



**COMPENDIUM OF  
GENERAL LETTERS AND CIRCULAR  
ISSUED BY  
ORISSA HIGH COURT**

**(CRIMINAL)**

## PREFACE

First of its kind in the State Judiciary ever since the separation, the "Compendium of General Letters & Circulars issued by the Orissa High Court (Criminal)" is the brain-child of Hon'ble the Chief Justice Mr. H. L. Agrawal who mooted the idea of compiling in the form of a book the numerous general letters and circulars issued ever and anon by this Court as also the Patna High Court, with a view to overcome the usual difficulty in locating the relevant instructions in the matter of transacting judicial business effectively within the prevailing system of judicial administration. The thread-bare compilation extending over long years as far back as 1916 was a herculean task and, to say the least, the proposition entailed a heavy toll of time and energy to mature into reality. But for His Lordship's relentless pursuit and meticulous supervision, the compendium would not have come into being within such an amazingly short time, belying the usual expectation.

It was well-nigh impossible to bring the volume up to date without adding considerably to its length, particularly in view of the complexity that has grown up in the sphere of administration of justice consequent upon the separation of the Judiciary from the Executive. Nonetheless, in order not to increase the length of the book and to make it dexterous, attempt has been made to compensate by eliminating quite a good number of old letters which, by efflux of time, have become either obsolete or less useful on account of the growing precision of the rules of procedure. For the sake of convenience an exhaustive index topic-wise has also been prepared.

The Registry owes an everlasting debt of gratitude to Hon'ble Mr. Justice S. C. Mohapatra for the benefic advice and affectionate guidance received at every stage of the venture.

It is hoped that the utility of the present compilation would not be outlived for decades to come and all in good time the compendium will earn the distinction of being a reliable and knowledgeable guide to the Subordinate Judiciary and the legal profession.

The Registry is specially appreciative of all the pains taken by Mr. S. F. Ahmed, ex-Special Officer (Special Cell) of the Court, for the timely publication of the compendium.

P. K. PANIGRAHI  
REGISTRAR (INSPECTION)

CUTTACK  
THE 2ND OCTOBER, 1988

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**GENERAL LETTER NO. 1 OF 1970**

(Civil and Criminal)

From

Shri S. K. Patro, B. L., Registrar, High Court of Orissa  
Cuttack.

To

All the District and Sessions Judges of the State

Dated Cuttack, the 17th February 1970.

Subject—Delivery of judgement within 30 days from the conclusion  
of arguments.

Sir,

I am directed to refer to General letters No. 3 of 1966 (Civil) and No. 1 of the 1969 (Criminal) on the above subject and to say that some doubt has been expressed on the question whether the date on which arguments in a case are heard and concluded may be excluded from computation of the maximum period of 30 days prescribed for delivery of judgement.

On a consideration of the matter, the Court observe that the period of 30 days prescribed in the aforesaid General Letters may be reckoned from and exclusive of the date on which arguments are heard and concluded.

I am to request that the above instructions may be kept in view in computing the thirty-day period prescribed for delivering judgements in civil and criminal case by all the Courts.

Yours faithfully,

S. K. PATRO

Registrar

**GENERAL LETTER NO. 3 OF 1970**

(Civil and Criminal)

To

All the District and Sessions Judges of the State.

Subject—Use and preservation of Shorthand Note-Books

Sir,

I am directed to refer to Court's General Letter No. 2 of 1970 (Civil and Criminal) and to say that in furtherance of the object of the

instructions issued therein, the Court direct that the following procedure shall be invariably followed in the subordinate courts:—

(i) Every Shorthand Note-Book used by a Stenographer for taking down the judgments and orders etc., of the officer to whom he is attached or of any other officer who utilises his services at any time, either in the temporary absence of the officer to whom the stenographer is permanently attached or with his consent, shall bear page marks numbered consecutively, according to the sequence in which the pages of the Note-Book are made use of.

(ii) The stenographer shall put his signature on each page of the Shorthand Note-Book.

(iii) He shall put his signature with date at the foot of the record of every dictation in the Shorthand Note-Book.

(iv) The Shorthand Note-Book, when used up, shall be consigned to the District Record Room and shall be destroyed after being preserved there for at least 5 years.

I am to request that the aforesaid instructions should be strictly followed by all courts in future.

Yours faithfully,

S. K. PATRO

Registrar

GENERAL LETTER NO. 6 OF 1970

(Civil and Criminal)

From

Shri S. K. Patro, B.L.

Registrar of the High Court of Orissa

To

All the District & Sessions Judges of the State

Dated, Cuttack the 19th November 1970

Subject—Courtesies to be shown to Superior Judicial Authorities on their entering the Court room presided over by a Subordinate Judicial Officer.

Sir,

I am directed to say that a question arose for the consideration of the Court as to the appropriate manner in which courtesies should be

shown by a Judicial Officer presiding over a court to Member of the High Court Bench and to other judicial authorities on their entering the court room in official capacity for the purpose of inspection of the ijlas work of the Officer. Upon the consideration of the matter and in order that there may be uniformity of practice in this respect the Court observe that a Member of the High Court Bench visiting the subordinate courts does so as a Superior Judicial authority and it is the duty of the Presiding Officer to stand on ijlas in mark of respect when the Hon'ble Judge enters the Court to inspect the ijlas work. Similar courtesies should also be shown to other superior judicial authorities such as the District and Sessions Judge and the Additional District Magistrate (Judicial) on their entering the court room for the purpose of inspection of court work.

I am, accordingly, to request that the above instructions be strictly followed in future by all the Judicial Officers in the State.

Yours faithfully

S. K. PATRO  
Registrar

19-11-1970

GENERAL LETTER NO. 1 OF 1971

(Civil and Criminal)

From

Shri K. P. Mohapatra, B.L.  
Registrar of the High Court of Orissa

To

All the District & Sessions Judges of the State

Dated Cuttack, the 24th February, 1971

Subject—Punctuality in attending courts

Sir,

I am directed to say that one of the matters discussed in the District Judges' Conference of 1970 was the failure of most of the Judicial Officers in attending the courts punctually at the appointed hour. It was impressed upon all the District & Sessions Judges that they should ensure that every judicial officer under their control attends office in time and holds court punctually at the appointed time every day. Instances have since come to the notice of the Court that some Presiding Officers continue to attend court without regard for punctuality and conduct judicial business till late hours. It is needless to point out that unpunctuality causes inconvenience to lawyers and litigants alike and violates the provisions of rule 1 of G. R. & C. O. (Civil), Volume I and rules 1 and 2 at page 1 of G. R. & C. O. (Criminal), Volume I.



The necessity of attending the court in time and coming to the Ijlas at the fixed hour was emphasised in General Letter No. 7 of 1944 (Civil), copy of which is enclosed for ready reference. The instructions contained therein are applicable not only to Courts exercising Civil Jurisdiction but also to Criminal Courts of all classes.

2. After careful consideration the Court direct that the Presiding Officers of all Civil and Criminal Courts in the State must attend the Court punctually at 10.30 a.m. come to the Ijlas at 11 a.m. and dispose of the Judicial business posted for the day by 4.30 p.m. at the latest. At the stations where the Courts function in morning hours between April and June, the Presiding Officers must also attend and leave the Courts punctually according to the fixed hours after disposal of judicial business which should ordinarily commence half an hour after the Court hours.

I am to request that the above instructions of the Court may be brought home to all the Judicial Officers working in your judgship and sessions division with a view to strict observance thereof.

Yours faithfully

Sd. K. P. MOHAPATRA

Registrar

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GENERAL LETTER NO. 7 OF 1944

(Civil)

From

A Salisbury Esq. I. C. S.

Registrar of the High Court of Judicature at Patna

To

All District Judges of Bihar and Orissa and the Judicial Commissioner of Chotanagpur.

Dated Patna, the 5th September 1944

Sir,

I am directed to say that it has been represented by the Court that great inconvenience is caused to lawyers and the litigant public by Presiding Officers of Courts not coming to the Ijlas at a fixed time.

The Court realise that Presiding Officers often have much work to do in chambers and that the time taken by such work varies from Court to Court. Presiding Officers should, however, fix a time when they will sit in court and should try to sit in Court every day at that appointed time even if it necessitates the putting off a part of their chamber work to the following day when it is exceptionally heavy. This will not only enable the lawyers and the litigant

public to know they will be ready, but will enable inspecting officers to know whether Presiding Officers are arranging sufficient work to occupy them during Court hours.

To ensure this, the Court further consider that Presiding Officers should note in the diary (Form No. R-8) the time at which they actually take their seats in Court by the side of the time at which they arrive at the Court building and also the time at which they actually rise from the Court there is no need to note the time at which they leave the Court building.

I have the honour to be

Sir,

Yours most obedient servant

A. SALISBURY

Registrar

GENERAL LETTER NO. 4 OF 1971

(Civil and Criminal)

From

Shri K. P. Mohapatra, B. L.,  
Registrar of the High Court of Orissa.

To

All the District and Sessions Judges in the State.  
Dated, Cuttack, the 21st July, 1971.

Subject—Undue adjournments made before actual date of delivery of judgements in civil and criminal cases.

Sir,

I am directed to invite a reference to the instructions issued by the Court in General Letter No. 3 of 1966 (Civil) and General Letter No. 1 of 1969 (Criminal) disapproving the practice of re-opening and re-hearing of arguments in civil and criminal cases after the arguments are concluded on a prior date and to say that it has come to the notice of the Court that some judicial officers are in the habit of hearing arguments either in part or in full on a particular date and of making long adjournments to one or more dates for further hearing after recording orders to the effect that arguments are heard in part. By this process they compute the maximum period of thirty days prescribed for delivery of judgement from the last date on which argument in a particular case is recorded in the order-sheet to be concluded after repeated adjournments. The Court have reason to believe that such a procedure is resorted to as a subterfuge for avoiding deliver of judgement in due time.

The court consider that once arguments in a case are heard on a particular date every attempt should be made to conclude the same that day. If for any reason arguments cannot be concluded on the date they are opened, the hearing should be continued on the day following and where necessary from day to day till it is concluded.

I am accordingly to request that the above instructions of the Court may be strictly followed in future by all the subordinate civil and criminal courts.

I am further directed to request that every instance of failure in hearing arguments continuously from the date they are opened till they are concluded should be demi-officially reported by the officer concerned direct to the address of the Registrar of the High Court under intimation to the District and Sessions Judge. The report shall be sent after the judgement is pronounced in the cases in question. Besides full description of the case, the report shall contain necessary particulars about the number of adjournments, with dates, made in breach of the above instructions and the reason therefor.

Yours faithfully,

K. P. MOHAPATRA

Registrar

GENERAL LETTER NO. 1 OF 1974

(Civil and Criminal)

From

Shri A. C. Das,  
Joint Registrar of the High Court of Orissa.

To

All the District Judges of the State.

Dated, Cuttack, the 21st June, 1974.

Sir,

I am directed to say that the Court direct that the work-load of the different officers under your jurisdiction shall be assessed by you at regular intervals. A report should be submitted to the Court with the requisite statistics if more officers than the existing number are necessary at any station. Similarly, a report should be submitted to the Court about the places from where any officer or officers should be withdrawn on the ground that the work-load does not justify their continuance. Necessary statistics should also be furnished in support of such proposals for withdrawal of officers. These directions of the

Court shall be followed in respect of Civil and Criminal cases triable by all classes of Judicial Officers in your judgment and sessions division.

I am to request that the above orders of the Court should be strictly followed henceforward.

Yours faithfully,

A. C. DAS

Joint Registrar

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GENERAL LETTER NO. 1 OF 1976

(Civil and Criminal)

From

Shri D. Hota, B. L.,

Registrar of the High Court of Orissa.

To

The District and Sessions Judges of the State.

Dated, Cuttack, the 22nd July, 1976.

Subject—Exemption of the Class II Officers of the Orissa Judicial Service from the requirement of G. L. No. 2 of 1971.

Sir,

I am directed to refer to G. L. No. 2 of 1971 in which it has been directed that all the subordinate Judicial Officers when they fail to deliver judgements within two weeks from the date of conclusion of hearing of arguments should address D. O. letters direct to the Registrar of the Court by the first day of every month furnishing copies thereof to the respective District Judges stating therein the names of parties and case numbers of the cases in which Judgements are delivered after more than two weeks in their respective courts. In addition, particulars as to the number of adjournments made, if any, after the conclusion of hearing and the dates of such adjournments till delivery of judgement shall also be stated.

2. In the District Judges' Conference on 15-1-1976 and 16-1-1976 the question of revision of the aforesaid General letter came up for consideration. It was the consensus of opinion of all the District Judges of the State that in view of the inexperience of most of the officers of the Orissa Judicial Service, Class II it may not be possible for them to prepare judgements within two weeks from date of conclusion of trial and they should be exempted from the requirements of G. L. No. 2/71. The court after careful consideration concur in the aforesaid decision and direct that the officers belonging to the Orissa Judicial Service, Class II should be exempted from the requirements of G. L. No. 2/71.

3. I am, therefore, to request that the aforesaid direction of the court may be brought to the notice of all the subordinate courts working under you for their information and guidance.

Yours faithfully,

D. HOTA

Registrar

GENERAL LETTER NO. 1 OF 1977

(Civil and Criminal)

From

Shri D. Hota, B. L.

Registrar of the High Court of Orissa

To

All the District & Sessions Judges of the State

Subject—Reward and fine for high and low percentage of personal service of summons by process servers.

Sir,

I am directed to say that the Court have had under consideration the question of introducing a system of giving rewards and imposing fines for high and low percentage of personal service effected by the process servers with a view to securing higher percentage of personal service of the processes issued in civil and criminal cases. Reports have come to the notice of the Court that after discontinuance of the service of processes in criminal cases through the police agency, the percentage of personal service with acknowledgement has considerably gone down with the result that it takes a long time to bring criminal cases to the hearing stage and unless some effective measures are taken to ensure higher percentage of personal service, with acknowledgement by the process servers it will not be possible to ensure expeditious disposal of civil and criminal cases.

2. After careful consideration of the matter in all its aspects the Court direct that all process servers who fail to secure less than 40% and above 30% of personal service with acknowledgement in a month should be fined Re. 1 (Rupee one) those securing personal service between 20% to 30% be fined Rs. 2 (Rupees two) and those securing less than 20% be fined Rs. 4 (Rupees four).

3. The Court further direct that process servers securing 70% to 80% of personal service with acknowledgement in a month should be given a reward of Re. 1 (Rupee one) those securing 80% to 90% be given Rs. 2 (Rupees two) and those securing more than 90% be given Rs. 4 (Rupees four).

4. The Judge in charge, Nizarat, whose duty it is to recommend any reward or fine should see that as far as practicable, the number of processes entrusted to the individual process servers of his establishment is equal. While considering the question of giving a reward or imposing a fine he should keep in view, the number of process entrusted to the process server concerned.

5. The Judge in charge, Nizarat while determining the question of awarding a reward or imposing a fine would take into consideration the hazards of the journey which the process server is to face in executing processes in hilly tracts and flooded areas, etc.

6. The process server on whom fine is imposed will have the right to make his representation before the District and Sessions Judge whose decision in the matter would be final.

7. The amount of expenditure on account of payment of reward to the process servers may possibly be met from the amount of the fine realised for which reason this system is not likely to involve any financial commitment to the State Government. The usual procedure to be followed is that the amount of fine levied should be deducted from the pay of the process server and credited to Government and the amount of rewards to be paid should be drawn from the contingent grant at the disposal of the Court.

The aforesaid instructions may be brought into force with immediate effect.

Yours faithfully,

B. HOTA

Registrar

GENERAL LETTER NO. 1 OF 1987

(Civil and Criminal)

From

Shri B. N. Misra, LL.B.

Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State

Dated, Cuttack, the 9th August 1982

Subject—Administrative work by the District and Sessions Judges on the last Saturdays of the month.

Sir,

I am directed to say that a doubt was entertained as to whether the last Saturday of the month should be utilised for administrative

work as provided under Rule 2(a) of the General Rules and Circular Orders (Criminal), Volume-I or it should be observed as Judicial Clearance Day as per Rule 5(iv) at page 215 of the General Rules and Circular Orders (Civil) Volume-I. Under Rule 2(a) of the General Rules and Circular Orders (Criminal), Volume-I the Sessions Judges and Chief Judicial Magistrates are required to devote all working Saturdays for administrative work at the headquarters subject to adjustment of hearing of part-heard Sessions Cases. Rule 5(iv) of Chapter-I, Part IX at page 215 of the General Rules and Circular Orders (Civil), Volume-I lays down that the last Saturday of every month should be set aside as a 'Clearance Day' on which day cases will not be heard except the part-heard Sessions Cases and urgent Criminal Work. It further provides that the District Judges will finish the pending judgements on the last Saturday of the month but at the same time they are required to perform other duties such as consideration of the Sheristadars inspection report, examination of the diaries of the Subordinate Courts and inspection of the office. There seems to be no conflict between the rules in the General Rules and Circular Order (Civil) and General Rules and Circular Orders (Criminal) as regards the nature of duties required to be performed by the District and Sessions Judges on the last Saturday of the month.

In the above premises, the Court direct that the last Saturday of the month is to be primarily utilised administrative work like all other working Saturdays of the month, there is no bar to utilise a part of the day for finishing pending judgements.

I am, accordingly to request that the aforesaid instructions be strictly followed in future.

Yours faithfully

B. N. MISHRA

Registrar

GENERAL LETTER No. 2 OF 1982

(Civil and Criminal)

From

Shri B. N. Mishra, LL.B.  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State

Dated, Cuttack, the 9th September 1982

Subject—Submission of accurate periodical statements on due dates  
Sir,

I am directed to refer to Rule 336 at page 98 of the General Rules and Circular Orders (Criminal), Volume-I and 33 at page 196

of the General Rules and Circular Orders (Civil), Volume-I, which provide that quarterly statements should be submitted by the District and Sessions Judges to the High Court on or before the 25th of the month next succeeding the period to which they relate. Further Rule 3349-at page 101 of the General Rules and Circular Orders (Criminal) provides that at the end of each month Sessions statement shall be submitted to the High Court showing all cases pending for trial at the commencement of the month or brought before the Court during the month. It is noticed that proper attention is not being bestowed to the submission of accurate periodical returns to the Court by the due dates. The necessity for timely submission of statements and returns has been impressed upon by the Court from time to time and a reference may be made to the instructions contained in General Letters No. 1 of 1924 (Criminal), No. 3 of 1954 (Criminal) and No. 2 of 1965 (Criminal). Despite such repeated instructions there has been inordinate delay in the submission of statements and returns, as is painfully observed by the Court.

I am, therefore, to request you to see that accurate statements are furnished to the Court, in time. In case of default, the Court will take a serious view in the matter.

Yours faithfully

B. N. MISRA

Registrar

GENERAL LETTER No. 1 OF 1986

(Civil and Criminal)

From

Shri J. M. Mohapatra, M.Com., LL.B.  
Registrar (Judicial)  
Orissa High Court, Cuttack

To

All the District and Sessions Judges of the State

Dated, Cuttack, the 17th/19th June 1986

Subject—Maintenance of Diary (R)-8 (Civil) & (R)-6 (Criminal)

Sir,

I am directed to say that the Court after careful consideration of all the previous General Letters and Circulars on the subject noted above, have been pleased to observe that the following instructions should be followed in the matter of maintenance of Court Diary by the Subordinate Courts henceforth.



2. The Presiding Officers should sit in the Court every day at the appointed time and should note in the diary, the time at which they actually take their seats in the Courts by the side of the time at which they arrived at the Court building, and also the time at which they actually rise from the Courts and by its side the time of their departure from the Court building. They should strictly observe punctuality in Court attendance and take sit in the Courts at the appointed time even if it necessitates the putting off a part of the chamber work to the following day when it is exceptionally heavy. At the time of inspection, the inspecting authorities should carefully examine the diaries of the Presiding Officers and see whether they are properly recording the time of their arrival and departure and in case they notice any deviation from the instructions, they should note the fact in their inspection notes.

3. The Court deprecate the practice in Courts of giving short and frequent adjournments in suits and cases fixed for hearing and fixing large number of suits and cases for hearing on a day on which it is impossible for the Court to take them up as it leads to corruption and causes harassment to the parties. In this respect the Presiding Officers may profitably note and follow the observations of the Hon'ble Mr. Justice H. R. Meredith in the judgement in C. R. No. 302/43 (sheikh Yaruddin Vrs. Mr. B. Das).

"Suits should not be fixed for hearing month after month when there is no prospect of their being actually heard. Only sufficient work should be fixed each day to ensure a reasonable prospect of its being done. The Court itself should watch its diary and see that cases are fixed accordingly. Where necessary long adjournments should be given without hesitation. One effective adjournment for six months is better than six ineffective adjournments. The order sheet should invariably indicate the grounds for adjournments and the Courts's reason for allowing the same."

4. Maintenance of diary being the personal responsibility of the Presiding Officer, the Presiding Officers should plan the posting of suits and cases carefully and methodically, so that there is adequate work everyday and there is no undue detention of witnesses. The Court wish to impress upon all the Presiding Officers of the Subordinate Courts that while posting of cases for hearing in the diary, they should keep in view need of their full engagement for the day, the inconvenience that may be caused to the litigant public whose cases are adjourned and the necessity of avoidance of undue detention of witnesses and adjournment of cases for hearing. Mechanical orders of adjournment of cases can never be countenanced. The Presiding Officers should properly scrutinise the work of their subordinates and avoid adjournment due to non-compliance of Court's order and avoid to make untrue statement in order sheets that he has no time to hear a particular case although the diary shows that he had adequate time. The Court emphasize that the business of Judicial Court should be so systematically transacted that litigants are not put to any harassment. Cases of hearing should be methodically arranged and posted on convenient dates without the necessity of adjournment. Cases of adjournments for non-compliance of Court's order without taking any action against the concerned clerks would be seriously viewed. Cases of detention of witnesses should be properly scrutinised by the inspecting officers.

