

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Law of Criminal Procedure Code
Semester-IV (Batch: 2014-19)

Mid Term Test: Feb-Mar. 2016



Date: 2nd March, 2016

Duration: 2 hours

Max. Marks: 30

Instructions:

- Read the questions properly and write the answers in the given answer book.
- The respective marks for each question are indicated in-line.
- Do not write any thing on the question paper.
- Indicate correct question numbers in front of the answers.
- No questions or clarifications can be sought during the exam period, answer as it is, giving reason, if any.
- **Bare Act is not allowed except for index page.**

Part-A
Answer all the questions

Marks

- Q.1 The crucial phrase in Section 162(1) Cr.P.C. is "*in the course of an investigation*", an investigation being defined in Section 2(h) as including all proceedings under the Code for the collection of evidence conducted by a police officer. The phrase was considered by a Bench of the Allahabad Court in one of the case. Two different views were pressed before their Lordships; first, that the phrase should be treated solely as marking a span of time, that is to say, it defined the period of time between the moment it ended and no statement made during that interval, whatever the circumstances in which it was made, could ever be used; second, that the phrase imported the meaning that the statement has to be made, not only after the investigation has started, but as step in, or in conscious prosecution of the investigation itself. (07)
- Answer the following:**
- (a) Out of the two views pressed before their Lordships, which view can be accepted and why? Are the two things, the period of investigation and the course of investigation synonymous? (2 Marks)
- (b) What is the requirement for a statement to come within the purview of Section 162 of Cr. PC? Whether an independent complaint made to the Investigating Officer by the accused will be a statement in the course of investigation? (2 Marks)
- (c) What is the test laid down to decide whether it is a step in the pending investigation? Whether an anonymous letter written to Sub-inspector can be held to be a statement in the course of investigation? (3 Marks)
- Q.2 Appellant was arrested in connection with an offence punishable under Sections 386, 506 and 120-B of the I.P.C. He was produced before the Metropolitan Magistrate, Delhi on 31.10.1998 and was released on bail by order dated 2.1.1999 by the Metropolitan Magistrate on the ground that charge-sheet was not submitted within 60 days as provided under Section 167(2) of Cr.PC. That order was challenged before the Sessions Judge, New Delhi by filing Criminal Revision No. 22 of 1999. By judgment and order dated 18.8.1999, the Additional Sessions Judge, New Delhi allowed the said revision application. The learned Additional Sessions Judge held that for an offence under Section 386 I.P.C., period of sentence could be up to 10 years rigorous imprisonment. (07)

Hence, clause (i) of the proviso (a) to Section 167 (2) would be applicable. He, therefore, set aside the order passed by the Metropolitan Magistrate releasing the accused on bail. That order was challenged before the High Court by the accused. The High Court referred to its earlier decisions and held that the expression “an offence punishable with imprisonment for a term of not less than 10 years in clause (i) of the proviso to Section 167 would mean an offence punishable with imprisonment for a specific period which period would not be less than 10 years or in other words would be at least ten years. The words not less than qualify the period. These words put emphasis on the period of ten years and mean period must be clear ten years. It was further held that on a plain reading of clause (i) of proviso (a) to sub-section (2) of section 167 Cr.PC., there seemed to be no doubt that offences punishable with death, imprisonment for life or imprisonment for a term of ten years or more would fall under clause (i) and offences which are punishable with imprisonment for less than ten years would fall under clause (ii). Hence, the High Court set aside the order passed by the Additional Sessions Judge. That order is challenged in the appeal before the Supreme Court of India?

