

CHAPTER 6
PETTY OFFENCES, AND THE CODE
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6.1 Petty offences

The Code of Criminal procedure (as re-enacted in 1973) contains certain interesting provisions whereunder certain "petty offences" can be dealt with without summoning the accused in court. Such provisions have some relevance to the subject of the present study. Although the person dealt with under such procedure undergoes a conviction and therefore there is no "decriminalisation" in the literal sense, yet, there is at least a situation where the stigma of criminality is, for all practical purposes, avoided. It is, therefore, desirable to refer to the relevant provisions, which is the object of this Chapter. Reference to these provisions will serve another purpose also. With a few modifications, the relevant provisions can form the rough basis for a procedural work, whereunder administrative agencies can deal with such violations. Accordingly, some of these provisions will be referred to in this Chapter.

6.2 Section 206

Section 206 of the Code of Criminal Procedure reads as under :-

"206. *Special summons in cases of petty offence* – (1)
If, in the opinion of a Magistrate taking cognizance of a petty offence, the case may be summarily disposed of under section 260, the Magistrate shall, except where he is, for reasons to be recorded in writing, of a contrary opinion, issue summons to the accused requiring him either to appear in person or by pleader before the Magistrate on a specified date, or if he desires to plead guilty to the charge without appearing before the Magistrate, to transmit before the specified date, by post or by messenger to the Magistrate, the said plea in writing and the amount of fine specified in the summons or if he desires to appear by pleader and to plead guilty to the charge through such pleader, to authorise, in writing the pleader to plead guilty to the charge on his behalf and to pay the fine through such pleader:

Provided that the amount of the fine specified in such summons shall not exceed one hundred Rupees.

(2) For the purposes of this section, 'petty offence' means any offence punishable only with fine not exceeding one thousand rupees, but does not

include any offence so punishable under the Motor Vehicles Act, 1939, or under any other law which provides for convicting the accused person in his absence on a plea of guilty.

(3) The State Government may, by notification, specially empower any Magistrate to exercise the powers conferred by sub-section (1) in relation to any offence which is compoundable under section 320 or any offence punishable with imprisonment for a term not exceeding three months, or with fine, or with both where the Magistrate is of opinion that, having regard to the facts and circumstances of the case, the imposition of fine only would meet the ends of justice.

Section 206 was inserted on the recommendation of the Law Commission,¹ in order to expedite the trial and also to save the accused from inconvenience, where the offence with which he is charged is a 'petty offence'.

If the Magistrate taking cognizance finds that the offence is a 'petty' offence and is triable summarily under section 260, the Magistrate must follow the course provided in section 206(1), unless he records a contrary opinion, with reasons, why he is not following the procedure under section 206(1).

The summons is to be issued in the alternative, i.e.

- (i) requiring the accused to appear in person; or
- (ii) that if he desires to plead guilty, and desires not to appear in person or by pleader, he may transmit such plea in writing to the Court by post or by messenger, before the specified date, together with the amount of fine specified in the summons, which shall not exceed Rs. 100; or
- (iii) directing that if he desires to plead guilty through a pleader, he should authorise the pleader in writing to plead guilty to the charge and to pay the fine.

6.3 Section 253

Section 253 of the Code of Criminal Procedure, 1973 is as under:-

"253. *Conviction on plea of guilty in absence of accused in petty Cases.-*

(1) Where a summons has been issued under section 206 and the accused desires to plead guilty to the charge without appearing before the Magistrate,

1 Law Commission of India, 41st Report, Vol. 1, paras 17.6 to 17.8.

he shall transmit to the Magistrate, by post or by messenger, a letter containing his plea and also the amount of fine specified in the summons.

(2) The Magistrate may, in his discretion, convict the accused in his absence, on his plea of guilty and sentence him to pay the fine specified in the summons, and the amount transmitted by the accused shall be adjusted towards that fine, or where a pleader authorised by the accused in this behalf pleads guilty on behalf of the accused, the Magistrate shall record the plea as nearly as possible in the words used by the pleader and may, in his "discretion, convict the accused on such plea and sentence him as aforesaid."

6.4 Section 260

Summary trials are governed by section 260 of the Code quoted below:-

"260. *Power to try summarily.* - (1) Notwithstanding anything contained in this Code -

- (a) any Chief Judicial Magistrate;
- (b) any Metropolitan Magistrate;
- (c) any Magistrate of the first class specially empowered in this behalf by the High Court,

may, if he thinks fit, try in a summary way all or any of the following offences:-

- (i) offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years;
- (ii) theft, under section 379, section 380 or section 381 of Indian Penal Code, where the value of the property stolen does not exceed two hundred rupees;
- (iii) receiving or retaining stolen property, under section 411 of the Indian Penal Code, where the value of the property does not exceed two hundred rupees;
- (iv) assisting in the concealment or disposal of stolen property, under section 414 of the Indian Penal Code, where the value of such property does not exceed two hundred rupees;
- (v) offences under sections 454 and 456 of the Indian Penal Code;
- (vi) insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, under section 506 of the Indian Penal Code;

- (vii) abetment of any of the foregoing offences;
- (viii) an attempt to commit any of the foregoing offences, when such attempt is an offence;
- (ix) any offence constituted by an act in respect of which a complaint may be made under section 20 of the Cattle-Trespass Act, 1871.

