

CHAPTER XXVI

CRIMINAL BUSINESS

General

1. Rules re: Civil proceedings to apply mutatis mutandis to criminal proceedings. — The rules applicable to civil proceedings shall, except as otherwise provided in this Chapter, apply mutatis mutandis to criminal proceedings.

2. Proceedings to contain statement that no such proceeding had been filed before. — (i) Every appeal or application shall contain a statement that no appeal or application in the same matter has previously been filed. If the appellant or applicant state that an appeal or application has previously been made he shall also state how the said appeal or application has been disposed of and how the present appeal or application is competent.

(ii) If there was a cross-case or counter-case arising out of the same incident or incidents leading to the appeal or application the memo of appeal or application shall mention the number of that case in the trial Court.

3. Application for bail to be served on Government Pleader. — In every application for grant of bail, the applicant shall state whether or not he was granted bail pending inquiry or trial in the lower Court, and if such bail was granted, he shall set out in full the order granting bail. A copy of the application for grant of ball shall be served upon the Government Pleader in cases arising from the Greater Bombay area at least 24 hours before the application is heard by the Court and in cases from the mofussil 48 hours before such hearing.

Registers

4. Registers for classes of proceedings. — Separate registers for the following classes of cases shall be maintained: -

- (1) Appeals.
- (2) Revision Applications,
- (3) Confirmation Cases,
- (4) References,
- (5) Miscellaneous Applications, and
- (6) Applications under the Constitution.

¹[(7) Appeals to the High Court from Judgment or Order passed by the Family Courts under Chapter IX of Criminal Procedure Code, 1973.

1. Added by Notification No.P.3604/90 Dt.27-11-1990.

Note : This classification is covered by the amended Entry No. xiii of Rule 10 of Chapter V of the Bombay High Court Appellate Side Rules, 1960 (Reprint 1981).]

5. Registration of proceedings. — Immediately on the presentation of any criminal proceeding in this Court by an Advocate, or party in person, or on receipt of the same through jail, or otherwise, it shall be entered in the appropriate register subject to office objections, if any. Entries in the registers shall be made serially according to the date of the presentation or receipt.

6. Joint appeal or application by persona affected by same Judgment — All persons aggrieved by a judgment or an order passed in a criminal case, may join in one appeal or application for revision and one copy of the judgment or order complained of shall be sufficient.

7. Examination of proceedings by Office. — Every appeal or application shall be examined by the Office as expeditiously as possible, and the examination shall be completed within six days from the date of filing, except in matters in which the sentence is six months or under, and in which the accused is in custody, when the examination should be completed not later than the day next after presentation or receipt of the appeal or application.

[Note. — Attention is invited to sub-section (1) of section 12 of the Limitation Act, 1963, which provides that in computing the period of limitation for an appeal or an application for leave to appeal or for revision or for a review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the sentence or order appealed from or sought to be revised or reviewed shall be excluded.

Where a party applies for a certified copy by post other than registered post, the date of its receipt by the office of the Court would be the date of the presentation of the application. Whenever such application is made by registered post, the same shall be pre-paid for acknowledgment and the date of posting of the letter would be the date of presentation of the application to the Court.]

8. Office to notify objections; and their removal by Advocates or appellants. — (i) When an appeal or an application (other than an appeal or an application from Jail) is incomplete or defective, the Office shall notwithstanding anything, contained in any other rules, affix on a special Notice Board a notice specifying the office objections. An entry of the date of the notification as above shall be made on the presentation form.

(ii) The Advocate or the appellant, or applicant concerned, as the case may be, shall remove all office objections within fourteen days from the date of the notification of the office objections as above, failing which the matter shall, without delay, be placed before the Court for orders.

9. Notification of receipt of record, — The receipt of the record of the lower Court shall be notified on the Board immediately.

