CHAPTER-12

PROSECUTION OF CASES

271. **Public Prosecutor and Assistant Public Prosecutors**

I. The Public Prosecutors are appointed in accordance with the provisions of section 24 of the code of Criminal Procedure, 1973. The Public Prosecutor appears for the State and conducts prosecution in all session's cases, contests bail application, and argues appeal and criminal miscellaneous petitions in the Sessions Court and gives advice on legal matters.

II. The Assistant Public Prosecutors are appointed in accordance with the provisions of If section 25 of the Code of Criminal Procedure, 1973. The Assistant Public Prosecutors conduct prosecutions in the Magistrates' Courts. It shall be the duty of the APPs to advise the Investigating Officers in case advice is sought for.

III. It shall be the duty of the Public Prosecutor to advise the Investigating Officer during the investigation of a Sessions case when so requested by the Investigating Officer and it shall be further his duty to scrutinize the charge sheet in cases where the charges are exclusively triable by the Court of Sessions. Prosecutors should take utmost care in properly presenting the case before the Court after studying the case adequately and interviewing the witnesses to be examined in

the Court.

IV. The Prosecutor as well as the Investigating Officer should bear in mind the relevant provisions regarding limitations for taking cognizance of certain offences as laid down in Chapter 36 of the Criminal Procedure Code Section 467 to 473. Here, Section 468 CrPC specifies the period for taking cognizance of an offence. Section 469 lays down as to when the period of limitation should begin to run in relation to an offence. Section 470 prescribes rules regarding exclusion of time while computing the period of limitation. Section 471 provides for the exclusion of the day when the Court is closed. Section 472 lays down the period of limitation in cases of continuing offences. Section 473 lays down as to when the period of limitation may be extended on a proper explanation of the delayer in the interest of justice.

V. With regard to charge-sheeting of a case, where any person is arrested and detained in custody and the investigation cannot be completed in 24 hours, the provisions of Section 167 CrPC Sub-Section 2 should be kept in mind.

The functions and duties of the Prosecutors

VI. There should be constant interaction between Investigating Officers and prosecutor's right from the initial stage. There should be no hesitation for the IO to seek the advice of the APP

on collection and appreciation of evidence. The APPs have instructions to render proper legal advice whenever sought for by the police. The duties of prosecutors are 3-fold.

A. To tender legal advice during investigation for proper construction of case records that helps prosecution in the court subsequently;

B. Diligently conduct prosecution in courts.

C. Offer opinion on judgements.

Duties of Public Prosecutors and Addl. Public Prosecutors

VII-A. Offering legal advices to the I.Os in sessions cases at the stage of the investigation when sought for, and vetting draft charge sheets in session cases. It shall be their duty to properly examine the statements recorded by the Investigating Officer and the charges suggested. If a lacuna is found in the investigation, they must request the Investigating office to rectify the matter. This should be done as far as possible through discussions. In case there is a difference between the Investigating Officer and the Prosecutor, the matter should be reported to the concerned Superintendent of Police.

B. The Prosecutor, before presenting a charge-sheet, should carefully scrutinize it and ensure that it has been properly prepared, the accused have been charged under correct sections of law and that all the witnesses necessary for proving the prosecution case have been cited. It is his responsibility to obtain from the Investigating Officer, all necessary instructions before the presentation of the charge-sheet and be prepared to go on with the conduct of the case on the day the charge-sheet is presented to the Court.

C.conduct of prosecutions before the District and Sessions Court and Addl. District and Sessions Court respectively to which they are appointed/posted.

D. ensure that the witnesses are presented before the court as per the schedule of the cases.

E. prepare the arguments of cases by projecting the prosecution case citing latest case laws relevant to the facts for successful prosecution;

F. bring to the notice of the SP the non-production and absence of witnesses after service of summons;

G. ensure that the summons to official witnesses and IOs are obtained in time and served to avoid any delay to the regular conduct of prosecution by seeking any adjournments;

H. Keeping in possession all copies of documents that are filed in court in original for ready reference during the trials;

I. receive notices of Appeals and Bails and in turn intimate the same to the concerned SHO/IO in writing and obtain CD files to get necessary instructions to handle the bail applications and also to argue the appeals filed against convictions.

J. soon after the receipt of judgement copy where there are acquittals and inadequate sentences passed and where there exist good grounds for Appeal and Revision, advise the SP

accordingly by furnishing details and specific reasons.

K. attend the meeting at request of the IG L&O/DIG/SP without prejudice to the court work. Such meetings should be held by the officers on Saturdays or Sundays or Court holidays.

L. tender legal advice in writing within a week on cases referred to him by SP after perusal of concerned records and discussions with officials if he considers it necessary.

Duties of Assistant PP

VIII-A. Conduct the prosecution in the cases filed by the Police and takes every possible legal action for successful prosecution of cases in public interest;

B. give his written opinion or/and advice after perusal of the case diary and connected records and discussion with concerned IO and officials if necessary, the opinion should be sent in form within a week after receipt of the CD file and report of IO in form .

C. vetting of draft charge sheets in the cases referred to him in B above after satisfying himself that the material available on record warrants a charge sheet. The charge sheet should be based on evidence against each accused with applicable sections of law in respect of each. If further probe or

investigation is needed it should be informed in writing to the IO. The report in form should be sent only after replies to his comments or further probe is completed

D. be responsible and vigilant in giving legal advice/opinion/ vetting of draft charge sheet so as to avoid future complaints of negligence and irresponsible attitude;

D. oppose the bail applications after receiving necessary instructions that may be given by the concerned officials;

E. ensure that the witnesses attend the court as per schedule and NBWs are executed well in time by issuing suitable instructions to the concerned in writing. In case the concerned officer does not respond, the matter be reported to the SP/SDPO concerned.

