

## BURNISHED LAW JOURNAL

### TYPES OF SENTENCES AND THEIR EXECUTION BY COURTS UNDER CRIMINAL PROCEDURE CODE: AN OVERVIEW<sup>1</sup>

#### INTRODUCTION

Execution of sentence is dealt in Chapter 32 of Criminal Procedure Code, 1973. In awarding of sentence, the judge has wide discretion within the statutory limits. Therefore, each judge works in his own discretion and the sentence given by him is based on his own judgment. Sentences can vary in the way they are implemented. There are several factors which affect the matters of executing sentence. There are various constitutional and statutory provisions which suspend, remit or commute sentences given to the convict. Under the Indian Constitution, 1950 Article 72 and 161 empowers the governor and the president to grant pardon or commute the sentence. This power is exercised by the head of the state. The executive can show mercy to the convict by way of remission, suspension or commutation of sentence. The basic purpose is to take into consideration certain aspects of the case which do not arise during the proceedings in the court of law. Thus, its courts discretion as to decide the terms of sentence given to a convict.

In the case of State of M.P. v. Bablu Natt<sup>2</sup>, the Supreme Court stated that “the principle governing imposition of punishment would depend upon the facts and circumstances of each case. An offence which affects the morale of the society should be severely dealt with.”

#### TYPES OF SENTENCES

##### A. DEATH SENTENCE

Under section 366 of CrPC, 1973, a session judge cannot execute a death sentence without the confirmation of High Court, till the time the convict remains in jail. Then the High Court looks into the case under section 388 and can: -

- Confirm the sentence given by Session Court

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<sup>2</sup>State of M.P. v. Bablu Natt, (2009) 2 SCC 272

- Annul the conviction and convict the accused of the same charges as that of the Session Court or may order for fresh proceedings.
- May acquit the person as the time for appeal has not been lapsed yet or the appeal has been disposed of.

In the leading judgment of Attorney General of India v. Lachma Devi<sup>3</sup>, it was held that “Execution of Death sentence hanging publicly is unconstitutional being inhuman.”

### **Execution of death sentence passed by High Court**

Under Section 414 of the CrPC, if the High Court passes the order of death sentence in appeal or revision, the Session Court has to carry on the order by issuing a warrant.

### **Postponement of execution of sentence of death in case of appeal to Supreme Court**

Under Section 415 of CrPC, 1973, where the person is sentenced to death from High Court may order for postponement if the case has been sent for appeal in Supreme Court under Article 134 of Indian Constitution. The postponement shall be allowed for preferring such appeal has been lapsed or has been disposed of altogether.

Where the death sentence has been confirmed or passed by High Court, the person sentenced may make an application to the High Court for the grant of certificate under Article 132 or 134 of Indian Constitution, 1950. The Court has to order the sentence to be postponed or if the such certificate of appeal has been granted before the time of considering such appeal by Supreme Court.

Where a death sentenced has been confirmed by High Court , and then court is satisfied that the sentenced person intends to grant a special leave to appeal under Article 136 of Indian Constitution , the High Court will order the postponement of execution of the sentence till the time as it considers sufficient which is reasonable for him to file him such petition.

### **Postponement of capital sentence on Pregnant women**

Under Section 416 of CrPC, 1973 if a person sentenced to death is found to be pregnant, then the High Court shall commute the sentence to life imprisonment.

Panchhi v. State of U.P.<sup>4</sup>, commutation of death sentence of a woman to life imprisonment on the ground of being pregnant has been held to be not proper as it is not only the sufficient

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<sup>3</sup> Attorney General of India v. Lachma Devi, AIR 1986 SC 467.

<sup>4</sup> Panchhi v. State of U.P., (1998) 7 SCC 177

ground though in the instant case, the death sentence was commuted to life imprisonment because of some other grounds.

## **B. IMPRISONMENT**

The State Government has the power to direct the place of imprisonment for any person who is convicted under CrPC, 1973.

