Application anddismissed it but thereafter, this being fresh cause of action on the basis of the order, meeting of the review

DPC in forms of the order passed in the O.A. No.759 / 1999 and promoted the respondent to the senior scalewith effect from 1st

April, 1999. Therefore, earlier decision of this Court would not come in the way of therespondent for challenging the order of review DPC granting promotion to the respondent in the senior scale with effect from 1st April, 1999. Therefore, this being separate and independent cause, for which, the respondent is entitled to challenge the same before the Central Administrative Tribunal. When apparently the decision of the petitioner is contrary to the order passed by the Chief Commissioner dated 12th March, 1999, then naturally, interference by the Tribunal granting full relief in favour of the respondent is a proper relief, which has been rightly granted by the tribunal. As such, the tribunal has not committed any error while passing the order impugned in this petition while exercising the powers of judicial review. If the Court feels that there is injustice caused by the employer to the employee, in that case, it is the duty of the Court to consider and examine the same and if it found that there is real injustice caused by the petitioner to the respondent, then same requires to be interfered with and proper relief ought to be granted in favour of the respondent, and that has been rightly done by the tribunal with full application of mind and that too with cogent reason in support. Therefore, according our opinion, the tribunal has rightly dealt with the matter in proper perspective manner and for that, no error has been committed and it was within the jurisdiction of the tribunal to pass such orders and hence, no interference of this Court is called for while exercising the powers under Articles 226 and 227 of the Constitution of India.

12. The Union of India has challenged the order of Central Administrative Tribunal before us. We cannot act as an appellate authority. We cannot reappreciate the same evidence again which was already appreciated by the tribunal. Even in case two views are possible, no interference can be made and nor even permissible. The scope of judicial review has been recently been examined by the Apex Court in case of SYED T.A. NAQSHBANDI AND OTHERS V. STATE OF JAMMU & KASHMIR AND OTHERS reported in [2003] 9 SCC 592. The relevant observation made by the Apex Court in Head Note [H] is referred to under:

"Judicial review is permissible only to the extent of finding whether the process in reaching the decision has been observed correctly and not the decision itself, as such. Critical or independent analysis or appraisal of the material by the Courts exercising powers of judicial review unlike the case of an appellate court would neither be permissible nor conducive to the interests of either the officers concerned or the system

and institutions. Grievances must be sufficiently substantiated to have firm or concrete basis on properly established facts and further proved to be well justified in law, for being countenanced by the court in exercise of its powers of judicial review. Unless the exercise of power is shown to violate any other provision of the Constitution of India or any of the existing statutory rules, the same cannot be challenged by making it a justiciable issue before Courts."

In view of our discussion in aforesaid foregoing paragraphs, there is no substance in the present petition and the same deserves to be rejected.

In the result, present petition fails and the same is rejected accordingly. No order as to costs.

Union Of India (Uoi) vs Ajitkumar Singh on 30 January, 2004

Indian Kanoon - http://indiankanoon.org/doc/1888387/

2. D. Amaladoss vs The State Of Tamil Nadu Rep By The... on 19 September, 2006

Madras High Court
Madras High Court
D. Amaladoss vs The State of Tamil Nadu Rep. By The ... on 19 September, 2006
Equivalent citations: 2006 (5) CTC 141, (2006) 4 MLJ 1360
Author: E D Rao
Bench: E D Rao, K Sugana
ORDER

Elipe Dharma Rao, J.

1. Challenge is to the order in G.O.(2D) No. 208 Home (Courts I-A) Department, dated 29-09-1999 passed by the first respondent, by which the petitioner was dismissed from service in respect of certain charges alleged against him, which have been held to be proved in the enquiry.

2. Facts, in brief, as culled out from the pleadings on record, are:

   The petitioner was a Judicial Officer in the Tamil Nadu State Judicial Service. A complaint was made to the High Court by one R. Muthusamy against the petitioner alleging corruption and misconduct. The complaint was received by the Vigilance Cell of the Madras High Court on 2-12-1991. The Sessions Judge, Dharmapuri issued an office memorandum, dated 12-5-1992, calling for the remarks of the petitioner in respect of certain allegations made against him in the transfer petition (Crl. M.P. No. 1286 of 1992) seeking transfer of the criminal case in C.C. No. 152 of 1991, which was pending before the petitioner, to some other criminal court. The allegation was that the petitioner demanded bribe for delivering a favourable judgment. The petitioner submitted his explanation on 14-5-1992 denying the allegation of demand of bribe.

   Another office memorandum dated 21-7-1992 was issued to the petitioner by the Sessions Judge, Dharmapuri calling for his remarks on the complaint made by an advocate that out of personal animosity and inimical disposition of mind, he has shown discriminatory attitude in the mater of imposition of sentence and awarded higher sentence to one Kaveriammal, who was convicted in STR No. 2698 of 1992. Petitioner submitted his explanation, denying the allegations made against him.

These incidents had happened during 1991-93 when the petitioner was serving as Judicial Magistrate-I, Dharmapuri. In both these matters, an Advocate by name Kabilan had appeared for the accused and the transfer petition was made by him. While the matter stood at that stage, the petitioner was served with a memorandum in ROC No. 176/96 Con. B2 dated 22-10-1996 with a copy of the report of the Special Officer (Vigilance Cell) and copies of the testimonies of the witnesses said to have been recorded during the preliminary enquiry held on 31-08-1996.

The petitioner was directed to submit his explanation, which he did on 19-11-1996. In his explanation, the petitioner stated that since the subject-matter of the report related to the period July, 1991 to June, 1992, he could not recollect the factual details and, therefore, requested for copies of certain documents to enable him to make an effective explanation. Permission was granted to the petitioner to peruse the records in the presence of the Registrar of this Court, which was done by him on 14-12-1996. Ultimately, the petitioner submitted his explanation on 2-1-1997, denying all the allegations. The petitioner, in his explanation, also raised the plea of prejudice in view of the whooping delay of more than four years and also due to non-availability of certain important documents relating to the allegations for his persual.

The explanation offered by the petitioner was found to be not acceptable. By proceedings dated 4-12-1997, five charges were framed against the petitioner. The crux of the charges is alleged demand of bribe and misconduct relating to the criminal cases in C.C. No. 152 of 1991 and STR No. 1698 of 1992, which were pending before the petitioner when he was Judicial Magistrate-I, Dharmapuri during 1991-93. Petitioner submitted his statement of defence on 29-1-1998. District Judge, Dharmapuri and the Principal Sub-Judge, Krishnagiri were appointed as the Enquiry Officer and the Presenting Officer respectively to conduct the enquiry proceedings initiated against the petitioner. The

Enquiry Officer, after conclusion of the enquiry proceedings, submitted his report dated 25-9-1998 to the High Court, a copy of which was forwarded to the petitioner vide High Court proceedings dated 17-5-1999. Of the five charges, Charge Nos. 1,2,4 and 5 were found to be proved against the petitioner and Charge No. 3 was found to be not proved. The petitioner was required to make further representation with reference to the findings of the Enquiry Officer. The petitioner submitted his representation dated 20-7-1999. During

the pendency of the enquiry proceedings, the petitioner had also made a representation to the High Court that since he had made a complaint before the Bar Council of Tamil Nadu against Advocate Kabilan for having filed false complaint before the District Court, Krishnagiri with reference to the allegation in Charge No. 1., the entire enquiry proceedings should be kept in abeyance till the disposal of the complaint by the Bar Council.

On 17-08-1999, the Administrative Committee of the High Court passed the minutes recommending to the Full Court to accept the findings of the Enquiry Officer and to impose the penalty of dismissal from service. The recommendation of the Administrative Committee was accepted by the Full Court in the meeting held on 24-08-1999. On the basis of the recommendation made by the Full Court, the second respondent, by the impugned order dated 20-09-1999, dismissed the petitioner from service. This was communicated to the petitioner at 4.45 p.m. on 30-9-1999, the day on which he was to be superannuated. The petitioner submitted an appeal on 19-11-1999, but sensing that no useful purpose would be served by awaiting the outcome of the appeal, he has filed the present writ petition challenging his dismissal from service.