F. report to the SP in case there is no proper attendance in court by the concerned official and lack of interest in production of witnesses before the trial court;

G. discuss the priority of old cases pending prosecution in consultation with SHO/officials concerned and get the cases expedited in the court;

H. maintain cordial relationship with the court, police, and members of the Bar;

I. act in a fair and impartial manner in discharge of duties towards court, police and other departments;

J. assist the court with his fairly considered view as the court is entitled to have the benefit of prosecuting officers specialized

expositions;

K. take all necessary legal steps to ensure that the court does not close the cases on account of non-production of witnesses;

L. consult the senior prosecuting officer and seek advice on cases involving legal complications/expertise;

M. attend at request on non-court working days the review/crime meetings held by the Inspector General L&O/DIGP/Range and SP whenever convened and furnish the required information, appraise the problems faced in the conduct of prosecution or securing attendance of witnesses to the court;

N. render timely advice to the Superintendent of Police after perusing the certified copy of judgements whether there is a fit case to prefer an appeal, while furnishing detailed reasons recorded against acquittal or insufficiency of sentence.

Consultation with the Prosecutors

272. The Investigating Officer must consult the Prosecutors in the following cases:-

(a) Cases which are exclusively triable by the Court of Sessions;

(b) Cases under section 120-B IPC;

(c) Cases under section 121 to 130 IPC;

(d) Cases under section 231, 233, 235, 237, 239, 241, 242 to 250, 252, 253,254, 256 to 263 A IPC.

(e) Cases under section 295-A, 296 and 297 IPC;

(f) Cases under section 304-A, 330, 332, 353, 363, 365 IPC;

(g) Cases under section 393, 394, 406 to 409, 419 and 420 IPC.

(h) Cases under section 465 to 468, 471 to 477 and 477-A IPC.

(i) When a case and counter case are registered and a decision has to be taken, whether both the cases have to be charge-sheeted or only one of them;

(j) Cases involving complicated questions of law / fact;

(k) Cases under the E.C.Act 1955;

(l) Any other case where the IO/SDPO/SP desire that the Prosecutor should be consulted;

(m) Any case where the Prosecutor considers that such consultation is necessary.

(n) In respect of the cases referred to above, while sending the draft charge-sheets to the APPs the Investigating Officer should give sufficient time to the Prosecutor to scrutinize the charge-sheets. Along with the draft charge-sheet, the Investigating Officer should send the case diary file to the PP/APP to enable him to study the papers for scrutinizing draft charge-sheet. If there is a difference of opinion between the Investigating Officer and the Prosecutor on any matter pertaining to investigation or prosecution, such matters should be referred to the Superintendent of Police.

Commencement of Prosecution

273. Trial of a case commences after cognizance is taken with hearing for framing charges by the Magistrate or the Sessions Judge (Sections 190, 193, 207, 226, 228 and 240 CrPC). When the case is posted for examination of witnesses, the court should be requested for summons after consulting the Prosecutor. It should be ensured that the number of witnesses is limited only to those who can be examined and avoid number

of officers of the same department being summoned on a particular day. The summons obtained or issued should be served and the served copy of the summons returned to the court well in advance.

Examination of witnesses in Court

274-1. The handling of witnesses in Court calls for an attitude and technique different to that employed in the interrogation of persons during an investigation. While the investigator seeks to discover the author of a crime and the manner of its perpetration, the prosecutor aims at establishing the guilt of the person known to be the offender as the result of the investigation. The IO has an important role to play even though the Prosecutor is responsible for proper prosecution of the case.

2. It must not be the prosecutor's object to secure the conviction of accused persons by any means. His true function is to thoroughly study the case, marshal the facts and to assist the Court in administering justice on the basis of admissible legal evidence and placing before the court all evidence, circumstantial and oral in a cogent manner, and help the court to interpret the evidence in the light of appropriate case law. It is certainly the duty of the Prosecutor to ensure prompt trial and not concede for too many adjournments, or to ask for adjournments himself without a cause.

3. Examination of witnesses in Court is governed by the provisions of the Indian Evidence Act. The party that calls him first examines a witness. This is called his examination-in-chief. The opposite party is then entitled to cross-examine him, after which he may be re-examined by the party calling him, if it so

desires.

4. Examination and cross-examination must relate to relevant facts, but the cross-examination need not be confined to the facts to which the witness testified in his examination-in-chief. The re-examination should be directed only to the explanation of matters referred to in the cross-examination. If, however, any new matter is, by the permission of the Court, introduced in the re-examination, the opposite party may further cross-examine the witness on that point.

5. It is essential that the IO produces witnesses in advance so that prosecutor prepares his witnesses before the trial begins. The witnesses have several psychological barriers and complexes including fear, apart from ignorance of court proceedings or Law. The preparation should consist of giving confidence to him, refreshing the memory of each witness and in instructing him as to how he should behave in Court and answer questions that may be put to him by the defence lawyer in cross-examination. He should be cautioned to keep his temper, to answer questions clearly and in natural manner, and not to volunteer more information than is asked of him. A timid or nervous witness would need encouragement, while a self-opinionated, loquacious one, must be cautioned against making his answers unnecessarily long or speaking about matters on which he has not been questioned.

6. During his preliminary interview, the prosecutor must make it a point to cross-examine his witnesses. This would help them to face the defence lawyer's cross-examination in the Court, with confidence.

7. There should, however, be no attempt to tutor witnesses. A tutored witness is apt to perjure himself in Court and damage even a good and true case. But, if the memory of witness is refreshed, that will advance the cause of justice. It is emphasized that this will largely depend on the Investigating Officers having recorded statements truthfully, in the language of the witnesses.

8. The prosecutor must not produce in Court more witnesses than are actually essential to prove his case. No particular number of witnesses is required for the proof of any fact (section 134 of the Evidence Act). It is the quality and not the quantity that matters.

9. After a prosecution witness has entered the box, the very first thing that the prosecutor should do is to put him at ease. It must be realized that few persons will be free from flurry when figuring as a witness in Court. It is, therefore, essential that the prosecutor should create confidence in his witness by his demeanour, by the form in which he frames his questions and by the manner in which he asks them. His tone should be modulated and re-assuring. The witness should, as a rule, be permitted to tell his own story, but the prosecutor should make sure that all important facts are clearly brought out. He should avoid technical terms as well as difficult and high sounding words.

10. The prosecutor should handle his witnesses according to their nature. An over-zealous, garrulous witness for example, should never be allowed to tell his own story, for, by so doing, he is

likely to expose himself to severe cross-examination. The effort should be to keep such a witness well to the point and compel him merely to answer the questions that are put to him. A stupid or timid witness will require great patience and good humour. Any display of anger only adds to his confusion.