(2) When, in the course of a summary trial, it appears to the Magistrate that the nature of the case is such that it is undesirable to try it summarily, the magistrate shall recall any witness who may have been examined and proceed to re-hear the case in the manner provided by this Code."

These trials shorten the record in petty cases and thereby save the work of the Magistrate.¹ Their validity under article 14 of the Constitution has been upheld.²

6.5. Section 320.

Section 320 of the Code of Criminal Procedure, 1973 reads as under:-

"320. *Compounding of offences.* - (1) The offences punishable under the sections of the Indian Penal Code specified in the first two columns of the Table next following may be compounded by the person mentioned in the third column of that Table:-

TABLE

Offence	Section of the Indian Penal Code applicable	Person by whom offence may be compounded
1	2	3
Uttering words, etc., with deliberate intent to wound the religious feelings of any person.	298	The person whose religious feelings are intended to be wounded.
Causing hurt	323, 334	The person to whom the hurt is caused.

1 *Marta v. Piadade*, A.I.R. 1969 Goa 94.

2 *Bindeswari v. Birju*, A.I.R. 1959 Pat. 46.

1	2	3
Wrongfully restraining or confining any person.	341, 342	The person restrained or confined.
Assault or use of criminal force.	352, 355, 358	The person assaulted or to whom criminal force is used.
Mischief, when the only loss or damage caused is loss or damage to a private person.	426, 427	The person to whom the loss or damage is caused.
Criminal trespass.	447	The person in possession of the property trespassed upon.
House trespass.	448	- do -
Criminal breach of contract of service.	491	The person with whom the offender has contracted.
Adultery.	497	The husband of the woman.
Enticing or taking away or detaining with criminal intent a married woman.	498	- do -
Defamation, except such cases as are specified against section 500 of the Indian Penal Code in column 1 of the table under sub-section (2).	500	The person defamed.
Printing or engraving matter knowing it to be defamatory.	501	- do -

1	2	3
Sale of printed or engraved substance containing defamatory matter knowing it to contain such matter.	502	- do -
Insult intended to provoke a breach of the peace.	504	The person insulted.
Criminal intimidation except when the offence is punishable with imprisonment for seven years.	506	The person intimidated.
Act caused by making a person believe that he will be an object of divine displeasure.	508	The person against whom the offence was committed.

(2) The offences punishable under the sections of the Indian Penal Code specified in the first two columns of the Table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that Table:-

Offence	Section of the Indian Penal Code applicable	Person by whom offence may be compounded
1	2	3
Voluntarily causing hurt by dangerous weapons or means.	324	The person to whom hurt is caused.
Voluntarily causing grievous hurt.	325	- do -
Voluntarily causing grievous hurt on grave and sudden provocation.	335	- do -

1	2	3
Causing hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	337	The person to whom hurt is caused.
Causing grievous hurt by doing an act so rashly and negligently as to endanger human life or the personal safety of others.	338	-do-
Wrongfully confining a person for three days or more.	343	The person confined.
Wrongfully confining for ten or more days.	344	- do -
Wrongfully confining a person in secret.	346	The person confined.
Assault or criminal force to woman with intent to outrage her modesty.	354	The woman assaulted (or) to whom the criminal force was used. ¹
Assault or criminal force in attempting wrongfully to confine a person.	357	The person assaulted or to whom the force was used.
Theft, where the value of property stolen does not exceed two hundred and fifty rupees.	379	The owner of the property stolen.

¹ *Ram v. State of U.P.*, (1990) Cr. L.J. 405, para 7 All.,

1	2	3
Theft by clerk or servant of property in possession of master, where the value of the property stolen does not exceed two hundred and fifty rupees.	381	The owner of the property stolen.
Dishonest misappropriation of property.	403	The owner of the property misappropriated.
Criminal breach of trust, where the value of the property does not exceed two hundred and fifty rupees.	406	The owner of the property in respect of which the breach of trust has been committed.
Criminal breach of trust by a carrier, wharfinger, etc., where the value of the property does not exceed two hundred and fifty rupees	407	- do -
Criminal breach of trust by a clerk or servant, where the value of the property does not exceed two hundred and fifty rupees.	408	- do -
Dishonestly receiving stolen property, knowing it to be stolen, when the value of the stolen property does not exceed two hundred and fifty rupees.	411	The owner of the property stolen.