3. Learned senior counsel appearing for the petitioner submitted that there was a whooping delay of over four years from the period of the alleged incidents (1991-92) and the initiation of disciplinary proceedings (1996) and thereafter again there was an inordinate delay of nearly three years in imposing the major penalty of dismissal from service (1999). The inordinate and unexplained delay of more than four years for initiating the disciplinary enquiry and three years in imposing the penalty would vitiate the entire disciplinary proceedings initiated against the petitioner. The delay factor, in the facts and circumstances of the case where the charges are all based on oral evidence, has virtually caused great prejudice to the petitioner. The delay factor has paralysed the petitioner's memory from recollecting the past events with absolute clarity and thus deprived him from making an effective defence. Of course, delay per se may not vitiate the departmental enquiry proceedings, but if the delay is enormous and unexplained and if it is demonstrated that there is likelihood of prejudice being caused to the delinquent, the punishment itself would be vitiated. The delay factor coupled with the denial of permission to peruse certain vital documents and non-availability of certain documents on the records resulted in the complete breach of the principles of natural justice as well as Article 311(2) of the Constitution of India.

4. In support of the above contention, learned Counsel relied on The State of Madhya Pradesh v. Bani Singh; State of Punjab v. Chaman Lal Goyal; Union of India and Ors. v. Raj Kishore Parija 1995 Supp (4) SCC 235; T.V. Balakrishnan v. State of Tamil Nadu and Ors. 1995 Supp. [4] SCC 236; State of Andhra Pradesh v. N. Radhakrishnan and B Loganathan v The Union of India.

5. Learned senior counsel further argued that on receipt of the enquiry report, the Administrative Committee, before recommending to the Full Court the punishment of dismissal from service, should have considered the whole issue with reference to the evidence adduced at the enquiry and formed a provisional opinion regarding acceptance of the enquiry report and also on the question of proposed punishment. Even the Full Court should have done this exercise before accepting the recommendation of the Committee. This procedure was given a go-by in the present case. The letter dated 10-6-1999 written by the High Court directing the petitioner to appear before the Medical Board and the further letter dated 30-6-1999 calling for the judgments rendered by the petitioner to consider him for promotion to the post of Sub Judge indicate that calling for further representation from the petitioner was done without forming an opinion whether to accept the enquiry report or not. This procedural lapse was in violation of Rule 17(b)(ii) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, which would render all the subsequent proceedings void and illegal.

6. Learned senior counsel submitted that the Enquiry Officer wholly relied upon the preliminary statement of P.W.1 and Ex.P-5 for the purpose of corroboration. Under Rule 17(b) of the Rules, preliminary statement of a witness cannot be relied upon. What is relevant is the evidence given during the enquiry proceedings. Further, there are contradictions and inconsistencies in the preliminary statement and the statements of the witness in the enquiry proceedings. The Enquiry Officer failed to consider the statements of P.W.1 in his cross-examination. The Enquiry Officer has not properly appreciated the evidence. The findings of the Enquiry Officer on Charge Nos. 1 and 2 are erroneous, biased and tainted with procedural flaws.

7. Learned senior counsel further submitted that it is not uncommon in the judicial service, particularly in the criminal courts in mofussil stations, that there are no holidays for the Magistrates as they work on all the seven days of the weeks, including Saturday, Sunday and even on public holidays. Passing remand orders, recording dying

declaration, etc. are done even on Saturdays, Sundays and even on public holidays. When once an order of remand to judicial custody is passed on a holiday in bailable offences, the right to move bail application accures to the accused instantaneously and there is no rule or circular prohibiting the release of the accused on bail on holidays in bailable offences. Thus, the findings of the Enquiry Officer on charge Nos. 4 and 5 are erroneous. Further, grant of bail, imposition of sentence are all done in exercise of judicial powers and if the accused is aggrieved by the sentence, that could have very well been challenged by way of revision or appeal. No comparison could be made between the sentence imposed in one criminal case with the other to attribute allegations of motive, mala fide, etc. inasmuch as it all depends upon the facts and circumstances of the each case and the antecedents of the accused.

8. Lastly, learned senior counsel submitted that in any event, considering the overall fact situation of the case and the inordinate delay at every stage of the proceedings, the punishment of dismissal from service is excessive. Learned Counsel submitted that the petitioner had put in thirty-six years of service and he has not suffered any punishment till 1999. He was due for promotion as Subordinate Judge in February, 1998, but was not considered in view of the pendency of the present disciplinary proceedings. Further, imposing the major penalty of dismissal from service, that too on the last day of his service career, is unjust.

9. Learned Additional Government Pleader appearing for the respondents, by reiterating the averments made in the counter-affidavit filed by the second respondent, submitted that considering the grave charges of corruption and misconduct against the petitioner, which were proved in the enquiry proceedings, the punishment of dismissal from service cannot be said to be unjust and illegal. Learned Counsel submitted that sufficient opportunities were afforded to the petitioner at all levels of the enquiry and, therefore, it cannot be argued that the entire enquiry procedure was vitiated due to non-observance of the principles of natural justice. The entire matter was considered by the Administrative Committee. After considering the enquiry report and the further representation of the petitioner, the Committee found that the representation submitted by the petitioner was not satisfactory. The Committee, therefore, accepted the enquiry report and found the petitioner guilty of the charges which were proved against him. With regard to imposition of penalty, since the proved charges relate to grave misconduct and corruption, the Committee recommended to the Full Court to accept

the findings of the Enquiry Officer and to impose the penalty of dismissal from service. The Full Court in the meeting held on 24-08-1999 accepted the recommendations of the Committee, following which the Government was addressed for issuing orders of the appointing authority imposing the penalty of dismissal from service on the petitioner. Learned Counsel submitted that the appeal petition submitted by the petitioner was forwarded to the Government for issuing necessary orders.

10. On the above stated facts and circumstances of the case, learned senior counsel in support of his first submission on delay in issuing the charge memo, initiation of enquiry proceedings and imposition of punishment relied on the decision of the Supreme Court in State of Madhya Pradesh v. Bani Singh . This matter arises under the Administrative Tribunals Act. The matter before the Supreme Court was against the order of the Central Administrative Tribunal, Jabalpur in O.A. Nos. 201 and 102 of 1987. O.A. No. 201 of 1987 was filed to quash the adverse entries made in the ACR for the year 1976-77 and in the ACR for the year 1979-80; to give retrospective promotion in the Selection Grade of the IPS from 1978 when the juniors of his batch were promoted; and promotion to the post of Super Time Scale to the rank of DIG with effect from 7-11-1981 when his juniors of the batch were promoted with consequential benefits including arrears of pay, etc. We are concerned with the delay in the initiation of the departmental enquiry proceedings and the issuance of the charge-sheet in respect of certain incidents that happened in 1975-76 when the said officer was posted as Commandant, 14th Battalion, SAF, Gwalior. By the order dated 16-12-1987, the Tribunal quashed the charge memo and the departmental enquiry on the ground of inordinate delay of over 12 years in the initiation of the departmental proceedings with reference to an incident that took place in 1975-76. Against that order when the State Government approached the Supreme Court, while dealing with the contention of the Government that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits, it was held we are unable to agree with this contention of the learned Counsel. The irregularities which were the subject-matter of the enquiry is said to have taken place between the years 1975-1977. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April, 197 there was doubt about the involvement of the officer in the said irregularities, if any, and

came to know it only in 1987. According to them even in April, 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly dismissed the appeal.

