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PART I

Acts, Ordinances, President's Orders and Regulations

NATIONAL ASSEMBLY SECRETARIAT

Islamabad, the 15th June, 1976

The following Acts of Parliament received the assent of the President on the 4th June, 1976, and are hereby published for general information :—

ACT No. XLIV OF 1976

An Act further to amend the Code of Criminal Procedure, 1898

WHEREAS it is expedient further to amend the Code of Criminal Procedure, 1898 (Act V of 1898), for the purposes hereinafter appearing ;

It is hereby enacted as follows :—

1. **Short title, extent and commencement.**—(1) This Act may be called the Code of Criminal Procedure (Amendment) Act, 1976.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. **Substitution of Chapter XXIIA, Act V of 1898.**—In the Code of Criminal Procedure, 1898 (Act V of 1898), hereinafter referred to as the Code, for Chapter XXIIA the following shall be substituted, namely :—

“ CHAPTER XXIIA

TRIALS BEFORE HIGH COURTS AND COURTS OF SESSION

265A. *Trial before Court of Session to be conducted by Public Prosecutor.*—
In every trial before a Court of Session, initiated upon a police report, the prosecution shall be conducted by the Public Prosecutor.

265B. *Procedure in cases triable by High Courts and Courts of Session.*—
The following procedure shall be observed by the High Courts and the Courts of Session in the trial of cases triable by the said Courts.

265C. *Supply of statements and documents to the accused.*—(1) In all cases instituted upon police report, copies of the following documents shall be supplied free of cost to the accused not later than seven days before the commencement of the trial, namely :—

- (a) the first information report ;
- (b) the police report ;
- (c) the statements of all witnesses recorded under sections 161 and 164 ; and
- (d) the inspection note recorded by an investigation officer on his first visit to the place of occurrence and the note recorded by him on recoveries made, if any :

Provided that, if any part of a statement recorded under section 161 or section 164 is such that its disclosure to the accused would be inexpedient in the public interest, such part of the statement shall be excluded from the copy of the statement furnished to the accused.

(2) In all cases instituted upon a complaint in writing,—

(a) the complainant shall—

- (i) state in the petition of complaint the substance of the accusation, the names of his witnesses and the gist of the evidence which he is likely to adduce at the trial ; and

- (ii) within three days of the order of the Court under section 204 for issue of process to the accused, file in the Court for supply to the accused as many copies of the complaint and any other document which he has filed with his complaint as the number of the accused ;
- (b) copies of the complaint and any other documents which the complainant has filed therewith and the statements under section 200 or section 202 shall be supplied free of cost to the accused not later than seven days before the commencement of the trial.

265D. *When charge is to be framed.*—If, after persuing the police report or, as the case may be, the complaint, and all other documents and statements filed by the prosecution, the Court is of opinion that there is ground for proceeding with the trial of the accused it shall frame in writing a charge against the accused.

265E. *Plea.*—(1) The charge shall be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make.

(2) If the accused pleads guilty, the Court shall record the plea, and may in its discretion convict him thereon.

265F. *Evidence for prosecution.*—(1) If the accused does not plead guilty or the Court in its discretion does not convict him on his plea, the Court shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution :

Provided that the Court shall not be bound to hear any person as complainant in any case in which the complaint has been made by a Court.

(2) The Court shall ascertain from the Public Prosecutor or, as the case may be, from the complainant, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon such persons to give evidence before it.

(3) The Court may refuse to summon any such witness, if it is of opinion that such witness is being called for the purpose of vexation or delay or defeating the ends of justice. Such ground shall be recorded by the Court in writing.

(4) When the examination of the witnesses for the prosecution and the examination (if any) of the accused are concluded, the accused shall be asked whether he means to adduce evidence.

(5) If the accused puts in any written statement, the Court shall file it with the record.

(6) If the accused, or any one of several accused, says that he means to adduce evidence, the Court shall call on the accused to enter on his defence and produce his evidence.

