

**RMM LAW COLLEGE SAHARSA**

**CODE OF CRIMINAL PROCEDURE**

**IIIrd Part**

**Paper -3**

**TOPIC- General provisions as to inquiries and trials.**

**Lecture Notes by- BINOD KUMAR JHA**

**Date:- 19/06/2020**

**314. Oral arguments and memorandum of arguments.**

(1) Any party to a proceeding may, as soon as may be after the close of his evidence, address concise oral arguments, and may, before he concludes the oral arguments, if any, submit a memorandum to the Court setting forth concisely and under distinct headings, the arguments in support of his case and every such memorandum shall form part of the record.

(2) A copy of every such memorandum shall be simultaneously furnished to the opposite party.

(3) No adjournment of the proceedings shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grant such adjournment.

(4) The Court may, if it is of opinion that the oral arguments are not concise or relevant, regulate such arguments.

**315. Accused person to be competent witness.**

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

Provided that—

(a) he shall not be called as a witness except on his own request in writing;

(b) his failure to give evidence shall not be made the subject of any comment by any of

the parties or the Court or give rise to any presumption against himself or any person charged together with him at the same trial.

(2) Any person against whom proceedings are instituted in any Criminal Court under section 98, or section 107, or section 108, or section 109, or section 110, or under Chapter IX or under Part B, Part C or Part D of Chapter X, may offer himself as a witness in such proceedings:

Provided that in proceedings under section 108, section 109 or section 110, the failure of such person to give evidence shall not be made the subject or any comment by any of the parties or the Court or give rise to any presumption against him or any other person proceeded against together with him at the same inquiry.

### **Comments**

It is well settled that no Court can compel the accused to give evidence unless there is compliance with section 315(1)(a), i.e., a request in writing by the accused; *Sarbeswar Panda v. State of Orissa*, (1997) 2 Crimes 534 (Ori).

### **316. No influence to be used to induce disclosure.**

Except as provided in sections 306 and 307 no influence by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

### **317. Provision for inquiries and trial being held in the absence of accused in certain cases.**

(1) At any stage of an inquiry or trial under this Code, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, or that the accused persistently disturbs the proceedings in Court, the Judge or Magistrate may, if the accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

(2) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately.

### **318. Procedure where accused does not understand proceedings.**

If the accused, though not of unsound mind, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and in the case of a Court other than a High Court if such proceedings result in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.

### **319. Power to proceed against other persons appearing to be guilty of offence.**

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1) then—

(a) the proceedings in respect of such person shall be commenced afresh, and witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

### **Comments**

In order to apply section 319 it is essential that the need to proceed against the person other than the accused, appearing to be guilty of offence, arises only on evidence recorded in the courses of any inquiry or trial; *Bhola Rai v. State of Bihar*, (1997) 3 Crimes 48 (Pat).

### **320. Compounding of offences.**

(1) The offences punishable under the sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the Table next following may be compounded by the persons mentioned in the third column of that Table.

(2) The offences punishable under the sections of the Indian Penal Code (45 of 1860) specified in the first two columns of the table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that table:—

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

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

(b) When the person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil Procedure, 1908 (5 of 1908) of such person may, with the consent of the Court compound such offence.

(5) When the accused has been committed for trial or when he has been convicted and an appeal is pending no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.

(6) A High Court or Court of Session acting in the exercise of its powers of revision under section 401 may allow any person to compound any offence which such person is competent to compound under this section.

(7) No offence shall be compounded if the accused is, by reason of a previous conviction, liable either to enhanced punishment or to a punishment of a different kind for such offence.

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

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

#### **STATE AMENDMENT**

Madhya Pradesh:

In the table below sub-section (2) of sec. 320 of the Principal Act,—

(i) in column first, second and third, before section 324 and entries relating thereto, the following sections and entries relating thereto shall be inserted, namely:— "(1) (2) (3)

Rioting 147 The person against whom the force or violence is used at the time of committing an offence:

Provided that the accused is not charged with other offence which is not compoundable. Rioting armed with deadly weapon 148 The person against whom the force or violence is used at the time of committing an offence:

Provided that the accused is not charged with other offence which is not compoundable  
Obscene acts or use of obscene words 294 The person against whom obscene acts were done or obscene words were used."

(ii) in column first, second and third, after section 500 and entries relating thereto, the following section and entries relating thereto shall be inserted, namely:—

"(1) (2) (3)

Criminal intimidation if Part II of The person against whom the offence of threat to be cause death section 506 Criminal Intimidation was committed." or grievous hurt, etc.

[Vide Madhya Pradesh Act 17 of 1999 section 3 (w.e.f. 21-5-1999).

### **Comments**

Section 320 Cr. P provides for compounding of certain offences with the permission of Court and certain others even without permission of Court, the concept of negotiated settlement in criminal cases is not permissible concept of `plea-bargaining' against public policy and under criminal justice system; State of Uttar Pradesh v. Chandrika, AIR 2000 SC 164: 2000 Cr LJ 384 (SC).