5. All Presiding Officers availing administrative clearance days should maintain separate diaries for entering therein the broad features of the administrative works done by them on Saturdays in order to enable the High Court to know at the time of inspection that the system of doing administrative work on Saturdays really fosters improvement in judicial administration.

6. Presiding Officers required to hold circuits for the trials of Sessions Cases should maintain a Sessions Circuit Diary and note the cases dealt with by them at the circuit places.

7. There is no need to maintain separate diaries for Mobile Courts. For proper assessment of the work done by the Magistrate holding Mobile Courts, he should maintain the entries in the Court diary about the time spent by him in holding Mobile Court, and places where the Mobile Court was held, approximate distance covered and the number of cases instituted and disposed of (with the case numbers) on his return to headquarters.

8. So far as the matter relating to examination of witnesses in Sessions and Criminal Cases is concerned, the running total of witnesses examined everyday should be noted in red ink from day to day in the diary showing the number of witnesses in attendance, number examined and discharged, number declined and discharged and the number detained during each quarter of the year. Figures for witnesses in criminal cases under regular trials and those under summary trials should be shown separately and new serial numbers should be started at the commencement of each quarter. The number of witnesses examined in preliminary enquiries under Sections 202 and 340 Cr. P. C. and under section 299 Cr. P. C. should be noted separately in the diary and they should not be mixed up with the number examined in regular trials. The number of witnesses examined in chief whose cross-examination is deferred need not be shown against the heading "Number examined and discharged., but the aforesaid information may be shown in a separate note below the said heading. The inspecting authorities should scrutinise the entries in every page of the diary and give proper instructions wherever there is undue deviation and also examine if the officers are doing adequate work every day.

I am, therefore, to request that the above instructions of the Court may be strictly followed by all the Subordinate Courts in the State.

Yours faithfully,

J. M. MOHAPATRA

Registrar (Judicial)

G. L. 7/44 (Civil), 1/54, 6/45 (Civil), 6/62

L. 12006/16-11-73 (Cr.), 1623/6-3-62, 11534/26-11-84 (Cr.), 6568/21-9-66 (Cv.), 3033/4-4-75 (Cr.), 7969/8-7-81 (Cr.), 1501/3-3-62, 8137/63, 23-12-63 2957/30-4-76, 1135/28-1-82 (Cr.).

## ORISSA HIGH COURT, CUTTACK.

General Letter No. 1 of 1987

(Civil and Criminal)

From

Shri S. K. Behera, Registrar (Administration), High Court of Orissa.

To

All the District and Sessions Judges of the State.

Dated: Cuttack, the 17th July 1987.

Subject—Opening of subordinate Judicial Courts, both Civil and Criminal on dates of sitting of Lok Adalats.

Sir,

I am directed to say that the Orissa Legal Aid and Advice Board in its endeavour to bring about amicable settlement between the litigating parties is, usually, setting up Lok Adalats in different areas even on Sundays and Public holidays for the sake of convenience and on each such occasion, approaching the Court for the opening of the subordinate Courts for recording compromises entered into between the parties.

This practice having become a regular feature, the Court after due consideration of the matter are pleased to decide that hereafter, on receipt of intimation from the Member-Secretary of the said Board in regard to the dates of sitting of the Lok Adalats, the District Judge concerned should issue suitable instructions to the Presiding Officers of all the Judicial Court both civil and criminal, of the station where such Adalats are to be held to remain present in their respective Courts on those dates and receive and dispose of compromise petitions, if any, filed before them, in accordance with law.

The above instructions be followed in future without any deviation until further orders.

Yours faithfully

S. K. BEHERA

Registrar (Administration)

## GENERAL LETTER No. 5 of 1916

From

The Registrar of the High Court, of Judicature at Patna

To

The District and Sessions Judge of Cuttack.

Dated Patna, the 12th August 1916 .

Sir,

The attention of the Judges having been drawn to several instances of protracted enquiries under section 195 of the Criminal Procedure Code. I am directed to say that such applications should be promptly disposed of. This section only contemplates a summary enquiry before granting sanction to prosecute and it was never intended that the court to which the application for sanction is made, should hear at full length the whole of the evidence which will be placed finally before the trying Court. I am to add that protracted enquiries only tend to defeat the ends of justice by giving increased opportunities for fabrication of false evidence and the gaining over of witnesses.

English Department,  
Criminal.

I have the honour to be  
Sir,

Your most obedient Servant  
W. S. COUTTS  
Registrar

## GENERAL LETTER No. 2 of 1924

From

J. F. W. James, Esq., I.C.S.

Registrar of the High Court of Judicature at Patna

To

All Sessions Judges (including the Judicial Commissioner of Chota Nagpur) and All District Magistrates and Deputy Commissioners.

Dated Patna the 6th November 1924

Subject—Instructions to Criminal Courts in Bihar and Orissa in the matter of summoning clerks from the Telegraph Check Office.

Sir,

It having been brought to the notice of the High Court that inconvenience is caused to the Government Telegraph Check Office, Calcutta, in consequence of clerks attached thereto being summoned

from time to time by Criminal Courts to attend those Courts to produce draft messages and to give evidence in cases in which draft messages are required for examination, I am directed to say that the following instructions should be observed by the subordinate Criminal Courts:—

(a) Section 95 of the Code of Criminal Procedure lays down the procedure in regard to the production of Post Office or Telegraph Office records before Courts of Criminal Jurisdiction. Sub-section (3) of section 94 of the Code expressly exempts letters, telegrams and parcels in the custody of the Postal or Telegraph authorities from the operation of sub-section (1) and (2) of that Section and a Court desiring the production of any such letter or telegram must proceed under section 95. The intention of this section appears to be that an officer should be deputed by the Court concerned to the office where such letter or telegram may be and that the Postal or Telegraph authorities should be directed to make over the document to the officer so deputed, who will then be in a position to prove that the document was produced from the custody of the Postal or Telegraph authorities.

(b) The attendance of Telegraph office clerks should be required only if they are in a position to prove the hand writing of the message or otherwise identify the writer or person who handed it in for transmission or to give material evidence on other relevant matters which cannot be proved from other sources.

I have the honour to be

Sir

Your most obedient servant

J. F. W. JAMES

Registrar

**GENERAL LETTER No. 3 of 1925**

**From**

J. F. W. James, Esq., I. C. S.

Registrar of the High Court of Judicature at Patna

**To**

All District & Sessions Judges

The Judicial Commissioner of Chota Nagpur and all District Magistrates and Deputy Commissioners.

Dated, Patna the 5th December 1925

Subject—Examination of lady doctors in cases under chapter XVI of the Indian Penal Code.

Sir,

I am directed to say that it has been represented to the Court that lady doctors when summoned to give evidence in Criminal Courts have

been subjected to unnecessary embarrassment in cross-examination. I am accordingly to suggest that when a lady doctor is examined as a witness in a case under Chapter XVI of the Indian Penal Code, her examination may be conducted in camera. In this connection, I am also to request that the attention of Magistrates may be drawn to the provisions of sections 148(2)151 and 152 of the Indian Evidence Act.

I have the honour to be

Sir

Your most obedient servant

J. F. W. JAMES

Registrar

GENERAL LETTER NO. 1 OF 1934

From

J. G. Shearer, Esq., I.C.S.

Registrar of the High Court of Judicature at Patna

To

All District Magistrates and Deputy Commissioners

Dated Patna, the 15th November 1934

Sir,

I am directed to refer to rule 11 at page 97 of the General Rules and Circular Orders Criminal, Volume-1, which provides that in calculating the duration of cases before the Magistrate, time must be counted from the date of apprehension of the accused or of his appearance in Court whichever was the earlier. The rule does not specifically mention cases in which there are several accused persons, but it is obviously intended that in such cases the duration should be calculated from the date on which the first accused to be apprehended or to appear in Court is apprehended or appears in Court. The High Court has noticed that in certain subordinate Courts the duration is counted from the date of apprehension or appearance of the last accused and that showing to this incorrect procedure cases which according to the correct mode of computation, are pending over three months or over one month are not so entered in Parts I and II respectively of the quarterly statements submitted by the Subordinate Court in form(S)3. I am, therefore, to request you to satisfy yourself in future especially during inspections of the accuracy of the quarterly statements in this respect. The Subordinate Courts may also be instructed that in

pending cases in which there are several co-accused an explanation of delay should be given whenever there is an interval of over three months or one month as the case may be, from the date on which the first accused to be apprehended or to appear in Court was apprehended or appeared in Court.

2. A practice exists in some Courts of calculating the interval of two months mentioned in rule 42 at page 19 of the General Rules and Circular Orders, Criminal, Volume I, from the date of apprehension of the last accused and not from that of the first. I am to request you to see that the practice where it exists is discontinued and that an explanation of delay is submitted by the committing Magistrate whenever the interval between commitment and the apprehension of any of the accused persons exceeds two months.

I have the honour to be

Sir

Yours faithfully,

J. G. SHEARER

Registrar

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GENERAL LETTER NO. 2 OF 1935

From

H R. Meredith, Esq., I. C. S.

Registrar of the High Court of Judicature at Patna

To

All Sessions Judges  
The Judicial Commissioner of Chota Nagpur  
All District Magistrates and  
All Deputy Commissioners

Patna, The 7th November 1935

Subject—Issue of notice to the complainant or private prosecutor in Criminal appeals and revisions.

Sir,

I am directed to say that it has come to the notice of the High Court that there is no uniformity of practice in the subordinate criminal courts as regards the issue of notice to the complainant or private prosecutor in criminal appeals and motions. In some districts such notice is not issued while in other districts there is considerable divergence as to the class of cases in which it is issued.

2. Although the Code of Criminal Procedure does not in general make it obligatory on the Court to issue notice to the complainant, the practice, where it exists, of not giving such notice, is not in the opinion of the High Court sound. They consider that it is elementary justice

that no order adverse to the lawful private prosecutor, or person initiating a proceeding under the Code of Criminal procedure or person who is to receive compensation, should be passed without, at the least, notice being given to him. Purely technical considerations as to the Crown being theoretically the prosecutor should not be stressed. In any case, if the private prosecutor has notice, he has an opportunity of pressing the District Magistrate to enter appearance.

3. To secure the assistance of the complainant or the private Prosecutor particularly in cases in which the Crown does not appear, notice must be given to him of the date of hearing of the appeal or application. To this end and with a view to standardize procedure in the Subordinate Courts, the following instructions are prescribed for guidance and I am to request you to see that the instructions are carefully observed in your Court and in the Courts Subordinate to you.

1. Notice should be given to the complainant (Private Prosecutor).

(a) both in appeals from and in applications for revision of orders of conviction or of sentence; and

(b) in applications directed against orders, especially those under Chapters X, XI, XII, XXXV, XXXVI, XLIII, and XLIV of the Code of Criminal Procedure.

2. When notice is issued to the private Prosecutor, a note should be made upon the notice to the effect that (1) the Crown has the right to appear to oppose the appeal or application, and (2) that except where the right is given by law to him, the person to whom the notice is issued, requires the permission of the Court to appear, and ordinarily will not receive such permission, if the Crown appears.

3. Unless notice is required to be given to him by law, failure to secure service upon the complainant or private Prosecutor should not be allowed to cause undue delay in the hearing of an appeal or application, particularly, if the accused person is in jail.

I have the honour to be

Sir,

Your most obedient servant

H. R. MEREDITH

Registrar

GENERAL LETTER NO. 1 OF 1936

From

H. R. Meredith, Esq., I. C. S.  
Registrar of the High Court of Judicature at Patna

To

All Sessions Judges and  
The Judicial Commissioner of Chota Nagpur  
Dated Patna, the 31st January 1936

Sir,

I am directed to say it has come to the notice of the Court that some Sessions Judges do not exercise a sound discretion in selecting



under the provisions of rule 64 at page 26 of the Court's General Rules and Circular Orders, Criminal, Volume 1, material exhibits for transmission to the High Court. The Court, therefore, desire to impress on all Sessions Judges that in applying the Rule and the instructions in General Letter No. 1 of 1935 (Criminal), the personal attention of the presiding Judge or if he has left the station, of the Sessions Judge, is essential and in particular all bloodstained weapons, garments and other articles which are relied upon by the prosecution to prove the identity of the murderer or his victim are to be among the exhibits to be sent to this Court with the record of a death reference case.

I have the honour to be

Sir,

Your most obedient servant

H. R. MEREDITH

Registrar

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GENERAL LETTER NO. 2 OF 1936

From

H. R. Meredith, Esq., I. C. S.

Registrar of the High Court of Judicature at Patna

To

All District and Sessions Judges  
The Judicial Commissioner of Chota Nagpur  
All District Magistrates, and  
all Deputy Commissioners

Dated Patna, the 24th February 1936

Subject—Subordination of the joint process serving establishment to the Court, issuing a process for the purpose of execution of that process.

Sir,

I am directed to refer to the Court's General Letter No. 1 of 1933 upon the appropriate and most efficient agency for the prosecution of cases in which there is an order of the Court to prosecute, and to say that in the case of complaints governed by section 195 (1)(a) of the Code of Criminal Procedure, where the complainant is a public servant or the Presiding Officer of a Court not qua Court but in his capacity as public servant difficulties may arise in view of the decision in the case of Thakur Prasad Vs. The King Emperor (XVI. P. L. T. 808), owing to the Public servant concerned not being the direct subordinate of the officer presiding over the Court whose process is resisted. In

order to prevent the possibility of such difficulties the Court have made an addition to rule 25 at page 14 of the Court's General Rules and Circular Orders, Civil, Volume I, providing that henceforward wherever there is a joint process serving establishment, the Nazir and all his staff will in addition to their present subordination, also the subordinate to any Court issuing a process for the purpose of execution of that process, and must therefore place themselves under the orders of the Presiding Officer in that regard.

I have the honour to be  
 Sir,  
 Your most obedient servant  
 H. R. MEREDITH  
 Registrar

GENERAL LETTER NO. 5 OF 1940

(Criminal)

From

H. Whittaker, Esq., I. C. S.

Registrar of the High Court of Judicature at Patna

To

All the Sessions Judges of Bihar and Orissa including The Agency Sessions Judges of Ganjam and Koraput, The Judicial Commissioner of Chota Nagpur and All District Magistrates and Deputy Commissioners of Bihar and Orissa including those of Ganjam and Koraput Agencies.

Dated Patna, the 18th December 1940

Sir,

A case has recently been brought to the notice of the Court in which a sentence seven years imprisonment passed by an Assistant Sessions Judge was reduced to two years imprisonment by this Court. The Assistant Sessions Judge concerned sent a modified warrant to the Jail Authorities in accordance with the provisions of rule 76 read with rule 79 at page 29 and 3-0-32 respectively of the Court's General Rules and Circular Orders, Criminal Volume I, but took no steps to secure the return of the Original Warrant from the Jail Authorities and cancel it as required by clause (c) of rule 76. He thus became partly responsible for the prisoner being wrongfully kept in Jail beyond the legal term of two years.

2. I am, therefore, directed to draw your attention to the necessity of observing strictly in future rule 76 and the directions contained in form (M) 75 at page 184 of the Court's General Rules and Circular Orders, Criminal, Volume II and to point out that it is the duty of the trial Court to issue reminders to the Jail Authorities from time to time to secure the return of the original warrant and that its duty of

complying with clause (c) of rule 76 is not discharged until the original warrant has been obtained from those Authorities and cancelled and attached to the record.

I have the honour to be  
 Sir,  
 Your most obedient servant  
 H. WHITTAKER  
 Registrar

GENERAL LETTER NO. 1 OF 1942

(Criminal)

From

H. Whittaker, Esq., I. C. S.  
 Registrar of the High Court of Judicature at Patna

To

All the District and Sessions Judges of Bihar and Orissa including the Agency Sessions Judges of Ganjam and Koraput and the Judicial Commissioner of Chota Nagpur.

Dated Patna, the 12th February 1942

Subject—Delay in the trial of Capital Sentence cases.

Sir,

I am directed to forward a copy of letter No. 50-34-41 G. G.(B), dated the 24th April 1941, from the Joint Secretary to the Governor-General (Public) regarding delays in the trial of Capital Sentence cases.

2. In order that the Court and the Provincial Government may be furnished of expeditiously as possible with the explanatory information now required by the Governor-General, the Court have decided, in consultation with the Provincial Government, that in all cases where there has been an interval of 9 months or more between the apprehension of the accused and the conclusion of the trial in the Court of Session, a full explanation of such delay should in future be sent to the Court along with the proceedings submitted under the provisions of section 374 of the Code of Criminal Procedure.

3 It should be clearly understood, however, that the period of 9 months here allowed before a Capital Sentence case becomes explanatory, should in no circumstances be regarded as the interval which may justifiably intervene between the apprehension of the accused and the conclusion of the trial in the Court of Sessions. On the contrary, every endeavour should be made to bring capital sentence cases to trial as soon as possible, if necessary, by giving them preference over other cases of a less serious type.

I have the honour to be  
 Sir,  
 Your most obedient servant  
 H. WHITTAKER  
 Registrar

GENERAL LETTER NO. 5 OF 1944  
(CRIMINAL)

From

A. Salisbury, Esqr., I. C. S.,  
Registrar of the High Court of Judicature at Patna

To

All Sessions Judges of Bihar and Orissa. The **Judicial**  
Commissioner of Chota Nagpur.

Subject—Examination of official witnesses on commission  
Dated Patna, the 4th September 1944

Sir,

I am directed to say that it has been brought to the notice of the Court that considerable dislocation of work and expenditure in the shape of travelling allowance are caused when public officers are summoned to give evidence of a formal character in criminal cases.

The Court consider that this dislocation and expenditure can be frequently avoided if these officers are examined on commission. They, accordingly, draw the attention of all Sessions Judges to the provisions of Section 503 of the Code of Criminal Procedure. Where the examination of a Public Officer is necessary for the ends of justice and his attendance can not be procured without an amount of delay, expense or inconvenience which, in the circumstances of the case, would be unreasonable, the Sessions Judge may dispense with his attendance and may issue a commission, under the provisions of Section 503 of the Code of Criminal Procedure, for his examination. It is however to be distinctly understood that it is not intended to fetter in any way the discretion of Sessions Judges to summon official witnesses in suitable cases.

I have the honour to be

Sir,

Your most obedient servant

A. SALISBURY

Registrar

GENERAL LETTER NO. 88 OF 1944  
(CRIMINAL)

From

A. Salisbury, Esq., I. C. S.  
Registrar of the High Court of Judicature at Patna

To

All District Magistrates and Deputy Commissioners of Bihar and Orissa. The Agents to the provincial Government of Orissa in Ganjam and Koraput.

Dated Patna, the 3rd November 1944

Sir,

It has come to the notice of the Court that in some districts records in Criminal cases are destroyed according to the date of

disposal in Trial Court, which is contrary to Rule 42 at pages 66—68 of the Courts' General Rules and Circular Orders, Criminal, Volume I, I am directed to draw your attention to the above rule and to say that records are to be destroyed according to the date of disposal by appellate and Revisional Courts.

I have the honour to be

Sir,

Your most obedient servant

A. SALISBURY

Registrar.

GENERAL LETTER NO. 3 OF 1945

(CRIMINAL).

From

A. Salisbury, Esq., I. C. S.  
Registrar of the High Court of Judicature at Patna

To

All the District Magistrates and Deputy Commissioners of Orissa.

Dated Patna, the 23rd December 1945

Sir,

I am directed to say that as a measure of paper economy the Court direct that until further orders, both sides of a folio (an impressed stamp paper) may be used in preparing copies and the following procedure adopted for the duration of the emergency:—

(1) The top most line on the back of the paper should not begin higher than on the front. The space thus left blank will be used for affixing the Courts' seal and nothing the details of cost thereon.

(2) The number of words on a double sided folio would be 600 typed, or 360 manuscript English or 480 vernacular.

(3) The fees for extra words used will be realised by extra adhesive stamps.

I have the honour to be

Sir,

Your most obedient servant

A. Salisbury

Registrar

## GENERAL LETTER NO. 1 OF 1946

(Criminal)

From

A. Salisbury, Esq., I. C. S.  
Registrar of the High Court of Judicature at Patna

To

All District Magistrates and Deputy Commissioners of Bihar and Orissa and the Agents to the Provincial Government of Orissa in Ganjam and Koraput.

Dated Patna, the 2nd January 1946

Sir,

It has come to the notice of the Court that there is great diversity of practice in calculating the duration of cases before Magistrates. I am directed to draw your attention to rule II at page 97 of the Courts' General Rules and Circular Orders, Criminal, Volume I, and to say that, in future the duration of cases in Magistrates' Courts is to be computed from the date of the apprehension of the accused or of his appearance in Court, whichever was the earlier.

I have the honour to be

Sir,

Your most obedient servant

A. SALISBURY

Registrar

## GENERAL LETTER NO. 2 OF 1946

(Criminal)

From

A. Salisbury, Esq., I. C. S.  
Registrar of the High Court of Judicature at Patna

To

All Sessions Judges of Bihar and Orissa  
The Judicial Commissioner of Chota Nagpur

Dated Patna, the 25th January 1946

Sir,

It has been brought to the notice of the Court that the warrants issued by appellate Courts in form No. (M)75 do not quote the number of the case either in the trial Court or in the Appellate Court with the result that difficulty is often felt in the Jail Department in giving effect to the orders of the Appellate Court, in an extreme case where the Appellate Court modifies one of several sentences of exactly similar nature passed on the same date by the same Magistrate and for the same offence but in different cases, it is impossible for the Superintendent of the Jail to know from the modified warrant which sentence is affected by the warrant. To meet this difficulty, the Court direct

that the number of the case should be specified in the form of modified warrant [from No. (M)75 at page 184 of the Courts' General Rules and Circular Orders, Criminal, Volume II] after noting the Section under which the original conviction was recorded.

