

Chapter - 07

* Laws relating to Crime and its procedure.

* Theft :- A property attach to earth like tree isn't movable but it Capable of being Stolen once it Separated from earth

Moving something includes removing an obstacle separating it from another object

eg: - (i) Opening a Tap to steal an expensive liquid from container is theft.

(ii) A entices z's dog to follow him with food. if A intends to take the dog dishonestly, its theft when dog begin's to follow A.

→ Punishment of theft :-

- Imprisonment upto 3 year or fine or both.
- Theft in dwelling house :- Imprisonment upto 7 year and fine
- Theft by clerk or Servant :- Imprisonment upto 7 year and fine

• Theft with preparation to cause death, hurt or restraint :- rigorous imprisonment upto 10 years and fine

* Extortion :-

eg :- A threatens to keep z's child in wrongful confinement unless z signs a promissory note to pay A.

if z signs the note A committed extortion

Punishment = Imprisonment upto 3 years or fine or both

Extortion by fear of death or grievous hurt or acquisition of serious offence :-
imprisonment upto 10 years or fine.

* Robbery :-

eg :- A holds z down and takes z's money without z's consent. Since A has restrained z for committing theft, A has committed robbery

A tells z that your child is kidnapped and will kill the child if you don't give money. This is extortion and not robbery, because threat of harm is not immediate

Punishment for Robbery :-

Rigorous imprisonment upto 10 years or fine.

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if robbery is committed on highway between sunset and sunrise imprisonment may extend to 14 years

Punishment for attempting Robbery :-

- Rigorous imprisonment upto 7 years and fine.
- Dishonestly receiving stolen property =
Imprisonment which may extend 3 years or fine or both.

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Imprisonment in lieu of fine :-

If fine imposed is not paid magistrate can impose imprisonment in default of payment but imprisonment cannot exceed $\frac{1}{4}$ th of term of imprisonment which magistrate is competent to inflict as punishment

Section 41

Certain Measures to be followed by police officer to exercise of power u/s 41.

(i) Section 41A

↳ Issuance of Notice to appear :-

- If arrest is not of a Cognizable nature

Police must issue notice directing the person to appear before them.

- if person complies they should not be arrested unless there are specific reasons recorded for need to arrest

(ii) Section 41 'B'

Procedure for Arrest :-

- Every police officer while making an arrest shall :-
 - (i) wear clear identification (mean name Batch)
 - (ii) prepare an arrest Memo. attested by witness and Country signed by arrested person.
 - (iii) Inform the arrested person of their right to have a relative or friend notified.

(iii) Section 41 'D'

Right to Meet an advocate :-

- An arrested person has right to meet an advocate of their choice during interrogation

CASE LAW

* In Armesh Kumar vs. State of Bihar.

- Supreme Court highlighted misuse of arrest powers emphasizing that arrest should not be made solely because an offence is non bailable and

Cognizable.

- Arrest should be made Cautiously, not as a routine action.

(Police wale sir sir Cognizable offence Hoga then Apko directly arrest karenge. Otherwise always notice denge then 3111 sir 3110 then action lenge)

* in S.K. Alagh Vs. State of U.P.

- Demand draft were drawn in favour of Co. but neither the goods were supplied nor the money return.

• Court ruled that managing director ^{not} could be held vicariously liable.

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* Summon →

- Court can send Summon to a witness by registered post and if witness acknowledges receipt and refuses delivery Court may declare that Summon has been duly served.
- Person Summoned must comply with Summons, if not warrant can be issued.

SEARCH WARRANT :-

- Court Can Specify in the warrant the Particular Place to be Searched.
- Only district magistrate or Chief Judicial magistrate can issue warrant for searching Postal or telegraph authorities.
- Magistrate Can issue Search warrant for places Suspected to hold Stolen Property or forged document.

Search By POLICE :-

- Police officer Can Conduct Search without warrant if they reason to believe that something essential for the investigation Can be found.
- However, Following Conditions apply :-
 - (i) Police must record reason for the Search.
 - (ii) Police must follow procedure in Section 100 and 165.

CASE LAW

- * in State of Punjab Vs. Balbir Singh
- it was held that non-compliance with Search

Provisions affect the Credibility of Search but not validity of recovery or trial.

