

CHAPTER XI

CRIMINAL BUSINESS

A—GENERAL

1. The rules in Chapter IV shall apply, as far as possible, to applications made under this Chapter.

2. A copy of every notice issued on admitting an appeal, also copies of notices issued on receipt of references under Sections 307 and 374, Criminal Procedure Code, and in all other classes of criminal cases (except revision cases) in which the Court directs the issue of notice, shall be sent to the Government Advocate.¹

3. On every Saturday the Registrar shall cause to be prepared and pasted on the notice board a list of the cases which are likely to be ready for hearing during the following week. This list shall be called the "Weekly Cause List" and shall contain the case in which the paper-books are ready or likely to be ready during the following week.

4. From this list the Registrar shall cause to be prepared every day a list of cases for hearing on the following day and shall cause them to be entered in the Daily Cause List.

5. The Registrar shall cause to be prepared and pasted every morning on the notice board outside the Court where the senior Judge of the Bench taking undefended criminal cases sits, a type-written copy of the list of such cases as are ready for hearing.

6. In every case —

(1) in which an accused person is ordered by the High Court to be released (whether from jail or from bail) or to surrender to his bail to serve out the sentence of imprisonment imposed upon him on being convicted by the High Court on reference or on appeal by the State Government or on the dismissal of an appeal made by him; or

(2) in which the capital sentence is confirmed, modified, set aside or passed on the accused person, by the High Court, the necessary order shall be sent down to the Lower Court, in Form No. 5 (Criminal) Appendix II (*See at page No. 233*), without waiting for the judgment to be signed.

7. In cases in which an accused person makes an application to the High Court for the transfer of his case from one Court to another, the accused person, or the Advocate acting on his behalf, shall file with the application a duplicate copy of the notice given to the Government Advocate and such notice must bear the signature of a responsible officer in the Office, acknowledging receipt of the

Note 1: Rule 2 — Section 77 of the Code now corresponds to Section 366 of 1973 Code. Section 307 of the old Code has not been incorporated in the 1973 Code.

notice and noting the time of receipt.

B—CASES INVOLVING CAPITAL SENTENCES

8. (i) On receipt of reference under Section 307 of the Criminal Procedure Code in which the accused is charged with the offence of murder, or a reference under Section 374 of the Code, or under Section 15(2) of the Assam Criminal Law Amendment Act (III of 1934) or Section 15(1) of the Assam Criminal Law Amendment Act of 1934 or on the admission of an appeal under Section 417 of the Criminal Procedure Code against the acquittal of an accused on a charge of murder, the Registrar shall at once give notice [see Forms Nos. 1 (Criminal), 2 (Criminal), 3 (Criminal), 4 (Criminal) and 6 (Criminal), Appendix II, (*See at Pages 226, 227, 228, 231, 234*)] to the prisoner or the accused through the District Magistrate of the date fixed for hearing such matter.²

(ii) (a) Whenever any document in the custody of the Parliament and State Assembly or any committees thereof are required to be produced in a Court of Law, the party to the legal proceedings shall make an application to the Court stating precisely the documents required, the purpose for which they are required and the date by which they are required. It is also to be specifically stated in each case whether only a certified copy of the document is required or an Officer of the Lok Sabha or the State Assembly should produce it before the Court. On such an application being filed by the party concerned, the Court after due scrutiny of the same shall proceed to take steps to move the Lok Sabha or the State Assembly as the case may be, with a letter of request in Form No. 3-A (Criminal) (*See at page No. 229*) for production of the document in question.²

(b) Whenever an officer or member of the Parliament or State Assembly is required to be examined as a witness in a Court of Law, the party to the legal proceedings shall make an application to the Court in this behalf and the Court after due scrutiny of the same shall proceed to take steps to move the Parliament or the State Assembly as the case may be with a letter of request in Form No. 3 B (Criminal) (*See at page No. 230*) for production of the witness concerned.²

(c) Whenever the presiding officer of a House of Parliament or of a State Legislature or the Chairman of a Committee thereof is required to produce a document or to appear in a Court either as a party or as a witness in case, a polite letter may be issued in specimen Form No. 3-A or 3-B (Criminal) to him instead of the usual formal notice or summons.²

9. If the record is in order, the Registrar shall at once cause the record of the Sessions Court to be printed without delay for the use of the Court at the hearing:

Note 2: Rule 8. — The then existing rule was re-numbered as R.8(i) and R.8(ii) (a) and (b) being inserted vide Correction Slip No. 11 and R. (ii)(c) being inserted vide Correction Slip No. 24.