10. Notice where property is returned to person not party to original proceeding. — The notice of appeal or of other proceeding shall also be given to a person in whose favour the Court below has made an order under section 250 or 357 or under section 451 of the Code of Criminal Procedure-

Provided that no case, in which the sentence awarded is one year or less and the accused is in jail, shall be kept back merely because the complainant or the person in whose favour the order has been passed is not served.

11. Procedure if any, notice cannot be served.— If the service of any notice cannot be effected within three months from the date of its receipt, the matter shall be placed before the Court with the relevant police report explaining why the notice could not be served. The Court may pass such orders as it deems fit.

Confirmation Cases

12. Procedure in regard to preparation of confirmation cases for hearing. — Immediately on receipt of the reference for confirmation of a Sentence of death, the Office shall issue notice to the District Magistrate where the reference is from the mofussil and to the Public Prosecutor, Greater Bombay. where the reference is from Greater Bombay. The Office shall also immediately make a requisition for printing, within three weeks ¹[45] copies of the paper-book including the memo of appeal, if any, by the condemned prisoner. The paper-books shall be printed in the form prescribed for paper-books by the Supreme Court.

1. Substituted by Notification No.P.3601/92 Dt. 27-5-1992.

Immediately after the receipt of the printed paper-books, an order shall be taken from the senior Judge sitting on the Bench hearing criminal appeals for placing the Confirmation Case on Board of hearing.

Notwithstanding anything contained in these rules, the Confirmation Case together with the Appeal, if any, shall be placed on the top of the Daily Board subject to a part-heard case, if any, as ordered by the senior Judge.

Two copies of the printed paper-book shall be supplied free of charge to the Government Pleader and one copy thereof shall be supplied free of charge to the Advocate appearing for the condemned prisoner. If the Government Pleader or the Advocate for the condemned prisoner required additional copies, each additional copy shall be paid for at the rate of 25 paise per page and Re.1 per plan or map and the amount payable shall be collected by means of Court-fee stamps affixed to the application for such copies.

Appeals and Applications

13. Accompaniments to appeals and applications, — Every appeal and application shall be accompanied by the certified copy of the judgment or order appealed or applied against, including where an application is against the appellate or revisional order of the Sessions Judge, by the certified copy of the judgment of the trial Court. When the order complained of is that of a Sessions Court having jurisdiction over more than one revenue district, the memorandum of the proceeding shall show the revenue district in which the memorandum of the proceeding shall show the revenue district in which the original proceeding was instituted

14. Deleted.

15. Deleted.

16. Supply of additional set of copies where proceedings are to be heard by Division or Full Bench. — In an appeal or application other than that received from jail, the appellant or the applicant or his Advocate shall file at the time of the presentation of the appeal or application an additional set of typed copies of the memorandum of appeal, judgment and any other annexures, in all cases where such appeal or application is required to be heard by a Division Court of two Judges. In case of a reference to a Full Bench of three or more Judges, the appellant or applicant shall supply the requisite number of copies for the use of the Full Bench.

17. Registrar may dispense with copies of Judgments in subsequent proceedings. — Where any appeal or application for revision preferred before the High Court is accompanied by requisite number of copies the Registrar may dispense with the copies of judgments in any subsequent appeal or application for revision presented by any party against the same judgment.

18. Supply of copy of record to Government Pleader and Advocate for accused in Certain Proceedings. — (i) In all appeals and proceedings other than confirmation cases, where paper-books are prepared, whether typed or printed, the Government Pleader shall be supplied with one copy of the paper-book free of charge.

(ii) In appeals (not being appeals against acquittals) and other proceedings (not involving a sentence of death) a typed or printed copy of the paper-book, as the case may be, shall be supplied, when available, to the accused or his advocate on payment at the rate of 4 paise per folio of 100 words of typed matter and 25 paise per page of printed matter and Re.1 per plan or map and the amount payable shall be collected by means of Court-fee stamps to be affixed to the application for the copy. In proceedings involving a sentence of death the accused or his advocate, and in cases in which an advocate is appointed to defend the accused at the cost of the State such advocate shall be supplied with a copy of the paper-book free of charge.