11. It is a rule of evidence that no leading question should be put to a witness in the examination-in-chief, except with the permission of the Court. This does not apply to matters which are introductory or undisputed or which have been already sufficiently proved (section 142 of the Evidence Act). In fact, questions in respect of introductory and undisputed matters are best asked in the form of leading questions, as it will expedite the trial and tend to infuse confidence in the witness. Thus, instead of asking "what is your name?", "where do you live?", "What is your business?", etc., it is admissible to ask "Mr. A, you are a teacher in an elementary school in the village B?" and so on. When, however, the main issues of the case are reached, the rule against leading questions should be strictly adhered to, though, in exceptional cases, when ordinary questions have failed to elicit a detail, the Court may permit the lawyer to lead the witness to the extent necessary to make him recall the point omitted.

12. When a witness shows himself to be opposed to the side which has called him or adopts an attitude contrary to the truth, the Court may, in its discretion, permit the side to treat him as a hostile witness and cross-examine him (section 154 of the Evidence Act). But this permission will not be lightly given. The general attitude of the witness and his demeanour, and the

trend of his evidence as a whole must indicate his hostility to his side or desire to conceal the truth. If the Court gives the permission, the side that called him may cross-examine him and put him questions to contradict him and impeach his credit.

13. The prosecutor must closely follow the cross-examination of his witness by defence, as that would often enable him to discover the accused's line of defence. He must take exception in time, to any improper or irrelevant questions that might be put by the defence counsel.

14. If the prosecutor finds that any of his witnesses has been made to give any misleading statement or that any point has been purposely left obscure, he should have it clarified in re-examination.

15. After the examination of his witnesses is completed, the Prosecutor has to prepare himself for the cross-examination of defence witnesses to rebutt effectively the evidence tendered for defence in examination-in-chief. This may be achieved by impeaching the credibility of the witness or his testimony with the material facts or information available in prosecution. Leading questions are permissible in cross-examination.

16. There is a marked distinction between discrediting the testimony and discrediting the witness. The method of cross-examination in the two instances would naturally be very different.

17. The testimony of a witness may be impeached by showing the scanty means he had for obtaining the correct knowledge of the facts spoken to by him or by showing that, though he had the best possible opportunity, he did not have the intelligence necessary to observe them correctly or the power of memory required to retain them so long. Again, two persons may witness an occurrence but give inconsistent versions of what they observed. Further, many persons enrich their personal experiences with the fabrications of their imagination or with what they have heard from others. It is one of the objects of cross-examination to separate fact from imagination and the personal observation of the witness from that of others.

18. The credit of a witness may be impeached —

A. by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

B. by proof that the witness has been bribed, has accepted the offer of a bribe or has received any other corrupt inducement to give his evidence;

19. It is not necessary to cross-examine every witness. When the prosecutor rises to cross-examine a witness, he should first ask himself the questions. “Has the witness testified to any thing that is materially against him? Is it necessary to cross-examine him at all? The cross-examination of a witness, when it is not really necessary, may go to elicit certain facts which are favourable to the opposite party.

20. Making much of trifling discrepancies should, for the same reason, be avoided.

21. The cross-examiner must be clear in his mind of his line of cross-examination and the facts he wants to elicit. Fishing questions are very apt to elicit wrong answers.

22. A skilful cross-examiner seldom takes his eyes from an important witness, while he is being examined by his adversary. His bearing, his manner of expressing himself, his movement of hands all help any intelligent and experienced observer to arrive at an accurate estimate of his integrity. During the examination-in-chief of a defence witness, the prosecutor should always be on the alert for an opening for his cross-examination and should try to detect the vulnerable spots in his narrative.

23. Bullying or threatening the witness seldom pays. It will often make the witness mentally defy the cross-examiner at once. If, on the other hand, the prosecutor's manner is courteous and conciliatory, the witness will soon lose the fear, witnesses generally have of the cross-examiner and can almost imperceptibly be induced into revealing true facts.

24. The mistakes of a witness should be drawn out more often by inference than by direct questioning, because all witnesses have a dread of self-contradiction. The loquacious witness should be allowed to talk on, and he will be sure to involve himself in difficulties. He should be encouraged and led by degrees into exaggeration that will conflict with common sense.

25. The down-right liar should be encouraged to exaggerate the way he thinks the prosecutor does not want him to. He will soon be found stretching his imagination to such an extent that nobody will believe a word of what he says.

26. If the manner of the witness and the wording of his testimony bear the marks of fabrication, it is often useful to ask him to repeat his story. He will usually repeat it in almost identically the same words as before, showing that he has learnt it by heart. Of course, it is possible, though not probable, that he has done this and is still telling the truth. An examiner should then test him by taking him in the middle of his story and jumping him quickly to the beginning and then to the end of it. If he is speaking by memorizing the version, he will be sure to succumb to this method.

27. If the prosecutor obtains any favourable answer from a witness, he should leave it there and pass quickly to some other question. The inexperienced examiner who repeats the questions, with the idea of impressing the answer upon his hearers, will have to blame himself if the witness corrects or modifies his answer.

Duties of Investigating Officers

275

I. On every date of hearing, the Investigating Officer should attend the court with the case diary files and assist the PP/APP in the conduct of the cases by giving him necessary instructions. If the Investigating Officer is not able to attend the court in the cases on any date of hearing, he should instruct his assistant (ASI or

HC, as the case may be) to attend the court with the C.D. files, contact the P.P. and give necessary instructions.

II. Where a case is adjourned for more than six hearings, an extra copy of the court C.D. should be made for the seventh and subsequent adjournments and sent to the SP concerned. It shall be the responsibility of the SP concerned to examine such cases and take all necessary action for speedy disposal of the cases.

III. Whenever an I.O. is transferred/promoted, he should prepare a list of cases, which are pending trial in the courts in which he is the I.O/Witness and in which his evidence has not yet been taken. It should be prepared in triplicate. The first copy should be sent to the Superintendent of Police of the district along with the charge report. The second copy should be kept in the PS in a separate file. The PSI should carry with him the third copy and maintain it in a separate file in the PS/Unit to which he is transferred.

IV. It is the responsibility of the Superintendent of Police to ensure that the Investigating Officers attend the Courts on the dates of hearing.

V. If there are several cases in which a police officer has to give evidence either as Investigating Officer or as witness, he should, in consultation with the APP so arrange the posting of cases that he is not summoned to court too frequently.