Provided that in all appeals under Section 417 of the Criminal Procedure Code, the paper-books may be typed:³

Provided further that in all references under Section 374 of the Criminal Procedure Code paper-books may be either typed or cyclostyled and need not be printed.

10.⁴ The paper-book shall contain the following papers:

- (a) The first information, if any;
- (b) The Magistrate's charge;
- (c) Statement under Section 164, if any;
- (d) Examination under Sections 342 and 364, if any;
- (e) The commitment order;
- (f) Post-mortem report, Chemical Examiner's report, Inquest Report (if any), map (if any);
- (g) The record of evidence in the Court of Sessions, with any further examination under Section 364, if any;
- (h) Assessors' opinion, if any;
- (i) The heads of charge to the jury;
- (j) The verdict of the jury;
- (k) The judgment of the Sessions Judge;
- (l) Exhibits (if any);
- (m) Petition of appeal (if any); and
- (n) The letter of reference in the case of a reference.

11. Ordinarily eleven copies of the paper-book shall be printed and immediately on receipt of the paper-books the Registrar shall cause two copies to be sent to the Government Advocate.

11A. If spare copies of printed paper-books are available, and parties, other than the accused, apply for them, they may be sold at the rate of six annas per page, subject to a maximum charge of Rs. 10 per volume.

12. In any case in which a sentence of death has been confirmed or passed by the Court, one copy of the printed paper-book of the case, together with one copy of the judgment of the Court shall be forwarded in each instance to the Government of Assam, immediately after the issue of the warrant confirming the

Note 3: Rule 9. — In this rule the proviso was inserted vide Correction Slip No. 40. Notification No. HC.XI/4/65-70/5336-RC, dated the 18th June, 1971 to come into immediate effect. The second proviso thereto was inserted vide Correction Slip No. 65. Section 374 referred to in this proviso, now corresponds to Section 366 of the 1973 Code of Criminal Procedure.

Note 4: Rule 10. — Sections 164, 342 and 364 as referred to in this rule, now correspond to Sections 164, 313 and 281 respectively of the 1973 Code of the Criminal Procedure.

sentence.

C—APPEALS

13. A criminal appeal, other than a jail appeal shall be presented to the Registrar.

14. The Registrar shall endorse on such petition of appeal the date of presentation, and if the petition of appeal is not barred by limitation, is sufficiently stamped and is otherwise in order, he shall cause it to be registered and laid before the Bench without delay.

15. If the Registrar finds that an appeal is barred by limitation, he shall forthwith lay the same before the Court for orders. If he finds that the memorandum of appeal is insufficiently stamped, or is not in proper order, he shall upon the matter being laid before him —

(a) in the case of a memorandum which is insufficiently stamped, fix a period within which the additional fee required may be paid; provided that the period of limitation has not expired; or if such period has expired, by the memorandum before the Court for orders;

(b) In the case of a memorandum which is not in proper form, fix a period within such memorandum must be amended or lay the same before the Court for orders.

16. (i) When an appeal has been admitted, the Registrar shall send for the records, fix a date for hearing and cause notices to issue in the prescribed form [see Form Nos. 3 and 4 (Criminal) Appendix II, (*See Page No. 228, 231*)].

(ii) (a) Whenever any documents in the custody of the Parliament and the State Assembly or any committee thereof are required to be produced in a Court of Law, the party to the legal proceedings shall make an application to the Court stating precisely the documents required, the purpose for which they are required and the date by which they are required. It is also to be specifically stated in each case whether only a certified copy of the document is required or an officer of the Lok Sabha or the State Assembly should produce it before the Court. On such an application being filed by the party concerned the Court after due scrutiny of the same shall proceed to take steps to move the Lok Sabha or the State Assembly as the case may be, with a letter of request in Form No. 3-A (Criminal) for production of the document in question.

(ii)(b) Whenever an officer or member of the Parliament or State Assembly is required to be examined as a witness in a Court of Law, the party to the legal proceedings shall make an application to the Court in this behalf and the Court after due scrutiny of the same shall proceed to take steps to move the Parliament or the State Assembly as the case may be with a letter of request in Form No. 3-

B (Criminal) for production of the witness concerned.