(iii) Notwithstanding anything contained in the preceding sub- rule the Court may where it thinks fit direct that the accused be supplied with a copy of the paper-book free of cost.

²[In all Criminal Appeals arising out of a charge under section 302 of the Indian Penal Code, the Records and Proceedings should be obtained for Admission. Similarly, in all appeals against conviction under section 302 or 307 *ibid*, the weapon or weapons with which the offence is alleged to have been committed should be sent for immediately after such an appeal is admitted]

2. Office Order No. Cri/3952/66, Dt. 15-11-1966.

Appeals against acquittals

19. Procedure re-appeals against acquittals by Private parties. —(1)Every application for leave under section 378(3) should be a composite application giving necessary facts and circumstances of the case along with the grounds which may be urged in the appeal with a prayer to entertain the appeal. The appellant shall file

along with application two typed copies of the composite application and the Judgment or Judgments of the Court concerned.

(ii) If the leave to appeal is granted, the composite application presented shall be entered in the register of appeals and numbered accordingly. The appellant shall forthwith supply the requisite Court-fee stamps prescribed for the appeal. The Sessions Court shall be required to prepare five paper-books.

20. Notices in appeals against acquittals to District Magistrate and Public Prosecutor, and intimation by them whether accused is in jail. — When an appeal against an acquittal is admitted, notice shall be given to the District Magistrate, or in Greater Bombay, to the Public Prosecutor, who shall be required to inform the High Court whether the accused is in jail, and, if so, in what jail he is confined.

21. Free supply of paper-book to accused or his Advocate — In appeals against acquittals, a copy of the paper-book, whether typed or printed, shall be supplied free of costs to the Advocate for accused or to the accused if he is not represented by an Advocate. Additional copies, if required by such Advocate or accused, shall be charged at the rates mentioned in Rule 18.

22. Record in Government appeals against acquittals under section 302 to be Printed unless otherwise directed — (a) Unless the Court at the time of admission of the case directs that printing shall be dispensed with, the record of the case shall be printed -

(i) in appeal filed by Government against an order of acquittal under section 302 of the Indian Penal Code.

(ii) in appeal filed by Government against an order of acquittal in respect of an offence other than offence under section 302 of

(iii) in applications for revision filed by Government for enhancement of sentence passed in respect of an offence under section 302 of the Indian Penal Code.

(b) In such cases where the record is required to be printed, only one typed copy of the paper-book typed on one side of the paper shall be called for from the lower Court.

References under section 307, Criminal Procedure Code.

23. Deleted.

24. Deleted.

Special Procedure for Appeals and Application received from Jail

25. Accompaniments to jail appeals and applications – (i) All appeal and applications received from jail shall be accompanied by a copy of the register of petition duly filed in by the Jail Superintendent and certified copies of the Judgments and orders as prescribed for appeals and revisions under those rules.

(ii) No additional copies for the use of the Court or Division Bench shall be required to be supplied by the appellant or applicant from jail.

(iii) If the memorandum of appeal or petition is not in English, it shall be translated in the Translators' Office. Four typed copies of the translations shall be prepared in that Office:

³[Provided that such translations would not be necessary if the documents are in Marathi and if the party or the Advocate undertakes that English translations would be supplied whenever an order in that respect is made by the Court in a particular proceeding.]

3. Added by Notification No. 3603/86, Dt. 7-8-1986

Special Procedure for Applications for transfer.

26. Procedure for transfer applications. — An application for transfer of a criminal case shall, as soon as it is presented, be placed before the Court for rule subject to office objections, if any. The party or his Advocate shall remove all office objections within a week from the date of the said office objections being notified on the Notice Board. If the party or his Advocate fails to remove the said office objections within the said time, the matter shall be placed before the Court which may in its discretion dismiss it for want of prosecution.

Boards

27. When a case becomes ready. — Subject to special orders of the Court, if any, a case shall not be considered as ready until the expiry of a week from the date of the notification of the record.