VI. In the case of Investigating Officers who have been transferred out of the district, the Superintendent of Police should arrange

with his counterpart for prompt attendance. If any Investigating Officer is absent before the court for two consecutive dates of hearing, the Superintendent of Police should write to the DIG/Range, who in turn should ensure that the particular Investigating Officer attends the court.

VII. The investigating officer should assist the Assistant Public Prosecutor in briefing witnesses, conducting the prosecution, filing documents and exhibiting the various items of property, and see that the prosecution case is presented in the best possible manner. He must also make enquiries and furnish material to the Prosecutor for the cross-examination of defence witnesses.

VIII. Security proceeding cases must be conducted in the Executive Magistrate's Courts invariably by an Officer not below the rank of Inspector and who is not the I.O. in that case. They may, if necessary, requisition the services of APPs in important cases.

Public Prosecutors and Assistant Public Prosecutors

276-1. The Public Prosecutor appears for the State and conducts prosecution in all session's cases, contests bail applications, and argues appeals and criminal miscellaneous petitions in the Sessions Court and gives advice on legal matters.

2. In a case in which the services of legal advice of PP, Addl. PP or APP are sought the IO should send the case diary file along with a report as indicated in Order No. in advance to him and also give him the necessary personal briefing before commencement of trial. He should personally attend Court on all dates of hearing invariably unless he is held up on any other

urgent duty, in which case one of the ASI, or HCs who assisted in investigation or specifically nominated to follow up a case in the court should be sent to Court with the case diary in time to meet the Assistant Public Prosecutor

4. When a case of serious rioting or important murder or dacoity or any other case of public importance is under trial, the Superintendent of Police and the Sub-Divisional Officer should keep themselves in touch with the progress of the case and take personal interest in proper conduct of its prosecution by helping the PP with all available evidence.

Giving Evidence in Court by Police Officers

277. The following are guidance to Police Officers for compliance

(a) Always appear in uniform and if belonging to CID or other organizations not required to wear uniform, in proper civil dress, when giving evidence in court;

(b) Always salute the court if in uniform. If in plain clothes, salute in Indian style with folded hands when both entering and leaving the witness box;

(c) Be attentive, never fidget;

(d) Be calm and dignified while giving evidence, so as to impress the court and the counsel favourably;

(e) In giving evidence, look straight towards the court.

(f) When questioned by the adverse party, never turn towards the prosecution counsel.

(g) Answer no question without understanding it. If the question is not clear enough to be understood, say so and politely ask the counsel to repeat it in a simpler form.

(h) Do not answer a question with a counter-question.

(i) If you do not remember any fact, say so at once rather than attempt a

random answer.

(j) Never show irritation and do not be offended if the cross-examiner questions you in a way you do not like.

(k) If questions are unnecessarily vexatious or obnoxious, represent the matter to the court and seek its protection. Above all, do not quarrel with the counsel.

(l) Carefully distinguish between what you know personally and what you may have heard from others.

(m) In answering a question, do not give unnecessary information, for example, if asked whether the colour of a certain article is white, do not say "No, it is black", say simply "No" or "Yes".

(n) If you consider that some of your answer requires an explanation, which the counsel failed to elicit, you may, when both the sides have finished, represent the matter to the court.

(o) Remember that all that the court wants to ascertain is the guilt or innocence of the accused and not your intelligence.

(p) Give no more details regarding the source of your information than from information received "I did this or that".

(q) Avoid lengthy answers, as they furnish more material for cross-examination. Your

replies should be concise.

(r) Do not leave the court without its permission.

(s)Read the deposition carefully prior to putting your signature on the recorded deposition. If anything is recorded in the deposition which you have not deposed, bring it to the notice of the Court and get it corrected by the Court.

Enhancement of Punishment

278. In every case in which an accused person previously convicted of an offence punishable under Chapter XII or Chapter XVII of the Indian Penal

Code with imprisonment of either description_for a term of three years or upwards, is prosecuted for an offence punishable under either of the two chapters with life imprisonment, the Prosecuting Officer concerned should, having regard to-

(a) the nature and adequacy of evidence to prove in the Court of Sessions the offences committed by the accused;

(b) the interval between the date of the commission of the offence and date of release of the accused after his latest conviction and sentence;

(c) the total number of previous convictions;

(d) sentences awarded in the case of each previous conviction; and

(e) the fact whether the Magistrate before whom, the accused is charge-sheeted is competent to award an adequate sentence commensurate with the gravity of the offences and the accused's previous convictions - move the court under section 324 of the Code of Criminal Procedure for committing the accused to the Court of Sessions for trial.

Prosecution of Witnesses for Perjury

279. With a view to preventing witnesses intentionally giving false evidence and for the eradication of the evil of perjury, it is necessary to take action against such witnesses who turn hostile in the Courts. The Assistant Public Prosecutor should, in such cases, take action on the lines laid down in the following order:

(1) When a witness in a criminal case turns hostile to the prosecution the concerned Assistant Public Prosecutions should, in the course of the cross-examination, lay a proper foundation for the prosecution of the witnesses for perjury, strictly complying with the provisions of Section 145 of the Indian Evidence Act.

(2) On the conclusion of the trial, the Assistant Public Prosecutor, while addressing his argument on the merits of the case, should also emphasise on the necessity of prosecuting the witness for perjury.

(3) If the court, at the time of delivery of the judgment or final order, does not record a finding that in its opinion the witness has intentionally given false evidence and that for the eradication of the evils of perjury and in the interests of justice, his prosecution for perjury is necessary and does not proceed under the provisions of Section 340 of the Code of Criminal Procedure, the prosecuting officer should carefully examine the judgment on the same day on which it is pronounced.

(4) After examination of the judgment as aforesaid if the Prosecutor finds that judgment does not contain any finding under Section 340, he should immediately after the judgment and in consultation with his superintendent, present to the court, an application under Section 340 of the Code of Criminal Procedure for taking action as provided therein and for instituting a complaint for perjury in a competent Court of Law.

(5) If, after such application, the court refuses to take action and make a complaint as provided in Section 340 of the Code, a copy of the court order should immediately be obtained and the feasibility of appealing against it should be examined. In appropriate cases, appeals when justified should be preferred under Section 340 of the Code.

