

## **TRIAL**

### **Under the scheme of Criminal procedure code, 1973 trial can be divided into the following:**

1. Sessions trial- Sections 225 to 239
2. Trial by magistrate can further be divided into:
  - Warrant trial- Sections 238 to 250: it can further be divided into the following:
    - a) On police report [sections 238-243] + [sections 248 to 250]
    - b) Otherwise than on a police report [sections 244 to 250]
3. Summons trial- Sections 251 to 259
4. Summary trial-Sections 260 to 265

### **SESSIONS TRIAL (SECTION 225-237)**

All cases punishable by more than 10 years of imprisonment are trial by session court.

#### **Procedure:**

1. Section 225: Prosecution is conducted by public prosecutor
2. Section 226: opening case for prosecution
3. Either discharge under section 227 (in which case the trial will stop) or framing of charge under section 228.
4. If charges are framed then either a) conviction on plea of guilty (section 229) or b) date for prosecution evidence (section 230)
5. If proceeded under section 230 then evidence for prosecution will be done under section 231.
6. After proceeding under section 231 there will be either a) acquittal (section 232) or b) entering upon defence (section 233).
7. After recourse to section 233- arguments will take place under section 234
8. Last step is judgement (can be either of acquittal or conviction) (section 235)

## DETAIL PROCEDURE

1. Section 225: case in a session court will be opened by public prosecutor only.
2. Section 226: when accused is brought in pursuance of a commitment of the case under section 209, the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused.
3. Section 227: if upon consideration of
  - a. Records of the case [section 161, section 162],
  - b. Document submitted [FIR],
  - c. Hearing submissions of accused and the prosecution

If judge thinks there is no ground for proceeding then he will discharge the accused.

4. Section 228: if after such consideration and hearing as aforesaid, if judge is of the opinion that there is ground for presuming that the accused has committed an offence which:
  - a. Is not triable by Court of session- then may frame charge and by order transfer the case for trial to the CJM/JM (first class) and direct accused to appear before CJM/JM (first class)-----Such magistrate shall try the offence in accordance with the procedure for trial of warrant cases instituted on a police report.
  - b. If triable by court of session—then frame charge in writing
  - c. If charge is framed under section 228 (1) (b) then charge shall be read and explained to the accused-----then accused shall be asked whether he pleads guilty or claims to be tried.
5. Section 229: conviction on plea of guilty: if accused pleads guilty----judge shall record the plea and may **in his discretion** convict him.
6. Section 230: if accused:
  - a. Refuses to plead
  - b. Does not plead
  - c. Claims to be tried
  - d. Is not convicted under section 229

then judge---will fix the date for exam of witnesses and may on prosecution's application issue summon for attendance of witnesses and document.

7. Section 231: Evidence for prosecution:
  - a. On date fixed—judge takes all evidence in support of prosecution
  - b. Judge may allow cross-examination of any witness to be deferred until any other witness have been examined or recall any witness for further cross-examination.
8. Section 313: Power to examine the accused.
9. Section 232: Acquittal---if after
  - a. Taking the evidence
  - b. Examining the accused
  - c. Hearing the prosecution
  - d. Defence on the point

The judge considers that there is no evidence that the accused committed the offence, the judge shall record an order of acquittal.

10. Entering upon defence: if accused is not acquitted under section 232---he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof.  
If accused puts in any written statement, the judge shall file it with the record.  
If accused applies for summons, judge shall issue such process except where he thinks it to be vexatious or delay or for defeating the ends of justice.
11. Section 234: when examination of witness for the defence is complete—prosecutor shall sum up his case and accused or his pleader shall be entitled to reply. Provided, where any point of law is raised by the accused or the pleader---prosecution may—with permission of judge make his submissions.
12. Section 235: after hearing arguments and points of law---judgment is passed.  
If accused is convicted—judge shall hear him on question of sentence and then pass sentence on him according to law.  
EXCEPTION--- section 360---judge may order to release the accused on probation of good conduct or after admonition.
13. Section 236: previous conviction will be taken into account.
14. Section 237: procedure in cases instituted under section 199 (2).