28. Cases to be set down for hearing on Mondays. — Criminal cases shall ordinarily be set down for hearing on Monday on which day they shall have precedence over other cases.

29. Preparation of Weekly Boards. — (1) Subject to special orders of the Court regarding special circulation, Weekly Boards of criminal cases ready for hearing in the following week shall be prepared and notified on every Wednesday.

(2) For the day-to-day hearing of cases Weekly Boards shall be prepared and notified on the last working day of the week preceding the week for which such boards are prepared. Such Boards shall consist of matters which have been notified under sub-rule (1). At the end of each working day matters disposed of by the Courts or Courts during the course of the day shall be struck off from such Boards.

(3) Notwithstanding anything contained in sub-rule (2) a week for the purposes of the Weekly Boards of hearing mentioned in the preceding sub- rule may commence on any day of the week as may be desired by the Court or as may be directed by the Chief Justice:

Provided that First 25 (or so many as may be directed by the Court concerned) of the matters put or left over on the Weekly Board of hearing at the commencement of each working day shall ordinarily (but not necessarily) be regarded as the quota of cases fixed for hearing on the day.

(4) Motions for urgent circulation shall be made either immediately after the Court assembles, or reassembles, as the case may be, for hearing in the forenoon or the afternoon, or just before the Court rises for the lunch interval. No such motion shall be made or permitted at any other time after 3 p.m. except under special circumstances and unless the party or the Advocate concerned satisfies the Court that he could not move the Court as required under the earlier part of this sub-rule or earlier than 3 p.m., as the case may be.

(5) The Sheristedars in charge of the respective Courts shall seek and obtain orders of the Court at 3.30 p.m. on every full working day and at 1 p.m. on Saturdays and half working days for discharging the board for the day and shall immediately convey the orders of the Court in this regard to the Board Department.

Preparation of Paper-Books, Translations, etc., in the High Court.

30. Preparation of Paper-Books, Translations, etc., in the High Court. — (1) Where paper-books in Criminal Appeals or other criminal proceedings are, or are required to be, prepared in the High Court, the procedure hereinafter indicated shall be followed :—

(i) The office shall prepare the requisite number of copies of the paper- book including therein all such papers as are normally included in the paper- books prepared in such matters in the Sessions Court. The translations and the typing work required for this purpose shall be done at the cost of the State :

⁴[Provided that such translations would not be necessary if the documents are in Marathi and if the party or the Advocate undertakes that English translations would be supplied whenever an order in that respect is made by the Court in a particular proceeding.]

[4. Added by Notification No. 3603/86, Dt. 7-8-1986.](#)

(ii) The typing shall be done neatly and legibly with double space left between consecutive lines; there shall be a two-inch margin, and every tenth line shall be numbered in the margin. There shall be prefixed to the paper-book an index which shall conform to the requirements given in the High Court Criminal Manual, 1960 in that behalf.

(iii) The paper-books thus prepared shall be supplied on payment of cost or supplied free of cost to the parties or the Government Pleader in accordance with the rules hereinbefore appearing,

(2) Applications for translations in Criminal Cases of documents not required to be included in the paper-books under the instructions given in the Criminal Manual in that behalf shall not be allowed without the order of the Court and unless such applications are made within a week of the notification of the receipt of the Record and the Proceedings and are accompanied by an undertaking to pay as soon as the translations are ready the charges for the same as per the rates provided for in sub-rule (i) of Rule 8 of Chapter IX, unless the accused is exempt from the payment of such charges under the provisions of the said rule.

31. Appointment of Advocate for undefended accused at Government cost.

— (i) An Advocate shall be appointed at the cost of the State by the Deputy Registrar for an accused who is not represented by any Advocate in the following cases:—

- (1) Confirmation cases;
- (2) Appeals against acquittals;
- (3) Proceedings involving a sentence of death;
- (4) Appeals from jail where a notice for enhancement of sentence has been issued.
- (5) Jail appeals where notice has been ordered to issue by the Court;
- (6) Applications from jail where a notice of enhancement has been issued;
- (7) Applications by the State or other proceedings for enhancement of sentence.
- ⁵[(8) Criminal Writ Petition challenging the order of detention.]