Abscondence of Accused

280. An absconder is one who intentionally makes himself inaccessible to the process of law and it is not enough if it is shown that it was not possible to trace him soon after occurrence. It should be established that he was available at or about the time of the commission of the alleged

offence and ceased to be available thereafter. For this purpose, the prosecuting officer conducting the case, should elicit through the Investigating Officer and also the Police Officers deputed to trace and arrest the absconder, evidence on the following points after citing them as prosecution witnesses, in addition to any other points on which evidence is necessary to prove such abscondence :-

(1) The residence and place where the absconder was living before the commission of the offence.

(2) The place and places he was ordinarily visiting before the commission of the I offence;

(3) His daily occupation and the place or places of his occupation.

(4) The names and addresses of his friends/relatives he was ordinarily frequenting, etc., before the commission of the offence.

(5) Any other matters relevant, which became known during the course of investigation.

(6) The order Number and date issued to them under Section 55 of the Code of Criminal Procedure, directing them to trace and arrest the absconder.

Examination of Medical Officers

281. The practice of summoning medical witnesses and making them wait for a long time in A the court without examination or sending them back without their evidence being recorded should be resisted. The prosecutor should take steps to promptly bring to the notice of the court the presence of the Medical Officers and request that the cases in which they have appeared may be taken up first so that they may be examined as soon as possible and enabled to return to their duties. The prosecutor should move the court for priority in that behalf. If, however, it is not

possible to record their evidence on the days on which they are summoned to appear, they should be informed of it sufficiently early so that they may return to their duties in the hospitals immediately. A Medical Officer should not be made to appear in court more than once in the same case unless absolutely necessary and every step should be taken to see that on the day he appears, his evidence is completed and he is relieved of his duty in that case.

Summoning of Experts

282. Only the experts cited in the charge sheet should be summoned to give evidence, the prosecutor should move the court well in time for the issue of process to the experts giving them sufficient time to adjust their programmes to attend the court on the dates fixed for their evidence. Teleprinter messages should not be sent at the last minute to get the expert witnesses to the court.

283. Arguments and Summing up of the Cases

(i) The prosecution consists of two distinct parts. The first is the presentation of evidence and the other is the summing up of the case and arguments. Normally the contents of the arguments will be:-

(a) Statement of the essential questions involved;

(b) Statement of quantum of proof required for proving the case;

(c) Statement of the arguer's evidence, its credibility, probability, probative value and numerical preponderance, if any;

(d) Discussion of adversary's evidence to show its weakness, its lack of credibility, its insufficiency because of its inherent weaknesses or lack of probative quality, and its opposition to the greater weight or superior credibility or probability of the arguer's evidence;

(e) Applicability of facts to any points of law; and

(f) Discussion of relief.

(ii) A good argument has the following characteristics;

1) Orderly presentation;

2) Balanced and well-proportioned length;

3) Courtesy towards court and opposing counsel;

4) Naturalness;

5) Earnestness and sincerity;

6) Maintenance of interest;

7) Use of plain and simple language;

8) Anticipation of adversary's arguments; and

9) Reply to adversary's arguments.

(iii) The Prosecutor will have to prepare his arguments on the lines indicated above and present them in the best manner possible.

Privilege in Respect of Official Records

284.

1. The law relating to the production of unpublished official records as evidence in courts is contained in sections 123, 124 and 162 of the Indian Evidence Act.

2-AFor the purposes of section 123, the expression “Officer at the head of the department” means the Minister in charge or the Secretary to Government concerned (AIR 1961 SC 493). Before claiming privilege, the head of the department should examine the relevant document carefully and his affidavit should contain an indication as to the nature of the document, as to why privilege is claimed, what injury to public interest is apprehended by its disclosure or what affairs of State are

involved. A bare statement by the head of the department that, in his opinion, the disclosure would be against public interests is not enough. He should indicate the nature of the suggested injury to the public interest, and also put in a statement saying that he has considered the document carefully and has come to the conclusion that it cannot be produced without injury to public interest.

B. The mere fact that the officer as the head of the department does not wish the documents to be produced is not an adequate justification for taking objection to their production. Production of documents should be withheld only when the public interest would, by their disclosure, be injured, or where disclosure would be injurious to national defence or to good diplomatic relations or where the practice of keeping a class of documents secret is necessary for the proper functioning of the public service. Privilege is not to be claimed on the mere ground that the documents are State documents or are official or marked confidential or, that their disclosure, would result in Parliamentary discussion of public criticism or would expose inefficiency in the administration or tend to lay a particular department of the Government open to a claim for compensation.

C. It has been held that, it is desirable, but not indispensable, that the records should be sent in a sealed cover through an officer of the department claiming privilege and that the statement of the head of the department would be considered conclusive and the privilege be upheld, except for compelling reasons to the contrary. Hence the appropriate working principle under section 123 is to produce the records in question, in a sealed cover and raise the claim of privilege, setting out the grounds in an

affidavit in Form appended to this Order.

D. A public servant other than head of the department, who is summoned to produce an official document, should first determine whether the document is in his custody and he is in a position to produce it. In this connection, it may be stated that all official records are deemed in the custody of the head of the department and it is only under special circumstances that an official document can be said to be in the custody of an individual public servant. If the document is not in the custody of the public servant summoned, he should inform the court accordingly. If, under any special circumstances, the document is in the custody of the public servant summoned, he should next determine whether the document is an unpublished official record relating to affairs of State and whether privilege under section 123 should be claimed in respect of it. If he is of the view that such privilege should be claimed or even if he is doubtful of the position, he should refer the matter to the head of the department who will issue necessary instructions and will also furnish the affidavit in Form 1. The public servant, who is to attend a Court as a witness with official document, should where permission under section 123 has been withheld, be given an affidavit in Form I, duly signed by the head of the department. He should produce it when he is called upon to give his evidence and should explain that he is not at liberty to produce the documents before the court, or to give any evidence derived therefrom. He should, however, take with him in a sealed cover the papers which he has been summoned to produce.