I have the honour to be

Sir,

Yours most obedient servant

A. SALISBURY

Registrar

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GENERAL LETTER NO. 5 OF 1946

(Criminal)

From

A. Salisbury, Esq., I.C.S.  
Registrar of High Court of Judicature at Patna

To

All District Magistrates and Deputy Commissioners, Bihar and Orissa.

The Agent to the Provincial Government of Orissa in Ganjam and Koraput.

Dated Patna, the 16th October 1946

Sir,

I am directed to say that during his inspection of Criminal Courts in Bihar in 1943, the Hon'ble Mr. Justice Meredith found a general complaint that orders in Miscellaneous Criminal proceedings are often passed in Magistrates' Chambers or at their houses and are not communicated to the parties or their pleaders. This causes much inconvenience to the parties and they are compelled to approach the Peshkar to know the orders.

The Court consider the practice to be undesirable and direct that in future all orders in miscellaneous Criminal proceedings should be passed in open Court and in the presence of the parties or their pleaders.

I have the honour to be

Sir,

Your most obedient servant

A. SALISBURY

Registrar

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## GENERAL LETTER NO. 2 OF 1951

(Criminal)

From

Shri K. C. Nanda, M.A., B.L.  
Registrar of the High Court of Orissa

To

All Sessions Judges of Orissa  
Dated Cuttack, the 6th April 1951

Sir,

I am directed to say that it has come to the notice of the Court that the practice obtaining in the Sessions Courts of the State in the matter of maintenance of the Sessions Register (R)23 is not uniform. In some of the Courts one common Register is maintained for all the districts comprising the Sessions Division while in the other Courts separate Registers for each district are maintained.

The Court consider that the latter practice is not only wholesome, but would also facilitate the compilation and submission of annual returns, separately for each district. Further rule 33 of Chapter II, Part VI at page 102 of the General Rules and Circular Orders Criminal, Volume I provides, by implication, the maintenance of a separate Register for each district.

The Court, accordingly, direct, that to ensure uniformity of practice in the matter of separate Sessions Registers (R)23 should be maintained for each district of a Sessions Division.

Yours faithfully,

K. C. NANDA

Registrar

## GENERAL LETTER NO. 4 OF 1951

(Criminal)

From

Shri K. C. Nanda, M. A., B. L.,  
Registrar of the High Court of Orissa

To

All Sessions Judges of Orissa  
Dated Cuttack, the 23rd November 1951

Sir,

I am directed to say that a question has been raised whether free copies of depositions should be granted to Public Prosecutors and State Defence Lawyers in Sessions Cases and if so, whether such copies shall be prepared at Government cost.

2. All the Sessions Judges of the State were consulted in the matter. Their reports reveal that the existing practice in some of the Sessions Divisions is to supply to the aforesaid officers free copies of depositions in Sessions cases at Government cost, while in other



Sessions Divisions no occasion has yet arisen, either to grant or refuse an application, in this respect. The majority of the Sessions Judges are, however, of the opinion that such copies required by the Public Prosecutors and State Defence Lawyers should be prepared by the Copyist Establishment and supplied to them at Government cost only.

3. Rule 12 of Part V at page 89 of the General Rules and Circular Orders, Criminal, Volume I, provides that no fees are to be required or paid for searching or for copying papers wanted by Public Officers for public purposes. The Court consider that the expression 'Public Officers' cannot be given any narrow or restricted meaning so as to exclude Public Prosecutors and State Defence Lawyers. Besides the expression 'Public Officer' as defined in section 2(17) (h) of the Code of Civil Procedure is clear enough to indicate that Public Prosecutors and State Defence Lawyers are Public Officers.

4. As to the other point, whether such free copies of depositions are to be prepared by the Office Typist or by the Copyist Establishment the Court consider that it will not be possible for the Office Typist to prepare such copies in addition to his normal duties. As such copies will be required for public purposes by Public Officers, the preparation thereof on plain paper should be at the cost of Government.

The Court, accordingly, direct that free copies of depositions in Sessions cases may be granted, on application, to the Public Prosecutors and State Defence Lawyers and that such copies be prepared by the Copyist Establishment, at Government cost, in the manner prescribed in rule 15 at page 90 of the General Rules and Circular Orders, Criminal, Volume I.

Yours faithfully

K. C. NANDA

Registrar

GENERAL LETTER NO. 1 OF 1953  
(Criminal)

From

Shri R. P. Mishra, B. L.  
Registrar of the High Court of Orissa.

To

All Sessions Judges and District Magistrates  
Dated Cuttack, the 6th January, 1953

Sir,

I am directed to invite a reference to rule 74 at pages 28-29 of the Courts General Rules and Circular Orders, Criminal, Volume I which prescribes the mode of communication of warrants for the release of prisoners on bail and to say that it has come to the notice of the Court that some of the subordinate appellate Courts are in the habit of sending such warrants, direct to the trying Courts for necessary action, in direct contravention of the instructions contained therein.

2. The Court do not favour this practice, inasmuch as it results in the incorrect and incomplete maintenance of the Register of Bail Orders in Form No. (R) 24 by the Magistrate concerned. They, therefore,

direct that the provisions of the aforesaid rule should be strictly followed in future.

3. The Court, further, direct that the District Magistrates, Sub-divisional Magistrates and Taluk Magistrates other than at subdivisional headquarters, who are in-charge of the register of bail orders, shall, on receipt of the warrants for release on bail, attend to them immediately, with a view to avoid any possibility of delay in giving effect to the same.

Yours faithfully

R. P. MISHRA  
Registrar

GENERAL LETTER NO. 2 OF 1953  
(Criminal)

From

Shri R. P. Mishra, B. L.  
Registrar of the High Court of Orissa

To

All Sessions Judges of the State

Dated Cuttack, the 10th March 1953

Sir,

I am directed to say that the Court have had occasions to notice that in cases of rioting and murder where a mob set out armed with deadly weapons and attack the other party as a result of which one or more of them are killed and the identity of the actual assailants of the deceased persons cannot be established some of the Sessions Courts do not frame a charge under section 302/149 or under section 304/149, I. P. C. against all the rioters with the result that when the identity of the actual assailants of the deceased persons is not established, some other members of the mob, whose presence and participation in the riot is established beyond reasonable doubt are being convicted only of a petty offence under section 147 or 323, I. P. C. resulting in the passing of grossly inadequate sentences, in such cases, section 149, I. P. C. is more appropriate than Section 34, I. P. C. and all the rioters may be held to be constructively guilty under section 302/149 or under section 304/149, I. P. C. as the case may be, if the evidence discloses that they knew it to be likely that murder or culpable homicide not amounting to murder would be committed in furtherance of their common object. Doubtless, it is always open to the Court, after trial, to reduce the offence to one under section 325/149 or under section 326/149, I. P. C. as the case may be, against those rioters who did not take part in the murderous assault vide 17, P. E. T. 350 and I. L. R. 25 Patna, 215 but it is very necessary that proper charges should be framed at the commencement of the trial. They consider that it is always hazardous to make up ones mind in this behalf in such cases of rioting in the initial stages and stake the result on proof of the individual charge for the murderous assault without a charge against all for the constructive liability therefore. Even if it be thought that, in such cases, the rioters cannot be held constructively guilty under section 302 or section 304, I. P. C. a charge under section 149 is very necessary against all the accused persons for the assault on the deceased in respect of such offence which, apart from the assailant, can be attributed to the rioters generally, i.e., for instance section 326,

I. P. C. or section 325, I. P. C.: The result of such regrettable omission, which *prima facie* appears to be erroneous, is that in cases of serious rioting which end in the death of some individuals on the spot, all the accused found guilty, ordinarily, escape with very inadequate sentences.

2. The Court, accordingly, consider that in all such cases of rioting and murder, the safer rule to follow would be to frame a charge under section 302/149, I. P. C. so that it may be possible to apportion the blame on the persons against whom the offence has been proved later. In the absence of a charge under section 149, I. P. C. the offence of murder is difficult to be proved especially when death was resulted from promiscuous assault made by several persons.

3. The Court further suggest that in all such cases of commitment, the Sessions Judge should carefully read the order of commitment or the medical report regarding the injuries sustained by the deceased and satisfy himself as to whether the case should be retained in his file or can be transferred to the file of the Assistant Sessions Judge for disposal. In any case when the order of the committing Magistrate indicates that the offence would come within the scope of section 300, I. P. C. unless it is covered by the exceptions to that section, the Sessions Judge should, ordinarily keep the case in his file or in the file of the Additional Sessions Judge and frame a charge under section 302, I. P. C. leaving it to the accused to establish during trial, those circumstances which would bring his case within the scope of the said exceptions.

4. Without fettering your discretion in any way, I am to request that the aforesaid instructions of the Court may be borne in mind while dealing with cases of the nature mentioned above.

Yours faithfully  
R. P. MISHRA  
Registrar

GENERAL LETTER NO. 3 OF 1953

(Criminal)

From

Shri R. P. Mishra, B. L.,  
Registrar of the High Court of Orissa

To

All the Sessions Judges of the State

Dated Cuttack, the 10th March 1953

Sir,

I am directed to say that a question has been raised as to whether a separate register of Sessions Cases in Form No. (R)23 should be maintained in the Courts of Additional and Assistant Sessions Judges.

All the Sessions Judges were consulted in the matter and the majority view is in favour of maintenance of separate Registers in the Courts of Additional and Assistant Sessions Judges. The Court, also consider that maintenance of such separate Registers will facilitate compilation and submission of periodical returns.

Accordingly, the Court direct that separate Register of Sessions Cases in Form No. (R) 23 should be maintained in all Courts of Additional and Assistant Sessions Judges.

Yours faithfully

R. P. MISHRA

Registrar

GENERAL LETTER NO. 2 OF 1955

(Criminal)

From

Shri R. P. Mishra, B. L.,  
Registrar of the High Court of Orissa

To

All District Magistrates of the State

Dated Cuttack, the 21st February 1955

Subject—Magistrates should obtain orders from the High Court before giving effect to the bail orders.

Sir,

I am directed to say that the Court have decided that the revision application of a convicted person sentenced to imprisonment shall not be taken up for admission nor his prayer for bail considered, until he has surrendered.

In order to give effect to such decision the Court direct that the Magistrate concerned should ascertain whether on the day on which an accused person surrenders before him, he has already previous to his surrender, obtained an order for bail from the Court in case the accused be found to have obtained a bail order from the Court, previous to his surrender the Magistrates should obtain necessary orders from the Court whether or not the bail order should be given effect to.

The above instructions should be strictly followed in future.

Yours faithfully

R. P. MISHRA

Registrar

GENERAL LETTER NO. 3 OF 1955

(Criminal)

To

All Sessions Judges of the State  
All the District Magistrates of the State

Sir,

I am directed to say that it has come to the notice of the Court that some of the subordinate Courts overlook the point that the deposition of a witness begins from the statement of his name and should include other particulars such as his age, home, parentage and profession. It has also been noticed that these details instead of being noted by the Presiding Officer himself, are noted by his Peshkar. In

some cases, the estimate of age, which is to be made by the Court itself and meant to be written in the second line of the form of the heading of deposition, is not made at all, which in others the blank space meant for the estimate is filled in by the Peshkar, either merely repeating the age given by the witness or representing his own estimate of the age of the witness. The Court consider that the question of the age of a witness is of great importance and it is necessary that in all cases where a witness has been examined an estimate of his age should be made and that this estimate should be the estimate of the Presiding Officer of the Court himself and not of the Peshkar.

In this connection, I am to invite a reference to rule 50 at page 22 of the Court's General Rules and Circular Orders, Criminal, Volume I, which provides not only for writing in the Presiding Officer's own handwriting the name of the person examined, the name of his or her father, etc. but also for writing in his own hand his estimate of the age of the person examined.

The Court direct that in future the provisions of the aforesaid rule should be strictly followed by all Presiding Officers.

Yours faithfully  
R. P. MISHRA  
Registrar

GENERAL LETTER NO. 4 OF 1955  
(Criminal)

To

All the Sessions Judges of the State

Dated: the 3rd December 1955

Sir,

I am directed to say that it has come to the notice of the Court that Sessions cases involving grave offences such as dacoity and homicide are being freely transferred to the file of Assistant Sessions Judges for disposal with the result that even when the offences committed are of a very serious nature and call for deterrent punishment, inadequate sentences which bears no relation to the gravity of the offence committed are imposed by Assistant Sessions Judges. The Court doubtless do not intend to fetter the discretion of the Sessions Judges in the matter of transfer of such Sessions cases to Assistant Sessions Judges under them, but are nevertheless anxious to see that the Sessions Judges should satisfy themselves that the nature and circumstances of the offences do not call for a heavier sentence than Assistant Sessions Judges can impose. The Court are mindful of General Letter No. 1 of 1945, issued by the Patna High Court in regard to cases of dacoity, but the principle enunciated therein would apply to cases of homicide, etc. The Court desire that these instructions should be treated as supplementary to those obtained in General Letter No. 1 of 1945 and that transfer of such cases should not ordinarily be made to the file of Assistant Sessions Judges.

Yours faithfully  
R. P. MISHRA  
Registrar

✓  
GENERAL LETTER NO. 2 OF 1957

(Criminal)

~~From~~Shri K. C. Nanda, M. A., B. L.,  
Registrar of the High Court of Orissa, Cuttack.

To

All District Magistrates of the State.

Sir,

I am directed to say that Honble the Chief Justice, during his last inspection of the Magisterial Courts at Koraput has made the following observation in the matter of exercising proper and effective control and supervision over the Magisterial Courts. The Court desire that the said observations should also be implemented in the other districts of the State and a report of compliance submitted to the Court as well as to the State Government.

(i) The Additional District Magistrate after completing his inspection should call for special progress reports in respect of long pending cases with a view to keep effective control over disposals. It is highly desirable for him to see some of the disposed of records specially where orders of acquittal or discharge have been passed and satisfy himself about the quality of work of the Magistrate concerned. Judgments of Acquittal are seldom taken to Superior Courts either on appeal or revision and there is consequently a tendency on the part of the trying Magistrate to be superficial in writing out such Judgments.

(ii) The Additional District Magistrate shall maintain close and effective control over the work of all Magistrates at headquarters by weekly or fortnightly scrutiny of the trial registers and order sheets of old cases, especially those which are long pending, and give helpful advice to the trying Magistrates.

(iii) It is very necessary to keep one First Class Magistrate and some other Magistrate according to requirements exclusively for Criminal work.

(iv) When the accused has once absconded, he should not be released on bail again unless the bailor is a local man.

(v) It has been observed that the diary (R) 6 is not maintained satisfactorily. Both the Bench Clerk and the Magistrate should bestow their personal attention in order to maintain it up-to-date. The hour of sitting and rising of the Court and the work done apart from the Judicial work should be noted. The unsatisfactory writing of cases posted for each date on the left half of the page should be avoided.

The Additional District Magistrates should take steps that the above instructions are strictly followed.

Yours faithfully

K. C. NANDA

Registrar

## GENERAL LETTER NO. 3 OF 1957

(Criminal)

From

Shri K. C. Nanda, M. A., B. L.,  
Registrar of the High Court of Orissa, Cuttack

To

All Sessions Judges of the State  
Dated Cuttack, the 14th August, 1957

Sir,

I am directed to say that a question has been raised as to whether in case of a death sentence passed by a Sessions Judge and confirmed by the High Court but subsequently commuted by the President of India, it is necessary that a modified warrant should be issued by the Court of Sessions in pursuance of the order of commutation.

2. The Court, after careful consideration of the matter, are pleased to direct that the order of commutation of the President of India communicated to the Jail authority itself serves as a modified warrant and, hence no other modified warrant need be issued by the Court of Sessions.

Yours faithfully

N. C. NANDA

Registrar

## GENERAL LETTER NO. 4 OF 1957

(Criminal)

From

Shri K. C. Nanda, M. A., B. L.,  
Registrar of the High Court of Orissa, Cuttack

To

All District Magistrates of the State  
Dated, Cuttack, the 7th September, 1957

Sir,

I am directed to say that it has been brought to the notice of the Court that no uniform procedure is being followed by the Criminal Courts in the matter of maintaining the record of proceedings for realisation of fines imposed in Criminal cases. In some districts separate miscellaneous cases are started after delivery of the judgment to facilitate the realisation of the fine imposed, whereas, in other districts entries are made from time to time in the order sheet of the original case records till the fine imposed is realised or ultimately written off.

2. Realisation of fines and issue of distress warrant in cases of default under section 386 of the Code of Criminal Procedure are important features of criminal administration. Therefore, to ensure effective check over realisation of fines and also to secure uniformity of practice and procedure in the matter throughout the State,

the Court direct that whenever a magistrate convicts an accused and sentences him to fine either with or without any substantive sentence of imprisonment there should be a separate order mentioning whether the fine has been paid or not and if the fine is not paid, there should be a further order in the order-sheet to start a miscellaneous case in which the original order of the Court imposing the fine and default sentence should be extracted. The Magistrate should then take action in the miscellaneous case record either to grant time under section 388 of the Code of Criminal Procedure or issue distress warrant straight off whereafter he should send the accused to jail custody. The Court further direct that these miscellaneous cases should bear a separate number in order to distinguish them from the original case record.

3. I am to request that the aforesaid instructions may be strictly followed by all the Criminal Courts under you in future.

Yours faithfully

K. C. NANDA

Registrar

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GENERAL LETTER NO. 5 OF 1957

(Criminal)

From

Shri K. C. Nanda, M. A., B. L.,  
Registrar of the High Court of Orissa, Cuttack

To

All District Magistrates of the State

Dated Cuttack, the 18th September, 1957

Sir,

I am directed to say that it has been brought to the notice of the Court that some of the Criminal Courts are not in the habit of taking prompt steps to return the original documents called for from the records of the Civil Courts under the provisions of section 94 of the Code of Criminal Procedure and reminders and special letters issued in that respect do not produce any effective result. It appears that certain original documents sent to the Criminal Courts in compliance with the requisitions are reported to be not available and in one case the document produced was destroyed along with the criminal case records.

2. The above state of affairs is undoubtedly very unsatisfactory. In order to obviate this difficulty and to ensure prompt return of the records and documents, the Court direct that all Criminal Courts should, when it becomes necessary in the course of proceedings pendings before them to refer to the contents of an original document deposited in other Courts as the party at whose instance the document is called for to immediately substitute a certified copy of it as soon as it is produced and marked as an exhibit and the original document thereafter be returned to the Court concerned forthwith. They further direct that if in any case the retention of the original document be deemed necessary till the disposal of the case, it may be so retained



only by a special order of the Court passed to that effect, but in any event, it should not be further retained after the disposal of the case.

3. I am to request that the aforesaid instructions may be observed strictly by all the the Criminal Courts, in future.

Yours faithfully

K. C. NANDA

Registrar

GENERAL LETTER NO. 4 OF 1958

(Criminal)

From

Shri K. C. Nanda, M. A. B. L.  
Registrar of the High Court of Orissa.

To

All Sessions Judges of the State (7)  
All District Magistrates of the State (13)  
Dated Cuttack. - the 15th September, 1958

Sir,

I am directed to say that it has been brought to the notice of the Court, that although under the provisions of Sub-section (2) of section 78 of the Indian Evidence Act, 1872 (1 of 1872), proceedings of the Legislatures can be proved by the journals of those bodies, or by published Acts or abstracts or by copies purporting to be printed by order of the Government concerned, requisitions are issued to the speaker and the Secretary of Lok Sabha for production of original documents in the custody of the House. The Court observe that the procedure followed in the matter is neither correct nor in accordance with law. As proceedings of the Legislature can be proved by the production of authorised parliamentary publications, the Court direct that Parliament should not be troubled in such matters except only when unpublished documents are required in evidence.

2. The Court further consider that, even in respect of such unpublished documents, it will not be necessary in most cases, to call for the original documents and it may be sufficient if certified copies thereof are made available. Accordingly, they desire that certified copies of the documents may, in the first instance, be called for, and, if at a later stage, any of the parties to the suit or case insist upon the production of the original documents, then alone the original document be called for.

I am to request that the aforesaid instructions may be strictly followed in future by all the subordinate criminal courts.

Yours faithfully

K. C. NANDA

Registrar

## GENERAL LETTER NO. 5 OF 1958

(Criminal)

**From**

Shri K. C. Nanda, M. A. B. L.  
Registrar of the High Court of Orissa.

**To**

All District Magistrates, of the State (13)  
Dated, Cuttack, the 21st November, 1958

**Sir,**

I am directed to say that under rule 11, Part VI, Chapter II at page 97 of the General Rules and Circular Orders, Criminal, Volume I, the duration of criminal cases is required to be counted from the date of apprehension of the accused or of his appearance in court, whichever is earlier. Further, under the rules, an explanation of the delay where any criminal case is pending for more than five months is submitted to the High Court along with the quarterly statements. It has been brought to the notice of the Court that as there is no separate column in the Trial Register in form No. (R) 3 for noting the date of apprehension or the date of appearance of the accused, some inconvenience is caused for finding out the average duration of the cases or the extent of pendency at the time of compilation of the periodical statement. In order, therefore, to facilitate easy compilation of the statements it has been suggested that the date of apprehension or the date of appearance of the accused may be noted in column 3 of the Trial Register below the date of receipt of the case.

2. All the District Magistrates were consulted in the matter. It appears that the existing practice in some of the districts is to note the date of apprehension or of the appearance of the accused in col. 3 of the Trial Register below the date of receipt of the case, while in some other districts this information is noted in the remarks column of case, while in some other districts this information is noted in the remarks column of the register. In one district, this is not at all noted in the register and necessary information at the time of preparation of the periodical statements is collected with reference to the case records. The majority of the District Magistrates are, however, of the view that the date of apprehension or of the appearance of the accused should be noted in col. 3 of the Trial Register below the date of receipt of the case.