5. [Inserted by Notification No. 1301/86, Dt. 26-5-1992.](#)

Provided that in proceedings not involving a sentence of death no advocate shall be appointed at the cost of the State to defend the accused when he is not in jail unless the District Magistrate in the mofussil or the Chief Metropolitan Magistrate in Greater Bombay reports that the accused is not financially in a position to engage an advocate at his own cost or fails to make any report before the proceeding is notified for hearing.

(ii) Notwithstanding anything contained in the above sub-rule the Court may order that an advocate be appointed in any matter at the cost of the State to defend an undefended accused, if the ends of justice so require.

(iii) The appointment of an advocate under sub-rule (i) above shall be made in good time to enable him to be ready for conducting the case, and as far as possible, on Wednesday preceding the week for which the case is notified for hearing. If the accused afterwards appoints an advocate or counsel of his own choice the advocate appointed by the Deputy Registrar shall be allowed his fee for the case. In such a case the paper-book supplied to the advocate appointed by the Deputy Registrar shall be made available to the advocate or the Counsel appointed by the accused, but not without the payment of charges prescribed under rule 18 above.

32. Advocate's fees when Appointed at State cost. — (i) The fees of the advocate appointed at the cost of the State to defend an accused shall be on such scale as the Government may from time to time prescribe.

⁶[(ii) ⁷[(a)] The fees of the advocate appointed at the cost of the State in petition challenging order of detention shall be Rs.300 and in case the effective hours of hearing exceed five hours, then additional amount of Rs.30 per hour shall be payable subject to maximum of Rs.450.]

6. Inserted by Notification No. P. 1301/86, Dt. 26-5-1992.

7. Added by Notification No. P. 1301/86, Dt. 29-7-1995.

⁸[(ii)(b) In other Criminal Writ Petitions except detention matters challenging any order or decision the fees of the Advocates appointed by the High Court as amicus curiae at the cost of the State shall be maximum Rs.450.]

8. Added by Notification No. P. 1301/86, Dt. 29-7-1995.

33. Registrar's powers to enhance fees. — The Registrar may increase fees payable in a case up to Rs.50 having regard to the complicated nature, heavy labour and time involved in the case.

Production in Court of Accused in Jail Custody.

34. Production of accused in jail at the hearing if he so desires. — If an accused who is in jail desires to remain present in Court at the time his case is heard, the Deputy Registrar should obtain from the Court an order under the Prisoner's (Attendance in Court) Act, 1955, to the officer in charge of the jail for the production of the accused at the hearing of the case in the following cases:—

- (1) Appeals against acquittals;
- (2) Cases in which notice of enhancement of sentence has been issued;
- (3) Revision application under section 397 of the Criminal Procedure Code;
- (4) Cases where the Court considers the presence of the accused desirable or necessary.

Payment of Road and Diet Money, etc. to Accused and Witnesses.

35. Payment of expenses to accused acquitted or discharged. — The Registrar may give to any person produced in custody before the Court and acquitted and discharged or set at liberty by this Court, the money for his railway fare, steamer fare or bus fare and daily expenses, from the grant under the head "Road and Diet Charges":

Provided—

(a) that the amount given on account of daily expenses shall not exceed the rate of Rs.⁹[25] a day for the number of days which in the opinion of the Registrar will necessarily be occupied in such journey;

9. Substituted by Notification in Gazette, Dt. 24-11-1994, Pt- 4-C, Pg. 852.

(b) that the amount of Railway fare, Steamer fare or Bus fare shall be of the lowest class.

Note— The Registrar may delegate the powers under this rule to the Deputy Registrar.

36. Travelling and daily allowances to witnesses. —Any person summoned as a witness in any case in the High Court shall be paid Travelling and Daily Allowance on the same scale as is prescribed in the rules in the Criminal Manual.

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