* Bail in Cases of Non-bailable Offences

Exceptions : -

Court can grant bail in any situation : -

- (i) if accused is under 16 years of age.
- (ii) if accused is women, sick or infirm → Mentally or Physically Not strong
- (iii) There is any special reason that makes granting bail just and proper.
- (iv) if trial for non-bailable offence is not concluded within 60 days from start of taking evidence accused must be released in bail.
- (v) if after trial but before judgement Court believes there are reasonable grounds to think accused is not guilty Court can release on bond without surety.

* Anticipatory Bail

- A person who believes they may be arrested for non-bailable offences can apply for anticipatory bail to High Court or Court of Session.
- It's Court's discretion to give such kind of anticipatory bail.
- However there are following conditions : -

- (i) Person must make them selves available for police interrogation when required
- (ii) Person must not induce threaten or promise anyone connected to the case to prevent them from disclosing facts.
- (iii) Person must not leave india without Court's permission.

CASE LAW

* in Case of Balakrishna Savalram Pujari Waghmare Shree Dnyaneshwar

Court clarified that Continuing offence cause ongoing injury and wrong doer is liable for as long as injury continuous

* in State of Bihar vs. Deokaran Nenshi

• Court explain that Continuing offence arises from ongoing disobedience to a rule or law.

• whereas, one time offence occurs when act is completed once and for all.

* in Case of Kuriachan Chacko vs. State of Kerala.

• A Case involved in money circulation scheme where promoters were aware that scheme is unworkable

yet they made false representation to induce people to invest

- Supreme Court held that promoters could be presume to have committed offence of cheating

* in Mohd. Ibrahim vs. State of Bihar

- Accused was alleged to have executed false sale deed. the real owner filed a complaint.

- However, accused believed in good faith that property belong to him and purchaser also believe this.

- Supreme Court held that accused is not guilty in cheating because there was no fraudulent or dishonest intention.

* in Shriti Enterprises vs. State of Bihar.

- A contract dispute arose where accused failed to keep their promises the complainant sought to prosecute under section 420 for cheating.

- Court held that mere breach of contract doesn't constitute cheating unless fraudulent or dishonest intention is established from the very beginning of transaction.

- If such intent is present criminal liability for cheating can be imposed however if promise was

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made in good faith but not fulfilled later the case would be breach of contract and only civil remedies would apply not criminal prosecution

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- ★ in Iridum India Telecom Ltd vs. Motorola
 - it was held that deception is essential for cheating and non-disclosure of relevant information can also be treated as misrepresentation leading to deception.
- ★ in M.N. Ojha vs. Alok Kumar Srivastava
 - it was held that intention to wrongfully retain excise duty qualifies as cheating specially if accused prevents the state from recovering what's due
- ★ in T.R. Arya vs. State of Punjab
 - negligence without dishonest intent does not amount to cheating.

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* Offences Related to Property Mark :-

- (i) According to Sec 479 of IPC Property Mark is a sign use to indicate that movable property belongs to specific person.
- (ii) This can be a symbol, label or any distinctive mark applied to goods or property to show ownership.
- (iii) Punishment for using false property Mark is Imprisonment upto 1 year or fine or both.

* false Property Mark :-

- (i) It means Marking or using property in a way that falsely suggest that it belongs to someone else.

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* Difference between fine and Penalty :-

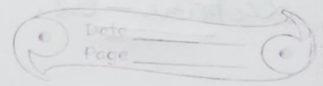
fine :- from Book

- fine → According to Merriam-webster dictionary fine "a sum imposed as punishment for an offense."

Penalty :-

- According to Merriam-webster dictionary, "the suffering or the sum to be forfeited to which"

↓ Fine is imposed for any offence when a penalty is imposed for non compliance. or crime.



a person agrees to be subjected in case of non fulfilment of stipulations.

fine :-

- fine is monetary punishment imposed for committing an offence or crime.
- it is generally used in criminal law where an illegal act or violation has been committed.

Example → As per Section 16(3) of Companies act fine is imposed for failing to comply with legal direction given under Section 16(1)

Penalty :-

- It is a monetary consequence imposed for non compliance or failure to follow a rule and regulation usually in civil cases.

Example → According to Section 12(8) of Companies act, 2013 if default is made in complying with requirements of Section 12 Company and officer who is in default shall be liable to a penalty of 1000 rupees for everyday during which default continues but not exceeding 1 lakh rupees.