

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

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

End Semester Examination: April-May 2016

Date: 5th May, 2016

Duration: 3 hours

Max. Marks: 50

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 acts not allowed except for the index.**

Part-A

Answer **any three** questions

Marks
(3x10
=30)

- Q.1 Section 43, Cr.P.C. provides that any private person may arrest or cause to be arrested any person who in his presence commits a non-bailable and cognizable offence, or any proclaimed offender and without unnecessary delay, shall make over or cause to be made over any person so arrested to a police officer or, in the absence of a police officer, take such person or cause him to be taken in custody to the nearest police station.

In Section 59 of the old Act the words were “any person who in his view commits...” there was a controversy about the meaning of the word “view”. According to some High Courts the term “view” did not mean in presence; and when an offence was not committed in presence of a person, but if he believes that the offence has been committed he has a right to arrest. In all these cases persons though not present at the place of occurrence joined the chase, with the persons who were chasing the offenders from the place of occurrence. It was held that the person who helped in the arrest has power to arrest under the section because the person in whose presence the offence was committed could take the help of others under section 46 of the Act.

To the contrary, it was held that persons who joined the chase with belief that offence had been committed, have no right to arrest. According to these cases only the persons in whose presence the offence was committed has a right to arrest. In the present section the words “who in his view commits an offence”, have been replaced by the words “who in his presence commits an offence”. Had that been the only change it would have been validly argued that the view that persons who joined chase or helped in arrest were not empowered to arrest. But there are two other changes. In the old Act the words were “any private person may arrest” and without unnecessary delay shall make over to a police officer. In the present section the words are “a private person” may arrest or cause to be arrested and without unnecessary delay shall make over or cause to be made over to a police officer.”

Answer the following questions:

- (a) Whether from this change, a person in whose presence the offence has not been committed can legally take part in arrest of the offender? Are these persons taking part in chase under the present section protected? Whether they can cause reasonable injury for arrest? Is there any right of private defence available to the offender against them?
- (b) Do the words "in his presence" mean in his sight? Whether a man can arrest, if he is present at the time of its being committed?
- (c) Suppose on a winter dark night, a person is sleeping in a room and there is no light. A thief enters the room. Although the person has not seen the thief, Can he arrest the thief? Suppose a blind man is sleeping and thief enters. Can he arrest the thief?
- Q.2 Section 200, Cr.P.C. reads that a Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate.

Section 202, Cr.P.C. makes it clear that any Magistrate, on receipt of a complaint of an offence of which he is authorized to take cognizance may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer, for the purpose of deciding whether or not there is sufficient ground for proceeding. Sections 200 and 202 of the Code have to be read in juxtaposition as they have to be.

Answer the following questions:

- (a) If these two provisions are read together, whether there is bar of taking cognizance after examination of witnesses and complainant?
- (b) What is the object of Section 202, Cr.P.C. in relation to the issue of process? Whether a Magistrate can direct an enquiry under section 202, Cr.P.C., if it is not possible for the Magistrate to take cognizance of the offence on the existing materials? Is there any impediment for the Magistrate, if the materials existing are sufficient to take cognizance and issue process against the accused without holding such inquiry?
- (c) Whether a Magistrate is ought to take cognizance, if he has any doubt about the existence of *prima facie* case? Is it within the jurisdiction of the Magistrate at that stage, to direct an inquiry under Section 202, Cr.P.C.?
- Q.3 An encounter took place on the night of 18.2.1996, at a particular place near Bhitari Bazaar, Sagar, Madhya Pradesh, in which firearms and other weapons were used and persons were injured. The details of the incident are not relevant and hence skipped. Two rival versions reached the police station regarding the above incident and two First Information Reports were registered upon those rival versions by the officer-in-charge of the police station. FIR No. 92 of 1996 was registered against 24 persons arrayed in it as accused (for convenience this can be referred to as 'the first case') and FIR No. 93 of 1996 was registered against six persons (this can be referred to as 'the second case' for convenience). Both cases were investigated together by the police and ultimately challans

were laid in both cases alleging offences under Section 307 read with Section 149 besides some other offences of the Indian Penal Code in both the cases. The Magistrate before whom the challans were filed completed the inquiry proceedings and committed both cases to the Sessions Court for trial. Thus the two cases flocked together side by side.