Relevant provision of law is:

Section 386, IPC: Extortion by putting a person in fear of death or grievous hurt.-

Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Answer the following:

- (a) What is the power of a Magistrate pending investigation relating to an offence punishable with imprisonment for a term “not less than 10 years”? Suppose in case, where offence is punishable with imprisonment for 10 years or more whether the accused could be detained up to a period of 90 days? (2 Marks)
- (b) What would the expression “not less than” in this context mean? What does the expression under Section 386 of I.P.C., “imprisonment of either description for a term which may extend to ten years” mean? (2 Marks)
- (c) Suppose if we consider clause (i) of proviso (a) to Section 167 (2), whether it would cover the offence for which punishment could be imprisonment for less than 10 years? Whether under Section 386 of the I.P.C, it can be said that imprisonment prescribed is not less than 10 years? Whether the appeal would be allowed? (3 Marks)

- Q.3 An anonymous complaint was made against a Sub-Inspector of Police that he committed an offence punishable under the Prevention of Corruption Act against the applicant and it was investigated by a Deputy Superintendent of Police in accordance with the provisions of the Act. The Deputy Superintendent in the course of the investigation interrogated people including the applicant, who made a statement in reply to his queries, to the effect that he was beaten by the Sub-Inspector and was compelled by him to pay him a bribe. The Deputy Superintendent, as the result of his investigation, recommended proceedings under Section 7 of the Police Act, 1861 dealing with (*Appointment, dismissal, etc., of inferior officers*) against the Sub-Inspector; in the report he said that the Sub-Inspector had tried to suborn some of the persons who were likely to give evidence against him. (07)

Proceedings under Section 7 of the Police Act were commenced against the Sub-Inspector and then he filed a complaint against the applicant for the offence of Section 500 of the I.P.C, alleging that the statement made by him to the Deputy Superintendent during the investigation was defamatory. The Magistrate took cognizance of the complaint and tried the applicant; in the meantime the proceedings under Section 7 of the Police Act were stayed, though it was not known under whose order and on what

ground. The trial Court found that the applicant committed the offence of defamation by making the statement against the Sub-Inspector and convicted him.

The relevant provisions of law are:

Section 500, IPC: Punishment for defamation.- *Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.*

Section 132, Evidence Act: Witness not excused from answering on ground that answer will criminate.- *A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind:*

Proviso.- *Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.*

Answer the following:

- (a) Whether a statement under Section 161 is absolutely protected? Suppose if a person makes a defamatory statement during investigation whether he shall be protected under Section 132 of the Evidence Act? What protection is afforded under the proviso of the Section? (3 Marks)
- (b) Section 161 of the Cr.PC makes no distinction between one person acquainted with the facts and circumstances of the case and another, instead they are all interrogatees. Does the word "witness" used in Section 132 of the Evidence Act refer to any interrogatee examined by a police officer under Section 161 of Cr. PC? (2 Marks)
- (c) Whether the applicant was a witness when he made a defamatory statement against the Sub-Inspector and can be entitled to the privilege of exemption against the liability for any prosecution under Section 132 of the Evidence Act? State whether the conviction of the applicant can be maintained at appeal? (2 Marks)

Part-B

Answer any [2] Questions

- Q.4 (a) In the arena of Criminal Law, the Code of Criminal Procedure, 1973 occupies a pre-dominant place, as it provides the procedure for investigation, enquiry, trial and judgment apart from revisions and appeals in respect of criminal cases whether covered by Indian Penal Code, 1860 or any other special enactments dealing with crimes and punishments subject to the restrictions and limitations provided in such laws. State the Historical evolution of the Law relating to Criminal Procedure. (1.5 Marks) (4.5)
- (b) What is the meaning and purpose of complaint? What are the requisites of a complaint and to whom the complaint must be made? Is it necessary that complaint should be made by the aggrieved person and is there any particular form prescribed in which a complaint is to be made? (3 Marks)
- Q.5 (a) Explain with the help of a figure the hierarchy of executive magistrates and also that of criminal courts and their powers to pass sentences. (3 Marks) (4.5)
- (b) Why is it necessary to have a hierarchy of different criminal courts? (1.5 Marks)
- Q.6 (a) What are the powers and duties of the police for the prevention of cognizable offences? (3 Marks) (4.5)
- (b) What preventive action can the police take in respect of injury to public property and in respect of false weights and measures? (1.5 Marks)
