CRIMINAL JURISPRUDENCE IN INDIA

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ABSTRACT

Criminal law in India although is very rigid and lengthy but the implementation has been quite frail resulting in feeble following of law in India .due to this it has become important to understand the very basics of criminal law foundation as well as various institutions that are responsible for the implementation of law .There are 4 primary objectives of this paper according to the author, followed by numerous other objectives .they are , firstly, To define and trace the history of magisterial trials and criminal trials in India. Secondly, to identify the process or procedure involving the trial and identify the officials and jurisdictions involved in the cases with respect to the trials. The research methodology is qualitative form. Qualitative research refers to the meanings, definitions, characteristics, symbols, metaphors, and description of things. Qualitative research is much more subjective and uses very different methods of collecting information, mainly individual, in-depth interviews and focus groups. This particular study would include a detailed as well as comparative study relating to acid attacks ,case studies pertaining to different nations in comparison to Indian grounded theory which will give a basic observation over a period of time as well as a historical research and related changes. The conclusion of the paper would include various suggestions which can strengthen the institution of criminal law in general in India and the way ahead.

INTRODUCTION

Any act or omission which is forbidden by law and is felonious and punishable by law is a crime. The punishment for such crime is pronounced by following procedures of criminal trial. The criminal trials in India are well entrenched statutory, administrative and judicial chassis. The whole criminal law consists of three main acts –

1. Indian Penal Code, 1860
2. Code of Criminal Procedure, 1973
3. Indian Evidence Act, 1872.

Criminal procedure code is a extensive and exhaustive procedural law for comportment of a criminal trial in India, encloses within the approach for accumulation of evidence, examination of witnesses, interrogation of accused, arrests, safeguards and course of action to be arrogated by Police and Courts, bail, process of criminal trial, method of conviction, and the rights duties and obligations of the accused for a fair trial. The stratagem for a criminal trial in India, is foundationally, except as otherwise provided, ruled by The Code of Criminal Procedure, 1973 (Cr.P.C.). IPC is the fundamentally penal law of India, which is germane to all offences, except as may be provided under any other law in India. IEA is a intricate treaty on the law of "evidence", which can be advanced in trial, manner of constructive production of the evidence in trial, and the evidentiary value, which can be attached to such evidence conjointly deals with the judicial presumptions, skilled and scientific proof. There are bound different laws, that are enacted to alter guiltiness in special circumstances. it's conjointly vital to notice that Asian country follows the adversarial system, wherever typically the encumbrance of proof is on the State (Prosecution) to prove the case against the suspect, and till and unless the allegation against the suspect are established on the far side cheap doubt, the suspect is plausible to be innocent. In bound exceptional cases, which can relate to act of terrorism, etc., the encumbrance of proof has been placed on the suspect person, World Health Organization claims to be clean-handed. Asian country contains a extremely developed criminal jurisprudence and prosecution system, supported by judicial precedents, however, there could also be bound problems or considerations about the execution of constant by Police and implementation by Judiciary. The courts in Asian country, notably High Courts and Supreme Court are proactively guarding the rights of the suspect. Even Article twenty-one of the Constitution of Asian country has been understood in an exceedingly extremely dynamic manner to safeguard the rights, life and liberty of the voters, by conjointly incorporating the principles of natural justice. The criminal investigation method and prosecution mechanism in Asian country, will be started in any of the subsequent manner: a. On criticism /reporting /knowledge of the commission of a knowable offence, any officer, even while not the orders of a official, will investigate the knowable case. [Section 156 (1) of the Cr.P.C.] b. just in case of failure or inaction of a officer to analyze a knowable offence, a criminal criticism will be filed before a official underneath Section one

hundred ninety of Cr.P.C., for taking cognizance of such offence, and on such criticism, the official himself will take cognizance of the case and do the enquiry, or within the various underneath Section 156 (3) of the Cr.P.C., order Police to register associate degree F.I.R and investigate the offence. c. just in case of non-cognizable offence, Police isn't obligated to analyze, and also the judicial method will be started by filing a criminal criticism before the competent court, underneath Section one hundred ninety of the Cr.P.C.