3-A. A public servant who is summoned to produce an official communication which is made to him in official confidence should first determine whether the public interest would suffer by its disclosure. He shall not be compelled, if he considers it so, he should claim privilege under section 124 in Form appended to this order. In case of doubt, he should seek the advice of the head of the department. When he is not attending the court himself to give evidence, he shall have the claim of privilege in Form II sent to the court along with the document. The person, through whom the document is sent to the court, should submit the affidavit to the court when called upon to produce, the document. He should take with him the document which he has been called upon to produce but should not hand it over to the court unless the court directs him to do so. In such a case, privilege should be claimed under section 124 and the document should not be shown to the opposite party, nor should it be marked as exhibit in any proceedings. If the document is not in his custody, he should inform the court accordingly.

B. The basic principle for deciding whether a particular document is a communication made in official confidence to a public officer or not, is whether the document produced or the statement made was under the process of law or not. If the former is the case, it would be difficult to say that a document produced or statement made under the process of law is a communication made in official confidence. The question whether a communication was made in official confidence is for the court to decide.

FORM I

AFFIDAVIT IN RESPECT OF A CLAIM OF PRIVILEGE UNDER SECTION 123 I.E. ACT IN THE COURT OF

Writ Petition No./Suit No. ..... of 2001

I, ... (here insert the name, designation and address of the person making the affidavit), do hereby solemnly affirm and state as follows:

A summons bearing No. ..... dated ..... issued by the Court ..... in writ Petition/Suit No. ..... of 2001, (..... vs .....), has been received on ..... ., requiring the production in the said Court on ...., of document stated below. I as the head of the department am in control of, and in-charge of, its records. I have carefully considered them and have come to the conclusion that they are unpublished official records relating to affairs of State and their disclosure will be prejudicial to public interest for the following reasons:

LIST OF DOCUMENTS SUMMONED

I do not, therefore, give permission to anyone under section 123 of the Indian Evidence Act, 1872, to produce the said documents for inspection or to give any evidence derived therefrom.

Solemnly affirmed at ..... this ..... day of 2001

Name and designation of the Person
Making the affidavit.

FORM II

AFFIDAVIT IN RESPECT OF A CLAIM OF PRIVILEGE UNDER SECTION 124

IN THE COURT OF .....

Writ Petition No./Suit No. ..... of 2001

I, ... (here insert the name, designation and address of the person making the affidavit), do hereby solemnly affirm and state as follows:

A summons bearing No. ..... dated ..... issued by the Court of ..... in Writ Petition/Suit No. ..... of 2001 (..... vs .....) has been served on me on ...., requiring the production in the said Court on ..... of the documents stated below. I have carefully considered them and have come to the conclusion that they contain communications made in official confidence and I consider that the public interest would suffer by their disclosure for the following reasons:

LIST OF DOCUMENTS SUMMONED

I, therefore, claim privilege under section 124 of the Indian Evidence Act, 1872.

Solemnly affirmed at ..... etc., this ..... day of..... 2001

Signature and designation of the Officer
making the affidavit

Action on breach of a security bond:

285. When a person on a security of any kind is prosecuted for an offence involving a breach of the conditions of the bond, report in that regard should be made to the court in writing, so that it may, in the event of conviction order the confiscation of the security.

Delay in the Disposal of cases in Courts

186-1. Delay in the disposal of criminal cases is mainly caused by:

A. piecemeal examination, non-production or absence of witnesses including official witnesses and failure to hear the case, from day to day,

B. absence of police or prosecutor or witnesses on the day fixed for hearing,

C. Absence of accused on bail and non-production of accused from Jails,

D. Absence of defense counsel,

E. Frequent adjournments delaying tactics by the defense,

F. The posts of Magistrate being vacant,

G. Heavy schedule in a court,

2. Each one of these reasons/situations should be tackled by a quick and thorough appraisal of the reason or reasons for delayed trials by the prosecution and Investigating Officials particularly, SHO and concerned SDPO. In each case there will be only one or two reasons out of the above that hold up the trial. The specific reason should be tackled promptly effectively and by pursuing the matter vigorously at the level of the trial or higher courts. Closest understanding and cooperation is required between prosecution staff and the police. The SP, PP/Additional PPs should review individually and together all pending cases and launch an effective strategy. If, for example, the cases are not progressing due to heavy schedule the matter should be brought to notice of District and Sessions Judge. If any case is held up for appearance of official witness the SP should make all arrangements to see that he is produced. If there are stay orders arrangements must be made to get them vacated. If accused is absconding an all out drive should be launched to trace them. The monitoring of each case on trial is that of SP. In addition, SP, SDPO, SHO shall have daily monitoring of service of summons or execution of warrants.

3. Police Officers should be punctual in attending court. If the IO is unavoidably detained on any other important work, he should arrange to send the ASI or HC with the case diary to attend the court in time. There can generally be no excuse for the absence of prosecuting officers, as dates of hearing are fixed

by courts in consultation with them and more or less a Prosecutor is earmarked for each court. Reasonable time should be allowed for service of summonses and Police Officers on their part should see that summonses are served on the witnesses and they appear in court on the date fixed for hearing in addition to returning the served summons to court well in advance or at least a day before that date. Action may also be taken under section 174 of the Indian Penal Code, against witnesses who fail to attend the court in spite of the service of summonses. Preference should always be given to committal work (section 193 Cr.PC) over other work. Pendency can be considerably reduced and disposal of cases expedited by cooperation with the magistracy. Police Officers summoned as witnesses must attend and depose after proper preparation and consultation with the PP or APP. Absence from court on the day summoned should be taken serious note of by senior officers.

Pendency of cases with Magistrates

286-1. It is the responsibility of the SHO to take steps to obtain proceedings in all cases from Magistrates. While discussing pendency in courts with SDPOs during the monthly crime meeting, the Superintendent of Police will also ensure that all pending proceedings have been obtained from courts.

Disposal of petty cases

1. The pendency of petty cases has an overall adverse impact on law and order besides being a source of harassment of the accused. Almost all cases can be disposed off the same day or next day as the procedure is extremely simple and generally they are all admission cases. The

facility of compounding is also provided for traffic violations. The SHO of Police Station and Traffic Police should ensure production of accused where it is necessary or laid down and assist the courts in quick disposal.

2. The SP is responsible for laying down strict procedures for levying, collection and deposit of fine amounts in the traffic violations. The prescribed registers and records should be subjected to strict audit regularly, particularly from the point of view of adequacy of fines and their accounting.