In the Sessions Court the first case was taken up under Section 227 of the Code and the court framed charge against the accused for offences under section 307 read with sections 149, 147 and 427 IPC. When the preliminary arguments in the second case were heard under section 227 of the Code the Sessions Judge found that no offence triable exclusively by a Court of Sessions need to be included in the charge and hence he framed a charge as envisaged in Section 228 (1) (a) of the Code for the offence under section 149 and certain other counts of the Indian Penal Code. Thereafter he transferred the second case for trial to the Chief Judicial Magistrate as provided in Section 228 (1) of the Code.

Answer the following questions:

- (a) The facts in the counter case warranted the framing of charge under section 307 IPC against the complainant and his companions and simply because a charge under section 307 IPC has been framed against the complainant and his companions, whether the petitioner and the complainant can claim, on ground of parity, that such charge should also be framed against the respondents? Discuss how charge is to be framed and what is the settled law on this point?
- (b) After hearing the preliminary arguments, the Sessions Judge felt that in the second case no offence triable exclusively by a Court of Sessions is involved, whereas in the first case a charge for offences including one triable exclusively by the Sessions Court could be framed. In such a situation is it necessary that the Sessions Court should transfer the former case to the Chief Judicial Magistrate for trial as envisaged in Section 228 (1) of the Code?
- (c) Whether the Sessions Judge has the power to try any offence under the Indian Penal Code? Read and understand the scope of Section 228 (1) in the light of the above legal position and explain. State whether in the present case, the Sessions Judge ought to have transferred the second case to the Chief Judicial Magistrate as he did?

Q.4. The Code classifies all criminal cases into summons cases and warrant cases. A “warrant case” means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years; and a “summons case” means a case relating to an offence, and not being a warrant case. Warrant cases are more serious than summons cases; and the trials of more serious warrant cases are conducted by a Sessions Court, while the less serious warrant cases are triable by Magistrates.

Answer the following questions:

- (a) What is the need to have different trial procedures to be followed by Magistrates in respect of warrant cases instituted on a police report and in respect of those instituted otherwise than on a police report? Why is it not necessary to have such a difference in trial procedures in cases tried before a Sessions Court?
- (b) A crime is a wrong not only against the individual victim but also against the State.

Therefore, the State takes upon itself, at least in case of serious offences, the responsibility of prosecuting the accused persons. In this context explain what are the salient features of a trial before a Sessions Court?

- (c) What is the broad distinction between a trial before a Sessions Court and a trial in a warrant case by a Magistrate? What procedure is to be followed by a Magistrate in a trial of a warrant case?

Part-B

Answer **the** question.

(1x5=
05)

- Q.5 What is the objective and significance of making provisions in the Cr.P.C. for maintenance of certain persons? Under what circumstances can wife claim maintenance from her husband? Is a married woman entitled to claim maintenance from her father?

Part-C

Answer **any three** questions

(3x5=
15)

- Q.6 What is "anticipatory bail"? What is the condition precedent for making application? By which court can such bail be granted? Whether High Court is bound to entertain application made directly to it?
- Q.7 Define the term "investigation". State what does investigation constitute of? Which police officer can investigate a non-cognizable offence? Suppose the information discloses a cognizable as well as non-cognizable offence which may arise out of the same facts, is the police officer debarred from investigating the non-cognizable offence?
- Q.8 What is the object and purpose of inquest report? Who can act under Section 174 of Cr.P.C.? When the inquest is to be made and what is the manner of investigation? Which Magistrate is empowered to hold inquest enquiry?
- Q.9 State and explain the manner of pronouncing a judgment. Under what circumstances the judgment may be pronounced in absence of the accused? Why writing of lengthy judgments is not appreciated?