11. Basing on the above said judgment of the Supreme Court, learned senior counsel for the petitioner submitted that complaint was made on 2-12-1991 and an office memorandum was issued on 12-5-1992 calling for the remarks of the petitioner in respect of certain allegations made against the petitioner in the transfer petition. Petitioner submitted his explanation on 14-5-1992. Another office memorandum was issued on 21-7-1992. The petitioner submitted his explanation. The complaint was made against certain incidents happened during the period 1991-93 when the petitioner was serving as Judicial Magistrate No.I, Dharmapuri. The complaint was made by an Advocate Kabilan. Thereafter, the petitioner was served with a memorandum dated 22-10-1996 with a copy of the report of the Special Officer (Vigilance Cell) and copies of the testimonies of the witnesses said to have been recorded during the preliminary enquiry held on 31-08-1996 and the petitioner was directed to submit his explanation. Accordingly, submitted an explanation on 2-1-1997 denying the allegations. Thereafter on consideration of the explanation, five charges were framed against the petitioner on 4-12-1997. Petitioner submitted his statement of defence on 29-1-1998. The enquiry proceedings were concluded and the report was submitted on 25-9-1998. Against the second show casue notice dated 17-5-1999, the petitioner submitted his representation on 27-5-1999. After consideration and as per the recommendations of the Administrative Committee, the Full Court accepted the recommendations of the Administrative Committee in the meeting held on 24-8-1999. Thereafter, the impugned order dated 20-9-1999 was served on the petitioner on 30-9-1999 dismissing him from service. Therefore, there was a delay of nearly six years in initiating the enquiry proceedings, completion of the enquiry proceedings and issuance of the impugned order for the incidence which took place during 1991-93. Therefore, applying the above said principle laid down by the Supreme Court to the facts and circumstances of the

case, learned senior counsel submitted that the order of dismissing the petitioner from service on the ground of delay and laches and in the absence of satisfactory explanation for the delay, the impugned order is liable to be set aside.

12. The second contention raised by the learned senior counsel was with regard to the appreciation of evidence of the complainant as PW-1 and his senior counsel as PW-2. The complaint was marked as Ex.P-5. As per the complaint of the Advocate Kabilan, P.W.1, which was marked as Ex.P-5, his statement was recorded by the Special Officer on 31-8-1996 and during the enquiry he deposed the allegations made in the transfer petition dated 11-5-1992, which was marked as Ex.P-2. Learned Counsel pointed out the following inconsistencies and contradictions in the evidence of PW-1 and PW-2 and also in Ex.P-2 and Ex.P-5. The inconsistencies and contradictions with reference to Charge No. 1, which were pointed out by the learned senior counsel, are as follows:

1. While in Ex.P-5, Statement of Kabilan PW-1 before the Special Officer, dated 31-8-1996 it is stated "today your case is posted for judgment: regarding that come and meet me at my house. To adjourn the case show one accused absent", in Ex.P-2 Transfer Petition dated 11-5-1992, it is stated "on 7-5-92 Magistrate called me and told that 'judgment is not ready' and therefore he asked me to file a petition Under Section 317 CrPC.".

   However, in his deposition before the Enquiry Officer, PW-1 stated "The Magistrate said that the case stood for Judgment today: Show some one absent and come to the residence". The remark made by the Enquiry Officer is "It is not necessary to state each and every detail in the Transfer Petition".

2. In his deposition, P.W.1 stated "till 4'O clock the case was not called. On that day after the close of afternoon sitting the Magistrate did not sit on the dais. (So the C.M.P. No. 2372/92 was the last petition for that day). The deposition of Swamy Kannu (Court Clerk PW-4) Swamy Kannu states that C.M.P. No. 2372/92 was the 18th entry in the Reg. No. 12 for 7-5-1992 is 3159 ending with No. 3225. The remark of the Enquiry Officer is "He will give the Crl. M.P. Number and enter in the diary subsequent to the court work. So we cannot expect that C.M.P. No. 2372/92 was not received as the last petition."

3. Before the Special Officer, PW-1 stated that "PW-1 met the Magistrate at 4.00 PM in the Chamber. Immediately came out of the

Chamber thinking that he expects amount. As told by Magistrate A-6 was shown absent on 7-5-1992. PW-1 in his deposition stated "PW-1 met the Magistrate at 4.00 p.m. in the Chamber and then filed CMP No. 2372/92 immediately (without consulting the senior)". PW-2 stated in his deposition "When I was in the club in the evening Kabilan came and told me that the Magistrate asked Kabilan to meet him in his chamber and residence. I told him to go and meet accordingly. He went away saying that he will show some accused absent and get an adjournment." The remark made by the Special Officer is "According to PW-2 C.M.P. No. 2372/92 was filed by P.W.1 after consulting with P.W.2 which is contradictory to the version of P.W.1 and Ex.P-5".

4. In Ex.P-5, PW-1 stated "After the case was adjourned on 7-5-1992 at 6.00 PM I went to the house of Magistrate and pleaded for lesser amount and said that I will bring the money on 11-5-1992 and returned from there. That day (7-5-1992) evening at 6.30 PM I met my senior in Ramalinga Chetty Street and narrated all that happened. My senior said "Alright, let's see. Come and see me tomorrow morning". I went home". PW-1 in his deposition stated "After the case was adjourned on 7-5-92 P.W.1 meets P.W.2 in the club at 6.30 PM and P.W.2 advised him to take Rs. 300/- or Rs. 400/- with him. I took Rs. 300/- with me. I met the Magistrate on 7-5-92 at his residence at 6.30 to 7.00 p.m. and I went away saying I will come on the 8th". In this cross-examination, he stated "After meeting the Magistrate I did not meet my senior. After meeting the Magistrate in the evening on 7th I met him on the 11th. In between this period I did not go to meet the Magistrate". The deposition of PW-2 is "Only at 6'O Clock in the evening Kabilan told me that the case was adjourned on the words of the Magistrate". In Ex.P-2 transfer petition it is stated "On 10-5-1992 Sunday I met the Magistrate at his residence as per the words of the Magistrate and at that time he demanded Rs. 10,000/-. I came away saying that I will meet him again." (The embellishment in the deposition of PW-1 was not considered by the Enquiry Officer. With reference to the day, date and time of demand, the Enquiry Officer says that the same can be ignored and brushed aside without giving specific reasons therefor. Contradictions in the matter of PW-1 meeting PW-2 as stated in Ex.P-5 and in the deposition of PW-1 and PW-2. Enquiry Officer accepts the existence of contradictions. But states it may be due to lapse of time and lack of memory of P.W.1).

5. In Ex.P-5, PW-1 stated "On 8-5-92 morning at about 8.30 AM I met my senior Thiru Krishnan at his residence. He told that the case may

be transferred to some other Court. PW-1 in his deposition stated "Any only on the next day morning, I went and saw my senior on the 8th morning at 10'O Clock and told him about the demand. Senior said 'Stay petition may be filed in the Sessions Court". PW-2 stated in his deposition "He (PW-1) came and met in the next day morning...Only on the 8th Kabilan came and told me that the Magistrate asks money." The Enquiry Officer remarked "not to incur the wrath of the Magistrate filing transfer petition is reasonable. But does not consider the bona fides in the filing of absent petition on 11-5-1992.The inconsistencies and contradictions with reference to Charge No. 2 are as follows:

1. In ExP-5 PW-1 stated "Kaveryammal case was adjourned from 3-6-92 to 4-6-92 even though admission petition was filed on 3-6-92". In the chief examination PW-1 does not speak about the adjournment of Kaveryammal Case (Ex.P-4) from 3-6-92 to 4-6-92. In the cross-examination PW-1 states that the adjournment from 3-6 to 4-6-92 was due to return of the Magistrate in the evening at 8.00 PM on 3-6-92 after camp court work at Palacode. In his deposition, PW-2 does not spell out any detail about Ex.P-4 except that he filed appeal and converted the sentence of imprisonment into fine. PW-4 states that Kaveriammal was bound over by the police to appear before the court on 4-6-92 only. That bond has been executed on 30-5-92. In this case also it is noted in the Diary entry that the accused present on 3-6-92. This entry is Ex.D-4. I have written that entry mistakenly due to pressure of work. The remark made by the Enquiry Officer is to the effect that petition copy in CMP No. 3045/92 not given to the petitioner despite request. Enquiry Officer does not believe the evidence of the court clerk and says that it was denied conveniently by PW-4 to avoid embarrassment. Adjournment of the case from 3-6 to 4-6-92 is not material one.