Plea bargaining

3. Plea bargaining means pre trial negotiations between the accused and prosecuting agency during which the accused agrees to plead guilty in exchange for certain concessions by the prosecution. To reduce the delay in the disposal of criminal trials and appeals as also to alleviate the suffering of under trial prisoners as well as their dependents and keeping in mind the real purpose of victimlogy the concept of plea bargaining has been introduced. A guilty plea is formal admission of guilt and is the equivalent of a conviction.
4. The concept of plea-bargaining has been introduced by insertion of a new chapter XXI A consisting of 12 sections (sec 265 A to 265 K) Cr.PC through the Criminal Law (Amendment) Act 2005.
5. The essential requirement of plea-bargaining are :
    (a) Voluntariness of the accused to plead guilty in exchange for a concession, which is a pre-requisite for admitting an application for plea bargaining.
    (b) The statement or facts stated by an accused in the application for plea-bargaining should not be used for any other purpose except for plea bargaining and

(c) While a plea-bargaining is contractual agreement between the prosecution and the defendant regarding the disposition of a criminal charge, such an agreement is not enforceable until a judge approves it.

6. The plea bargaining can be divided into three types:

(a) Charge bargaining- the accused agrees to plead guilty to a specific charge in exchange for a mutually agreed upon sentenced or the dismissal or reduction of other criminal charges.

(b)Sentenced bargaining- involves implied reduction in sentenced.

(c) Facts bargaining-

8.The provision of plea bargaining can be invoked by the accused in the following cases:

(a) Wherein police case chargesheet/completion report has been filed against the accused.

(b) Wherein a complain case a magistrate has taken cognizance of an offence

9. The provision of plea bargaining shall not apply

(a) where such offences for which the punishment of death or imprisonment for life or of imprisonment for a term exceeding seven years has been provided under the Law for the time being in force appears to have been committed by such an accused.

(b) Where such offences affects the socio-economic condition of the Country as notified by the Central government (section 265A (2) Cr.PC)

(c) Where such offences has been committed against a women, or a child below the age of 14 years (section 265L Cr.PC)

(d) Where the accused is a previous convict of such an offence (section 265B Cr.PC)

(e) Where the accused is a habitual offender.

10. The following offence has been notified by Central government as socio-economic offences.

(a) Dowry Prohibition Act

(b) The Commission of Sati Prevention Act, 1987

(c) The Indecent Representation of Women (Prohibition) Act, 1986

(d) The Immoral Traffic (Prevention) Act, 1956.

(e) Protection of Women from Domestic Voilence Act, 2005

(f) The Infant Milk Substitutes, Feeding bottles and Infant Foods (regulation of production, supply and distribution) Act, 1992

(g) Provision of Fruit products order, 1955 (issued under the essential commodities Act, 1955).

(h) Provision of meat food products order, 1973 (issued under the essential commodities Act, 1955.

(i) Offences with respect to animals that find place in schedule I and part II of the schedule II as well as offences related to altering of boundaries of protected areas under Wildlife (protection) Act, 1972.

(j) The SC and ST (prevention of Atrocities) Act, 1989.

(k) Offences mentioned in the protection of Civil Rights Act, 1955.

(l) Offences listed in sections 23 to 28 of the Juvenile justice (care and protection of children) Ac, 2000.

(m) The Army Act, 1950

(n) The Air Force Act, 1950

(o) The Navy Act, 1957

(p) Offences specified in sections 59 to 81 and 83 of the Delhi Metro Railway (Operation & Maintenance) Act, 2002.

(q) The Explosives Act, 1884

® Offences specified in sections 11 to 18 of the Cable Television Networks (Regulation) Act, 1955.

(s) Cinematograph Act, 1952.

11. An accused charge of an offence intending to avail the benefit /concession of plea bargaining may file application for the purpose in the Court in which such offence is pending for trial. Such an application shall contain a brief description of the case relating to which the application is filed including the offence to which the case relates and

shall be accompanied by an affidavit sworn by the accused stating therein that he has voluntary preferred, and that he has not previously been convicted by a Court in case in which he had been charged with the same offence.

12. The Court shall issue the notice to the public prosecutor or the complainant of the case, as the case may be and to the accused to appear on the date fixed for the case. The provision of issuance of notice by the Court to the public prosecutor in a police case and to the complainant in a complaint case and the accused is the mandatory requirement of section 265B (3) Cr.PC.

13. Where the accused appears on the date fixed under section 265B (3) of Cr.PC, the Court shall examine the accused in camera, where the other party in the case shall not be present, to satisfy itself that the accused has filed the application voluntarily. When the Court finds that the accused has not filed the application voluntarily, it shall disallow the application and proceed with the case from the stage at which such application was filed by the accused. Hence a duty has been cast upon the Court to satisfy itself by the examination of the accused in camera, where other party of the case is not present, that the application filed by the accused is voluntarily.

14. Where the Court is satisfied that the application has been filed by the accused voluntarily, it shall provide time to the public prosecutor or the complainant of the case, as the case may be and the accused to work out a mutually satisfactorily disposition of the case which may include giving to the victim by the accused a compensation and other expenses incurred during the case.

15. If a mutually satisfactorily disposition has been worked out under section 265C Cr.PC the Court shall prepare a report of such disposition which shall be signed by the presiding officer of the Court and all other persons participated in the meeting and if no such disposition has been worked out, the Court shall record such observation and proceed further

in accordance with the provisions of Cr.PC from the stage the application under sub section (1) of section 265B Cr.PC has been filed in such case.

16. Where a satisfactory disposition of the case has been worked out u/s 265D of Cr.PC the Court shall dispose of the case by awarding the compensation the victim in accordance with the disposition u/s 265D of Cr.PC and hear the parties on the quantum of the punishment or releasing of the accused on probation of good conduct or after admonition u/s 360 Cr.PC or for dealing with the accused under the provisions of Probation of Offenders Act 1958 or any other law for the time being in force following the procedure specified in section 265E (b) (c) (d) of Cr.PC.

17. The Court shall deliver its judgment in terms of section 265E of Cr.PC in the open Court and the same shall be signed by the presiding officer of the Court. (Section 265F Cr.PC)

18. The judgment delivered by the Court u/s 265F Cr.PC shall be final and no appeal except the Special Leave Petition under Article 136 and Writ petition under Article 226 & 227 of the Constitution shall lie in any Court.