HISTORY OF CRIMINAL TRIALS IN INDIA

Pre-Constitutional Position

The canons of truthful trial in criminal proceedings, on paper likewise as functionally, were adequately well recognised as virtues of changeless (Sanatana Dharama) ancient Indian legal system pre-Muslim grand Turk rule and pre-British rule. Fairness was equally followed in theory and practise. Succinctly, it lined all the aspects of a good trial notable to trendy jurisprudence inasmuch because it sent that parties to a case were needed to prove proof. the very fact to be established in a very case was Sadhya and the suggests that by that the very fact was sought-after to be evidenced was called Pramana (evidence), and rules governing and control trials were specifically set down. it had been a system of open and truthful trial. The judges were to be impartial within the administration of justice. an excellent stress was set on the style the trial was to be conducted which a multo fortiori meant to make sure a good trial likewise as religion and confidence of the general public and therefore the litigants within the judicial system; judges were to be desisting from greed and anger, and adhering strictly to the Dharamashastra; judges were ne'er to do cases or hear the parties alone; judges weren't to conduct the trial on the Q.T.. the traditional Indian legal literature presents 5 causes that amply a propria vigore give rise to the charge of partiality against a choose, viz., (i) Raga (affection in favour of party), (ii) Lobha (greed), (iii) Bhaya (fear), (iv) Dvesha (ill-will against a celebration) and (v) Vadinoscha rahashrutihi (the choose meeting and hearing a party to a case secretly). Besides, there have been well recognized provisions concerning truthful trial, viz., trial to start with the party straight off furnishing to the court in writing the proof (that is list of witnesses and documents) by suggests that of that the party projected to prove the alleged facts (burden of proof); parties were themselves to provide witnesses, and witnesses United Nations

agency were way removed either by time or by place or United Nations agency refused to stir out, were created to be gift by the order of the choose (summons to witnesses); witnesses United Nations agency didn't seem before the court to administer proof, while not being unwell , or United Nations agency gave false proof , were to blame for penalisation (penalty for failure to administer evidence); subsistence allowance to witnesses; witnesses were to be examined in open court; witnesses were to be drug oath; the judges were to impress upon the witnesses the greatness of telling the reality, and therefore the offence they'd be committing by giving false proof (exhortation to the witness); judgments got in accordance with the statements of a majority of pure and accountable witnesses (appreciation of evidence); provide of bribe, effacing the suggests that of recognition, holding out temptation to the witnesses or choose, or supporting the expression of one's thoughts were decent grounds for penalty for conceive to influence judges and their independence.

The higher than delineation of ancient changeless Indian system speaks un-equivocally a volume regarding the truthful trial of the environment expressed within the trendy jurisprudence that "justice mustn't solely be done however it apparently and beyond question looks to own been done." It isn't a matter of losing or winning a case; it's a matter of justice, free, truthful and fearless trial of the parties that the parties to a case have a sensitive nerve to feel the heartbeat of justice inasmuch as that "justice is frozen in confidence, and confidence is destroyed once correct individuals flee thinking 'the choose was biased.'"

However, courts were open to free, fearless and truthful trial throughout alien rule notably in those cases wherever there was robust opposition to alien rule the maximum amount as that no charge, no hearing, no right of habeas corpus, no judge, no jury was Muslim Raj's and British Raj's covin technique of coping with those suspected of nationalist involvement

The Post-Constitutional Position

"Equality, Justice and Liberty" is that the trinity of truthful trial recognised within the administration of justice of Asian country wherever the affluent and also the "lowly and lost" have the equality of access to justice within the administration of justice normally and also the criminal justice system specifically. This fundamental of truthful trial is that the backcloth of the International Covenants, and enjoined within the Constitution of Asian country as well because the criminal laws production the criminal justice system of India. the wonder of the

principles enshrined lies within the indisputable fact that abundant matter is decocted into little words. The thrust is imperative to means that (criminal procedures) that should be trustworthy so as to own simply ends. The Law Commission of Asian country during this perspective has observed:

Equality is that the basis of all trendy systems of jurisprudence and administration of justice in thus far as an individual is unable to get access to court of law for having his wrongs redressed or for defensive himself against a criminal charge, justice becomes unequal and laws that ar meant for his protection don't have any which means and to it extent fail in their purpose.