2. Ex.P-5 does not speak about Rs. 25/- at all. Ex.P-5 does not speak about advocate P.S. Mohan. In his deposition, PW-1 stated "If admission petition is filed Rs. 25/- must be given. I did not give that amount of Rs. 25/-. On 4-6-1992 sentence of imprisonment for ten days imposed on Kaveriammal in Ex.P-4 case. On the intervention of advocate P.S. Mohan cash security bail petition C.M.P. 3046/92 was filed. The admission petition of Kaveriammal was numbered as C.M.P. No. 3045/92 on 4-6-92 and the court seal for receiving the petition on 4-6-92 is found on the petition. The remarks made by the Enquiry Officer is "CMP No. 3046/92 petition copy not furnished to the petitioner despite request. Ex.D-2 is contrary to CMP No. 3046/92. Two new facts introduced falsely in the deposition of PW-

1. Enquiry Officer gives a go by for all the infirmities on the ground that PW-1 was a junior lawyer of 7 years standing and hence inexperienced and so these are not material. Pointing out the above said inconsistencies and contradictions in the statements of PW-1, PW-2 and PW-4 and the relevant exhibits, learned senior counsel submitted that when the complainant PW-1 is not able to give evidence in support of his statement contained in Ex.P-5, the enquiry officer should not have given the finding that the charges, except Charge No. 3, are proved. Further submitted that the Enquiry Officer has liberally made his comments that the junior advocate is inexperienced. Therefore, the approach of the Enquiry Officer was not on the correct lines of law.

13. As per the above inconsistencies and contradictions in the evidence of PW-1 and PW-2, the cardinal principle in the corruption case is that there must be a demand and acceptance of bribe by the delinquent officer and the same has to be proved beyond reasonable doubt. In this case, if the evidence of PW-1 and PW-2 are taken into account they do not prove that there was a demand and acceptance of bribe by the petitioner. Therefore, the Enquiry Officer should not have held that the charges, except Charge No. 3, are proved against the petitioner. The enquiry was in utter violation of Rule 17(b) (ii) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Further, seriously contended that the above disciplinary proceedings are vitiated when the petitioner was asked to appear before the Medical Board for considering him for promotion to the post of Subordinate Judge.

14. With regard to Charge No. 4 relating to grant of bail is concerned, learned senior counsel submitted that the Magistrate in the mofussil stations are working on all the days, including Saturday, Sunday and public holidays. Passing remand orders, recording of dying declaration, etc. are done even on holidays. Therefore, after considering his explanation, the petitioner should not have been punished with the extreme penalty.

    More over, grant of bail is a judicial function and the petitioner has discharged his judicial function in a bona fide manner.

15. In support of his submission, learned senior counsel relied on the decision in D.H. Satyam v. The King 1948 MWN Cr. 136. This Court while considering the revision petition against an order of acquittal pronounced on a Sunday observed as follows:

I do not see any justification for admitting the revision simply on the ground that the order of acquittal was pronounced on Sunday. Though Rule (I) of the Criminal Rules of Practice states that no judicial work should be transacted on Sunday it does not mean that the Court has no jurisdiction to acquit an accused on Sunday and release him from custody. The rule provides for cases of absolute urgency. Even if the pronouncing of the order of acquittal may not be one of absolute urgency I do not feel that this by itself will justify my interference in revision.

16. Learned senior counsel also relied on the decision of the Supreme Court in Moti Ram and Ors v State of Madhya Pradesh. In the said case, the petitioner, a poor mason, pending his appeal in the Supreme Court obtained an order for bail in his favour to the satisfaction of the Chief Judicial Magistrate. The direction of the Supreme Court did not spell out the details of the bail, and so, the Magistrate ordered that a surety in a sum of Rs. 10,000/- be produced. The petitioner could not afford to procure that huge sum or manage a surety of sufficient prosperity. Further, the Magistrate demanded sureties from his own district. He refused to accept the suretyship of the petitioner's brother because he and his assets were in another district. The petitioner moved the Supreme Court again to modify the original order to the extent that the petitioner be released on furnishing surety to the tune of Rs. 2,000/- or on executing a personal bond or pass any other order or direction" deem fit and proper. In this context, the Supreme Court held:

There is already a direction for grant of bail by this Court in favour of the petitioner and so the merits of that matter do not have to be examined now. It is a sombre reflection that many little Indians are forced into long cellular servitude for little offences because trials never conclude and bailors are beyond their meagre means. The new awareness about human rights imparts to what might appear to be a small concern relating to small men a deeper meaning. That is why we have decided to examine the question from wider perspective bearing in mind prisoner's right in an international setting and informing ourselves of the historical origins and contemporary trends in this branch of law. Social justice is the signature tune of our Constitution and the little man in peril of losing his liberty is the consumer of Social Justice. There is no definition of bail in the Code although offences are classified as bailable and non-bailable. The actual Sections which deal with bail, as we will presently show, are of blurred semantics. We have to interdict judicial arbitrariness deprivatory of liberty and ensure fair procedure which has a creative

connotation after Maneka Gandhi 17. Learned senior counsel for the petitioner also relied on the decision of this Court in A.M. Sankaran v. The Registrar High Court, Madras 1999 [2] LW 174 wherein this Court set aside the punishment of compulsory retirement imposed on a Judicial Magistrate on the ground that the charge does not disclose that the respondent had any case of recklessness or abuse of power or other misconduct by the petitioner. The Division Bench on the basis of the declaration of law by the Supreme Court and taking into consideration the charge and the evidence adduced did not find any justification in initiating disciplinary proceedings against the petitioner. The impugned order was, therefore, quashed.

18. Learned senior counsel also relied on the decision of the Supreme Court in P.C. Joshi v. State of U.P. and Ors wherein in paragraphs 8, 9 and 10 it was observed as follows:

    There are other two charges in respect of which the appellant was found to be guilty. One relates to grant of order of stay of disconnection of telephone for non-payment of Rs. 410/- to the Telephone Department in a consumer dispute filed by a senior government doctor. All that he did in his capacity as In-charge District Judge on the assumption that the District Judge being the ex officio Chairman of the District Consumer Forum he could grant such an order and that too when one of the members of the Forum has placed the papers before him seeking for orders. At best it is a case of bona fide and erroneous exercise of judicial powers and that matter cannot be treated as misconduct at all. How the enquiry officer could arrive at a finding that it is falling in one of the categories mentioned above, surpasses our comprehension.

    The last charge is to the effect that the appellant had appointed a mali (gardener) on a temporary basis for a period of 3-12 months at a time when he was In-charge District Judge. The action of the appellant was too trivial to call for any action because the appointment made by him was not pursuant to any improper motives such as illegal gratification or otherwise. How the same amounts to misconduct is not clear to us at all except to state that he was only In-charge District Judge. Thus we find that the findings recorded by the enquiry officer are totally vitiated for want of any legally acceptable or relevant evidence to support the charges of misconduct. In the absence of any evidence, the enquiry officer could not have reached the conclusion in the manner he did, and these findings affirmed by the disciplinary authority also stand vitiated.

19. Now coming to the punishment imposed by the respondents, on appreciation of the enquiry report and the representation made by the petitioner, the punishment is disproportionate to the charges levelled against the petitioner.

20. From the above facts and circumstances of the case and on the scrutiny of the overall appreciation of the evidence of P.W.1 and P.W.2, who are junior and senior advocates, and the inconsistencies and the contradictions as recorded above with regard to the place and time of demand of the bribe by the petitioner and receipt of the amount and the other inconsistencies and contradictions in Ex.P-5 during the course of recording the evidence, the Enquiry Officer who thought he was appointed only to give an enquiry report that the charges are proved by which punishment can be imposed by the High Court the enquiry officer against the inconsistency and contradictory statement made by P.W.1 and P.W.2 excluded the inconsistencies and the contradictions on the ground that by virtue of time gap and that inexperience cannot be appreciated when he was dealing with a judicial officer who was not having any blemish record throughout his career except the complaint made by P.W.1 which can be viewed that when he has failed to obtain favourable orders from the petitioner and others have obtained. More so, when the petitioner was due for promotion and the punishment was imposed at the time of his retirement.