3. The Court consider that, in order to ensure prompt and accurate submission of the periodical statements, it is very necessary that this information should be posted in the Trial Register. Otherwise, it will be very taxing and also time taking to make a reference to every case record for the purpose of collecting the information at the time of the preparation of the statements. They are further of the view that nothing of this information in the remarks column of the register will not be appropriate, in as much as, under the instructions contained in the note 2 below that form, the result of appeal or application for revision and the dates of adjournment of each case are required to be noted therein. On a careful consideration of the matter, the Court direct that the date of apprehension of the accused or the date of his appearance in court should be noted in column 3 of the Trial Register below the date of receipt of the case.

I am to request that the above instruction may be strictly followed in future, by all the Courts subordinate to you.

Yours faithfully  
K. C. NANDA  
Registrar

GENERAL LETTER NO. 4 OF 1960  
(Criminal)

From

Shri T. V. Rao, B.A., LL.B.  
Registrar of the High Court of Orissa

To

All District Magistrates of the State  
Dated Cuttack, 31st May 1960

Sir,

I am directed to say that it has been brought to the notice of the Court that the tendency of lodging false and frivolous complaints alleging commission of Criminal offences is on the increase and that landlords and tenants, employers and employees sometimes involve each other in vexatious prosecutions with the object of coercing each other to do certain acts or to agree to certain propositions which would not be enforced by lawful means, for instance, vacating premises, refunding arrears of rent already decreed, etc. It is also alleged that even lawyers get false complaints instituted against persons with a view to blackmailing them. Sometimes such prosecutions are also lodged in distant areas of different States other than the States in which the persons complained against may be residing causing them much inconvenience and expense before the complaints are finally dismissed.

2. The Court consider that the existing provisions of law are sufficient to deal with the problems and the evils may be remedied to a very great extent if Magistrates are careful and direct an enquiry under section 202 of the Code of Criminal Procedure before issuing process for compelling the attendance of the persons complained against. Further, in cases where cognizance has been taken and the Magistrate, after examining the witnesses, is of the opinion that the case is false, frivolous or vexatious, he can while discharging or acquitting the accused, award compensation under section 250 of the Code. Besides these procedural measures, it may be advantageous, if the Magistrate were to initiate action under section 182 of the Indian Penal Code in some glaring cases of false complaints filed before them.

3. Without any way fettering the discretion of Magistrates, in individual cases, the Court desire that the aforesaid instructions may be kept in mind by all the subordinate Magistrates while dealing with cases of false and frivolous complaints made before them.

Yours faithfully  
T. V. RAO  
Registrar

## GENERAL LETTER NO. 6 OF 1960

(Criminal)

From

Shri T. V. Rao, B.A.LLB.  
Registrar Orissa High Court, Cuttack

To

All Sessions Judges of the State  
All District Magistrates of the State  
Additional District Magistrate (Judicial)

Sir,

I am directed to say that it has been brought to the notice of the Court that the provisions of section 72 of the Code of Criminal Procedure are not being strictly followed by the Criminal Courts in the matter of issue of summons to the Regional Passport Officers of Delhi, Calcutta, Bombay, Madras and Lucknow and the staff working under them in connection with cases pertaining to forgeries of passports in as much as the summons are sent direct to the officers concerned instead of routing the same through the Head of Office. Under the provisions of the aforesaid section, where the person summoned is in the active service of the Government, the Court issuing the summons shall ordinarily send it, in duplicate, to the head of the office in which such person is employed and such head shall there upon cause the summons to be served in the manner provided by section 69 of Criminal Procedure Code. Accordingly, the summons meant for service on the Regional Passport Officer or his subordinates should be routed through proper channel instead of being sent direct to the officer concerned. The Chief passport officer of the Ministry of External Affairs is the Head of the Office so far as the Regional Passport Officers are concerned and the Regional Passport Officers are the heads of the office in respect of the staff working under them. The Court, therefore, direct that in order to avoid delay and inconvenience the summons intended to be served on the Regional Passport Officers should be effected through the Chief Passport Officer and on the staff working under the Regional Passport Officer through such officer only.

2. It has also been stated that the summons are usually issued to the Regional Passport Officers by name which makes it obligatory on such officer to be personally present in the Court. The main purpose for which the Regional Passport Officers are summoned is to produce and prove some official documents in any pending case before the Court. In exceptional cases however, when the personal presence of official designation it will not only facilitate quick compliance but will also be economical as the officer may be in a position to depute some of his subordinates to produce the required documents before the Court. In exceptional cases however, when the personal presence of a Regional Passport Officer is required before the Court, the summons may be issued by name.

3. The Court further direct that in any event summons to Regional Passport Officers or their subordinates should not be issued by any Criminal Court at short notice.

4. I am to request that the aforesaid instructions may be brought to the notice of all Courts subordinate you for their information and guidance.

Yours faithfully,

T. V. RAO

Registrar

GENERAL LETTER NO. 7 OF 1960

(Criminal)

From

Shri T. V. Rao, B.A., LL.B.,  
Registrar of the High Court of Orissa

To

All Sessions Judges of the State  
All District Magistrates of the State  
Additional District Magistrates (Judicial)

Dated Cuttack, the 11th November 1960

Sir,

I am directed to say that it has been brought to the notice of the Court that a Military personnel when found travelling in a train without having a proper ticket is produced before a Railway Magistrate, who orders the recovery of the fare and the penalty imposed on the individual concerned in accordance with section 113 of the Indian Railways Act, 1890 and in the event of his inability to pay the charges he is sent to undergo imprisonment for a period which the Magistrate concerned may direct. Such a course works great hardship on the Military personnel as on account of his association, however, short it may be with hardened Criminals in the Jail which is considered most undesirable from the point of view of discipline and security in the Army, he is discharged or dismissed from the service.

2. In order to obviate such a contingency, the Court direct that when a Military personnel is unable to pay the amount ordered to be recovered from him under section 113 of the Indian Railways Act, the Court concerned instead of sending him to Jail, should ascertain from him his identity, particulars of his commanding officer and communicate the same along with a warrant under section 386 of the Code of Criminal Procedure to the Collector of the district for the recovery of the dues. The District Collector may then forward the demand to the Commanding Officer concerned who will recover the amount due from the individual's pay and allowances and remit the same to him.

I am to request that the aforesaid instructions may be strictly followed by all the Courts in your Sessions/District division in future.

Yours faithfully,

T. V. RAO

Registrar

GENERAL LETTER NO. 3 OF 1961  
(CRIMINAL)

From

Shri T. V. Rao, B. A., LL.B.,  
Registrar of the High Court of Orissa.

To

All Sessions Judges of the State  
All District Magistrates of the State  
Additional District Magistrates (Judicial), Cuttack, Puri,  
Balasore, Dhenkanal, Sambalpur and Mayurbhanj.

Sir,

In continuation of the Court's General letter No. 6 of 1960 (Criminal), I am directed to say that it has been brought to the notice of the Court, that in view of periodical transfers being made amongst the officers and staff in the Regional Pass-Port and Emigration Offices, due to administrative reasons, it becomes extremely difficult for the officers, when summoned by name to produce documents in Courts, to come from a different station other than where the Court is sitting. It has been suggested that, when documents have to be produced and testified to in cases arising out of forgery of pass-ports, summons may be sent to the Regional Pass-Port Officers to depute any competent person from his staff, and the officials be summoned by name only when their personal attendance is considered essential by the Judicial authorities.

The Court agree with the above suggestion and direct that when documents have to be produced and testified to, summons should be sent to the Regional Pass-Port Officers to depute any competent person from his staff, and the officials be summoned by name only when their personal attendance is considered essential by the Judicial authorities.

I am to request that the above instructions may be brought to the notice of all the courts subordinate to you, for their information and guidance.

Yours faithfully  
T. V. RAO  
Registrar

✓ GENERAL LETTER NO. 4 OF 1961  
(Criminal)

From

Shri T. V. Rao, B. A., LL.B.,  
Registrar of the High Court of Orissa.

To

All Sessions Judges  
All District Magistrates  
All the Additional District Magistrates (Judicial) of the State.  
Dated Cuttack, the 21st December 1961

Sir,

I am directed to say that in item No. (6) at page 788 of their Fourteenth Report, Volume II, the Law Commission have recommended as follows:—

"(6) Presiding Officers should not hesitate to take firm action against witness who remain absent notwithstanding service

of summons by the issue of warrants, forfeiture of bonds and by instituting prosecution”.

2. It has been stated that even when the witness are served with summons in due time to enable them to appear before the Court but fail to do so, the Magistrates seldom take any penal action. Under the Criminal Procedure Code, it is open to the Magistrate to file a complaint and to have the witnesses prosecuted for non-attendance under section 174 of the Penal Code. The Magistrate may also issue a warrant under which the witnesses can be arrested and produced before the Court and the Court should not hesitate to adopt this drastic measure in cases in which the witnesses have wilfully remained absent. Further, the Magistrates and Sessions Judges should not hesitate to forfeit the bonds of witnesses who after having been bound over to appear on a particular day fail to appear. The Commission observe that stern action on the part of the Presiding Officers by way of issue of warrants and forfeiture of bonds cannot fail to have a salutary effect all round and result in a marked improvement in the attendance of witnesses.

The Courts are pleased to direct that the above recommendations of the commission should be strictly followed by all the subordinate Criminal Courts in future.

Yours faithfully

T. V. RAO

Registrar.

GENERAL LETTER NO. 5 OF 1961  
(Criminal)

From

Shri T. V. Rao, B. A., LL.B.,  
Registrar of the High Court of Orissa.

To

All District Magistrates of the State  
All Additional District Magistrates (Judicial) of the State  
Dated, Cuttack, The 21st December, 1961

Sir,

I am directed to say that it has been suggested by the Law Commission that a strict system of supervision should be devised to prevent delays arising from methodical postings. In paragraph 14 at page 781 of their Fourteenth Report, Volume II, they have observed as follows :—

“Quite often cases are adjourned in Magistrates’ Courts on the ground that the prosecuting Police Officer or the Assistant Public Prosecutor is not present in Court. Such absence may arise from a variety of reasons. In cases where the absence is due to an inadequacy of prosecuting staff, the only remedy would be to increase its strength suitably.

But even with the existing strength delays can to a large extent be avoided by a methodical posting of the cases. If the same prosecutor has to attend more Courts than one, it should be possible to fix definite days in the week in which a prosecutor is to appear in a particular court and cases in which his presence is required should invariably be posted to those days.

Similarly in cases which are prosecuted by Officers of Departments other than the police it should not be difficult for the Magistrate to ascertain in advance the convenience of the Departmental Officers in-charge of the prosecution and to post all cases prosecuted by that Department to a particular date suitable to him.

It may also be pointed out that many cases, particularly petty ones, need not be adjourned merely by reason of the absence of the prosecutor. In Madras this difficulty has been got over by instructions to the Presiding Officers that in simple cases when the prosecutor is absent the Magistrate should himself examine the prosecution witnesses on the basis of the memorandum annexed to the charge sheet which indicates the facts to which the witnesses are expected to depose.

2. The Courts are entirely in agreement with the above observations of the Law Commission and direct that the same may be brought to the notice of all subordinate Courts under you for their information and guidance.

Yours faithfully

T. V. RAO

Registrar

GENERAL LETTER NO. 6 OF 1961

(Criminal)

From

Shri T. V. Rao, B.A., LL.B.  
Registrar of the High Court of Orissa

To

All District Magistrates of the State  
All Additional District Magistrates (Judicial)  
of the State.

Dated Cuttack, the 21st December 1961

Sir,

I am directed to say that the Law Commission of India have observed in paragraphs 15 and 16 at pages 781-782 of their Fourteenth Report, Volume II as follows :-

- "15. Cases under special Acts appear to suffer greater delays. In such cases the Court has generally to rely on the police for the apprehension of the accused and the service of summonses though in some of these cases such as those under the Forest Act, the Excise Acts or the Municipal Laws, the Departmental agency also undertakes a part of these duties. Police Officers naturally do not display the same amount of interest in these cases which are primarily the concern of the other Departments as in cases under the Indian Penal Code, even where the successful conduct



of the prosecution depends to some extent upon the co-operation of their Department. It must also be noted that cases under these special enactments are far from numerous now-a-days than formerly. When, as happens fairly frequently, the departmental personnel fail to apprehend the accused or effect service, on the witnesses the task may finally be entrusted to the police. The delay arising in the disposal of these cases only emphasises the need for efficiency in the service of processes, particularly in the cases handled by the Departments themselves.

"16. The Court is practically powerless in the matter because the case has necessarily to be kept pending by reason of the failure to apprehend the accused or to serve the witnesses. In some of these cases, especially petty ones which burden the files from month to month without any progress being made for the causes mentioned, the presiding Magistrate may well draw the attention of the Department concerned to the position and suggest a withdrawal of the cases unless he considers them suitable for taking action under section 512 of the Criminal Procedure Code."

2. The court agree with the above observations of the commission and direct that the Magistrates should bear in mind the same while dealing with cases under the Special Acts initiated by Departments other than the police.

Yours faithfully  
T. V. RAO  
Registrar

GENERAL LETTER NO. 5 OF 1962

(Criminal)

From

Shri T. V. Rao, B. A., LL. B.,  
Registrar of the High Court of Orissa

To

All District Magistrates/Additional District Magistrates  
(Judicial).

Dated Cuttack, the 11th April 1962

Subject—Transfer of under-trial prisoners from jail after lock-up.

Sir,

I am directed to say that it has been brought to the notice of the Court that recently an instance occurred when a Subdivisional Magistrate transferred the cases of some under-trial prisoners detained in a sub-jail to another Court and issued orders for transfer of the under-trial prisoners to another jail—after lock-up.

Under the rules contained in the Orissa Jail Manual, all the prisoners in the jail are locked up in the evening and the hour of lock-up takes place at sunset. The Court observes that rules 157, 409, 524, 785 and 844 of the Orissa Jail Manual impose restrictions for removal of

an under-trial prisoner from the jail after lock-up time on security grounds. Rule 803 specifically directs that the Superintendents of transferring Jails shall so arrange that the prisoners transferred may reach their destination before lock-up.

On careful consideration, the Court direct that the aforesaid rules of the Orissa Jail Manual, should be strictly followed by all the Criminal Courts in the matter of removal of under-trial prisoners from the jails after the lock-up time.

This may be brought to the notice of all Magistrates under you for their information and guidance.

Yours faithfully

T. V. RAO

Registrar

GENERAL LETTER NO. 1 OF 1964

(Criminal)

To

All Sessions Judges of the State/All District Magistrates of the State, All Additional District Magistrates (J) of the State.

Sir,

I am directed to say that a question has been raised as to whether P. R. Bonds may be insisted on the lawyer representing an accused under section 205 of the Code of Criminal Procedure for payment of fine when a sentence of fine only is imposed on the accused and time is granted for such payment under clause (b) of sub-section (1) of section 388 of the same code. It has been brought to the notice of the Court that in some cases the representing Pleader applied for time on the date of Judgment to pay up the fine, but subsequently no payment was made.

The Court, on careful consideration, observe that there is no provision in the Code to realise fine from the lawyer representing an accused and it may not be proper or legal to hold him liable to pay up the fine on behalf of the accused or to get a P. R. Bond executed by him. Doubtless under section 205 of the Code, a Magistrate may, in his discretion, dispense with the personal attendance of the accused and permit him to appear by his Pleader, but the decision reported in 49 Cr. L. J. 747 will manifestly show that while granting such permission the Magistrate should always take into account whether the fine that might be imposed on the accused for the offence in question could be realised from the accused under section 386. Further, under section 366(2) of the Code, the Magistrate has got the discretion either to allow an accused to be represented by the lawyer at the time of delivering judgement or to insist on his personal attendance if he doubts about the prompt realisation of fine. Without in any way fettering the discretion of the Trying Magistrates, the court desire that the attention of the Subordinate Magistrate may be drawn to

the provisions of sections 205, 366(2) and 388 of the Code of Criminal Procedure for proper observance in future so that there may not be any delay or difficulty in the realisation of the fine amounts.

I am to request that the above instructions may be brought to the notice of all Subordinate Criminal Courts under you for their guidance in future.

Yours faithfully

T. V. RAO

Registrar

GENERAL LETTER NO. 2 OF 1964

(Criminal)

To

All Sessions Judges of the State  
All District Magistrates of the State  
All Additional District Magistrates of the State (J)

Sir,

I am directed to say that a question has been raised as to whether the work done by the Typist in preparing briefs supplied to the Public Officers for public purposes is to be entered in the Register of application for copies (R) 14 for the purpose of assessing the quantity of work done by them.

2. Reports received from the Sessions Judges of the State indicate that the existing practice in the matter is not uniform. In some Courts, the information relating to the preparation of briefs by the Typists is entered in (R) 14 whereas in some other Courts no entry is made in any register.

3. Under the existing rules, a Magistrate is required to supply copies of documents to a Government Advocate or Pleader or any other person specially empowered in that behalf for the purpose of conducting any trial or investigation on behalf of the Government before any Criminal Court. Public prosecutors are also required to be furnished with copies of briefs for the purpose of conducting cases before the Sessions Courts. Doubtless, a register of applications for copies in form No. (R) 14 is maintained in the Copying Department and all application filed by the parties for grant of copies which are prepared on folios are entered in this register, but the various columns contained therein are useful only for giving information about copies, supplied to parties. Briefs or copies of Judgement supplied to public officers for public purposes are prepared on plain papers. Hence, requisitions for briefs or applications for copies of judgment by public officers should not appropriately be entered in the Register (R) 14. In order however, to assess the amount of work done by the typist and copyists of the Subordinate Courts in the matter of preparation of briefs and copies of judgements, etc., the Court direct that a new Register in the following form may be maintained in manuscript by all Courts subordinate to you. The question of framing a rule and prescribing a printed form for the purpose will be taken up after watching the working of this system for some time.

**REGISTER OF BRIEFS AND APPLICATIONS FOR JUDGEMENT REQUIRED BY PUBLIC OFFICERS**

Sl. No.	Date of requisition of application if any	Name of the applicant	Description of document or paper to be supplied	Date when made over to the typist or copyist	Name of the typist or copyist	Signature of typist or copyist is with date	Date when the copy is made over to the Sheristadar or Head clerk	Number of words typed	Remarks
1	2	3	4	5	6	7	8	9	10

4. The Court further directs that the Presiding Officers of Subordinate Courts should frequently scrutinise the entries in this new register and see that there is no undue delay in the issue of copies to the public officers. The Inspecting Officers should also during their periodical inspection effectively check this register and issue instructions where necessary.

Yours faithfully,

T. V. RAO

Registrar

GENERAL LETTER NO. 3 OF 1964

(Criminal)

To

All Sessions Judges/  
All District Magistrates/  
All Additional District Magistrate (J)  
of the State.

Dated Cuttack, the April, 1964

Subject:—Report of the Motor Vehicle Insurance Committee

Sir,

I am directed to enclose an extract from para 24 of Chapter VII of the report of the Motor Vehicles Insurance Committee and to say that the Court are in complete agreement with the recommendations made by the Committee therein.

Accordingly, they direct that Criminal Courts trying cases under the Motor Vehicles Act should make it a point to draw the attention of the victim to his right to move the Claims Tribunal for compensation at the time of pronouncing a judgment of conviction and to note that fact in the ordersheet of the record of the case.

Yours faithfully

T. V. RAO

Registrar

EXTRACT OF THE PARA 24 OF CHAPTER VII

24. Apart from the increase in the volume of work which this will involve, it is to be remembered that even if proceedings are commenced *suo moto* no award can be made by the Tribunal unless the aggrieved party appears and leads evidence to prove the negligence of the driver. The impartiality of the Tribunal will open to doubt and the apprehension will be created in the minds of the drivers/owners of vehicles and the insurance that it has already made up its mind if it undertakes the role of a complainant as well as Judge. We are therefore, in respectful agreement with the view conveyed by the Madras High Court to the Madras Government that a simpler remedy will be to request the criminal courts, by a general circular, to draw the attention of the victim to have a right to move the Tribunal for compensation, at the time of pronouncing a judgment of conviction to state at the foot of the calendar which accompanies the judgement that they have made above direction.

## GENERAL LETTER NO. 5 OF 1964

(Criminal)

To

All the Sessions Judges/  
 District Magistrates/  
 Additional District Magistrates (Judicial) in the State.  
 (Judicial) in the State.

Subject—Summons in Criminal cases to be sent through the Head of the office.

Dated Cuttack the 23rd December, 1964

Sir,

I am directed to refer to the provisions of Section 72 of the Code of Criminal Procedure under which the Court issuing the summons shall, if the person to be summoned is in active service of Government or Railways, ordinarily send it in duplicate to the Head of Office in which such employee is employed and such Head of office shall thereupon cause the summons to be served in the manner provided by Section 59 and return it to the Court under his signature with the endorsement required by that Section. It has, however, come to the notice of the Court that considerable remissness prevails in some of the subordinate courts in the matter of observance of the provisions of the above section and all summonses intended to be served on public servants are either sent direct or if sent through the Head of the office in which they are employed, they are not accompanied by any letter of request for service and return.

On careful consideration, the Court direct that in all cases of summons issued by Criminal courts for service on persons working under Government or the Railways, the same should, except in special circumstances, be sent through the Head of Office with an order under the signature of the Presiding Officer in the form enclosed.

Yours faithfully,

T. V. RAO

Registrar

ORDER FOR TRANSMISSION OF SUMMONS TO BE SERVED  
 ON A PUBLIC SERVANT WHO IS AN ACCUSED  
 OR WITNESS IN A CRIMINAL CASE

(Section 72 of the Code of Criminal Procedure)

District.....