The following basic concerns type the idea of criminal justice jurisprudence regarding truthful trial:

(i) AN defendant person ought to get a good trial in accordance with the accepted principles of natural justice;

(ii) each effort ought to be created to avoid delay in investigation and trial that is harmful not solely to the people concerned however additionally to the society; and

(iii) the procedure mustn't be sophisticated and will, to the utmost extent potential, guarantee deal to the poorer sections of the community.

An overview of those basic concerns unfold the vicissitudes of criminal laws regarding a good trial in criminal proceedings in the maximum amount as that the substantial criminal laws (Indian legal code, 1860 and different Special Criminal Laws) lay down the essential rudiments or ingredients of an offence, and also the procedural laws (Criminal Procedure Code, 1973, Indian proof Act, 1872 and a few special criminal laws) lay down the procedure also because the mechanism of argument proof for the holding of the truthful trial in order that the truthful trial looks beyond any doubt and plainly to be transmitted. So, the Code of Criminal Procedure, 1973 lays down the procedure for the trial of all criminal cases below the Indian legal code except any special kind of procedure prescribed by the other law for the nonce in effect. for instance, the Official Secrets Act, 1923 prescribes the special procedure for holding trial in camera; the Customs Act, 1962 confers special powers on the customs officer to confiscate product prescribing a special kind of procedure so, and also the power of a court or the Supreme Court of Asian country being the Courts of Record has special inherent jurisdiction to institute

proceedings for contempt and penalize wherever necessary and also the Code of Criminal Procedure excludes special jurisdiction from its scope, and intrinsically higher courts will subsume matters of contempt summarily and adopt its own procedure.

Manifestations of Criminal trial embrace pre-trial stage (inquiry and investigation, role of the police to apprehend the wrongdoer in bailable, non-bailable, cognoscible and non-cognizable offences, first data report back to the police and their power to research, search and seizure, etc.), trial stage (jurisdiction of the criminal courts in inquiries and trials, framing of charges, trial before the court of sessions, trial of warrant cases by the Magistrates in cases instituted on police report and cases instituted apart from on police report, trial of summons cases by Magistrates, outline trials, mode of taking and recording proof and commissions for the examination of witnesses, Legal aid, the judgement, submission of death sentence for the confirmation by the court, trial by a High Court),post-trial stage (Appeal, Review, etc)

PROCESS INVOLVING CRIMINAL TRIAL

Indian Penal Code and Code of Criminal Procedure are together known as "twin sisters" of criminal law in the country of India. Code of Criminal Procedure (Cr. P. C.) is the procedural law for supervising a criminal trial in India. The plan of action includes the approach for collection of evidence, examination of witnesses, interrogation of accused, arrests, safeguards and procedure to be taken up by Police and Courts, bail, the conduction of criminal trial, a process of conviction, and the rights, liabilities of the accused of a fair trial by principles of natural justice. Indian Penal Code (IPC) is the primary penal law of India, which applies to all offences. Indian Evidence Act (IEA) is a extensive, treaty on the law of "evidence", which can be utilized in the trial, the manner of production of the evidence in a trial, and the evidentiary value which can be affixed to such evidence.

According to the Code of Criminal Procedure, a magisterial Trial is of three types: warrants case, summons case and summary trial.

Warrant Cases

According to Section 2(x) of Code of Criminal Procedure, 1973 a warrant case is a case in which relates to malfeasances punishable with death, imprisonment for life or imprisonment for a term exceeding two years. The trial in warrant cases begins either by the filing of FIR in a police station or by writing up a complaint before a magistrate. ensuing, if the magistrate is content with that the malfeasance is punishable for more than two years, he sends the case to the sessions court for trial. The process of sending it to sessions court is called "committing it to sessions court".

Salient features of a warrant case are:

1. Charges must be broached under a warrant case
2. Physical presence of accused is mandatory
3. A warrant case cannot be changed into a summons case
4. The accused can be allowed examine and cross-examine the witnesses more than one time.
5. The magistrate should corroborate that the provisions of Section 207 are .
6. Section 207 of Cr. P.C. 1973, include the furnishing of copies such as police report, FIR, statements recorded or any other relevant document to the accused.
7. The stages of trial in warrant cases are given from Section 238 to Section 250 of the Code of Criminal Procedure, 1973.

