

SOLVED PROBLEMS

I. THE CODE OF CRIMINAL PROCEDURE, 1973

1. IMPORTANT GENERAL TERMS (DEFINITIONS)(SEC.2) [INQUIRY (COMMITTAL PROCEEDINGS)(SEC. 2(g))

PROBLEM No. 1

‘A’ a leader of a political party makes a libelous statement against the Governor of a state. The public prosecutor of that district files a complaint directly before the Sessions Court without any committal proceeding by the magistrate’s court. ‘A’ objects to this step and states that a criminal trial can be conducted by the Sessions Court only when the case is committed to it by a magistrate – Decide.

ANSWER:

Committal proceedings are held to determine whether, in the case of more serious criminal offences, there is sufficient, evidence to require the defendant to stand trial.

Committal proceedings are generally held before a Magistrate, who hears evidence from the prosecution which is recorded and can be used at the trial.

After hearing the evidence the Magistrate must determine if there is sufficient evidence to justify the defendant being committed for trial. If there is insufficient evidence, the Magistrate may discharge the accused person.

This does not amount to an acquittal: it is still open for the prosecution to obtain further evidence and bring subsequent committal proceedings, or proceed direct to trial by way of an ex officio indictment.

Only with the committal of the accused by a Magistrate, the Sessions Court will have the jurisdiction to try the accused. This procedure is envisaged to save the valuable time of the Sessions Court and High Court.

In the above case, the Public Prosecutor of the District directly filing the case before the Sessions Court against ‘A’ is not in tune with the procedure laid out under the law. He should have initiated committal proceeding before a Magistrate who would decide whether the case merits trial before the Sessions Court.

Therefore, the act of the Public Prosecutor is not in order.



2. POWERS OF COURTS (Sec. 26 - 35)

PROBLEM No. 2

An Assistant Sessions Judge sentences an accused to 7 Years' rigorous imprisonment. Whether the judge has power to impose such sentence? Decide.

ANSWER:

As per Sec. 28 of Cr.P.C, an Assistant Sessions Judge can sentence an accused to 7 years' rigorous imprisonment **Sec. 28 speaks about the sentences which High Courts, Sessions Judges and Assistant Sessions Judge may pass.**

Sec. 28(3) reads- An Assistant Sessions Judge may pass any sentence authorised by law **except** a sentence of death or of imprisonment for life or **of imprisonment for a term exceeding ten years.**

As per the above Sec. the Assistant Sessions Judge has powers to pass a sentence of imprisonment not exceeding 10 years and hence sentencing the accused to 7 years' rigorous imprisonment is legal and valid as u/s 28(3) of Cr.P.C.

**PROBLEM No. 3**

A murdered his brother and his son. The Sessions Judge who tried the case described the offence as horrible and awarded death penalty to A. A preferred an appeal against the death penalty Will the succeed?.

ANSWER:

As per Sec. 28(2) of Cr.P.C, a Sessions Judge or Additional Sessions Judge may pass any sentence authorized by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

As per this section, since death sentence passed by a Sessions Judge requires confirmation by the High Court, generally, the High Court will not confirm a death sentence, if the death caused by the convict is not one of 'rarest of rare cases'.

The term 'horrible' as described by the sessions judge is not covered under the term 'rarest of rare cases' and hence A can succeed in the appeal before the High Court.