1	2	3
Assisting in the concealment or disposal of stolen property, knowing it to be stolen, where the value of the stolen property does not exceed two hundred and fifty rupees.	414	The owner of the property stolen.
Cheating	417	The person cheated.
Cheating a person whose interest the offender was bound, either by law or by legal contract, to protect.	418	- do -
Cheating by personation.	419	- do -
Cheating and dishonestly inducing delivery of property or the making alteration or destruction of a valuable security.	420	- do -
Fraudulent removal or concealment of property, etc., to prevent distribution among creditors.	421	The creditors who are affected thereby.
Fraudulently preventing from being made available for his creditors a debt or demand due to the offender.	422	- do -

1	2	3
Fradulent execution of deed of transfer containing false statement of consideration.	423	The person affected thereby.
Fradulent removal or concealment of property.	424	- do -
Mischief by killing of maiming animal of the value of ten rupees or upwards.	428	The owner of the animal.
Mischief by killing or maiming cattle, etc., of any value or any other animal of the value of fifty rupees or upwards.	429	The owner of the cattle or animal.
Mischief by injury to work of irrigation by wrongfully diverting water when the only loss or damage caused is loss or damage to a private person	430	The person to whom the loss or damage is caused.
House-trespass to commit an offence (other than theft) punishable with imprisonment.	451	The person in possession of the house trespassed upon.
Using a false trade or property mark.	482	The person to whom loss or injury is caused by such use.
Counterfeiting a trade or property mark used by another.	483	The person whose trade or property mark is counterfeited.

1	2	3
Knowingly selling, or exposing or possessing for sale or for manufacturing purpose, goods marked with a counterfeit property mark.	486	The person whose trade or property mark is counterfeited.
Marrying again during the lifetime of a husband or wife.	494	The husband or wife of the person so marrying.
Defamation against the President or the Vice-President or the Governor of a State of the Administrator or a Union territory or a Minister in respect of his conduct in the discharge of his public functions when instituted upon a complaint made by the Public Prosecutor.	500	The person defamed.
Uttering words or sounds or making gestures or exhibiting any object intending to insult the modesty of a woman or intruding upon the privacy of a woman.	509	The woman whom it was intended to insult or whose privacy was intruded upon.

(3) When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

(4) (a) When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf may, with the permission of the Court, compound such offence.

(b) When the person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil Procedure, 1908, or such person may with the consent of the Court, compound such offence.

(5) When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.

(6) A High Court or Court of Session acting in the exercise of its powers of revision under section 401 may allow any person to compound any offence which such person is competent to compound under this section.

(7) No offence shall be compounded if the accused is, by reason of a previous conviction liable either to enhanced punishment or to a punishment of a different kind for such offence.

(8) The composition of an offence under this section shall have the effect of an acquittal of the accused with whom the offence has been compounded.

(9) No offence shall be compounded except as provided by this section."

6.6 Effect of compounding

Compounding of an offence under section 320 differs from withdrawal (sections 224, 257, 321). Withdrawal requires the permission of the court. It is a unilateral act of the complainant or other prosecuting agency. Compounding is in the nature of a bilateral agreement between the accused and the person injured.

When an offence has been duly compounded, it will operate as an 'acquittal' of the accused of the offence compounded, for all purposes under the Code with immediate effect.¹ But compounding does not mean that no offence had been committed at all.² Since the filing of a petition of compromise (with the court's consent, where required) has the immediate effect of acquittal of the accused, it is not thereafter open to the complainant

1 *Prithvi v. Birju*, A.I.R. 1962 Pat. 316; *Rajinder v. State*, A.I.R. 1980 S.C. 1200.

2 *State of U.P. v. Janni*, A.I.R. 1970 All. 235.

to withdraw from the compromise or for the court to revive the case or try the accused.

The effect of compounding, under section 320(8), is that the accused with whom the offence has been compounded, shall be acquitted. The general rule is that where a person is charged with an offence, however trivial it may be, the law must take its course and the charge inquired into, resulting in either conviction or acquittal. Any exception to this general rule can only be provided by law.¹

Such an exception is section 320; but its applicability is limited to those offences which are enumerated under section 320. The reason is that acquittal under section 320(8) saves the accused from any stigma attaching to his character as an accused. In the absence of such a statutory provision, the accused cannot acquire such a vindication of his character by the mere payment of compensation to the person aggrieved.

The Supreme Court once gave permission in a non-compoundable case.²

1 *Biswabahan v. Gopen*, A.I.R. 1967 S.C. 895, para 10-11.

2 *Mahesh v. State of Rajasthan*, (1990) Supp. S.C.C. 681, para 2-3.