In the Court of at

Case No. of

To

Under the provisions of Section 72 of the Code of Criminal Procedure, 1898, a summons, in duplicate, is herewith forwarded for service on the accused/witness who is stated to be serving under you.

You are requested to cause a copy of the said summons to be served upon the said accused/witness and to return the original to this Court signed by the said accused/witness with a statement of service endorsed thereon by you.

Judge/Magistrate

GENERAL LETTER NO. I OF 1965

(Criminal)

To

All District and Sessions Judges

All District Magistrates of Non-Separation district

All Additional District Magistrates (Judicial) of Separation districts.

Dated Cuttack, the 25th November 1965

Sir,

I am directed to say that recent High Court inspection of some of the Criminal Courts have shown that in some Courts, a few witnesses are summoned for their examination the case is adjourned to another date for summoning some more witnesses for examination. Such a course naturally drags on the proceedings and this piecemeal trial of Criminal Cases not only causes undue delay in the disposal of the proceedings but it also puts the accused to unnecessary trouble and expense.

2. In this connection, I am to refer to section 344 of the Code of Criminal Procedure, which provides that the proceedings in every inquiry or trial shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded. Rule 39 at page 14 of G. R. & C. O., Criminal Volume I is also to the above effect. Except for good and sufficient cause (to be noted in the order sheet). The Trial, when once commenced, should proceed throughout the day on which it has been opened and from day to day until all the witnesses in attendance have been examined. The Court consider that the present practice followed at some stations to summon a few of the witnesses and after their examination adjourn the case to another date for summoning some more witnesses is not at all regular. In para. 5 of the Courts confidential letter No. 1623(6) dated the 6th March, 1962 full and detailed instructions have been issued for day to day hearing and expeditious disposal Criminal Cases.

3. Accordingly, the Court direct that, as far as possible, piecemeal trial of Criminal cases should be avoided and the hearing continued from day to day by summoning witnesses in convenient batches.

I am to request that the aforesaid instructions may be brought to the notice of all Courts subordinate to you for their information and guidance.

Yours faithfully

A. MISRA

Registrar

GENERAL LETTER NO. I OF 1966

(Criminal)

To

All District Judges of the State  
All A. D. Ms. (J) of the State  
All D. Ms. of Non-separation districts

Sir,

I am directed to say that during the hearing of Criminal Revisions, difficulty is experienced in finding out the exact period of imprisonment already undergone by the petitions in pursuance of the judgements passed by the trial and lower appellate Courts under the existing rules or orders, no note or entry is made in the order sheet of the lower Court record showing the date on which the convict was committed to Jail and when he was released on bail by the order of the appellate Court or Court of revision. In many instances, the Court of revision has to ascertain the exact period of imprisonment already undergone with a view to decide whether the sentence passed to the petitioner needs further reduction.

In order to avoid such difficulty, the Court direct that all essential information, like the commitment of the convict to Jail, his release on bail granted by the appellate or revisional Court and his recommitment to Jail after disposal of the appeal or revision should invariably be noted in the order sheet of the original record under the dated signature of the Presiding Officer concerned. In Cases of Revisions, sometimes the record may be with the appellate Court by the time the bail order is received by the trial Court. In those few instances, the order may be recorded in a separate order sheet and the same be sent to the appellate or revisional Court for being tagged to the original record.

I am to request that the aforesaid instructions may be brought to the notice of all Criminal Courts subordinate to you for their information and guidance.

Yours faithfully

A. MISRA

Registrar



## GENERAL LETTER NO. 5 OF 1966

(Criminal)

From

Shri. A. Misra, B.L.

Registrar of the High Court of Orissa

To

All the District and Sessions Judge of Separation District of the State.

Cuttack, dated the 4th August 1966

Sir,

I am directed to say that it has been brought to the notice of the Court that some of the A. D. Ms. (Judicial) and Judicial Magistrates are in the habit of making direct references to the I-G. of Police in the matter of service of summons, execution of warrants, supply of vehicles to the Mobile Court, etc.

2. So far as the service of summons and execution of warrants are concerned, section 72 of the Cr. P. C. provides the proper procedure to be adopted in the matter. It lays down that where the person summoned is in active service of the Government, the Court issuing summons shall, ordinarily send it, in duplicate, to the Head of the office in which such persons is employed. The police officers against whom summons are issued are serving in the different districts under the respective Superintendents of Police. The Head of Office, so far they are concerned, is the Superintendent of Police of the district and not the Inspector-General of the Police who is the Head of the State Police Organization and occupies the position of a Head of the Department. Further service of summons and execution of warrants will be more expeditious if it is sent to the Head of the Office, because, if the summons are sent to the I-G. of Police, he in his turn has to send it to the Head of the Office who will get the service effected. Similarly, the Superintendents of Police are the appropriate authority to supply the vehicles to the Mobile Court Magistrates.

2. The Court therefore, strongly deprecated the practice followed at present in some of the districts and direct that the A. D. M.(j) and the Judicial Magistrates should not issue summons or warrants to the I-G. of Police and they should get them served through the Head of the office in which the particular Police Officer is posted. In case, the Superintendent of Police fails to take proper action in the matter it should be brought to the notice of the District Judges concerned and through him to the High Court who may, if necessary address the I-G. of Police for taking suitable action in the matter.

Yours faithfully

A. MISRA

Registrar

## GENERAL LETTER NO. 4 OF 1967

(Criminal)

From

Shri B. K. Patro, B.L.

Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State

All the District Magistrates of the State

All the Additional District Magistrates (Judicial of the State)

Dated Cuttack, the 26th October 1967,

Sir,

I am directed to say that it has come to the notice of the Court that in one case there was long delay of about 10 days committed by the office of the S. D. M. in the issue of release warrants regarding certain convicts who filed an appeal in the High Court and obtained bail orders. The Court take a very serious view of such matters as it involves the liberty of a citizen. They direct that once an order for bail is passed, it should, as far as possible, be carried out on the very day when it is received by the Magistrate concerned; unless there is good reason to be recorded in the order sheet for not complying with it on that day. In any case, it should not exceed more than two days. The primary duty and responsibility of compliance of bail orders and issue of release warrants rest on the Presiding Officer of the Court concerned, and he should therefore personally see that any delay, whatsoever in this regard is scrupulously avoided by the office.

I am to request that the aforesaid instruction may be brought to the notice of all Courts subordinate to you for their strict observance in future.

Yours faithfully

B. K. PATRO

Registrar

## GENERAL LETTER NO. 5 OF 1967

From

Shri B. K. Patro, B.L.

Registrar of the High Court of Orissa

To

All the District and Sessions Judge of the State

Dated Cuttack, the 19th July 1967

Sir,

I am directed to forward the accompanying copy of the High Court's judgment in Criminal Reference No. 18 of 1966 and to say

that the Court observe that Judicial decisions should not be influenced by matters which are wholly foreign. They feel that a notion has gained ground amongst the Judicial Magistrates that quick disposal of cases would earn certificate of efficiency, however slipshod the judgment may be. This impression is totally erroneous. While on the one hand, the Magistrates have the paramount duty of exercising proper control over the conduct of cases from the initial stage to avoid delay in disposal, it is equally their duty on the other hand to see that justice is not hurried and that cases are decided according to law and judicial ethics. They must be fully conversant with law and hear cases with patience and care so as to inspire confidence in the public mind.

You are requested to impress upon the Subordinate Judicial Officers under you that the Court not only insist upon adequate outturn but also on quality of work and that in no circumstances, quality can be sacrificed for hurried outturn of work.

Yours faithfully,

B. K. PATRO

Registrar

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CRIMINAL REFERENCE NO. 18 OF 1966

In the matter of a reference made by Shri T. Misra, Sessions Judge, Ganjam-Boudh at Berhampur, dated the 11th February 1966

Suma Naiko—Petitioner

Versus

State and 33 others—Opposite-parties

For petitioner—M/s. R. N. Misra and R. C. Patnaik

For opposite-parties—Mr. R. C. Misra and Standing Counsel

Presents—

The Honourable Mr. Justice G. K. Misra

Misra, J.—The Revenue Inspector, Aska and the Medical Officer, Gangpur had been summoned as witnesses to 20-10-1966. They did not appear. Without adjourning the case to procure their presence, the learned Magistrate passed the following order:—

“Service return of summons in respect of Revenue Inspector, Aska and Medical Officer, Gangpur not back despite repeated summons. The

case is a year old case and it is desirable that it should be disposed of without any further delay. As per the remark of the Additional District Magistrate (J) in his Inspection note, dated 17-9-65, there is lot of evidence regarding injury and assertion of the same by the victims, there is no necessity to wait for him. As to the evidence of the R. I., he cannot throw any light as to the factum of possession of the disputed land. He is not a charge-sheet witness and in view of the above position, I see no reason to wait for him for any further specially when the prosecution is not keen enough to supply their address or to produce them in the Court. Accordingly the prosecution is closed".

Against this order a Revision was filed before the learned Sessions Judge, Ganjam. He is of opinion that these witnesses are material witnesses for the prosecution and that the order of the learned Magistrate should be set aside and these two witnesses should be examined for the prosecution after being resummoned.

2. When the service return of summons had not been back, the learned Magistrate should not have dispensed with the examination of these two important witnesses merely because the case had been year old or because the learned A. D. M. (J) made some remarks about delay in the disposal of this case in his inspection notes. Both these matters were thoroughly irrelevant to the point in issue, namely, whether the evidence of these two witnesses would be dispensed with. The inspection note is not a part of the judicial record. It relates to the matter of administration wherein a superior supervising authority gives certain instructions regarding disposal of cases to further the cause of justice. The learned Magistrate should not have taken into consideration any of these two matters and should have taken necessary steps for procuring the presence of the two material witnesses. These considerations should be foreign to judicial decisions.

3. The accused persons caused various injuries to 11 persons. The Doctor was clearly a material witness. The Revenue Inspector was a material witness to the factum of possession. The learned Sessions Judge was therefore, right in holding that the prosecution should be given further opportunity to get these two witnesses examined.

4. The reference is accepted, the learned Magistrate is directed to resummon these witnesses and dispose of the case in accordance with law.

Sd. G. K. MISRA

Orissa High Court, Cuttack  
The 6th July 1967

GENERAL LETTER NO. 6 OF 1967  
(Criminal)

To

All Sessions Judges of the State  
All District Magistrates of the State  
All A. D. Ms. (Judicial) of the State

Sir,

I am directed to say that it has come to the notice of the Court that some of the Magistrates in this State are imposing

inadequate sentences for offences punishable under the Prevention of Food Adulteration Act, presumably due to their ignorance of the amended provisions of section 16 of the Act, as incorporated by the Prevention of Food Adulteration Act, 1964 (Act No. 49 of 1964).

2. The Court consider that the evils of adulteration of food-stuff have passed a serious threat to health of the whole society at present and the situation has assumed such a serious magnitude that in the interest of the society, the offences call for deterrent sentences. The Court therefore, while not intending to fetter the Judicial discretion of the Court's direct that in such cases, adequate sentences should be passed.

I am to request that the above instructions may be communicated to all courts subordinate to you.

Yours faithfully,  
B. K. PATRO  
Registrar

GENERAL LETTER NO. I OF 1969  
(Criminal)

To

All District and Sessions Judges of the State

Subject—Delivery of judgment within thirty days from the conclusion of arguments.

Sir,

I am directed to say that it has come to the notice of the High Court that in some Criminal Appeals and Sessions Cases, arguments were heard for the first time on certain dates and then the cases were reopened and reheard on subsequent dates and the judgments in such cases were not delivered within 30 days from the conclusion of the arguments on the first occasion as envisaged in General Letter No. 3 of 1966 (Civil).

The court strongly disapprove of this practice of delivering judgments beyond 30 days of the conclusion of arguments, even though the case, for some special reason, was reopened and reheard on a subsequent date. They, accordingly direct that the instructions issued in Court's General Letter No. 3 of 1966 (Civil) should *mutatis mutandis* be applied to all criminal cases and any delay in the delivery of judgment beyond 30 days from the date of closing of the case after arguments on the first occasion must be clearly mentioned in the monthly and quarterly statements.

I am to request that these instructions may be brought to the notice of all the Criminal Courts subordinate to you.

3

Yours faithfully,

S. K. PATRO  
Registrar

GENERAL LETTER NO. 1 OF 1970  
(Criminal)

From

Shri A. C. Das, B. A. (Hons.), LL. B.  
Joint Registrar of the High Court of Orissa

To

All the Sessions Judges in the State  
Dated Cuttack, the 4th August 1970

Subject—Writing of judgments in criminal cases in the language of the court other than English.

Sir,

I am directed to invite a reference to the provisions of section 367 of the Code of Criminal Procedure, read with Rule 11, occurring at page 3 in the Preliminary Chapter of the Court's General Rules and Circular Orders (Criminal) Volume I, 1962 Edition and to say that it has been felt necessary by the Court to prescribe the procedure to be followed by Presiding Officers of Subordinate Criminal Courts in writing judgments in the language of the court other than English. A judgment written in a language other than English and pronounced in accordance with the provisions of section 366 of the Code, doubtless, conforms to the law provided that the language is declared to be a court language. The fact remains that a judgment written in such a language shall, in the presence set up of things, lead to certain difficulties. The main trouble is likely to ensue from unavoidable necessity for an English translation of the judgment for use in the superior courts including the Supreme Court. Vernacular equivalents of legal terms and phrases in English and legal maxims or other expressions in Latin or in some other classical language have not yet been aptly or authoritatively laid down. Also particular concepts and propositions of law best expressed in one language may not be possible to be reproduced in another language with the same degree of clarity and precision. The resultant evil will be that a judgment and the reasonings therein contained shall be open to different interpretations in the higher forum where the judgment comes to be impugned and contesting parties may easily find it feasible to give to a crucial expression in the original judgment or in its English translation a meaning and interpretation as may best suit their own purposes even though such a meaning or interpretation may not have been contemplated by the author of the judgment. Such possibilities can, however, be eliminated if the Judge or Magistrate who writes the judgment in a language other than English, places on record an English rendering thereof made by himself.

The Court accordingly, direct that the Presiding Judge of a Subordinate Criminal Court, if he elects to write a judgment in the language of the court other than English, shall place on record, as soon as possible, an English translation thereof made by himself and authenticated by his signature and the seal of the court.

I am to request that these instructions of the court may be strictly followed in future by all the subordinate criminal courts in the State.

Yours faithfully,  
A. C. DAS  
Joint Registrar

GENERAL LETTER NO. 2 OF 1970  
(Criminal)

To

All the Sessions Judges in the State

Subject—Fixing a time-limit for execution of non-bailable warrants of arrest.

Sir,

I am directed to say that one of the subjects discussed in the District Judges' Conference of 1967 on item No. 24 of the Agenda was the desirability of modifying Form No. (M) 29 at page 129 of the Court's General Rules and Circular Orders (Criminal), Volume II, 1962 edition for providing therein a limit of time for the execution of non-bailable warrants of arrest, issued by Criminal Courts. As decided in the Conference, the matter was examined after obtaining from all the Sessions Judges in the State their considered views and also reports on the existing practice of the courts in each Sessions Division.

On a careful consideration of the practice prevalent in the different courts and the views offered by the Sessions Judges, the court observe that the amendment suggested to be made in Form No. (M) 29 is not consistent with the provisions of sub-section (2) of section 75 of the Code of Criminal Procedure according to which every warrant of arrest, issued by a court shall remain in force until it is cancelled by the court which issued it or until it is executed. It is accordingly laid down for the guidance of the Police in Rule 109(a) of the Orissa Police Manual, Volume I that a warrant of arrest remains in force and shall be retained at a Police-Station till the arrest is made or the individual surrenders or till the warrant is formally cancelled or withdrawn by the court which issued it. If, after due effects, it cannot be executed, the fact of, with reason for, failure shall be reported to the Magistrate. In view of these provisions there is no necessity for amending Form No. (M) 29 for fixing a time-limit by specifying a particular date for execution of warrant.

In Rule 287(a) of the Orissa Police Manual, Volume I, provision has been made for fixation of a date allowing the Police reasonable time for action on which date the Police Officer concerned shall have to report the execution or non-execution of the warrant. In actual practice, a date is reported to be given on the warrant of arrest itself by the courts in almost all the Sessions Divisions, but such a date is not required under law or under any rules to determine a limit of time for execution of the warrant. The date is necessary only for specifying the time by which the Police Officer shall submit a report regarding the execution or non-execution of the warrant, as provided in Rule 287(a) of the Police Manual.

In the circumstances, the court direct that the provisions of Rule 287(a) of the Orissa Police Manual, Volume I be kept in view by all the Criminal Courts so that they may record a separate endorsement on every warrant of arrest the date by which the Officer in charge of the Police-Station shall report to the issuing court the fact of execution or non-execution of the warrant. In the event of the default of any Police Officer in submitting the requisite report by the date fixed as above, the fact may be brought to the notice of the superior police authorities for necessary action against the defaulting officer or the court concerned may take suitable action against the officer for disobedience of the order of the court.

I am to request that the above directions of the court may be strictly followed by all the courts in your Sessions Division, exercising criminal jurisdiction.

Yours faithfully,

S. K. PATRO

Registrar

GENERAL LETTER NO. 1 OF 1972

(Criminal)

From

Shri K. P. Mohapatra, B. L.,  
Registrar of the High Court of Orissa

To

All Sessions Judges of the State

Dated Cuttack, the 6th December 1972

Subject—Effective measures for recommitment of convicts to jail and for realisation of fine amounts.

Sir,

I am directed to say that the Court have occasion to notice that a great deal of laxity prevails in taking suitable measures for realisation of amounts of fine imposed upon convicts in different courts and also for recommitment of the convicts to jail after their Appeals or Revisions, as the case may be, are disposed of either confirming the sentence or modifying the same. Default on this score is mainly due to failure in carefully maintaining the Register of Warrants of Imprisonment in Form No. (R)5, the Register of Bail Orders in Form No. (R)24 and the Register of Criminal Fines. With a view to obviating this evil, the Court direct that all Sessions Judges and Additional District Magistrates (Judicial) in the State should follow the following procedure :—

- (i) The Additional District Magistrate (Judicial) shall prepare a list showing the balance amount of criminal fines outstanding, at the half-year ending on the 30th June and on the 31st December of each year in respect of each court under his jurisdiction.
- (ii) The above list shall indicate the amount of fine realisation of which is stayed under orders of the appellate court or the revisional court.
- (iii) After verification of the relevant Registers the Additional District Magistrate (Judicial) shall give a certificate that in all cases where fines have been imposed, necessary action



has been taken in time by the courts concerned for realisation of the same and that wherever necessary the defaulter has been committed to jail to undergo the default sentence.

- (iv) The list mentioned above and the certificate shall be forwarded to the Court through the Sessions Judge twice in a year, one in the month of January and again in the month of July.
- (v) Along with the Quarterly Statements a certificate shall be furnished by the Sessions Judge to the effect that there is no case in which steps for recommitment to jail of accused persons have not been taken after disposal of appeals or revisions filed by them either confirming the conviction and sentence or modifying the same.
- (vi) The certificate to be furnished by the Sessions Judges as above shall be based upon a personal inspection of the Registers of Warrants of Imprisonment of their own courts and on the certificates furnished to them by the Additional District Magistrates (Judicial) in respect of their courts and of the courts of Magistrates under their jurisdiction.

The Court are further pleased to direct that the Sessions Judges would be held personally responsible if any case comes to the notice of the Court that the accused person has not been recommitted to jail after confirmation or modification, on appeal or revision, of the sentence originally passed against him.

I am, accordingly, to request that the above directions be strictly followed hereafter.

Yours faithfully,  
K. P. MOHAPATRA  
Registrar

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GENERAL LETTER NO. 1 OF 1973  
(Criminal)

From

Shri K. P. Mohapatra, B. L.,  
Registrar of the High Court of Orissa.

To

All Sessions Judges of the State

Dated Cuttack, the 15th September 1973

Subject—Item No. XXIV of the Agenda of the District Judges' Conference, 1972—Placing the records of unimportant Criminal Cases in the dormant file.

Sir,

I am direct to invite a reference to Item No. XXIV of the Agenda of the District Judges' Conference, 1972 and to say that a

decision was taken that records of unimportant Criminal cases of specified categories should be kept and preserved in the dormant file.

2. The records of unimportant criminal cases of the following categories remain pending for a pretty long time and continue to be shown in the periodical returns and for statistical purposes, though in fact trial of the accused does not take place, but orders are passed from day to day and action is accordingly taken:—

- I. Cases in which the accused persons are of unsound mind;
- II. Cases in which the accused persons have absconded; and
- III. Cases in which the accused persons are not being traced out on account of untrue, incorrect, incomplete and misleading address furnished in the charge sheet.

3. As regards the unimportant criminal cases in which the accused person are of unsound mind it is mandatory for the Magistrate to make an inquiry according to section 464 of the Code of Criminal Procedure. Pending such inquiry the accused may be dealt with in accordance with section 466 thereof and/or if the Magistrate is of opinion that on account of unsoundness of mind the accused is incapable of making his defence, he shall record a finding to that effect and shall postpone further proceedings in the case. In accordance with section 467, the trial of the accused can be resumed when it is found by the Magistrate that he is capable of making his defence. It will appear from the aforesaid provisions of the Code of Criminal Procedure that, if after inquiry a finding is recorded that due to unsoundness of mind the accused is incapable of defending himself, the further proceedings shall be postponed. According to Note 3 below rule 7 in Chapter II at page 38 of G. R. & C. O. (Criminal) Volume I, cases, of lunatics dealt with U/s. 466 of the Code of Criminal Procedure should not be shown as pending on the files. When such lunatics are subsequently brought before the Court and found to be capable of making a defence, their cases should be entered as new cases. It will, thus, appear that so far as Criminal cases, where the accused persons are found to be of unsound mind and incapable of making their defence are concerned, there is adequate rule for not showing the cases as pending for statistical purposes and periodical returns and so there is no necessity of placing such records in the dormant file, inasmuch as, such cases are ultimately consigned to the Record Room in accordance with Chapter IV at page 42 of G. R. & C. O. (Criminal), Volume I.