21. Though we cannot re-appreciate the evidence recorded during the course of enquiry conducted by the Enquiry Officer, but we are satisfied on the overwhelming material available on record and after going through the entire deposition of P.W.1 and P.W.2 and the explanation offered by the petitioner that the enquiry officer should not have held that the Charge No. 1 is proved against the petitioner. As per the judgment relied on by the learned senior counsel for the petitioner in Bani Singh case, cited supra, wherein the Supreme Court has interfered with the punishment where there was a delay of twelve years from the date of issuance of the charge-sheet and the imposition of penalty. In the present case also, it took nearly six years to complete the enquiry and impose the punishment. Therefore, we are satisfied that the findings with regard to Charge Nos. 1 and 2 are to be set aside.

22. Further, it is pertinent to note that both P.W.1 and P.W.2 were involved in criminal cases. While P.W.2 was involved in a gambling case, P.W.1 was involved in a criminal case arising out of a partition case. Therefore, we have to see the conduct of the parties before the

initiation of the departmental enquiry and thereafter the imposition of punishment on a judicial officer. The Supreme Court in Ishwar Chand case, cited supra, held as under: Under the Constitution the High Court has control over the subordinate judiciary. While exercising that control it is under a constitutional obligation to guide and protect judicial officers. An honest strict judicial officer is likely to have adversaries in the mofussil courts. If complaints are entertained on trifling matters relating to judicial orders which may have been upheld by the High Court on the judicial side no judicial officer would feel protected and it would be difficult for him to discharge his duties in an honest and independent manner. An independent and honest judiciary is a sine qua non for Rule of law. If judicial officers are under constant threat of complaint and enquiry on trifling matters and if High Court encourages anonymous complaints to hold the field the subordinate judiciary will not be able to administer justice in an independent and honest manner. It is therefore, imperative that the High Court should also take steps to protect its honest officers by ignoring ill-conceived or motivated complaints made by the unscrupulous lawyers and litigants. Having regard to facts and circumstances of the instant case we have no doubt in ourmind that the resolution passed by the Bar Association against the appellant was wholly unjustified and the complaint made by Sh. Mehalawat and others were motivated which did not deserve any credit. Even the vigilance judge after holding enquiry did not record any finding that the appellant was guilty of any corrupt motive or that he had not acted judicially. All that was said against him was that he had acted improperly in granting adjournments. Therefore, by virtue of the conduct of the parties we go to the extent of holding that the High Court should not have initiated the disciplinary proceedings against the petitioner on the complaint made by P.W.1 and P.W.2. Accordingly, the charge memo issued against the petitioner is set aside on the ground of delay as well as on the conduct of the parties.

23. Now coming to Charge Nos. 4 and 5, after hearing the learned senior counsel for the petitioner and the learned Counsel for the respondent and the judgment in D.H. Satyam case, cited supra, on which he relied on, we are of the view even these charges have no legal basis. In D.H. Satyam case, cited surpa, it was observed as follows:

    An order of acquittal pronounced on a Sunday even though in contravention of Rule 1 of the Criminal Rules of Practice is not without jurisdiction and the High Court will not interfere in revision on that ground.

24. In Moti Ram case, cited supra, Justice V.R. Krishna Iyer, speaking for the Bench observed as follows: Even so, poor men - Indians are, in monetary terms, indigents - young persons, infirm individuals and women are weak categories and courts should be liberal in releasing them on their own recognisances - put whatever reasonable conditions you may. Though the matter related to grant of bail and insistence of sureties, what was there in the mind of the Apex Court was freedom of a poor man.

25. In A.M. Sankaran case, cited supra, a Division Bench of this Court, while dealing with the disciplinary proceedings initiated against a judicial officer on the alleged misuse/abuse of powers under Section 451 of Crl.P.C., held as under: The charge does not disclose that the respondent had any case of recklessness or abuse of power or other misconduct by the petitioner. In such a case, whether the respondent (Registrar) had jurisdiction to initiate action against the petitioner in relation to an order passed by him while discharging his function as Judicial Officer, by framing such a charge, is the matter to be decided.

    In our case, we find that the petitioner has not abused or misused his judicial powers while granting bail on a holiday exercising his discretionary powers in the interest of the parties, more so their freedom. The Division Bench, in the above said case, referred to the decision of the Queen's Bench Division in Anderson v. Gorrie 1895 [1] QBD 668 and various judgments of the Supreme Court and ultimately came to the conclusion that in view of the declaration of law by the Honourable Supreme Court and taking into consideration the charge and the evidence adduced, there was no justification for initiating disciplinary proceedings against the petitioner therein and quashed the impugned order as well as the impugned proceedings.

26. In P.C. Joshi case, cited supra, the appellant was a judicial officer. In a departmental enquiry, he was found guilty of certain charges and consequently, his services were terminated. The charges, inter alia, pertained to orders of bail granted in certain cases. In two of these cases, according to the enquiry officer, bail ought to have been granted on the very first application, but it was granted on the second application although the second application contained no fresh grounds. The appellant challenged unsuccessfully before the High Court his termination on the ground that none of the acts he was charged of constituted misconduct. Dealing with the question of the alleged misconduct against the appellant, the Supreme Court held as under:

Inferences have been drawn by the enquiry officer only on the basis that either the applications had been rejected at earlier stage for grant of bail or such applications ought to have been granted at the first stage itself. However, no specific material was brought on record to show or prove that there were any mala fide or extraneous reasons on the part of the appellant in passing the orders. The Supreme Court set aside the order passed by the High Court and directed the immediate reinstatement of the appellant in service with continuity of service and all consequential benefits such as payment of arrears of salary and other benefits. The Supreme Court referred to its earlier decision in Union of India v. A.N. Saxena and Union of India v. K.K. Dhawan 1993 [2] SCC 56. In K.K. Dhawan case, cited supra, the Supreme Court has indicated the basis upon which a disciplinary action can be initiated in respect of a judicial or a quasi judicial action as follows:

i. where the judicial officer has conducted in a manner as would reflect on his reputation or integrity or good faith or devotion to duty;

ii. that there is prima facie material to show recklessness or misconduct in the discharge of his duty;

iii. that if he has acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

iv. that if he had acted in order to unduly favour a party;

v. that if he had been actuated by corrupt motive

The Supreme Court also quoted the observations made in paragraph 14 of the Ishwar Chand Jain, cited supra, which we have quoted above. In our case also, there is no material available on record to establish that the petitioner had granted bail on a holiday with mala fide intention or for extraneous consideration.

27. Therefore, following the above observations of the Supreme Court and applying the same to the facts and circumstances of the present case, we are thoroughly satisfied that there is no material on record to establish that the petitioner has granted bail for extraneous consideration. As stated above, except the present complaint, there were no other complaints against the petitioner during his whole service as judicial officer. Therefore, as held by the Supreme Court an honest, strict judicial officer is likely to have adversaries and if complaints are entertained on trifling matters relating to the judicial

officers, as has been done in the present case, and if the judicial officers are under constant threat of complaints and enquiry on trifling matters, and if the High Court encourages anonymous complaints, no judicial officer would feel secure and it would be difficult for him to discharge his duties in an honest and independent manner. An independent and honest judiciary is a sine qua non for the rule of law. Therefore, considering the entire facts and circumstances of the case and the material placed on record, we are of the view that the High Court should not have initiated the enquiry proceedings against the petitioner at all. We, therefore, set aside the enquiry proceedings as well as the punishment imposed on the petitioner.

28. In the result, the impugned order in G.O. (2D) No. 208 dated 29-09-1999 is quashed and the writ petition is allowed. No costs.