(ii)(c) Whenever the Presiding Officer of a House of Parliament or of a State Legislature or the Chairman of a committee thereof is required to produce a document or to appear in a Court either as a party or as a witness in a case, a polite letter may be issued in specimen Form No. 3-A or 3-B (Criminal) to him instead of the usual formal notice or summons⁵

17. In every case in which notice has been issued on the appellant that an appeal will be heard, the Registrar shall, on receipt of the record from the Lower Court, have prepared, by the same impression four typed copies of the record of the proceedings of the Court, whose sentence or order is under appeal, the first two copies being retained for the use of the Court at the hearing, the third copy for the Government Advocate and the fourth for supply, free of cost, to the Advocate appearing for the first accused where there are more accused persons than one.

Exception — Unless otherwise ordered, no copies need be made of the records:

(1) in cases where no pleaders appear;

(2) in cases in which pleaders appear, where the appeal is admitted on a question of sentence only.

(3) in other cases or classes of cases where the Hon'ble Chief Justice thinks fit to dispense with the preparation of paper-books.⁶

Provided that no paper book need be prepared in Criminal Appeals required to be heard by the Single Judge unless otherwise directed by the Single Judge.⁷

18. Jail appeals may be received by post. In the case of such appeals, the Registrar shall cause a translation of the petition of appeal to be prepared if necessary and shall submit it to the Bench for orders.

19. If a jail appeal is admitted, it shall be dealt with in the manner prescribed for appeals which are filed in Court.

D—REVISIONS AND REFERENCES

20. Cases (other than those mentioned in the preceding rules) may be taken up in the following way:

(a) upon a report by a Magistrate or Sessions Judge;

(b) upon a petition presented to a Bench;

Note 5: Rule 16. — The then R. 16 was re-numbered as R. 16(i) and Rr.16(ii)(a)(b) being inserted vide Correction Slip No. 11 and R. 16(ii) (c) was inserted vide Correction Slip No. 24.

Note 6: Rule 17. — The Exception No. (3) to this rule was inserted vide Correction Slip No. 8, Notification No. HC.XI-6/57/5571/RC, dated the 21.12.1957

Note 7: Rule 17 proviso — This provision was inserted vide Amendment Rules, 1992, Notification HC.XI-10/79/19349/RC, dated 19.8.1992.

(c) upon an order by a Judge on perusal of a sessions statement.

21. Every report with a record received from a Magistrate or Sessions Judge shall be examined to see if it complies with the instructions of the High Court to Magistrates and Sessions Judges and is in proper form.

22. If such report complies with the instructions and is in proper form the Registrar shall place the case before the Division Court.

23. Unless otherwise ordered, no copies need be made of the records:

(1) in case where no pleaders appear;

(2) In case where pleaders appear;

(a) where a rule is granted, or reference is made on a question of sentence or jurisdiction only;

(b) where a rule or reference is confined to matters appearing in a judgment.

24. The provisions of Part C of this Chapter shall apply as far as possible to applications for revision.

PAPER-BOOKS

25. The Paper-Book of criminal reference shall consist of the judgment of the Lower Court and the letter of reference.

26. In case of reference under Section 307, Criminal Procedure Code, the Paper-book shall be prepared as in case of a criminal appeal and the letter of reference.

27. In case of a reference under Section 432, Criminal Procedure Code, the record shall be placed before the Registrar who shall select the papers to be included in the Paper-book. The list of the selected papers shall be shown to the advocate of the parties who may apply for adding any other papers.⁸

28. The Paper-book in a criminal appeal shall consist of—

(a) the first information, if any;

(b) the Magistrate's charge;

(c) statement under Section 164, if any;

(d) examination under Section 342 and 364, if any;

(e) the commitment order;

(f) post mortem report, Chemical Examiner's Reports, Inquest Report (if any), map (if any);

(g) the record of evidence in the Court of Sessions, with any further examination under Section 364, if any;

(h) Assessor's opinions, if any;

(i) the heads of charge to the Jury;

Note 8: Rule 27 — Section 432 of the Code of Criminal Procedure, as referred to in this rule corresponds to Section 395 of the 1973 Code, as amended.

- (j) the verdict of the Jury;
- (k) the judgment of the Sessions Judge;
- (l) exhibits (if any); and
- (m) petition of appeal (if any).⁹

29. The Paper-book in criminal revision shall consist of—

- (i) the judgments of the Lower Courts.
- (ii) the petition of revision.

30. All applications for orders, under Cls. (a), (b), (c), (d) and (f) of Section 491 of the Code of Criminal Procedure shall be made by an advocate of the Court before the Division Bench taking the criminal cases of the High Court.