4. The unimportant cases of the Second category are classified as follows:—

- (A) Cases in which the Court has reasons to believe that the accused person has absconded and in which action has been taken according to Sections 87, 88 and 512 of the Code of Criminal Procedure.

These classes of cases can be placed in the dormant file after evidence is recorded U/s. 512 of the Code of Criminal Procedure.

- (B) There may be cases in which neither trace of the absconding accused person is available nor is the prosecution-able to furnish information about his whereabouts.

Exercise of power U/ss. 87, 88 and 512 of the Code of Criminal procedure being discretionary, the word 'May' having been used in the sections, in cases of this nature, the Magistrate may **not consider** it expedient to take recourse to the provisions of the above noted sections. Such classes of cases may also be placed in the dormant file recording reasons therefor after expiry of one year from the date of submission of the charge-sheet.

- (C) There may also be cases in which proclamation and attachment issued under sections 87 and 88 have not been served and executed by the police for a long time in spite of issue of repeated reminders and the Magistrate finds that no useful purpose is being served for keeping such cases pending.

He will be justified to place the records in the dormant file recording reasons therefor after expiry of one year from the date of submission of the charge-sheet.

5. The cases of the third category are those where untrue, incorrect, incomplete or misleading addresses of the accused persons are mentioned in the charge-sheets.

In industrial and big towns with a floating population, offences are committed under various Acts, such as Motor Vehicles Act, Motor Vehicles Taxation Act, the Orissa Municipal Act and the Bihar and Orissa Excise Act etc. But in the charge-sheets untrue, incorrect and incomplete or misleading addresses of the accused persons are mentioned. As a result, summons and warrants issued from the courts from time to time return unserved without any tangible result and a lot of time and energy of the court is wasted. In cases of this nature, if during the period of one year from the date of submission of charge-sheet, the Magistrates find it impossible to effect service of summons and execute warrants they will be justified in placing the records in the dormant file.

6. The main purpose for introduction of the system of placing certain categories of unimportant criminal cases in the dormant file is not only to lesson the burden of the Judicial Magistrates, save time and energy so as to afford them more time for trial of cases, but also to reduce the number of cases for statistical purposes and for periodical returns, because for these categories of unimportant cases the total figure of pendency of criminal cases is unnecessarily inflated without the cases being subjected to trial.

7. In view of the above, the Court after careful consideration direct as follows:—

- (i) Records of unimportant Criminal cases where action has been taken under section 87 and 88 and evidence has been recorded under section 512 of the Code of Criminal Procedure shall be placed in the dormant file.

(ii) Records of unimportant Criminal cases in which Magistrates do not consider it expedient to take action under sections 87, 88 and 512 of the Code of Criminal Procedure for the reasons that the accused is untraceable and his whereabouts are completely unknown and repeated attempts for service of summons and warrants have failed during a period of one year from the date of submission of charge-sheet shall also be kept in the dormant file.

(iii) Records of unimportant Criminal cases where action has been taken under sections 87 and 88 of the Code of Criminal Procedure but where proclamation and attachment have not been effected by the police within one year from the date of submission of charge-sheet in spite of repeated reminders, shall also be placed in the dormant file.

(iv) Records of unimportant cases in which the address of the accused persons appears to be untrue, incorrect and uncomplete or misleading and the prosecution is unable to furnish their correct address, as a result of which it is not possible to serve summons or execute warrants on the accused persons within a period of one year from the date of submission of charge-sheet, shall be placed in the dormant file.

(v) After appearance of the accused or on his production the record shall be called for by the concerned Magistrate from the dormant file and shall be proceeded with according to law in its original number.

(vi) Consignment of records to the dormant file shall be in accordance with Chapter IV at page 42 of the G. & R. & C. O. (Criminal) Volume-1.

(vii) The dormant record shall be kept in the District Record Room in separate bundles without being mixed up with records of disposed of cases so as to trace them out easily.

(viii) 'A' dormant file Register as per the *pro forma* in Annexure 'A' shall be maintained in the Court of every Magistrate.

(ix) A dormant file Register as per the *pro forma* in Annexure 'B' shall be maintained in every District Record Room.

(x) At the time of placing the records in the dormant file necessary notes shall be made in the remarks column of the General Register/Trial Register with date for facility of tracing out the whereabouts of the case.

(xi) After consignment of records to the dormant file the cases shall be deemed to be not pending until their revival and shall be omitted for statistical purposes and from periodical returns.

I am to request that the aforesaid instructions may be brought to the notice of the Subordinate Courts under your control for guidance and strict compliance.

Yours faithfully

K. P. MOHAPATRA

Registrar

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**ANNEXURE—A**  
**DORMANT FILE REGISTER TO BE MAINTAINED BY THE MAGISTRATE**

Serial No.	No. & year of the case	Names of the parties	Date of order for keeping the case on dormant file	Reason for keeping the case on dormant file	Date when sent to the Record room for being placed on the dormant file	Date when taken out from the dormant file & dealt in the trial file	Date of disposal of the case	Date when consigned to record room	Remarks
1	2	3	4	5	6	7	8	9	10

ANNEXURE - B

DORMANT FILE REGISTER TO BE MAINTAINED BY THE RECORD ROOM

Serial No.	Number and year of the case	Name of the parties	Date when received in the record room	Date when taken to the dormant file	Date when requisition for record is received from the trial court	Date when record is sent to the trial court	Remarks
1	2	3	4	5	6	7	8

GENERAL LETTER NO. 3 OF 1973  
(Criminal)

From

Shri K. P. Mohapatra, B.L.  
Registrar of the High Court of Orissa

To

All District Magistrates of the State  
Dated Cuttack, the 15th November 1973

Sir,

I am directed to say that the Court have had occasion to notice that the Executive Magistrates, trying criminal cases under the preventive sections of the Code of Criminal Procedure are not strictly following the provisions of the said Code, G. R. & C. O. (Criminal), General Letters and Circulars, issued by the court from time to time. It has been noticed that cases, u/s 145 of the said Code are not being disposed of within a period of two months from the date of appearance of the parties as far as practicable as envisaged in sub-section (4) thereof. Cases are being adjourned on flimsy grounds such as engagement of the Executive Magistrate for administrative work even though the parties are present and ready for trial of the cases. Witnesses present are not being examined from day to day till the list is exhausted. Even after examination of witnesses is over and instead of hearing arguments advanced by the Advocates, if any, immediately thereafter long adjournments are given for the said purpose. Even after close of the cases, orders are pronounced after much delay. Due to the above, the litigants are put to harassment and avoidable expenditure. The court view the above with concern and direct that the Executive Magistrates should follow the following instructions in the matter of hearing of cases under the preventive sections of the Code of Criminal Procedure :—

- (i) Speedy disposal of cases—Criminal cases under the preventive sections other than cases, u/s 145, Cr. P. C. should be disposed of within five months from the date of institution. Explanation should be submitted along with the quarterly statements for year-old cases as directed in G. L. No. 5 of 1954 (Criminal).

In cases under section 145, Cr. P. C., however the prescribed period of two months for conclusion of the enquiry from the date of appearance of the parties as envisaged in sub-section (4) should be strictly adhered to.

- (ii) Adjournment of cases—According to the provisions of section 344 of the Code of Criminal Procedure, in every enquiry or trial, the proceeding shall be held as expeditiously as possible and in particular when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the court finds adjournment of the same beyond the following day to be necessary for reasons to be recorded.

In G. L. No. 2 of 1962 (Criminal) (copy enclosed), the court impressed upon the Magistrates that they should



carefully plan the posting of cases and make it a point to examine all witnesses in attendance in court on the very same day. It was also indicated that the court will take a serious view of any officer who is in the habit of granting unnecessary adjournments and detaining witnesses unnecessarily.

The provision of law and the instructions contained in the General Letter referred to above should be strictly followed. Criminal cases should not be posted to such dates on which the Executive Magistrates are likely to be engaged in administrative work. This can be achieved by careful planning of the diary. Witnesses in attendance should be examined on the day the cases are posted but if for reasons beyond the control of the Executive Magistrate and for reasons to be recorded in writing, some of the witnesses cannot be examined on the same day, the case should be posted to the following working day for examination of the remaining witnesses.

- (iii) Hearing of Arguments—In G. L. No. 4 of 1971 (Civil and Criminal) (copy enclosed) reference was made to G. I. No. 1 of 1969 (Criminal) disapproving the practice of reopening and rehearing of arguments in criminal cases after arguments are concluded on a prior date. It was further emphasised that once arguments in a case are heard on a particular day, every attempt should be made to conclude the same that day. If for any reason arguments can be concluded on the day they are opened, the hearing should be continued on the day following and where necessary from day to day till it is concluded.

Arguments should be heard by the Executive Magistrates soon after close of evidence and no adjournment therefor should be given. Once begun, the arguments should be concluded on the same day and if it is not possible, it should be continued on the following day and where necessary from day to day till conclusion. Instructions contained in G. L. No. 4 of 1971 (Civil and Criminal) should be followed:

- (iv) Delivery of judgments—According to G. L. No. 4 of 1946 (Criminal), ordinarily judgments in all criminal cases should be delivered soon after the hearing. Delivery of judgments should not be postponed sine die. The court has fixed the period of one month as the maximum in the expectation that there will be very few occasions for submission of explanation for delay of delivery of judgment beyond one month or over. In G. L. No. 2 of 1971 (Civil and Criminal) (copy enclosed), the court observed that the period of 30 days should not be treated as the normal interval between the hearing of arguments and the delivery of judgments and directed that particulars should be submitted by demi-official letters direct to the Registrar of the High Court by the first date of every month regarding cases in which judgments are delivered after more than two weeks. The instructions contained in G. L. No. 2 of 1971 (Civil and

Criminal) should be followed equally by the Executive Magistrates and the court expect that judgments in criminal cases should be delivered by them within two weeks from the date of conclusion of the arguments. Explanation should be submitted alongwith the quarterly returns, if judgments are delivered beyond 30 days of the date of conclusion of arguments.

I am, therefore, to request that the above instructions may be brought to the notice of all the Executive Magistrates working under your control for strict observance.

Yours faithfully,

K. P. MOHAPATRA  
14-11-73  
Registrar

**FORM**

**STATEMENT SHOWING THE EXAMINATION OF WITNESSES AND THE AMOUNT PAID AS EXPENSES DURING THE QUARTER ENDING**

Name of the Magistrate with class of powers exercised	Number of witnesses examined and discharged								Amount paid as expenses	Remarks
	On the first day		On the second day		On the third day		After the third day			
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage		
1	2	3	4	5	6	7	8	9	10	11

CONFIDENTIAL

## GENERAL LETTER No. 2 OF 1974

(Criminal)

**From**

Shri A. C. Das, B. A. (Hons.), LL.B.

Joint Registrar of the High Court of Orissa

**To**

All the District and Sessions Judges of the State

Dated Cuttack, the 3rd April 1974

**Subject**—Appointment of Public Prosecutors and Additional Public Prosecutors.**Sir,**

I am directed to invite a reference to the provisions of sub-sections (2) to (5) of section 24 of the Code of Criminal Procedure, 1973 which has come into force with effect from the 1st April 1974 and to say that the Court observe that with a view to securing the appointment of really worthy and efficient persons as the Public Prosecutor or Additional Public Prosecutors for a district, District & Sessions Judges should scrupulously discharge the responsibility cast upon them by sub-section (3) for preparation of a panel of names of persons for such appointment. In offering their views on the suitability of the persons to be placed on the panel they should give careful consideration to the knowledge, in sight and experience of each individual in conducting Criminal cases, Sessions-trials and Civil cases too. Although sub-section (5) of section 24 provides that a person shall be eligible to be appointed as a Public Prosecutor or as an Additional Public Prosecutor only if he has been in practice as an Advocate for not less than seven years, the Court desire that District & Sessions Judges should keep in mind the fact that persons having to their credit active and regular practice at the Bar for not less than seven years should be chosen for the panel.

The Court direct that a copy of the names of the persons and the views offered by the District & Sessions Judges for preparation of the panel may be forwarded for information of the Court.

I am to request that the above instructions of the Court may kindly be strictly followed.

Yours faithfully

A. C. DAS

3-4-1974

Joint Registrar

## GENERAL LETTER NO. 3 OF 1974

(Criminal)

From

Shri A. C. Das, B. A. (Hons.), LL.B.  
Joint Registrar of the High Court of Orissa

To

The District & Sessions Judges of the State  
Dated Cuttack, the 9th April 1974

Subject—Cognizance of offences by Magistrates and the filing and the receipt of complaints and police reports.

Sir,

I am directed to refer to section 190 of the Code of Criminal Procedure 1973 (Act II of 1974) on the above subject and to say that the provisions thereof mark a departure from the corresponding section of even number of the Code of Criminal Procedure, 1898. The most important change brought about by the Code of 1973 is that any Magistrate of the first class and any Magistrate of the second class specially empowered in this behalf may take cognizance of any offence upon receiving a complaint of facts constituting such offence or upon a police report of such facts and otherwise too whereas the power of taking cognizance of an offence was ordinarily restricted in section 190 of the Code of 1898 to the District Magistrate or Subdivisional Magistrates or any other Magistrate specially empowered.

The new provision made in section 190 of the Criminal Procedure Code of 1973 is likely to cause confusion at stations where more Judicial Magistrates of the first class than one are posted. At these places each Magistrate is competent to receive a complaint or a police report independently by himself, no matter whether a Subdivisional Judicial Magistrate is also available. Parties will, therefore, be free to file a complaint or a police report before any such Magistrate at their own will. Such a state of things will result in much difficulty and inconvenience to the litigant public as also to the courts.

To obviate the evils ensuing from the situation envisaged as above, the Court, on careful consideration, are of opinion and they direct that :

(i) at stations where a Subdivisional Judicial Magistrate is available, he alone shall receive complaints and police reports and he will deal with them according to law;

(ii) at stations where only one Judicial Magistrate of the first class is posted, he shall receive complaints and police reports and will take necessary action according to law.

I am, accordingly, to request that the above instructions of the Court may be strictly observed.

All Officers functioning as Judicial Magistrates may be informed.

Yours faithfully

A. C. DAS

9-4-74

Joint Registrar

GENERAL LETTER NO. 4 OF 1974  
(Criminal)

From

Shri D. Hota, B. L.,  
Registrar of the High Court of Orissa

To

All the Sessions Judges of the State  
Dated the 7th August 1974

Subject—Procedure to be followed for hearing on the question of sentence and mode of preparation of judgements in Sessions trial and cases tried under the warrant procedure by the Magistrates.

Sir,

I am directed to refer to sections 235 and 248 of the new Criminal Procedure Code and to say that according to section 235 of the Code if the accused is convicted, the Sessions Judge shall unless he proceeds in accordance with the provisions of section 360 hear the accused on the question of sentence and then pass sentence on him according to law, Section 248 similarly provided that where any judicial Magistrate finds the accused guilty, but does not proceed in accordance with the provisions of section 325 or section 360, shall, after hearing the accused on the question of sentence, pass sentence upon him according to law.

2. A question has been raised as to whether the delivery of the judgement, hearing on the question of sentence and passing of sentence as well should be on the same date or there should be a separate adjournment for the purpose of hearing on the question of sentence. The other question is what should be mode of preparation of the judgement.

3. The Court consider that hearing of to arguments after conclusion of evidence is imparative in view of the above provisions. Ordinarily the hearing of argument on the question of sentence should be taken up soon after the pronouncement of the judgement of conviction. If, however, it is considered necessary to adjourn the hering on the question of sentence, adjournment may be granted for a short period and necessary precaution may be taken for securing the attendance of the accused on the date of hearing on the question of sentence and the passing thereof.

4. The judgement in the case cannot be deemed to be complete unless the sentence is passed. Therefore, the correct procedure would be write out, deliver and sign the judgment up to the state of finding the accused guilty and convicting him for particular offences, and after completion of the hearing of the argument on the question of sentence, the Judge or Magistrate, as the case may be, may pronounce the sentence imposed. The lists of witnesses examined, documents and material objects exhibited should then be appended to the judgement thereby making complete in all respects.

5. I am, therefore, to request that the above instructions may be brought to the notice of all the courts subordinate to you for their information and guidance.

Yours faithfully

D. HOTA

Registrar

## GENERAL LETTER NO. 7 OF 1974

(Criminal)

From

Shri D. Hota, B. L.  
Registrar of the High Court of Orissa

To

All the District and Sessions Judge of the State

Subject—Delivery of Judgement in Criminals cases in the absence of the accused.

Sir,

I am directed to refer to Court's General letter No. 6 of 1966 (Criminal) on the above subject and to say that instructions were issued therein that it would be open to the Magistrates to pronounce the judgment on the date already fixed for delivery of the same, despite the absence of the accused and if the case ends in conviction, the Magistrate may issue suitable warrants for arrest of the accused. If the sentence is one of fine, suitable coercive process for realisation of fine may also be issued in addition to the process for apprehension of the accused.

2. In the decision reported as Saraju Prasad Sahu and Others-Vrs.-State in 1972 C. L. T. 506, it has been held.

"From the above, it is quite evident that it is the duty of the trial Court to secure the attendance of the accused in Court, at the time of delivering a judgment of conviction by which the accused is sentenced to a substantive sentence, of imprisonment. In the present case, as stated above the judgment of conviction sentencing the petitioner to undergo rigorous imprisonment for two months, was delivered in the absence of the petitioners. Accordingly, there has been non-compliance also of the above provisions of the Criminal Procedure Code."

It has come to the notice of the court that some of the subordinate Criminal Courts on a mis-conception of the observations made in the aforesaid decision have taken a view that instructions conveyed in G. L. No. 6 of 1966 are in conflict with the decision quoted above. In the decision referred to above, the law laid down in sub-section-(2) of Section 366 of the Criminal Procedure Code, 1898 has been explained. The observations made therein leave no scope for entertaining a view that in no case judgment can be delivered in the absence of the accused. It has been emphasised in the decision that a Criminal Court is not absolved from the duty of the securing the attendance of the accused on the date of judgement. As in sub-section (2) of Section 366 of the Criminal Procedure Code, 1898, clear provisions have been made in sub-section (6) of section 353 of the Criminal Procedure Code, 1973, making it mandatory for the courts to require the attendance of the accused in the Court, if he is not in custody on the date of judgment except in a case where the personal attendance of the accused has been dispensed with, and the sentence

is one of fine or when the accused is acquitted. Thus the duty of the Criminal Courts to take steps to secure the attendance of the accused in Court on the date of judgment is a clear mandate of the law and this requirement cannot be dispensed with. There may, however, be cases where for some justifiable reasons, the Court may pronounce judgment in the absence of the accused and to meet such cases sub-section (7) of Section 353 of the Criminal Procedure Code, 1973 which corresponds to sub-section (5) of section 366 has been enacted. A proviso to sub-section (6) of section 353 of the Criminal Procedure Code, 1973 has been newly added enabling the Criminal Courts to pronounce judgment in the absence of one or more of the accused where in a case there are more than one accused.

3. In view of the above, the Court wish to make it clear that there is no conflict between the instructions conveyed in G. L. 2 of 1970 and the decision reported in 1972 C.L.T. Page-506. The subordinate Criminal Courts should, in all cases, take suitable measures in advance to secure the attendance of the accused. They may deliver the judgment in the absence of the accused in cases contemplated in sub-section (6) of section 353 of the Criminal Procedure Code and the proviso thereto and also cases where there are justifying reasons for so doing.

Yours faithfully,

D. HOTA

Registrar

GENERAL LETTER NO. 1 OF 1976

(Criminal)

To

All the District and Sessions Judges of the State

Subject :—Disposal and preservation of Final reports on which the investigations are refused by the Subdivisional Magistrates.

Sir,

I am directed to refer to the proceedings of the Conference of the District and Sessions Judges held in December, 1974 under item No. 24 of the agenda and to say that the question that came up for consideration before the conference was with regard to the manner of disposal and preservation of Final Reports, on which the investigations are refused by the Investigating Officers, and placed before the Subdivisional Judicial Magistrates for final orders. These final reports submitted by the police and accepted by the Subdivisional Judicial Magistrate, on which no further action is required to be taken, under the existing rules, can neither be retained in the office of the Subdivisional Judicial Magistrate nor consigned to the Record Room. Therefore there is every apprehension of these reports being unaccounted for, lost or misplaced. Specific rules have to be framed in the G. R. & C. O. Criminal, Volume-I for preservation and destruction of such papers.



Rule-8 (a) of Chapter I, Part III at page 35 of the General Rules and Circular Orders, Criminal, Volume-I lays down the manner of disposal of complaints dismissed under section 203 of the Criminal Procedure, 1973 in respect of which no inquiry is made under section 202 *ibid*. The Court, after careful consideration, direct that, until appropriate provisions are made, in the rules the instructions contained in Rule-8 (a) at page 35 of the G. R. & C. O. Criminal, Volume I should be applied for the purpose of preservation and destruction of the final reports on which the investigations are refused by the investigating Officers and are accepted by the Sub-divisional Judicial Magistrates for taking no further action thereon in order that they may not be lost, misplaced or unaccounted for.

I am to request that the aforesaid instructions may be brought to the notice of all the subordinate criminal courts under you for their information and guidance.

Yours faithfully,

D. HOTA

Registrar

GENERAL LETTER NO. 2 OF 1976

(Criminal)

From

Shri D. Hota, B. L.,  
Registrar of the High Court of Orissa.

To

All the District & Sessions Judges of the State

Dated Cuttack, the 24th May, 1976

Subject:—Revision of the instructions issued in the Court's General Letter No. 3/1970 (Criminal), read with their letter No. 7240, dated the 9th August 1974, in the matter of record of examination of the accused under section 281 (2) Cr. P. C., 1973.....Item No. 4 of the proceedings of the District Judges' Conference of 1975.