D. Amaladoss vs The State of Tamil Nadu Rep. By The ... on 19 September, 2006

Indian Kanoon - http://indiankanoon.org/doc/1046400/

প্রশাসনিক ট্রাইব্যুনাল, বগুড়া

উপস্থিত: এ,টি,এম মেসবাউদ্দৌলা
সদস্য
এ,টি, মামলা নং-৫০/২০১২

মোঃ আজিজুর রহমান সিনিয়র জুডিসিয়াল ম্যাজিষ্ট্রেট, গাইবান্ধা --- প্রার্থী।

-বনাম-

গণপ্রজাতন্ত্রী বাংলাদেশ সরকার পক্ষে-সচিব, আইন, বিচার ও সংসদ বিষয়ক মন্ত্রণালয়

বাংলাদেশ সচিবালয় , ঢাকা দিং--- প্রতি পক্ষগণ।

শুনানীর তারিখ ঃ- ০২-০৬-২০১৩ ইং

রায় ঘোষনার তারিখঃ- ২৩-০৬-২০১৩

উপস্থিতঃ কৌশলীগণ-

প্রার্থীপক্ষে ঃ- ১। মিঃ আহসান হাবীব-২

প্রতি পক্ষগণের পক্ষে ঃ- ১। মিঃ রবিউল করিম পানেশ অ্যাডভোকেট।

ঃ রায় ঃ

ইহা প্রশাসনিক ট্রাইব্যুনাল এ্যাক্ট-১৯৮০ এর ৪ (২) ধারায় বিধান মতে আনীত একটি মামলা।

মোঃ আজিজুর রহমান, সিনিয়র জুডিসিয়াল ম্যাজিষ্ট্রেট, গাইবান্ধা প্রার্থী হইয়া ২ নং প্রতিপক্ষ, রেজিষ্ট্রার, বাংলাদেশ সুপ্রীম কোট, হাইকোর্ট বিভাগ ঢাকা এর কার্যালয়ের প্রথম সহকারী রেজিষ্ট্রার কর্তৃক তাহার গত ইং ০১-০১-২০০৯ তারিখ হইতে ইং ২০-০৭-২০০৯ তারিখ পর্যন্ত সময়ের বার্ষিক গোপনীয় প্রতিবেদনে প্রদত্ত বিরূপ মন্তব্য কর্তনের আবেদন নামঞ্জুরের আদেশ অন্যায়, বে-আইনী ও বিধি বহির্ভূত মর্মে বাতিল ঘোষণার প্রার্থনায় ২ নং প্রতিপক্ষ সহ অন্যান্য প্রতিপক্ষগণের বিরুদ্ধে অত্র ট্রাইব্যুনালে এই মামলা দায়ের করেন।

প্রার্থীর মামলা সংক্ষিপ্ত বিবরণ এই যে,

প্রার্থী মোঃ আজিজুর রহমান বাংলাদেশ জুডিসিয়াল সার্ভিসে নিয়োগ প্রাপ্ত হইয়া জুডিসিয়াল ম্যাজিস্ট্রেট হিসাবে গত ইং ২২-০২-২০০৮ তারিখে গাইবান্ধা জেলায় যোগদান করেন। তিনি তাহার উপর অর্পিত দায়িত্ব সততা ও নিষ্ঠার সহিত পালন করিয়া আসিতে থাকায় কর্তৃপক্ষ তাহাকে গত ইং ২২-০৫-২০১১ তারিখে স্থায়ী করেন।

প্রার্থী সিনিয়র জুডিসিয়াল ম্যাজিস্ট্রেট হিসাবে গাইবান্ধায় কর্মরত থাকাকালে ৩ নং প্রতিপক্ষ চীফ জুডিসিয়াল ম্যাজিস্ট্রেট, গাইবান্ধা বিদ্বেষমূলকভাবে গত ইং ০১-০১-২০০৯ তারিখ হইতে ইং ২০০৭ -২০০৯ পর্যন্ত সময়ের বার্ষিক গোপনীয় প্রতিবেদনে বিরূপ মন্তব্য করেন। প্রার্থী উক্ত বিরূপ মন্তব্য কর্তনের জন্য ২ নং প্রতিপক্ষ বরাবর আবেদন করেন। কিন্তু ২ নং প্রতিপক্ষের কার্যলয় হইতে গত ২৬-০৫-২০১১ তারিখের স্বাক্ষরিত পত্রে প্রথম সহকারী রেজিষ্ট্রার প্রার্থীর উক্ত সময়ে বার্ষিক গোপনীয় প্রতিবেদনে প্রদত্ত বিরূপ মন্তব্য কর্তনের আবেদন নামঞ্জুর করা হইয়াছে মর্মে অবহিত করেন। প্রার্থী উক্ত নামঞ্জুর আদেশ পুনঃবিবেচনার জন্য যথাযথ কর্তৃপক্ষের মাধ্যমে ২ নং প্রতিপক্ষ বরাবর গত ইং ০৪-০৭-২০১১ তারিখে আবেদন করেন। তৎপেক্ষিতে ২নং প্রতিক্ষের কার্যলয়ের প্রথম সহকারী রেজিষ্ট্রার গত ইং ১৫-১১-২০১১ তারিখের পত্রে অবহিত করেন যে, প্রার্থীর ইং ০১-০১-২০০৯ তারিখ হইতে ইং ২০-০৭-২০০৯ তারিখ পর্যন্ত সময়ের বার্ষিক গোপনীয় প্রতিবেদনের প্রদত্ত বিরূপ মন্তব্য কর্তনের আবেদনখানি জি. এ কমিটির সভায় উপস্থাপনের জন্য মাননীয় প্রধান বিচারপতি মহোদয় সম্মতি জ্ঞাপন করেন নাই। প্রার্থীর উক্ত আবেদন জি.এ কমিটিতে উপস্থাপন না হওয়ায় এবং তাহা উপযুক্ত কর্তৃপক্ষ কর্তৃক বিবেচিত না হওয়ায় প্রার্থী পুনরায় গত ইং ০১-০১-২০১২ তারিখে পুনঃবিবেচনার জন্য একটি আবেদন করেন।

প্রার্থীর দাখিলকৃত উক্ত আবেদন নিষ্পত্তি না হওয়ায় এবং ইতোমধ্যে উক্ত আবেদন দাখিলের তারিখ হইতে দুই মাস সময় অতিবাহিত হওয়ায় তিনি প্রশাসনিক ট্রাইব্যুনাল এ্যাক্ট ১৯৮০-এর ৪ (২) গত ইং ১৯-১১-১৯৯৭ তারিখের সংশোধনী সংযোজনী শর্ত মোতাবেক নির্ধারিত সময়-সীমায় উপরোক্ত প্রার্থনায় গত ইং ১১-০৬-২০১২ তারিখ অত্র ট্রাইব্যুনালে এই মামলা দায়ের করেন।

প্রতিপক্ষগণের অত্র মামলা জবাব দাখিলের জন্য বার বার সময় প্রদান করা সত্বেও তাহারা কোন জবাব দাখিল করেন নাই। ফলে অত্র মামলাটি এক তরফা শুনানী অন্তে রায় প্রদানেরর জন্য লওয়া হয়।

ঃ বিচার্য বিষয় ঃ

১. মামলাটি বর্তমান আকারে আইনতঃ রক্ষনীয় কি না?
২. মামলাটি তামাদি দোষে বারিত কি না?
৩. ২ নং প্রতিপক্ষের কার্যালয়ের গত ইং ২৬-০৫-২০১১ তারিখের প্রার্থীর গত ইং ০১-০১-২০০৯ তারিখ হইতে ইং ২০-০৭-২০০৯ তারিখ পর্যন্ত সময়ের বার্ষিক গোপনীয় প্রতিবেদনে বিরূপ মন্তব্য কর্তনের আবেদন নামঞ্জুর করার আদেশ বে-আইনী কি না?
৪. প্রার্থী তাহার প্রার্থিত মতে প্রতিকার পাইতে হকদার কি না?