Different Stages of Criminal Trial in a Warrant Case when instituted by the police report:

First Information Report: Under Section 154 of the Code of Criminal Procedure, a FIR or First Information Report is reported, FIR puts the case into mobility. A FIR is information given by any person (aggrieved or non aggrieved) to the police relating to the commission of an offence.

Investigation: The further step after the reporting of FIR is the investigation by the investigating officer. A brief is made by the investigating officer by examining facts and circumstances, collecting evidence, examining innumerous persons and taking their oral or written statements in writing and all the other steps important for completing the investigation and then that brief is filed to the magistrate as a police report.

Charges: If after taking into account the police report and other necessary documents the accused is not discharged then the court frames charges under which he is to be martialled. In a warrant case, the charges should be framed in written.

Plea of guilty: Section 241 of the Code of Criminal Procedure, 1973 requests about the plea of guilty, after framing of the charges the accused is given an chance to plead guilty, and the accountability lies with the judge to ensure that the plea of guilt was willingly and freely made. The judge may upon its circumspection convict the accused.

Prosecution evidence: After the charges are framed, and the accused pleads guilty, then the court necessitate the prosecution to assemble evidence to prove the guilt of the accused. The prosecution is needed to to buttress their evidence with statements from its witnesses. This process is called "examination in chief". The magistrate has the capacity to issue summons to any person as a witness or mandate him to produce any document.

Statement of the accused: Section 313 of the Criminal Procedure Code gives an manoeuvre to the accused to be heard and explain the facts and circumstances of the case under principles of natural justice. The statements of accused are not documented under oath and can be used against him in the trial.

Defence evidence: A manoeuvre is given to the accused in a case where he is not being acquitted to assemble so as to defend his case. The defense can made both oral and documentary evidence. In India, since the burden of proof is on the prosecution the defense, in mainstream, is not required to give any defense evidence.

Judgement: The final pronouncement of the court with reasons given in buttress of the acquittal or conviction of the accused is known as judgement. In case the accused is acquitted, the prosecution is given time to appeal against the order of the court. When the person is convicted, then both sides are solicited to give arguments on the punishment which is to be bestowed. This is usually done when the person is convicted of an offense whose punishment is life imprisonment or capital punishment

Stages of Criminal Trial in a Warrant Case when Private Complaint institutes case

On the reporting of the complaint, the court will examine the complainant and its witnesses on the same day or any other day to determine whether any offense is made against the accused person or not.

After examination of the complainant, the Magistrate may mandate an inquiry into the issue and submit a report for the same.

After examination of the complaint and the investigation report, the court may come to a conclusion if or not the complaint is unalloyed or whether the prosecution has adequate evidence against the accused or not. If the court does not find any adequate material through which he can convict the accused, then the court will dismiss the complaint and record its reason for dismissal.

After examination of the complaint and the inquiry report, if the court is of the opinion that the prosecution has a unfeigned case and there are adequate material and evidence with the prosecution to charge the accused then the Magistrate may issue a warrant or a summon contingent on the facts and circumstances.

Summon Cases

According to Section 2(w) of Code of Criminal Procedure, 1973, Those cases in which an offense is punishable with an imprisonment of time period lesser than two years is a summon case. A summon case doesn't necessitate the method of preparing the evidence. Nevertheless, a summon case can be transmuted into a warrant case by the magistrate if after looking into the case he thinks that the case is not a summon case.

Important points about summons case

1. A summons case can be transmuted into a warrant case.
2. The person accused need not be present physically.
3. The person accused should be schooled about the charges orally. There is No need for framing the charges in writing.
4. The accused gets only one manoeuvre to cross-examine the witnesses.

5. The different stages of criminal trial in a summon case are given from Section 251 to Section 259 of the Code of Criminal procedure.

Stages Of Criminal Trial In A Summons Case

Pre-trial: In the pre-trial stage, the procedure such as filing of FIR and investigation is comported.

Charges: In summons trials, charges are not framed in written. The accused appears before the court or is presented before the court then the Magistrate would orally state the facts of the offense he is accountable.

Plea of guilty: The Magistrate after stating the facts of the offense will ask the accused if he pleads guilty or has any defense to underpin his case. If the accused pleads guilty, the Magistrate documents the statement in the words of the accused as far as possible and may convict him on his circumspection.

