

## Powers of Courts (Sec-26 to 35)

chapter III of the Code deals with powers of Courts to take cognizance of offences.

For this purpose offences are divided into two groups

- ① - offences under IPC
- ② offences under any other law

\* Sec-26 Courts by which such offences are triable -

① - any offence under IPC may be tried by

- High Court
- Court of Session
- any other Court acc. to first Schedule

② any offence under any other law shall

- when Court is mentioned then acc. to that Court
- If no Court is so mentioned may be tried

→ ① High Court

② any Court mentioned in first Schedule

2/10  
 Sec-366  
 368

| Name of Court   | Sentences which it may pass   |
|---|---|
| 1. High Court <u>Sec-28</u>   | 1. Any sentence authorised by law.  |
| 2. Sessions Judge or Additional Sessions Judge <u>Sec-28</u>                                      | 2. Any sentence authorised by law. However, a sentence of death is subject to confirmation by the High Court.   |
| 3. Assistant Sessions Judge <u>Sec-28</u>   | 3. Any sentence authorised by law, except –<br>(a) a sentence of death, or<br>(b) imprisonment for life, or<br>(c) imprisonment for a term exceeding <u>ten years</u> . |
| 4. Chief Judicial Magistrate or Chief Metropolitan Magistrate <u>Sec-29</u><br><u>ACJM - ACMM</u> | 4. Any sentence authorised by law, except –<br>(a) sentence of death, or<br>(b) imprisonment for life or<br>(c) imprisonment for a term exceeding <u>seven years</u> .  |
| 5. First Class Magistrate or Metropolitan Magistrate <u>29</u>                                    | 5. Any sentence of imprisonment <u>not exceeding three years</u> , or of fine <u>not exceeding ₹ 10,000</u> , or both.  |
| 6. Second Class Magistrate <u>29</u>  | 6. Any sentence of imprisonment <u>not exceeding one year</u> , or of fine <u>not exceeding ₹ 5,000</u> , or both.  |



Sec-30 - Power to award imprisonment in  
default of fine

J. Imp

not Judges  $\leftarrow$  Session  
Assistant Session

① The court of Magis. may award such term of imprisonment in default of payment of fine authorised by law. - provided that the term

(a)  $\rightarrow$  Not excess in power w/s 29  $\leftarrow$  CJH, ACJH  
JMI  
JMI

(b)  $\rightarrow$  where fine is part of substantive sentence  
 $\frac{1}{4}$  of the ~~excess~~ imprisonment for which mag is competent.

②  $\rightarrow$  The imprisonment awarded under this section may be in addition to a substantive sentence.  
2 years + 9 months

Fine

Imprisonment + Fine

$\rightarrow$  eg 379 - Theft

3 years + 10,000 + Both

2y + 10K

Only Fine

w/s 67 IPC

0-50 - 2 months

51-100 - 4 months

other case - 6 months.

JMFC - 3 years = 1 years = 12 months

3 years = 36 months

$= \frac{36 \text{ months}}{4} = \text{9 months}$

## Sec-65 IPC

Limit to imprisonment for non payment of fine, when  
imp & fine awardable.

shall not exceed  $\frac{1}{4}$  of the Imprisonment of offence.  
if the offence be punishable with imp as well as  
fine.

It is like offence punishment - 4 years  
max imp in default = 1 year

Chajjula vs state of Rajasthan (1972)

- If there is conflict b/w IPC sec-65 or Crpc  
sec-30 then Crpc will prevail.



Thus, suppose A is convicted of an offence which is punishable under the I.P.C. with imprisonment of either description for 4 years, or fine, or both, and he is sentenced by a First Class Magistrate to undergo imprisonment for a period of three years, *and also* to pay a fine of ₹ 200. In default of payment of the fine, A can be sentenced to imprisonment for an additional period of 9 months. Under S. 65 of the I.P.C, in default of payment of the fine, A may be sentenced to a period not exceeding 1 year, i.e., one-fourth of 4 years, the maximum imprisonment provided for the offence. But under the Criminal Procedure Code, the maximum period for which A may be imprisoned for non-payment of fine, *cannot*, in the present case, exceed 9 months, i.e., one-fourth of 3 years, which is the maximum imprisonment that can be awarded by a First Class Magistrate under the Criminal Procedure Code.

### Consecutive and concurrent sentences *Sec-31-*

At times, a person is convicted, at one trial, of two or more offences. Thus, if a theft is committed, the accused may be found guilty of both theft and of causing hurt. In the circumstances, he may be awarded sentences of imprisonment for *both* the crimes. Thus, he may be awarded imprisonment of 2 years for one crime and a year's imprisonment for the second. In such cases, the question arises as to whether the accused must spend an aggregate of three years in prison, or whether both sentences should run together, in which case, he would spend only two years in prison. If the terms of imprisonment are to be suffered one after the other, the sentences of imprisonment are said to run consecutively. If, on the other hand, the terms of imprisonment are to be



suffered together, the sentences are said to run *concurrently*. In the latter case, the lesser sentence *merges* into the greater.

In all cases, it is for the Court to decide whether two sentences passed against the same accused are to run concurrently or consecutively. The *general rule* is that such sentences run *consecutively*, and it is for the Court to direct, in a given case, that the sentences are to run concurrently. (S. 31)

It may also be noted that merely because the sentences are to run consecutively, and the *aggregate* punishment is in excess of the punishment which the Court is competent to inflict for a single offence, the Court need *not* send the offender to trial before a higher Court. However, for the purposes of *appeal*, the *aggregate* of all the consecutive sentences passed against an accused is deemed to be a single sentence.

Two further limitations are also imposed by S. 31 on a Court awarding consecutive sentences, viz.:

- (a) A person cannot be sentenced to imprisonment for more than *fourteen* years.
- (b) The aggregate punishment *cannot*, in any case, exceed *twice* the amount of punishment which the Court is competent to inflict for a single offence.

### Exercise of powers by successors-in-office

The powers and duties of a Judge or Magistrate can be exercised or performed by his successor-in-office. If there is any doubt as to who is the successor-in-office of any Additional or Assistant Sessions Judge, the *Sessions Judge* has to decide the question. Similarly, if there is any doubt as to who is the successor-in-office of any Magistrate, the *Chief Magistrate* or the *District Magistrate* is given the power to decide the question.

### Juvenile offenders

If CJM is competent to give 7 year punishment he may give 14 years punishment.

than the minimum so prescribed.

Where the accused steals a cow from the field, where it was put to graze by its master and then kills it for food, he will be guilty of the offence of theft and mischief under Sections 379 and 429, I.P.C., respectively. He may be convicted of these two offences at one trial and sentenced separately for each of them.<sup>3</sup>

It was held in *Bhaskaran v. Kerala*,<sup>4</sup> that direction that punishments should run concurrently is an integral part of the judgment. Therefore, a direction how the sentences in the two cases should run, issued subsequent to the disposal of the cases would amount to alteration of the judgment which is barred by Section 362, Cr. P. Code. Hence such directions cannot be issued after the judgment is pronounced.

In *Chatar Singh v. State of M.P.*,<sup>5</sup> accused was convicted for several offences and sentence of 20 years rigorous imprisonment was imposed. It was held that accused could not be sentenced to imprisonment longer than 14 years and as such sentence of 20 years imposed on accused was held liable to be set aside.

**32. Mode of conferring powers.—**(1) In conferring powers