ঃ **আলোচনা ও সিদ্ধান্ত** ঃ

১ নম্বর বির্চায বিষয় ঃ এই বিচার্য বিষয়টি সম্পর্কে শুনানীকালে প্রতিপক্ষ হইতে সুনির্দিষ্ট তথ্যগত ও আইনগত কোনরূপ আপত্তি উত্থাপিত হয় নাই। উপরন্তু নথি দৃষ্টে এমন কোন তথ্যাদি পাওয়া যায় না যাহাতে প্রতীয়মান হয় যে, অত্র মামলা বর্তমান আকারে চলিতে আইনগতঃ কোন বাধা আছে। এইরূপ অবস্থায় অত্র বিচার্য বিষয়টি প্রার্থীর অনুকূলে নিষ্পত্তি করা হইল।

২। নম্বর বিচার্য বিষয়ঃ প্রার্থীপক্ষের বিজ্ঞ অ্যাডভোকেট বক্তব্য শ্রবন অন্তে এবং নথি পর্যালোচনায় পরিলক্ষিত হয় যে, ২ নং প্রতিপক্ষের কার্যালয়ের গত ইং ২৬-০৫-২০১১ তারিখের পত্রে প্রার্থীর বার্ষিক গোপনীয় প্রতিবেদনে প্রদত্ত বিরূপ মন্তব্য কর্তনের আবেদন নামঞ্জুর করা হয়। প্রার্থী উক্ত নামঞ্জুর আদেশ পুনঃবিবেচনার জন্য যথাযথ কর্তৃপক্ষের মাধ্যমে ২ নং প্রতিপক্ষ বরাবর গত ইং ০৪-০৭-২০১১ তারিখে আবেদন করেন। তৎপ্রেক্ষিতে ২নং প্রতিপক্ষের কার্যালয়ের প্রথম সহকারী রেজিষ্ট্রার গত ইং ১৫-১১-২০১১ তারিখের পত্রে অবহিত করেন যে, প্রার্থীর ইং ০১-০১-২০০৯ তারিখ হইতে ইং ২০-০৭-২০০৯ তারিখ পর্যন্ত সময়ের বার্ষিক গোপনীয় প্রতিবেদনে প্রদত্ত বিরূপ মন্তব্য কর্তনের আবেদনখানি জি,এ কমিটির সভায় উপস্থাপনের জন্য মাননীয় প্রধান বিচারপ্রতি মহোদয় সম্মতি জ্ঞাপন করেন নাই। প্রার্থীর উক্ত আবেদন জি,এ কমিটিতে উপস্থাপন না হওয়ায় এবং তাহা কর্তৃপক্ষ কর্তৃক বিবেচিত না হওয়ায় প্রার্থী পূনরায় গত ইং ০১-০১-২০১২ তারিখে পনুঃবিবেচনার জন্য একটি আবেদন করেন। প্রার্থীর দায়েরকৃত উক্ত আবেদন নিষ্পত্তি না হওয়ায় এবং ইতিমধ্যে আবেদন দায়ের তারিখ হইতে দুই মাস অতিবাহিত হওয়ায় তিনি প্রশাসনিক ট্রাইব্যুনাল এ্যাকট এর ৪(২) ধারার শর্ত মতে উক্ত ১৯৯৭ তারিখের সংশোধনী সংযোজনী শর্ত মোতাবেক নির্ধারিত সময় সীমার মধ্যে উপরোক্ত প্রার্থনায় গত ১১-০৬-২০১২ তারিখে অত্র ট্রাইব্যুনালে প্রার্থী এই মামলা দায়ের করেন।

এমতকারণে প্রার্থীর অত্র মামলা দামাদি দোষে বারিতো নহে মর্মে সিদ্ধান্ত গ্রহণ করত অত্র বিচার্য বিষয়টি তাহার অনুকূলে নিষ্পত্তি করা হইল।

৩ নং বিচার্য বিষয়: প্রার্থী পক্ষের বিজ্ঞ অ্যাডভোকেট তাহার যুক্তি উপস্থাপন করে বলেন যে প্রার্থী প্রশাসনিক ট্রাইব্যুনাল এ্যাকট ১৯৮০ এর ৪ ধারার আওতায় বর্নিত গোপনীয় প্রতিবেদনে (এসিআরএ) উদ্দেশ্যে মূলক ভাবে খারাপ ও যুক্তিহীন প্রতিবেদন প্রদান করায় প্রার্থী ঐ আদেশের বিরুদ্ধে উর্ধ্বতন কর্তৃক্ষের নিকট আপীল দায়ের করিলেও কর্তৃপক্ষ উহা বিবেচনা করেন নাই। বিভিন্ন অভিযোগে (যাহা অপ্রমাণিত) প্রার্থীকে বার্ষিক গোপনীয় অনুবেদনে যে খারাপ মন্তব্য প্রদান করিয়া প্রতিবেদন দাখিল করা হইয়াছে উহা প্রচালিত আইন অনুযায়ী অগ্রহণযোগ্য ও অরক্ষনীয় হওয়ায় উহার রদ রহিতের জন্য বিজ্ঞ অ্যাভোকেট আবেদন করেন।

প্রার্থীপক্ষের বিজ্ঞ অ্যাডভোকেটের বক্তব্য, আইন ও সংশ্লিষ্ট কেস নথি সুষ্টভাবে প্রযালোচনা করিলাম।

প্রশাসনিক ট্রাইব্যনাল এ্যাক্ট-এর ৪ ধারার আওতায় একজন চাকুরীজীবির চাকুরীর Terms and conditions সম্পর্কে উর্ধ্বতন কর্তৃপক্ষ কর্তৃক যে কোন সিদ্ধান্ত ও কার্যক্রম এই চাকুরীর শর্ত সম্পর্কিত যে কোন আদেশ বিষয়য়ে চাকুরী জীবি প্রার্থী ট্রাইব্যুনালে আশ্রয় গ্রহণ করিতে সম্পূর্ণ এখতিয়ার সম্পন্ন। প্রার্থী বিচার বিভাগের একজন সদস্য এবং তাহার বার্ষিক গোপনীয় প্রতিবেদনের তর্কীত প্রতবেদনরে ফলে তিনি পরবর্তীতে পদন্নতিতে বাধা গ্রস্থ হইতে পারেন। ফলে তিনি ঐ প্রতিবেদনের বিরুদ্ধে অত্র ট্রাইব্যুনালের সরণাপন্ন হইয়া এই সম্পর্কিত বিধি বিধান ও আইনের আলোকে প্রতিকার প্রার্থনা করিয়াছেন যা অত্র ট্রাইব্যুনালের বিচার এখতিয়ারভুক্ত একটি বিষয়।

পার্থীপক্ষের দাখিলী পরিশিষ্ট E ২নং প্রতিপক্ষের ইস্যুকৃত তর্কিত বার্ষিক গোপনীয় প্রতিবেদন পর্যালোচনা করিলাম। গত ০১-০১-২০০৯ তারিখ হইতে ইং ২০-০৭-২০০৯ তারিখ পর্যন্ত প্রার্থী মোঃ আজিজুর রহমানের যে বার্ষিক গোপনীয় প্রতিবেদন প্রদান করা হয় উহাতে ক্রমিক নং ১ হইতে ১৪ নং কলামে উল্লেখ করা হয় যে, ১। শৃঙ্খলাবোধ খুব বেশী সতর্ক নহেন ২। আইনজীবী, মামলাকারী জনগন ও কর্মচারীদের সহিত সম্পর্ক-অবান্ধবসুলভ আচারণ প্রবণ, ৩। তদারকী ও পরিচালনা সামর্থ অধীনস্থদের নিয়ন্ত্রণে অপারগ, ৪। সহকর্মিদের সহিত সম্পর্ক-সহকর্মীদের এড়াইয়া চলার প্রবণতা। ৫। দায়িত্ব ও কর্তব্যবোর্ধ-দায়িত্ব এড়াইয়া চলেন ৬। বিচার সংক্রান্ত কাজের মান নিম্মমানের, ৭। সাক্ষ্য পর্যালোচনায় দক্ষতা-যথাযথ নয়, ৮। রায় লিখন-যুক্তিসঙ্গত নয়, ৯। সামগ্রিক মূল্যায়ন-সন্তাষজনক নয়, ১০। ঘটনার তাৎপর্য উপলব্ধি ক্ষমতা-যথাযথ নয়, ১১। প্রকাশ ক্ষমতা (লিখন) কাজ চলার মত নয়, ১২। বৃদ্ধিমত্তা-প্রত্যাশিত..., ১৩। সংক্ষিপ্ত মন্তব্য (খ) সততা ও সুনাম-নাই এবং ১৪। পদোন্নতির যোগ্যতা-অধিকতর পদেন্নতির অযোগ্য যোগ্যতার সর্ব্বোচ্চ সীমায় পৌছিয়াছে ।