Plea of guilty and absence of the accused: In cases, where the accused wants to plead guilty without physically attending in the court, the accused is wanted to send Rs.1000/- by post or through a messenger (lawyer) to the Magistrate. The absentee is also required to send a letter containing an acceptance of guilt and the amount of fine provided in the summons. The Magistrate can on his circumspection convict the accused.

Prosecution and defense evidence: In summons case, the routine followed is very simple and intricate procedures are eliminated. If the accused does not plead guilty, then the process of trial starts. The prosecution and the defense are asked to substantiate the evidence in standing of their cases. The Magistrate is also authorised and capacitated to take the statement of the accused.

Judgement: When the sentence is pronounced in a summons case, the parties need not testify on the amount of punishment given. The sentence is the sole discretion of the judge. If the accused is acquitted, the prosecution has the right to appeal. This right to appeal is also broadened to the accused.

The specifications of summons case and warrant case determine the duration of punishment in any offence is punishable with fine of Rs.50/- then such matter is summon case, a case of Public Prosecutor v. Hindustan Motors, Andhra Pradesh-1970[i].

Summary Trial

Cases which conventionally take only one or two hearings to resolve the issue comes under this category. The summary trials are restrained for small offenses to decrease the burden on courts and to save time and money. Those cases in which an offense is punishable with an sentence of not more than six months can be tried in a summary way. The point worth jotting is that, if the case is being tried in a summary way, an individual cannot be awarded a punishment of imprisonment for more than three months.Section 260 of the Code confers any Chief Judicial Magistrate,Metropolitan Magistrate and Magistrate of the first class with the capacity to try trial summarily. However, a Magistrate of the first class in order to try summarily has to seek special permission from the High Court. As per section 261, any High Court may authoritate any Magistrate of the second class to try summarily any misdeed punishable only with fine or with imprisonment for a term not exceeding 6 months with or without fine and any attempt or abetment of such offences.

Section 262 (1) strictly furnishes that the procedure for summary trials shall be carried on as per the procedure established for conducting the trials of summons-case, unless otherwise provided. Committment to this provision has to be done regardless of the nature of the case, that is, whether it is a warrant-case or summons-case. Further, it embargoes by section 262 (2) of the Code to pass any sentence of imprisonment for a term exceeding 3 months for any conviction with respect to summary trials. A sentence over reaching the period fixed by this section is illegal[ii]. In the case of Asghar Ali[iii], it was pronounced that the restrainment of imprisonment refers only to the substantive sentence, not to an alternative sentence of imprisonment in default of payment of a fine. A magistrate can thrust a sentence of imprisonment in default of payment of fine in addition to the maximum sentence of three months imprisonment which he has thrusted for the offence.The Allahabad High Court in the case of *Karan Singh*[iv],pronounced that if the evidence is not so set forth, the Magistrate may be required to do so even after examining the witness, or a re-trial may be mandated.

Moreover, all the documented records and judgment has to be written in the language if the Court. The Magistrate must write his full name and the mere putting in of the initials is not sufficient.[v]

The trial procedure is provided from Section 260 to Section 265 of the Code of Criminal Procedure.

Stages of Criminal Trial in Summary Cases

1. The procedure in accordance with the summary trial is parallel to summons-case.
2. Imprisonment up to three months can be passed.
3. In the judgement of a summary trial, the judge should record the corporeality of the evidence and a brief documentation of the finding of the court is written with reasons.

'Summons Case' and 'Warrant Case' are used in reference to the procedure taken up by the magistrate for the trial of the case, which is entirely different for both:

The procedure formulated for summons cases is uncomplicated and speedier than that specified for warrant cases. Warrant cases as they endure with offences graver than those in summons cases cannot be tried in the same uncomplicated and speedy fashion as summons cases.

Greater manoeuvres for defense are offered to the accused in a warrant case than in a summons case.

In contrast with what has been in a summons case a charge has to be framed in a warrant case and the accused has also a right to earmark cross-examination of the prosecution witnesses till a last stage. These are substantial and worthy rights which an accused has if the procedure formulated in Chapter XXI is guided and he cannot be destituted of them.