### **Place of Imprisonment**

Under section 417 of CrPC, if a person is sentenced under the provisions of CrPC and is restricted in jail than the magistrate of the court intends to order the person so sentenced, must be shifted to criminal jail. If a person who was transferred to criminal jail from the civil jail, will be sent back to civil jail unless-

- Three years have been elapsed since he was moved to criminal jail, in this case he shall be released under Section 58 of Civil Procedure Code, 1908 or Section 23 of the Provincial Insolvency Code.
- The court which ordered his imprisonment in civil jail orders the officer-in-charge of the criminal jail to release the convict under Section 58 of CPC, 1908 or Section 23 of the Provincial Insolvency Code.

### **Execution of sentences of Imprisonment**

Under Section 418 of CrPC, 1973, if a person has been imprisoned for life or for terms other than those mentioned in Section 413 of CrPC, the court passing the sentence shall forward a warrant to the jail or the place where the person has been confined. Provided, that a person is imprisoned till the rising of the court, it is not necessary to forward a warrant to the jail and the person shall be confined as per the directions of the court.

If the accused is not present in the court when he is sentenced to such imprisonment, the court will issue a warrant for the arrest of the person and for forwarding him to jail or to the place where he shall be confined and the sentence will commence on the date of his arrest.

In the case of *Ishwar Bhai Hirabhai Churana v. State of Gujarat*<sup>5</sup>, the Section 418, CrPC was held to be mandatory and the court also owes a duty to ensure that the sentenced is executed, otherwise the accused may avoid it.

### **Execution of Direction of a Warrant**

Under Section 419 of CrPC<sup>6</sup>, warrant for the execution of a sentence of imprisonment has to be directed to the officer in charge of the jail or any other place in which the accused is to be confined. And under section 420 of Criminal Procedure Code, 1973, if the person is to be confined in jail then the warrant needs to be given to the jailor.

## **C. LEVY OF FINE**

### **Warrant for levy of fine**

According to Section 421 of Criminal Procedure Code, 1973, when the offender has been sentenced to pay a fine, it can be recovered through either or both of the following ways-

- Issue a warrant for levy the amount through attachment and sale of any movable property belonging to the offender.
- Issue a warrant to the Collector of district, ordering him to collect the amount as arrears of land revenue from the movable or immovable property.

It is to be noted that if it is mentioned that there shall be imprisonment if default of payment arises and if the offender has already undergone such imprisonment in default, no court will issue such warrants unless there are some special circumstances which have to be recorded in writing or there is an order for the payment of expenses or compensation out of the fine under Section 357 of CrPC, 1973.

- The state government can make rules regulating the manners in which warrants are to be executed and the summary claims made by a person other than the offender himself would be considered accordingly.
- Where the court issues a warrant to the collector and he shall collect the amount in accordance with the law relating to recovery of arrears of land revenue. However, no such warrant shall be executed by the arrest or detention of the person in the prison.

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<sup>5</sup>*Ishwarbhai Hirabhai Churana v. State of Gujarat*, R/SCR.A/9112/2016

<sup>6</sup>Criminal Procedure Code, 1973



### **Effect of such warrant**

The warrant issued by any court shall order the attachment of any property for recovery of fines within the local limits of its jurisdiction and it shall authorise the attachment and sale of such property outside such jurisdiction too if it is endorsed by District Magistrate of the area in which the property to be attached is to be present<sup>7</sup>.

### **Suspension of execution of sentence of imprisonment**

Under Section 424 of CrPC, 1973 when the offender has been sentenced to fine only and in case of default of payment he shall be imprisoned and if the fine is not paid then-

- Order that the fine shall be paid in full on or before thirty days of such order or in two or three instalments shall be made in thirty days of such order and the next instalment within the period of thirty days.
- The court may suspend the execution of sentence of imprisonment and release the offender, and if the offender gives a bond with sureties depending upon the court for the payment of fine or in instalments. The court shall order the execution of imprisonment order if the offender fails to furnish the fine at the latest date on which instalment is to be made.
- The provisions will shall be applicable in any case where the order for the payment of money has been made for the non-recovery of which imprisonment may be made. And if the person fails to furnish a bond for payment of fine, the court may order the execution for imprisonment immediately.

### **General provisions regarding execution**

#### **Who may issue a warrant?**

Under Section 425 of Criminal Procedure Code, 1973, every warrant for the execution of a sentence may be issued either by Judge or Magistrate who gave sentence or by his successor-in-office.