নথি পর্যলোচনায় পরিলিক্ষিত হয় যে, প্রার্থী সহকারী জজ হিসাবে নিয়োগ পাপ্ত হন এবং জুডিসিয়াল ম্যাজিষ্ট্রেট হিসাবে যোগদান করেন এবং সিনিয়র জুডিসিয়াল পদে পদায়ন প্রাপ্ত হন। তাহার কর্মকান্ডে এমন কোন অনিয়ম ও অযোগ্যতা পাওয়া যায় নাই। এসি আর প্রদানের ক্ষেত্রে যুক্তিসংগত কারণ ও পূর্ববতী কর্মকান্ডের প্রমাণাদি উপস্থাপন ব্যাতিরেখে হঠাৎ করিয়া কোন অফিসারকে উপরে উল্লেখিত মন্তব্যগুলি করার কোন আইনগত সুযোগ নাই।

১৯৮৩ পিএলসি (সিএস) ৭৭৪-এ উল্লেখিত এসিআর সম্পর্কিত মামলায় সিদ্ধান্ত প্রদান করা হইয়াছে যে,--

Where adverse remarks were based upon facts not supported by the record and was as a result of confusion in the mind of Reporting Officer, the remarks were expunged by the (tribunal)

একই বিষয়ে **১৯৮৩** পিএলসি (**সিএস**) **১০১৯**- এ সিদ্ধান্ত প্রদান করা হইয়াছে যে-

Where the reporting Officer recorded adverse remarks in sweeping manner against all columns in report form, the remarks were challenged on the ground of personal grudge and malice Witness examined before the tribunal support allegations of malice and the possibility of personal annoyance. The Reporting Office defied the direction of the Tribunal and failed to submit his comments justifying his observations Vis-a-Vis work and conduct of the appellant. The previous record of the appellant was unblemished. The adverse remarks in the circumstances were set aside and the Tribunal took strong note of the behavior of the Reporting Officer.

উপরোক্ত সিদ্ধান্ত সমূহ ছাড়াও ৩০শে জানুয়ারী ২০০৪ তারিখ ইউনিয়ন অব ইন্ডিয়া (ইউওআই) বনাম অজিত কুমার সিং এসিআর সংক্রান্ত মামলায় গুজরাট হাইকোর্ট সিদ্ধান্ত প্রদান করেন যে,-

Therefore the whole purpose is while evaluating ACRs that in case if three ACRs are "very good'' out of five reports then, his overall grading will be "very Good'' (Ref. (2004) 2 GLR 952)

প্রতিপক্ষ কর্তৃক প্রার্থীর গত ইং ০১-০১-২০০৯ তারিখ হইতে ইং ২০-০৭-২০০৯ তারিখ পর্যন্ত সময়ে বার্ষিক গোপনীয় অনুবেদনে উল্লেখিত সংশ্লিষ্ট বিরূপ মন্তব্য ২ নং প্রতিপক্ষ কর্তৃক কর্তন করা হয় নাই। ৩ নং প্রতিপক্ষ প্রার্থীকে তাহার এসিআর-এ বিরূপ বক্তব্য করার পূর্বে কোন প্রকার শোকজ করেন নাই। যাহা এসিআর-এর নিয়ম ও ফরমে উল্লেখিত আইনের সুস্পষ্ট লংঘন।

ইহাছাড়া Criminal Rules & Orders-2009- এর বিধি ৪২০ উপবিধি ৫ অনুসারে প্রতিপক্ষ কর্তৃক অর্থাৎ জেনারেল এ্যাডমিনিষ্ট্রেশন কমিটি কর্তৃক যে আইনগত অধিকার প্রার্থীর প্রতি পযোজ্য তাহা অনুসরণ করা হয় নাই।

উপরোক্ত আলোচনা ও সিদ্ধান্তের প্রেক্ষিতে ৩ নং প্রতিপক্ষ চীফ জুডিসিয়াল ম্যাজিষ্ট্রেট গাইবান্ধা কর্তৃক প্রার্থীর গত ইং ০১-০১-২০০৯ তারিখ হইতে ইং ২০-০৭-২০০৯ তারিখ পর্যন্ত সময়ের বার্ষিক গোপনীয় প্রতিবেদনে প্রদত্ত বিরূপ মন্তব্য এবং ২ নং প্রতিপক্ষের গত ইং ২৬-০৫-২০১১ তারিখের উক্ত সময়ের প্রার্থীর বার্ষিক গোপনীয় প্রতিবেদনের প্রদত্ত বিরূপ মন্তব্য কর্তনের আবেদন নামঞ্জুরের আদেশ সম্পুর্ণ অরক্ষণীয় ও বাতিলযোগ্য প্রতীয়মান হইতেছে।

উপরোক্ত আলোচনা ও সিদ্ধান্তের প্রেক্ষিতে নির্ধারনী বিষয়টি প্রার্থীর অুনকূলে নিস্পত্তি করা হইল।

৪ নং বিচার্য বিষয় ঃ- ১-৩ নং বিচার্য বিয়ষগুলি প্রার্থীর অুনকুলে নিস্পত্তি হওয়ায় প্রার্থী অত্র মামলায় প্রার্থীত প্রতিকার পাইতে পারেন মর্মে সিদ্ধান্ত গ্রহণ করিয়া অত্র বিচার্য বিষয়টিও তাহার অুনকূলে নিস্পত্তি করা হইল। মামলার অবস্থা বিবেচনা করিয়া কোন খরচার আদেশ প্রদান করা হইল না।

অতএব, আদেশ

হয় যে,

অত্র মামলাটি প্রতিপক্ষগণের বিরুদ্ধে এক তরফা সূত্রে বিনা খরচায় মঞ্জুর হইল। ৩। নং প্রতিপক্ষ চীফ জুডিসিয়াল ম্যাজিষ্ট্রেট, গাইবান্ধা কর্তৃক প্রার্থীর গত ইং ০১-০১-২০০৯ তারিখ হইতে ইং ২০-০৭-২০০৯ তারিখ পর্যন্ত সময়ের বার্ষিক গোপনীয় প্রতিবেদনে প্রদত্ত বিরূপ মন্তব্য এবং ২নং প্রতিপক্ষের গত ইং ২৬-০৫-২০১১ তারিখের উক্ত সময়ের প্রার্থীর বার্ষিক গোপনীয় প্রতিবেদনের প্রদত্ত বিরূপ মন্তব্য কর্তনের আবেদন নামঞ্জুরের আদেশ অন্যায়, বে-আইনী এবং বিধি বহির্ভূত মর্মে এতদ্বারা বাতিল ঘোষনা করা হইল। প্রার্থীকে বিধি মোতাবেক যাবতীয় সুযোগ-সুবিধাদি প্রদানের জন্য প্রতিপক্ষগণকে নির্দেশ দেওয়া গেল।
আমা হইতে শ্রত এবং
আমা কর্তৃক সংশোধিত

স্বাক্ষর/
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