Provided that during vacations such applications may be made before and disposed of by the Vacation Judge:

Provided further that all interlocutory matters arising out of such applications shall be dealt with and disposed of by a Single Judge unless otherwise ordered by Division Bench.¹⁰

30A. An application, if received by post, shall be put up as soon as possible after the receipt thereof before the Division Bench, or, as the case may be, before the Vacation Judge.

Provided that an application from persons detained in jails shall not be entertained unless received through the Superintendent of the Jails in which they are detained.

31. Applications for orders under Cls. (a), (b), (c), (e) and (f) of Section 491 of the Criminal Procedure Code shall be made on petition duly verified by affidavit setting forth the circumstances under which the order is sought.

32. Where the application is for order Under Cl. (c) of Section 491 of the Criminal Procedure Code it shall be stated where the prisoner is detained and for what purpose his evidence is required.

33. Where an order under Cl. (d) of Section 491 of the Criminal Procedure Code is required the Court-martial or the Commissioner may send an application to this Court in writing and in such case an affidavit shall not be required. The application shall be in the form of a letter addressed to the Registrar, stating the purpose for which the said Court -martial has been assembled or the authority under which the said Commissioners are acting, and also stating whether the prisoner is detained in custody and when, where, and for what purpose he is required to be produced. It shall be the duty of the Registrar to submit the letter,

Note 9: Rule 28. — Sections 164, 342 and 364 as referred to in this rule corresponds to Sections 164, 313 and 281 respectively of the 1973 Code.

Note 10: Rule 30 — Second proviso to R. 30 has been inserted vide C.S. No. 94 vide Notification No. HC.XI-10/79/134 RC dated 6.1.1984.

as soon as possible after the receipt thereof and to obtain the order thereon of the Judges presiding over the Division Bench of this Court taking criminal cases.

34. Where the application is for an order Under Cl. (e) of Section 491 of the Criminal Procedure Code, notice of the application shall be served on the prisoner and it shall be stated in the affidavit where the prisoner is detained in custody, to what other custody, it is proposed to remove him and the reason for such change of custody.

35. When the application is for an order under Cl. (f) of Section 491 of the Criminal Procedure Code, the return of *cepi corpus* to the warrant of arrest shall be produced. The officer having the custody of the return shall cause the same to be produced before the Court on a requisition to him in writing.

36. In any case in which the Court shall order a person in custody to be brought either before a Court-martial, or before Commissioner or to be removed from one custody to another a warrant shall be prepared and signed by the Registrar, Appellate Jurisdiction, and sealed with the seal of the Court.

37. Such warrant where issued under R. 33, shall be forwarded by the Registrar to the officer-in-charge of the Jail in which the prisoner is confined, in every other case the warrant shall be served personally upon the person to whom it is directed or otherwise as the Court shall direct.

38. Where the application is to bring up before the Court a person in custody under a warrant to detain such person, a copy of the warrant under which he is detained, obtained from and authenticated by the signature of the person in whose custody the applicant is, shall be produced to the Court or it shall be shown by affidavit that it has been asked for and denied.

39. Where the Court is of opinion that a prima facie case for granting the application is made, a rule nisi may be issued calling upon the person or persons against whom the order is sought to appear on a day to be named therein to show cause why such order should not be made and may at the same time direct such person or persons to produce in Court the body of the person or persons alleged to be illegally or improperly detained then and there to be dealt with according to law.

39A. In Habeas Corpus matters the Government Advocate shall be notified even when such matters are placed before the Court for preliminary hearing.

40. On the return day of such rule or on any day to which the hearing thereof may be adjourned, where no cause is shown, or where cause is shown and disallowed, the Court shall pass an order that the person or persons improperly detained shall be set at liberty or delivered to the person entitled to him or their custody. Where cause is allowed the rule shall be discharged.

41. In disposing of any such rule the Court may in its discretion make an order for the payment by one side of the order of the costs of the rule.

42. The forms of warrants Nos. 21 to 25 (Criminal), of Appendix II, (See at Page Nos. 24, 243, 244) shall be followed.

43. Applications for writs in the nature of Habeas Corpus referred to in Art. 226(i) of the Constitution of India shall be governed by Rr. 30 to 42 of this Chapter.

NOTIFICATION
THE GAUHATI HIGH COURT

NO.HC.III-12/85/PV/2099-2104/G

Dated 22.6.2001

It has come to the notice of the Hon'ble High Court that in several cases relating to bail matters, applications are filed by relatives and friends of the accused without proper authorisation.

Henceforth, all the judicial sections are directed to check up whether applicant is an accused himself or the applicant has been authorised by the accused.