The contrast between the two forms of trial is not consequently and merely one of form importing more contortion operable u/S. 537 of the Criminal Procedure Code. On the other hand, it is so requisite that there is an almost unannulled presumption of prejudice to the accused if a warrant case is tried as a summons case[vi]."

An accused person gets only one opportunity of cross-examining the prosecution witnesses under the summons procedure whereas under the warrant procedure he is sanctioned to cross-

examine the said witnesses twice, once before the framing of the charge and again after the charge is framed[vii].

in summons cases where the physical presence of the accused has been disburse with, either under Section 205 or under Section 540-A, the court should have a power to disburse with his examination; and in other cases, even where his physical presence has been dispensed with, the accused should be examined personally.

LITERATURE REVIEW

Fair Trial in Criminal Proceedings in India By Dr. K. L. Bhatia:

It describes the process and procedures involved in criminal trials in india and the suggests various recommendations that need to be implemented in various trials taking place in india.

Criminal trial in India By Rebecca Furtado

The article facilitates information about the history of criminal trials in India and the process being followed including magisterial trials ,being traced to empires where criminal trials were still prevalent and how the changes have come across over time.

Criminal Trials R. Walton Moore The Virginia Law Register Vol. 1, No. 5 (Sep., 1895), pp. 327-339

The Creates a arena of comparison between various criminal trials and procedure being followed by various countries. Although every country has a different process being followed to punish offenders of different crimes , it also draws a line of commonality of processes and the rights and obligations of people involved in the process

41st law commission report

Some parts of the report includes various procedures and suggestions that has to be followed for better execution of justice in trials.

CONCLUSION

The trial of the summon cases is a smaller amount formal than different trial procedure only for the speedy remedy. Thus, the Section 258 that doesn't empower the functionary to drop the case, even within the absence of enough ground is somehow prejudice to the suspect. Court's opinion within the K.M. Matthew case [viii]was that the functionary has the silent power to drop the case if the allegation against suspect doesn't prove the commission of any crime. In varied judicial pronouncements, it's dissented. In Arvind Kejriwal case [ix]Supreme Court control law doesn't specifically empower functionary in respect to dropping of the case below 258 and passed the case to the tribunal to take care of it below section 482. However, the purpose must be thought-about that the tribunal conjointly once more want to look into the case to seek out whether or not there's any enough ground to proceed against the suspect, all this may impede the most objective of the summon case i.e. speedy trial. although this matter was self-addressed before the apex court in varied cases, it should be scrutinized once more to stay the honest trial and therefore the right of the suspect out of risk in such circumstances. Occasionally, the alternative downside happens and a celebration refuses to participate within the outline jury trial method. The response of the courts has varied, relying upon the character of the case and therefore the reasons for the will to avoid the outline jury trial method. On the opposite hand, courts have conjointly allowed parties to refuse participation within the method once it'd jeopardize the parties' traditional legal proceeding. Since the aim of a outline jury trial is to push settlement negotiations, there would appear to be very little purpose in dragging a celebration into a state of affairs during which they may withhold their best efforts and therefore bias the decision brought back. I conclude by oral communication that summons-case means a case concerning Associate in Nursing offence, and not being a warrant-case. Warrant-case means a case concerning Associate in Nursing offence that's punishable with: death, imprisonment always or imprisonment for a term Olympian two years. it has been aforementioned inside the provisions that if the suspect has been inactive for his plea, he has to accept his plea or has to defend him. justice of the first class has the power to transfer summon case into warrant case. If the suspect pleads guilty justice has to record the plea inside the words of the suspect and on his discretion can convict him for the offence. If the suspect is not gift before that justice, if he pleads guilty by the justice then he shall by the post to the justice, in letter stating his plea and fine mounted by the court for his offence has to be sent.

The Presiding decide or functionary shall scrutinize proof led by each the parties below a reasoned judgment. The force of judgment springs from the recording of proof. As such, the mode of taking and recording proof is uncountable and integral feature of criminal trial. Higher Court (Appellate/ Revisional Court) appearance at the proof through the eyes of the judge. Unless a decide is well equipped with legal data and conjointly well trained in recording proof, protection of innocent and penalization to the guilty would be a far-cry.

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