Sir,

I am directed to refer to the Court's General Letter No. 3/70 (Criminal) wherein the Court directed that the statement of the accused should invariably be recorded by the Magistrate or the judge himself by his own hand and the practice of getting the questions typed out with copies prepared by carbon process, for use in the examination of more than one accused be discontinued. In Court's letter No. 7240, dated the 9th August 1974, the Court while drawing the attention of the Subordinate Criminal Courts to the aforesaid General Letter and Section 281 of the new Criminal Procedure Code reiterated that the whole of the examination of the accused including

the questions put to him and answers given by him shall be recorded by the Presiding Judge or Magistrate or where he is unable to do so owing to physical or other incapacity by an officer appointed by him under his direction or superintendence. In the last District Judges' Conference while considering the question of relaxation of yardstick fixed for disposal of Sessions Cases, all the Sessions Judges expressed difficulties in personally recording statement of accused persons specially in cases where the number of accused persons is large. It was the consensus of opinion that having regard to the discretion envisaged in the sub-section (2) of Section 281, Criminal Procedure Code, 1973, it would be open to the Presiding Judge or Magistrate to get the examination of the accused recorded by his stenographer in cases where the number of accused persons is large and either due to his pre-occupation or pressure of work he is unable to perform the job himself.

The Court after careful consideration have been pleased to concur in the said decision and direct that ordinarily the presiding officer should record in his own hand the whole of the examination of the accused including the questions and answers. In case of physical or other incapacity which may be due to pre-occupation or pressure of work he may exercise the discretion of getting examination of the accused recorded under his direction and superintendence by an officer appointed in this behalf. The nature of the incapacity should however be mentioned in the order-sheet. This modifies instructions issued in G. L. 3 of 1970 and Court's letter No. 7240, dated the 9th August, 1974.

I am to request that the aforesaid instructions may be brought to the notice of the Subordinate Criminal Courts within your jurisdiction for their information and guidance.

Yours faithfully

D. HOTA

Registrar

GENERAL LETTER NO. 3 OF 1976

(Criminal)

No. 6289—XII-9/74

From

Shri D. Hota, B.L.  
Registrar of the High Court of Orissa

To

All the Sessions Judges of the State

Dated Cuttack, the 7th September 1976

Subject—Presentation of Criminal Appeals and Criminal Revisions in the Court of Session during the absence of the Sessions Judge from the headquarters and the powers of the Additional Sessions Judge, Assistant Sessions Judge and the Chief Judicial Magistrate authorised under section 10(3) Cr. P. C., 1973 to pass interim orders.

Sir,

I am directed to say that it has come to the notice of the court that at some headquarters stations of the Sessions Judges, Criminal Appeals and Criminal Revisions are not being entertained in the Court of the Sessions during the absence of the Sessions Judge from the headquarters. As provided in section 373, Code of Criminal Procedure, 1973 any person who has been ordered under section 117 to give security for keeping the peace or for good behaviour or who is aggrieved by any order refusing to accept or rejecting a surety under section 121 may appeal against such order to the Court of Session. Similarly section 374(3) of the Code of Criminal Procedure, 1973 provides that any person convicted by Judicial Magistrate may appeal to the Court of Session. Persons desiring to prefer appeals either under section 373 or 374, Code of Criminal Procedure, 1973 are at liberty to file Criminal Appeals in the Court of Session of the respective Session Division. The absence of the Sessions Judge from the headquarters whether on tour or otherwise does not stand in the way of institution of Criminal Appeals in the Court of Session. In court's letter No. 10196, dated 14-11-1974, the court had the occasion to consider whether any Criminal Appeal can be preferred before any Additional or Assistant Sessions Judge. Having regard to the provisions contained in section 381, Cr. P. C., 1973, the court observed that the Additional and Assistant Sessions Judges were not competent to receive any Criminal Appeal and in that context observed that no Criminal Appeal can be preferred before any Additional Sessions Judge or Assistant Sessions Judge or the Chief Judicial Magistrate and that all Criminal Appeals shall be presented before the Sessions Judge of the respective Sessions Division. By issue of such instructions the court did not intend that no Criminal Appeals can be instituted in the Court of Session during the absence of Sessions Judge from the headquarters. In view of the mandatory provisions contained in sections 373 and 374, Cr. P. C., 1973, all Criminal Appeals can be filed in the Court of Session notwithstanding the absence of the Sessions Judge from the headquarters.

2. True it is that section 397, Cr. P. C., 1973 does not in clear terms provide the forum for presentation of criminal provisions. But on a construction of the provisions contained in section 397, Cr. P. C., 1973, Criminal Revisions can also be filed in the Court of Session during the absence of the Sessions Judge from the headquarters.

3. The Additional Sessions Judge, Assistant Sessions Judge or Chief Judicial Magistrate as the case may be if authorised by the Sessions Judge under section 10(3), Cr. P. C. or under section 9(5), Cr. P. C. by the High Court, can dispose of any urgent applications arising out of any Criminal Appeal or Criminal Revision, subject to the restriction that might have been imposed on their power in dealing with any particular matter.

4. I am accordingly to request that the aforesaid instructions may be followed in future.

Yours faithfully,

D. HOTA

Registrar

## GENERAL LETTER NO. 1 OF 1977

(Criminal)

From

Shri L. Mohapatra, B.L.  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State

Dated Cuttack, the 24th August 1977

Subject—Recording of the period of pre-conviction detention undergone by the accused by the Subordinate Criminal Courts in the conviction warrant to calculate the period of detention to be set off under section 428, Cr. P. C., 1973.

Sir,

I am directed to say that a question arose as to which authority should indicate the period of pre-conviction detentions undergone by the accused persons in the warrants of imprisonment for the purpose of calculating the period to be set off under section 428 of the Code of Criminal Procedure, 1973.

The court, after careful consideration, direct that in supersession of G. L. No. 5 of 1974 (Criminal), the trial courts should specify the pre-conviction period of detention of a convict in the warrants of imprisonment to facilitate the Jail Authorities to work out the remaining period of imprisonment which the convict will be liable to undergo after the order of conviction is made final.

I am further directed to say that the application of the provisions of section 428 of the Code of Criminal Procedure, 1973 in respect of the criminal cases has been decided in the case of Mr. Boucher Pierre Andre Versus Superintendent, Central Jail, Tihar, New Delhi reported in A. I. R. 1975, Supreme Court 164 and the principles laid down therein should be strictly followed.

I am accordingly to request that the aforesaid directions of the court be brought to the notice of all the Subordinate Criminal Courts for their information and guidance.

Yours faithfully,

B. MOHAPATRA

Registrar

## GENERAL LETTER NO. 2 OF 1977.

(Criminal)

To

All the Sessions Judges of the State

Sir,

I am directed to say that in G.L. No. 5 of 1954, instructions were issued to the District Magistrates to scrutinise carefully the explanations of delay in disposal of cases pending for more than one year and to indicate in their comments the steps taken by them to remove the causes of delay. After separation of the judiciary, the then Additional District Magistrates (Judicial) were sending the criminal quarterly statements through the concerned Sessions Judges. Since the commencement of the Code of Criminal Procedure, 1973, the Chief Judicial Magistrates have been sending the quarterly statements along with the explanations of the year-old cases through the Sessions Judges and in many cases neither the Chief Judicial Magistrates nor the Sessions Judges are submitting their remarks or comments on such explanations.

According to the note appended to Rule 24 of Chapter II, Part VI of the General Rules and Circular Orders (Criminal), Volume I, 1962 (Second Edition), clear and concise explanations regarding delays, with the District Magistrate's remarks thereon, should be submitted to the court with quarterly statement-A, in Form No. (S) 3, Rule 344 of the General Rules and Circular Orders (Criminal), Volume I, 1977 (Third Edition) provides that the Chief Judicial Magistrate shall submit the quarterly statement to the court through the Sessions Judge along with the explanations furnished by the Judicial Magistrates with the remarks of the Chief Judicial Magistrate.

2. The court had occasions to notice that the Sessions Judges were forwarding the statements submitted by the Chief Judicial Magistrates without their comments. They should not divorce their responsibilities by sending the quarterly statements along with the explanations of year-old cases to the court mechanically.

3. The court, after careful consideration, direct that, in future, the Sessions Judges should submit their comments on the explanations of the year-old cases furnished by the concerned Magistrates and indicate the steps taken by them to remove the causes of delay in disposal of such cases, over and above the remarks made by the concerned Chief Judicial Magistrates, on such explanations.

The above instructions must be strictly followed in future.

Yours faithfully,

L. MOHAPATRA

Registrar

## GENERAL LETTER NO. 2 OF 1978

(Criminal)

Dated, Cuttack, the 15th December 1978

From

Shri B. K. Behera, LL.B.,  
Registrar of the High Court of Orissa

To

All the Sessions Judges of the State

Subject—Entry of the particulars of the orders passed by the High Court in original jurisdiction cases in the Register of cases in which the proceedings have been stayed in Form No. (R) 41 (Civil):

Sir,

I am directed to say that a question has been raised if the cases stayed by orders, passed by the High Court in the original jurisdiction cases should be entered in the Register of stay orders maintained by the Criminal Courts.

2. All the Sessions Judges of the State, who were consulted in the matter, are of the opinion that stay orders, passed by the court in the original jurisdiction cases should be entered in the stay order Register (R) 41.

The Court, while agreeing with the views of the District and Sessions Judges, direct that the orders of stay, passed in original jurisdiction cases should be entered in the Register of stay orders, maintained as per instructions, issued in Court's General letter No. 3 of 1966 (Criminal).

I am to request that the aforesaid instructions should strictly be followed in future.

Yours faithfully,

B. K. BEHERA

Registrar

## GENERAL LETTER NO. 1 OF 1980

(Criminal)

From

Shri B. K. Behera, LL.B.  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State

Dated, Cuttack, the 22nd May 1980

Subject—Expedition disposal of cases against under-trial prisoners

Sir,

The question of the expedition disposal of cases against the under-trial prisoners requires utmost attention. Instructions had been

issued by the Court for giving preference to such cases in Court's letter No. 9102/XXIX-83/72, dated the 24th October 1973. The desirability of expeditious trials of such cases has been emphasised by the Supreme Court in the decisions reported in A. I. R. 1979 Supreme Court 1369 & 1377.

The question of expeditious disposal of such cases figured in the District Judges' Conference held in the year, 1978 and it had been decided that apart from the instructions of the Court issued in the aforesaid letter, the Sessions Judge would allot and depute a Magistrate exclusively in charge of cases of under trial prisoners at stations where there are more than one Magistrates. It was further decided that a circular would be issued directing all the Magistrates to give a certificate in the monthly statements that they have given preference to such cases. It was also decided that the Chief Judicial Magistrates should scrutinise the records to see as to whether the provisions of Section 116(6) of the Code of Criminal Procedure were being followed. It was further decided that the Sessions Judges and the Chief Judicial Magistrates would instruct all the Magistrates to follow the provisions of the probation of Offenders Act.

It would appear that some steps have been taken by the Courts at different stations for the expeditious disposal of cases against the under-trial prisoners. However in order that appropriate steps are taken in this regard by the Subordinate Courts, the Court direct that the following instructions be scrupulously observed by the Subordinate Courts.

(a) At stations where there are more than one Magistrates the Sessions Judge would allot such cases to one Magistrate, as far as possible.

(b) The Magistrates shall give a certificate in the monthly statements that they have given preference to cases of under-trial prisoners. The Magistrates shall also give a certificate that the provisions of section 116(6) of the Code of Criminal Procedure have been followed and the Chief Judicial Magistrates should scrutinise the records see that this has been done.

(c) The Sessions Judges and the Chief Judicial Magistrates shall instruct all the Magistrates to properly follow the provisions of the Probation of Offenders Act.

(d) The Magistrates should apply the provisions of section 167(5) of the Code of Criminal Procedure when investigation has not been completed within the requisites period and the fact that this has been done shall find place in the monthly statement.

(e) The Magistrates must satisfy themselves before authorising the detention of the accused persons beyond the period of 15 days that there are adequate grounds for so doing. Their attention is drawn to the provisions of section 167(2) of the Code of Criminal Procedure.

(f) All applications for withdrawals of cases against the under trial prisoners, whenever made by the Public Prosecutors, should be heard and disposed of immediately after such applications are made irrespective of the dates fixed by advancing the cases and giving due notices to the parties.

I am to request that these instructions should strictly be followed by all Courts within your jurisdiction.

Yours faithfully

B. K. BEHERA

Registrar

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GENERAL LETTER NO. 1 OF 1981

(Criminal)

From

Shri B. N. Mishra, LL.B.

Registrar of the High Court of Orissa, Cuttack

To

All the Sessions Judges of the State

Dated Cuttack, the 21st August 1981

Subject—Manner of registration of a counter case committed to the Court of Sessions.

Sir,

I am directed to say that a doubt has been entertained regarding the manner of registration of a counter case committed to the Court of Sessions as there is no specific rule or law in that regard. The Court after careful consideration of the matter observe that in view of the principles laid down in the case of Kalandi Behera and others v The State (1964)XXX CLT 446 and in the case of Gundi Sahu and others v. State of Orissa and others reported in (1975) XLI CLT 607, if the Magistrate is satisfied that one case is really counter to the other it is desirable that the counter case, even though it is not exclusively triable by the Court of Session, should also be committed to the Court of Session and on such commitment should be registered as a Sessions case.

I am to request that the aforesaid instructions may be strictly followed by all Criminal Courts under you in future.

Yours faithfully

B. N. MISHRA

Registrar



## GENERAL LETTER NO. 2 OF 1981

(Criminal)

From

Shri B. N. Mishra, LL.B.  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State

Dated Cuttack, the 9th September 1981.

Subject—Production of material objects in Courts by the Malkhana Clerks on receipt of written requisitions.

Sir,

I am directed to say that the question of laying down the procedure in the matter of production of material objects by the Malkhana Clerk in the Courts concerned came up for discussion under item No. 48 of the Agenda of the District Judges' Conference, 1978. The Court after considering the suggestions of the District and Sessions Judges of the State are pleased to direct that with a view to facilitating safe and proper movement of the material objects which may be very valuable by their intrinsic worth or on account of their important evidentiary value and fixing responsibility in case there is any loss or tampering, the material objects should be taken out of the Malkhana for production in the Courts concerned only after receipt of a written requisition from the concerned Bench Clerk. Requisition for removal of material objects should ordinarily be issued in the first hour of the date on which the case is fixed for trial and should be returned back to the Malkhana at the end of the day by the Bench Clerk. The written requisition should be issued by the Bench Clerk in the following *pro forma*.

Form of Requisition for removal of material objects from Malkhana.

From the Court of

To

The Clerk-in-charge, Malkhana.....

Whereas the material objects in—Case No.—arising out of—P. S. Case No.—are required in connection with trial of the said case fixed for to day, you are required to send the same under safe custody.

By Order,

Bench Clerk

\* \* \*

\* \* \*

\* \* \*

\* \* \*

The following material objects are sent as per the above directions.

1.

2.

3.

4.

5.

Returned/Retained

Signature of the Malkhana Clerk

Restored to its place:-

Signature of the B. C. with date

Signature of the Malkhana Clerk

N. B.—To be prepared in duplicate and the Original to be preserved by Malkhana Clerk and duplicate to be filed with the Record by B. C.

\* \*

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\* \*

3. In order to watch the movement of the material objects from the Malkhana, a register should also be maintained in manuscript form containing the following headings in all the Court Malkhanas, so that information with regard to production of material objects in the Court concerned can be entered therein.

(1) Serial No.

(2) Name of the Court sending requisition.

(3) No. and date of requisition with details of the articles required.

(4) No. and year of the case.

(5) The date on which the articles are sent with details

(6) Dated signature of the person receiving the articles

(7) Date of return of the articles with the list of M. Os. marked.

(8) Signature of Malkhana Clerk in token of receipt of M. Os. with date.

(9) Remarks

4. Where, the material objects are valuable, the Clerk-in-charge of the Malkhana should himself take the articles and bring them back from the Courts concerned in order to prevent loss or tampering of the material objects during transit.

I am, therefore, to request that the aforesaid instructions may be brought to the notice of all the Criminal Courts subordinate to you for their information and guidance.

Yours faithfully  
B. N. MISHRA  
Registrar

GENERAL LETTER NO. 1 OF 1983  
(CRIMINAL)

To

All the District and Sessions Judges of the State

Subject—Sending of Material Objects to the High Court by the Subordinate Courts in connection with Criminal Appeals or Revisions.

Sir,

I am directed to invite a reference to rule 119 at page 30-31 of the General Rules & Circular Orders (Criminal) Volume-I which provides that Sessions Judges should send any material exhibit directly connecting the accused with the Crime to the High Court. In murder and homicide cases all weapons of offence should invariably be forwarded. Experience shows that the production of material objects in appeals and revisions besides being rare, involves waste of funds and manpower.

The Court, after careful consideration of the matter, have been pleased to observe that the Subordinate Courts should not despatch any Material object to the High Court in connection with any Criminal Appeal, Government Appeal or Revision unless specifically called for by the Court. Steps are being taken to accordingly amend the aforesaid rule and the forms pending amendment of the relevant rule, and forms the Subordinate Criminal Courts shall not despatch any material object in connection with any appeal or revision unless specifically called for by the Court.

I am to request that the above direction of the Court may be brought to the notice of all the Subordinate Criminal Courts under you for their information and future guidance.

Yours faithfully,  
R. N. PANDA  
Registrar

GENERAL LETTER NO. 2 OF 1983  
(Criminal)

From

Shri R. N. Panda, M. A., LL.B.  
Registrar of the High Court of Orissa, Cuttack.

To

All the District & Sessions Judges of the State.  
Dated Cuttack, the 26th August, 1983

Subject—Non-entering of cases withdrawn under Section 257 of the Criminal Procedure Code before appearance of the accused in the Register of the cases decided (R) 18.

Sir,

I am directed to say that the Court have had under consideration the question whether Column 17 of the Register of cases decided (R) 18 Criminal should be filled in respect of a case withdrawn under Section 257 of the Code of Criminal Procedure before appearance of the accused person.

The Court, after careful consideration of the matter, do hereby direct that the cases withdrawn under Section 257, Cr. P. C. before the appearance of the accused persons should not be entered in column 17 of the Register but only a note should be made in the Remarks column of the Register against the entry relating to such cases that the accused has been acquitted and the case has been withdrawn under Section 257 Cr. P. C.

The above instructions should be strictly followed in future by all concerned.

Yours faithfully,

R. N. PANDA  
Registrar

ORISSA HIGH COURT, CUTTACK  
GENERAL LETTER NO. 1 OF 1984

Criminal

Dated Cuttack, the 1st February, 1984

To

The District & Sessions Judges (All)

Subject—Recording of confessional statement of accused persons under section 164, Cr. P. C. by the Judicial Magistrates and Special Judicial Magistrates.

Sir,

I am directed to say that the Court had occasions to notice that some of the Judicial Magistrates and Special Judicial Magistrates of

the State improperly record the confessional statements of the accused persons under section 164 Cr. P. C., 1973. in consequence of which there has been a failure of dispensation of Justice.

The Court, on a careful consideration of the matter are pleased to direct that the attention of all the Judicial Magistrates and the Special Judicial Magistrates working in your Judgeship should be drawn to the principles laid down in paragraph-9 of the judgment in the case of Gurubaru Praja-V. The King reported in A. I. R. 1949 Orissa 67 with a view to enabling them to record such statements strictly in accordance with law.

Orissa High Court  
Administrative Department  
(Criminal)

Yours faithfully,  
[ILLEGIBLE]  
Joint Registrar

GENERAL LETTER NO. 2 OF 1984  
(Criminal)

From

Shri R. N. Panda, M. A., LL. B.,  
Registrar of the High Court of Orissa

To

All the District & Sessions Judges of the State

Subject—Marking of exhibits in Criminal Cases

Sir,

It has come to the notice of the Court that the practice prevailing in the Subordinate Criminal Courts regarding marking of exhibits is divergent and in some of the Courts information about the name of the person producing the document and the date of such production are not furnished in the exhibit marks. Unless such informations are readily available, from the exhibits marks difficulties may be faced at various stages by the Presiding Officers and their staff. In order that such difficulties are avoided, the Court direct that the following specimen form should be adopted for marking documents admitted in evidence in Criminal Cases.

*Further modified vide  
h.L No.2/93*

<p>Case No...../ of 19..../  Marked as Exhibit..... On...../  For/by Prosecution./Defence.....  Court.</p> <p style="text-align: center;">Sessions Judge/ Magistrate</p>
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I am to request that the above instructions may be brought to the notice of all Criminal Courts subordinate to you for their information and strict guidance.

Yours faithfully  
**R. N. PANDA**  
 Registrar

GENERAL LETTER No. 3 OF 1984  
 (Criminal)

From

Registrar, Orissa High Court, Cuttack

To

All the District and Sessions Judges of the State

Dated Cuttack, the 5th March 1984

Subject—Procedure to be followed in the matter of setting off the period of Pre-conviction detention in respect of under Trial Prisoners involved in more than one case.

Sr,

I am directed to refer to G. L. 1 of 1977 (Criminal) in which instructions were issued by the Court that the trial court should specify the pre-conviction period of detention of a convict in the Warrant of imprisonment to facilitate the Jail authorities to work out the remaining period of imprisonment which the convict will be liable to undergo after the order of conviction is made final. A question has been raised as to what procedure should be followed in the matter of setting off the period of pre-conviction detention in respect of under Trial Prisoners involved in more than one case.