#### **Sentence on escaped convict**

Section 426 of CrPC, 1973 states that when a sentence of death, life imprisonment or fine is passed under the provisions of this code on an escaped convict, such execution of sentence shall take effect immediately.

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<sup>7</sup>Batuk Lal, The Code of Criminal Procedure pg. 651 (3<sup>rd</sup> ed. 2017)

When a sentence of imprisonment is passed on escaped convict under this code then:

- If the sentence is severe than the previous sentence, then in such case the new sentence should take effect immediately. In a leading judgement of *Bhajan v. Superintendent Central Jail*<sup>8</sup>, a man convicted for two offences separately, the sentence would run separately when there is no order for concurrent running and the accused shall suffer the first sentence and afterwards the second one.
- If the new sentence is less severe than the previous sentence from which the convict escaped than the accused has to serve the term which is remaining of the sentence he has escaped from.
- The sentence of rigorous imprisonment will be deemed to be severer in kind than a sentence of simple imprisonment.

### **Sentence on offender already sentenced for another offence**

When a person is convicted for a sentence and is subsequently convicted for another than the convict has to commence the former punishment first and then will serve the punishment sentenced later, unless the court orders the subsequent sentence shall run concurrently. The sentence could be imprisonment or imprisonment for life. It is further to be noted that where a person has been sentenced under Section 122 of CrPC, 1973, in default of furnishing security while undergoing such sentence, sentenced to imprisonment for the offence committed prior to making of such order the latter sentence shall commence immediately. This has been cleared in the case of *Emperor v. Jag Mohan*<sup>9</sup>.

Thus, in the case of *State of Karnataka v. M.S. Bokkasad*<sup>10</sup>, when a person is already sentenced for life imprisonment and on a subsequent conviction sentenced to a term or life imprisonment, both the sentences shall run concurrently.

### **Period of detention undergone by the accused against the sentence of imprisonment**

Where the accused is serving conviction and has been sentenced to imprisonment for term other than the default of fine, the term of detention undergone by him during the

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<sup>8</sup> *Bhajan v. Superintendent Central Jail*, AIR 1952 Pepsu 2

<sup>9</sup> *Emperor v. Jag Mohan*, AIR 1933 Oudh 381

<sup>10</sup> *State of Karnataka v. M.S. Bokkasad*, 1976 Cr LJ 808

investigation, trial or inquiry of the same case before the date of conviction shall be set off against the term of imprisonment term imposed on him.

In *Jeevan Singh v. State of Maharashtra*<sup>11</sup>, when an accused has been sentenced to imprisonment for term, the period of detention undergone by him during investigation, trial or inquiry before the date of conviction shall be set off against the term of imprisonment and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder.

### **Return of warrant on execution of sentence**

When the sentence has been fully executed, the officer executing shall return the warrant to the court from which it is issued. The warrant that is returned has to be undersigned by the respective officer. The method of execution of the sentence must also be specified by the officer in charge<sup>12</sup>.

### **Money ordered to be paid recoverable as fine**

Any money (other than fine) payable by virtue of any order under this code and the method of recovery of such money is not expressly given in the code, then it shall be collected in the manner as if it is a fine.

### **CONCLUSION**

To conclude it could be said that the sentence awarded by the judiciary to an offender can be executed, remitted or suspended by the executive authority. The provisions of the Criminal Procedure Code, 1973 give various powers to the President and Governor of the state to amend the sentence of the offender. Whereas execution of sentence is done in the case of death, life imprisonment or levy of fine. Remission and suspension means to reduce the term of sentence and to postpone the sentence without changing the duration of the sentence. There are separate provisions for the pregnant woman where she cannot be given capital punishment. The warrant is to be issued in the name of offender to the officer-in-charge of jail. There are separate provisions given in Criminal Procedure Code, 1973, to the law breakers.

<sup>11</sup> *Jeevan Singh v. State of Maharashtra*, 1977 Cr LJ 1636:79 Bom LR 257

<sup>12</sup> *Execution, suspension Remission and Commutation of Sentences*, <https://blog.ipleaders.in/execution-suspension-remission-and-commutation-of-sentences/amp/> (Last visited April 22, 2020)