Procedure for filing appeals against acquittals and revision petitions in the High Court

1. In every case ending in acquittal or where there is a conviction only for minor offence, the accused have been acquitted for more serious in the Court of any Magistrate, an application for the certified copy of the judgment, deposition of witnesses, statements of accused shall invariably be filed on the same day or on the next day following the delivery of judgment.

2. It shall be the duty of PP/APP concerned to file such application for certified copies and to ensure their expeditious receipt. He should see that the certified copy bears clear endorsement regarding date

of the application for the certified copies, date of application when the copy was ready and the date of delivery of the certified copy.

3. In case of High Court, public prosecutor of High Court may be requested to obtain certified copies of judgment orders. Concerned SP/SP/Crime should closely monitor the obtaining of such copies from High Courts without delay.

4. The conducting PP shall scrutinize the judgment and should clearly show what the reasons for acquittal or for discharge are or whether there were any defects or negligence in investigation or in prosecution which lead to the unsatisfactory result. Adverse remarks regarding investigation or prosecution should also be clearly mentioned.

5. Each judgment should be scrutinized and examine with reference to the following points:

A. Whether the sentence is adequate or in-adequate.

B.Whether revision for enhancement of sentence is to be filed.

C.Whether acquittal or discharge is justifiable.

D.Whether the case of prosecution was properly put up in the Court.

E.Whether the Court appreciated the evidence brought by the prosecution.

F.Whether the rules and regulations prescribed were

adhered to in practice and whether any steps are required are to be taken to prevent lapses, if any, in future.

G.Whether there is a case for filing an appeal against acquittal.

6. If an appeal or revision is recommended to be filed against the acquittal/discharge, a self contained note should be prepared giving in brief the facts of the case and the reasons why the appeal or revision is considered justifiable. In his comments the prosecutor should discuss the specific points raised in the judgment and give clear reasons for his disagreement with the same. The reasons given by the prosecutor should be supported by the evidence on record and his recommendation should be clear and unambiguous.

7. The period of limitation should be specifically mentioned and the dates when application for a copy of judgment was made and was obtained and the time taken giving comments should also be indicated. Ordinarily, the prosecutor should not take more than a week for giving his comments from the time of receipt of the copy of the judgment. If more time is taken he should account for the same.

8. The SP will then make a through and critical study of all the documents, record his own comments and suggestions and forward without delay all the papers to DGP through DIG, Range/IG/Law & Order.

9. Copies of judgments and comments of the prosecutor should be sent to the Police Headquarter in triplicate in cases ending in acquittal/discharge. Police Headquarter will obtain permission

from State Government for filing appeal.

10. With regard to appeals against acquittal, no hard and fast rule can be laid down. When examining an acquittal judgment, regard should be had to the principals enunciated by the various High Court & Supreme Court regarding the scope and power of the appellate to interfere with an acquittal in exercise of its powers u/s 378 CrPC. Though a High Court has a full powers to review at large the evidence upon which an acquittal order is founded and to reach its own conclusions, the following factors should be taken into consideration before recommending an appeal:

(a) Views of the trial Court as to the credibility of the witnesses.

(b) Reluctance of the Appellate Court to disturb the findings of facts recorded by the trial Court which have the advantage of seeing and hearing the witnesses.

(c) Right of accused to the benefit of doubt.

11. The concerned SP shall pursue the recommendations of appeal/revision from Police Headquarter and ensure that revision/appeal should be filed before expiry of limitation period.

12. In case the appeal/revision could not be filed within limitations period, a chronological statement of delay from the receipt of the judgment be made and an application for condonation for delay be filed justifying the reasons for delay with the appeal/revision.

Watching progress in appeals filed by accused

Proper care should be taken to the progress made in an appeal filed by accused against his conviction. Daily Cause list of cases heard in

the High Court should be carefully pursued by the PP of the High Court. The SP should also pursue the same.

Action to be taken in case of Criticism by Courts on judgments

1. The concerned SP shall go through the judgments and such records of the case as may be necessary including the documents and records of the Police Station and of the Court. They will then considered whether any further action is called for in respect of any adverse remarks, stricture or criticism made by the Court and whether it is necessary to obtain the explanation or comments of any of the Officers of Sikkim Police. After obtaining such explanations or clarification they should consider whether any Police Officer was at fault and, if so, what further action was required to be taken?

2. Irrespective of their own views on the judgments pronounced by the Courts, SP should send along with a copy of the judgments, a full report to the DGP through DIG, Range/IG, Law & Order in every case in which an adverse remarks or criticism has been passed by the Court of Law.

Criminal Appeals - High Court - Better Representation

287-1. Copies of notices in all criminal appeals are sent by the High Court to Superintendent of Police. They should, in consultation with the Public Prosecutor, decide whether the deputation of a Police Officer is necessary. Intimation to the High Court should be sent if an additional set of records is required. In criminal revision cases, notices are sent by the Public Prosecutor to the District Magistrate, who in some cases, forwards them to the

Superintendent of Police. Ordinarily, in revision cases, deputation of an Officer may not be necessary.

2. In criminal appeals, revision petitions and bail applications coming before the High Court, the Public Prosecutor or the Additional Public Prosecutor, as the case may be, should obtain instructions from the concerned Superintendent of Police, marking copies of such correspondence to the DIGP/Range to keep them in the know of things.

3. In cases in which the High Court has released an accused person on bail without notice to the Public Prosecutor and there are adequate grounds for moving for cancellation of the bail, the High Court may be moved in the matter. Public Prosecutor may be consulted in all matters of importance.

A. In every appeal to the High Court which is of importance and in which the record is voluminous a Police Officer, with detailed personal knowledge of the case, should be sent to brief the Public Prosecutor High Court. It is especially desirable that he should be fully briefed in appeals against convictions, in important cases based on circumstantial evidence.

B. Immediately on deciding to depute a Police Officer to brief the Public Prosecutor in cases of criminal appeals and revisions, the Superintendent of Police should see that printed records are obtained direct from the Registrar of High Court and that the Police Officer is deputed to meet the Public Prosecutor with the printed records.

C. The date of hearing of a Government case in the High Court, especially in its early stages should be communicated in time to the head of the department concerned by the Law Officer in-charge of the case so that the Head of the Department may depute a departmental officer to instruct the law officer suitably. These orders apply to civil and criminal cases in the High Court.