(7) If the accused, or any one of several accused, after entering on his defence, applies to the Court to issue any process for compelling the attendance of any witness for examination or the production of any document or other thing, the Court shall issue such process

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unless it considers that the application is made for the purpose of vexation or delay or defeating the ends of justice. Such ground shall be recorded by the Court in writing.

265G. *Summing up by prosecutor and defence.*—(1) In cases where the accused, or any one of several accused, does not adduce evidence in his defence, the Court shall, on the close of the prosecution case and examination (if any) of the accused, call upon the prosecutor to sum up his case whereafter the accused shall make a reply.

(2) In cases where the accused, or any of the several accused, examines evidence in his defence, the Court shall, on the close of the defence case, call upon the accused to sum up the case whereafter the prosecutor shall make a reply.

265H. *Acquittal or conviction.*—(1) If in any case under this Chapter in which a charge has been framed the Court finds the accused not guilty, it shall record an order of acquittal.

(2) If in any case under this Chapter the Court finds the accused guilty the Court shall, subject to the provisions of section 265I, pass a sentence upon him according to law.

265I. *Procedure in case of previous conviction.*—(1) In a case where, by reason of a previous conviction, the accused has been charged under section 221, sub-section (7), the Court, after finding the accused guilty of the offence charged and recording a conviction, shall record the plea of the accused in relation to such part of the charge.

(2) If the accused admits that he has been previously convicted as alleged in the charge, the Court may pass a sentence upon him according to law, and if the accused does not admit that he has been previously convicted as alleged in the charge, the Court may take evidence in respect of the alleged previous conviction, and shall record a finding thereon, and then pass sentence upon him according to law.

265J. *Statement under section 164 admissible.*—The statement of a witness duly recorded under section 164, if it was made in the presence of the accused and if he had notice of it and was given an opportunity of cross-examining the witness, may, in the discretion of the Court, if such witness is produced and examined, be treated as evidence in the case for all purposes subject to the provisions of the Evidence Act, 1872 (II of 1872).

265K. *Power of Court to acquit accused at any stage.*—Nothing in this Chapter shall be deemed to prevent a Court from acquitting an accused at any stage of the case, if, after hearing the prosecutor and the accused and for reasons to be recorded, it considers that there is no probability of the accused being convicted of any offence.

265L. *Power of Advocate-General to stay prosecution.*—At any stage of any trial before a High Court under this Code, before the sentence is passed, the Advocate-General may, if he thinks fit, inform the Court on behalf of Government that he will not prosecute the accused upon the charge; and thereupon all proceedings against the accused shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal unless the presiding judge otherwise directs.

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265M. Time of holding sittings.—For the exercise of its original criminal jurisdiction, every High Court shall hold sittings on such days and at such convenient intervals as the Chief Justice of such Court from time to time appoints.

265N. Place of holding sittings.—(1) The High Court shall hold its sittings at the place at which it held them immediately before the commencement of the Law Reforms Ordinance, 1972, or at such other place (if any) as the Provincial Government may direct.

(2) But the High Court may, from time to time with the consent of the Provincial Government, hold sittings at such other places within the local limits of its appellate jurisdiction as the High Court appoints.

(3) Such officer as the Chief Justice directs shall give prior notice in the official Gazette of all sittings intended to be held for the exercise of the original criminal jurisdiction of the High Court. ”.

3. Saving.—Notwithstanding anything contained in the Law Reforms Ordinance, 1972 (XII of 1972), or in the Code as amended by this Act, any case triable by the Court of Session or High Court and pending, immediately before the commencement of this Act, in such Court, in which no evidence has been recorded before such commencement shall be proceeded with and completed in accordance with the provisions of this Act.

4. Repeal.—The Code of Criminal Procedure (Amendment) Ordinance, 1976 (XVIII of 1976), is hereby repealed.