In this connection the Court would like to draw the attention of the Subordinate Criminal Courts to the decision reported in A. I. R. 1977 S. C. at page 1096 (Government of Andhra Pradesh-Versus Anne Venkateswar Rao) in which it has been laid down that Section 428 Cr. P. C. makes it clear that the period of detention which it allows to be set off against the term of imprisonment imposed on the accused on conviction must be during investigation, enquiry or trial in connection with the same case in which he has been convicted. Accordingly the Court have been pleased to observe that the period of pre-conviction detention to be set off in respect of the under trial prisoners involved in more than one case, should be calculated separately with reference to each case irrespective of the fact that there might have been common period of detention of the same accused in different cases.

I am to request that the aforesaid principles be followed by all the Criminal Courts in future.

Yours faithfully,  
**K. C. MOHAPATRA**  
 for Registrar

Further modified  
vide G.L. NO. 1 of 1993  
, 90

GENERAL LETTER No. 1 of 1986

(Criminal)

From

Shri S. K. Behera, LL. B.,  
Registrar, (Administration),  
Orissa High Court, Cuttack.

To

All the District and Sessions Judges of the State

Dated, Cuttack, the 30th August, 1986

Sir,

I am directed to say that the Court have had under consideration the question of formulating a larger policy of releasing accused persons on their personal recognizance in minor and bailable offences.

The Court, after due consideration of the matter, have decided that the Criminal Courts should release accused persons involved in minor, bailable offences, excepting offences involving moral turpitude on their executing personal recognizance bonds, provided that the maximum prescribed term of sentence for the offence is not more than two years.

The above instructions should be strictly followed in future by all concerned.

Yours faithfully

S. K. BEHERA

Registrar (Administration)

GENERAL LETTER No. 2 OF 1986

(Criminal)

To

All the District and Sessions Judges of the State

Subject—Supply of carbon copies of deposition of witnesses to the Public Prosecutors and the State Defence Counsels in Sessions Cases.

Sir,

I am directed to refer to court's letter No. 1240, dated 19-2-1964 and say that it has come to the notice of the court that copies of depositions in Sessions cases are being prepared separately by the Copying Departments and supplied to the Public Prosecutors and the State Defence Counsels free of cost, causing unnecessary duplication of work besides over-burdening the Copying Departments which are already hard pressed with work.

The court after careful consideration of the matter have been pleased to observe that since the depositions in Sessions cases are usually typed out to dictation in open court, the problem can be got over by drawing carbon copies thereof at the very stage of recording the same and accordingly direct that such carbon copies of deposition of witnesses should be supplied to the Public Prosecutors and State Defence Counsels engaged in Sessions cases free of charges on their making applications for the purpose before recording of evidence starts.

I am to request that the above instructions may please be brought to the notice of all the Additional Sessions Judges and Assistant Sessions Judges of your Session Division for their information and strict observance in future.

Yours faithfully,

S. K. BEHERA

Registrar (Administration)

High Court  
Administrative Department  
(Criminal).

GENERAL LETTER No. 3 OF 1988

(Criminal)

From

Shri S. K. Behera  
Registrar (Administration), Orissa High Court, Cuttack

To

All the District and Sessions Judges of the State

Dated Cuttack, the 18th September 1986

Subject—Procedure for hearing of bail matters and granting release orders.

Sir,

I am directed to say that it has come to the notice of the court that bail matters are usually being heard by the Subordinate Criminal Courts including Sessions Courts after the lunch interval, resulting in delayed communication of orders for release on bail which is likely to adversely affect the right to liberty of the person concerned.

The court after careful consideration of the matter in supersession of the earlier instruction on the subject have been pleased to direct, without fettering in any way the discretion of the court concerned to take up urgent bail matters at any period of the court hours that hearing of bail matters posted for consideration from an earlier date should be heard at some fixed hour before the lunch interval and the order for release on bail handed over to the Advocate of the concerned party with a view to minimising the delay in his release.



I am to request that the aforesaid instructions may be brought to the notice of all the Criminal Courts including the Sessions Courts subordinate to you for their information and strict compliance.

Yours faithfully,

S. K. BEHERA

Registrar (Administration)

General Letter No. 4 of 1986  
(Criminal)

To

All the District and Sessions Judges of the State

Subject—Expeditious disposal of bail applications in non-bailable cases on the files of the Magistrates.

Sir,

It has come to the notice of the court that Judicial Magistrates unnecessarily keep on adjourning even such bail matters in which prima facie they are not competent to grant bail, awaiting case diaries. It is, therefore, directed that bail applications in such cases should be disposed of expeditiously and case diaries may be called for in such cases only where it is insisted for showing that the offence was such nature in which the Magistrate could grant bail. In such cases also, not more than two adjournments should be allowed for production of the case diary.

I am, therefore, to request that the above instruction of the court may be brought to the notice of all Judicial Magistrates for its strict observance.

Yours faithfully,

B. MISHRA

Registrar (Administration) I/C

Confidential

Copy of the letter No. 3845(13), dated the 30th October 1950 from the Registrar of the High Court to all District Magistrates and all Deputy Commissioners of the State.

I am directed to say that it has been brought to the notice of the court that some subordinate courts impose a short sentence of imprisonment, not because the offence committed involve a minor degree of moral turpitude, but because the courts consider that the accused is either a juvenile offender or an old man or has expressed repentance for the crime, committed. The court do not desire to fetter the discretionary powers of the Subordinate Courts in the matter of awarding proper or adequate sentence in each particular case. They,

however, feel that the tendency of imposing short term imprisonments may be discouraged as such sentences are seldom deterrent and never reformative and the loss of character and self respect involved often tends to create a criminal. But it should not be understood to mean that short sentences of imprisonment should be avoided by passing a sentence for a longer term than the circumstances of the case really require. In every case the Magistrate, before passing a sentence of short term imprisonment should therefore, first consider whether some other order such as the imposing of a fine or a sentence of shipping, release on probation under section 562, Criminal Procedure Code or the granting of time under section 388 in order to realise the amount of fine, imposed may not suitably be passed.

I am further to invite attention to extract of para. 4 of the Bihar & Orissa Judicial Resolution No.147-Jails, dated the 22nd October 1922 (copy enclosed).

This letter and the said extract may be brought to the notice of all Subordinate Magistrates under you.

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179. Extract of paragraph 4 of Bihar and Orissa Judicial Resolution No. 147-Jails, dated the 22nd September 1922, recorded on the Bihar and Orissa Jail Administration Report for 1921, circulated to Commissioners with Memo. No. 149-53-J., dated the 22nd September 1922.

4. His Excellency in Council regrets to observe that, inspite of the Inspector-General's comment in the last Annual Report as to the undesirability of sending prisoners to jails for short terms, there has been no improvement in this respect. 60.88 of persons convicted received sentences of 3 months and less, compared with 60.24 in the previous year. Of these convicts no less than 34.26 per cent had sentenced on one month or less. The Indian Jails Committee in their report recommended the prohibition by legislation of sentences of imprisonment under 28 days. Such sentences are in their opinion seldom deterrent and never reformative, while they are harmful in familiarising the offender with prison, in destroying his self-respect and making him indifferent to further disgrace.

The subject is now under the consideration of the Government of India. The Governor in Council trusts that Magistrates in dealing with juvenile offenders, will bear in mind the provision of section 562 of the Code of Criminal Procedure, section 5 of Whipping Act and section 31 of the Reformatory Schools Act.

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Copy of letter No. 2751, dated the 10th September 1957 from the Registrar, Orissa High Court, Cuttack to the District Judge, Mayurbhanj, Baripada.

Subject—Arrangement of Sessions and Criminal case records in the District Record Room.

With reference to the paragraph 10 at page 6 of your notes of inspection of the District Record Room, Baripada on the above

subject, forwarded with your office letter No. 1255, dated the 19th April 1956, I am directed to say that the court consider that Rule 42 of Chapter V, Part III at page 66 of the G. R. and C. O. Criminal, Volume I by implication enjoins that the arrangement and preservation of criminal case records should be according to the date of the final judgment and not according to the date of the original judgment. They accordingly direct that the disposed of records of Sessions and Criminal cases shall be arranged in the District Record Room according to the date of the final judgment.

No. 2752(6), dated the 10th September 1957

Copy forwarded to the District Judge of (1) Koraput-Jeypore, (2) Sambalpur-Sundargarh, Sambalpur, (3) Balangir-Kalahandi, Balangir, (4) Cuttack-Dhenkanal, Cuttack, (5) Ganjam-Boudh, Berhampur, (6) Puri-Nayagarh, Puri for information and necessary action with reference to his letter Nos. (1) 4444, dated the 29th October 1956, (2) 1991, dated the 31st October 1956, (3) 4291, dated the 30th October 1956, (4) 3406, dated the 7th November 1956 and (5) 2066, dated the 26th October 1957.

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No. 6245(7)-XLVI-C-11/61

From

Shri T. V. Rao, B.A.,LL.B.  
Registrar of the High Court of Orissa

To

All Additional District Magistrate (Judicial)

Dated Cuttack, the 24th November 1961

Sir,

I am directed to say that it has come to the notice of the court that in some of the Criminal Courts, criminal fines realised, are not being deposited in the treasury forthwith and inordinate delay is made by the Nazir in making such deposits. The court strongly disapprove of this practice as the same is quite irregular. They direct that all criminal fines realised, should be deposited in the Treasury forthwith and should on no account be allowed to remain with the Nazir.

2. This may be brought to the notice of all Subordinate Magistrates under you for their information and guidance.

Yours faithfully,

T. V. RAO

Registrar

No. 2158 (6) XLVIC-12/62

From

Shri T. V. Rao, B.A., LL.B.  
Registrar of the High Court of Orissa

To

All Additional District Magistrates (Judicial)  
(Except Sambalpur-Sundergarh, Sambalpur)

Dated Cuttack, the 31st March 1962

Subject—Measures to secure attendance of official witnesses

Sir,

I am directed to say that the Court have had occasion to notice that in spite of repeated instructions in the past, some of the Additional District Magistrates have failed to realise that where a case remains pending for a long time on the file of Judicial Magistrate due to non-attendance of official witnesses, the primary responsibility of contacting the superior officers of those official witnesses either personally or through correspondence demi-officially should remain with the Additional District Magistrate and not with the trying Magistrate. The Trying Magistrate will doubtless exhaust all the coercive processes permitted by the Criminal Procedure Code to secure the attendance of such official witnesses, but the Additional District Magistrate intervention alone will be effective. Thus, in cases where Police witnesses do not turn up before the Magistrate on the date fixed, the Additional District Magistrate should take note of the full particulars of those cases and write a demi-official himself to the Superintendent of Police concerned and also contact him personally if possible. The Court wish to caution all the Additional District Magistrate (Judicial) not to shirk their responsibility in the matter or to leave it to the Trying Magistrates to write demi-official letters to the authorities concerned.

2. The Court further direct that copies of the fortnightly scrutiny of the Judicial Magistrates work should clearly indicate to the Court full particulars of the actions taken in implementing the above instructions.

Yours faithfully,

T. V. RAO

Registrar

No. 3781 (15) XXIX-68/67

dated the 16th July 1968

From

Shri T. V. Rao, B. A., LL. B.  
Registrar of the High Court of Orissa

To

All District Judges of separation districts

All District Magistrates of separation districts

Subject—Provisions in the Executive Instructions against item 23 at page 8 regarding section 164 Cr. P. C. and at page 16 regarding rule 191(a) of the Police Manual.

Sir,

I am directed to refer to the note made against section 164 Cr. P. C. in item 23 at page 8 of the Executive Instructions on separation of Judiciary from Executive which provides that "ordinarily, the power should be exercised by the Executive Magistrate, but if the Executive Magistrate is not available and the matter is of urgency, then it would be exercised by the Judicial Magistrate". A further reference is invited to the note against rule 191 (a) of the Orissa Police Manual at page 16 of the aforesaid instructions which lays down that "though the recording of confessions in rule 191(a) is noted as concurrent, the intention is that where the number of Judicial Magistrates, available in a station is more than one, they should be deputed to record confessions. But where there is only one Judicial Magistrate, the services of the Executive Magistrates may be utilised for the purpose". Thus, there appears to be some apparent conflict between the allocation of functions under section 164 Cr. P. C. and rule 191(a) of the Police Manual.

2. Rule 191 (a) of the Police Manual Provides as follows :—

"In gang and other important cases in which an accused confesses and names accomplices, the investigating officer shall produce the accused as soon as possible before the highest Magistrate, short of the district Magistrate, who can be reached within reasonable time, to have the confession recorded, and at the same time consult the Superintendent as to whether steps shall be taken to have the confession verified. The investigation officer should not close the investigation pending sanction but should proceed to follow up immediately any clause suggested by the confession, which is likely to lead to detection rule 48 (b)."

Section 164 includes both the statements of witnesses and confessions of the accused while rule 191-A confines itself entirely to confessions by accused. But the former does not exclude confessions of the accused persons from being recorded by the Executive Magistrates.

3. In order to avoid any anomaly, the Court direct that statements of witnesses under section 164 Cr. P. C. should be entrusted ordinarily to the Executive Magistrates for recording, while confessions of accused persons under that section should ordinarily be recorded by the Judicial Magistrates.

4. The aforesaid instructions may be brought to the notice of the Subordinate Magistrates under you for their guidance. Necessary steps are being taken to amend the relevant notes of the Executive instructions accordingly.

Yours faithfully,

T. V. RAO

Registrar

No. 5642 (7)/XI-11/61

From

Shri T. V. Rao, B. A., LL.B.,

Registrar of the High Court of Orissa

To

All Additional District Magistrates (Judicial)

Dated Cuttack, the 4th October, 1962.

Subject:—Discrepancy in the submission of criminal pendencies.

Sir,

I am directed to say that a doubt has been expressed in certain quarters regarding the correct method of calculating the duration of cases before the Magistrates under rule 11 at page 97 of the G.R. & C.O. (Crl.) Volume-I. Further, at some stations, in G. R. cases, where the accused are apprehended by the police and released on bail and subsequently appear in Court after the charge sheet is filed, the duration is counted from the date of appearance of the accused but the date of apprehension by the police is not taken into account. At some other stations, a case is brought over from the General file to the trial file of the Magistrate only when all the accused persons enter appearance or they are apprehended. The Court, on careful consideration, disapprove of the above practice. They observe that the moment the charge-sheet is submitted and cognizance is taken, the case should be transferred from the General file to the Trial file and it should be shown as pending from the date the first accused is apprehended or appeared in Court whichever is earlier. The non-apprehension or appearance of the other accused persons where there are more than one is immaterial for the purpose of calculation of the duration. This

matter has been clarified in General Letter No. 1 of 1934 which says that rule 11 at page 97 of the G. R. & C. O. (CrI.) Vol 1 does not specifically mention cases in which there are several accused persons, but it is obviously intended that in such cases duration should be calculated from the date on which the first accused to be apprehended or to appear in Court, is apprehended or appeared in Court.

Accordingly, the Court direct that as soon as charge-sheet is submitted and cognizance is taken, the case should be brought to the trial file, and the provisions of rule II at page 97 of the G. R. & C. O. (CrI.) Vol-I and the instructions issued in General Letter No. 1 of 1934 (CrI.) regarding calculation of duration should be strictly followed in future.

This may be brought to the notice of all Subordinate Judicial Magistrates under your for their information and guidance.

Yours faithfully

T. V. RAO

Registrar

Extracts from the letter No. 76, dated the 7th January, 1963 from the Registrar of the High Court of Orissa to the A. D. M. (J), Sambalpur, Sundargarh.

Subject—Issue of warrants against the I. Os. for not attending the Courts.

\*\* \*\* \* \*\* \*

It appears that in several cases, the Magistrate, Second Class, Bargarh has issued warrants of arrest against witnesses especially the J. Os. for not attending the Court in obedience to summons. In G. R. case No. 530/60 a bailable warrant of arrest was issued to the witnesses but as the warrant of arrest was never returned back to the Court the A. D. M. (J), asked the Magistrate to issue notice to the Officer, In-charge of the concerned Police-Station to show cause why proceedings under contempt of Courts Act should not be drawn up against him. Similarly in G. R. Case No. 256/61 a warrant of arrest was issued against the I. O. which was not returned executed. The A. D. M. has observed that in cases of this type, the warrant of arrest should be addressed to the Circle Inspector of the Deputy Superintendent of Police for execution and the explanation of the officer be called if the warrant is not received back in time through the Superintendent of Police. He has also asked the Magistrate in another case to start contempt proceedings for not sending the service return in time.

In this connection I am to invite your attention to the instructions issued in the Court's letter No. 2158 (6), dated the 31st March 1962, and to say that the Court observe that if a police witness is absent, a D.O. from you to the Superintendent of Police may be more effective

than the issue of a warrant of arrest by the trying Magistrate. The court expect the A. D. Ms. to see that official witnesses appear promptly before the Courts. During his periodical inspection the A. D. M. must note down instances of delay due to non-attendance of official witnesses and then contact, either personally or through a D. O. the Superior Officers of the witnesses concerned and see that they attend Court on the dates fixed. In most instances, it may not be necessary, to issue warrants if arrest against public officers which is on the whole dis-creditable to the entire administration including the Judiciary.

Similarly proceedings for contempt should not be lightly taken, unless even the personal intervention of the A. D. M. has failed to produce any result.

No. 519/XLVI-C-1062

From

Shri T. V. Rao, B. A., LL. B.  
Registrar of the High Court of Orissa.

To

The A. D. M. (J), Sambalpur-Sundargarh, Sambalpur

Dated the 25th January 1963

Subject:—Re-issue of warrant of arrest against official witnesses

Sir,

I am directed to say that the Court direct that whenever during inspections it comes to your notice that a Judicial Magistrate has issued a warrant of arrest for the production of an official witnesses either a police officer or any other official you should further scrutinise the record and satisfy yourself that the Magistrate has exercised his discretion properly, in issuing such a warrant of arrest. Your inspection notes must show that you have examined this aspect carefully. As pointed out in Court's letter No. 76, dated the 7th January, 1963, the issue of warrants of arrest against official witnesses for securing their attendance in courts must be resorted to only in exceptional circumstances, after all other methods have failed. A personal demi official letter from the A. D. M. (J) to the Superior Officer (of the witnesses) concerned may be more effective than the issue of warrants of arrest by the Court.

I am to request that the above instructions **should be** strictly followed in future and it should always be indicated in your inspection notes as to how far they are being complied with by the Magistrates.

Yours faithfully

T. V. RAO

Registrar



Memo. No. 2653(7)/XLVI-B-4/63

**From**

Shri T. V. Rao, B. A., LL. B.,  
Registrar of the High Court of Orissa.

**To**

All Additional District Magistrates, (Judicial)

Cuttack, dated the 17th April, 1963

**Subject—Maintenance of register of Bail orders, Register of warrants of imprisonment and Register of fines.**

Sir,

I am directed to say that recent High Court's inspection of some of the courts of the Judicial Magistrates shows that notwithstanding repeated instructions from the court that it is the primary duty of the A. D. M. (J) to see that the Registrar of Bail orders, Register of warrants of imprisonment and Register of fine are maintained correctly and properly, several irregularities still persist in these registers. The Court find that irregularities in the maintenance of these registers occur due to the following reasons:—

(i) Neither the A. D. M. (J) nor the Trying Magistrate has read the relevant rules and instructions and has no clear idea as to how the entries are to be made correctly. The matters are left completely to the Bench Clerk.

(ii) Every Trying Magistrate thinks that his responsibility is only in respect of these entries made after he took over charge and he has nothing to do with the filling up of blanks in columns in the entries made during the time of his predecessor in office. This erroneous impression must be corrected. Though the first entries in these registers would necessarily be made by the Trying Magistrate as soon as an accused is convicted and sentenced to imprisonment or fine, as the case may be, the other columns are bound to remain blank at that time because it take several months and sometimes even more than a year, for the appeal or revision as the case may be, to be disposed of by the Superior Courts. By that time the Trying Magistrate may be transferred elsewhere and several succeeding entries are made in the register. Some times the new Magistrate opens a separate register, ultimately, if after an interval of, may, one year, the criminal revision is disposed of and the conviction of the accused by the Magistrate is upheld and the order of confirmation is received by the new Magistrate, he does not bother to see whether the remaining columns of the entries in the register of bail orders are immediately filled up and prompt steps are taken either to recommit the convicted person to jail to realise the fine imposed on him. This matter is left entirely to his Bench Clerk.

The A. D. M. (J) also in the course of his inspection merely sees the entries made by the new Magistrate, without specially noticing

whether the entries made by the previous Magistrate have been brought up to date and whether the blanks have been filled in or not.

2. The court view this with great concern. They wish to point out that they attach great importance to the proper maintenance of the aforesaid registers, on which the due execution of sentences of imprisonment or fine passed by trying Magistrates depends, and that the A. D. M. (J), will be held personally responsible, in addition to the trying Magistrate, for their proper maintenance. In future, if the aforesaid defects are found repeated, the court will not hesitate to revert the A. D. M. (J) concerned straight away as Subordinate Judge.

3. You are therefore requested to immediately go through the entries in the aforesaid registers maintained by your Subordinate Magistrates and see that the blanks are filled in, especially in respect of old entries and report compliance to the court within a month.

4. The above instructions may be brought to the notice of the Trying Magistrates under you, for their information and strict guidance.

Yours faithfully,

T. V. RAO

Registrar

No. 6051—IX-106/62

From

Shri T. V. Rao, B. A. LL. B.,  
Registrar of the High Court of Orissa.

To

The Additional District Magistrate (Judicial)  
Balasore.

Dated Cuttack, the 1st October 1963

Sir,

With reference to the paragraph under the heading "Register of Warrant of Imprisonment (in the Court of S. D. M.)" Sl. No. 131 Misc. Case No. 41 of 61" occurring in your notes of inspection of the Court of the S. D. M., and Judicial Magistrate, 3rd Class, Bhadrak made on 14-9-1962, I am directed to say that the Register of Warrants of Imprisonment (R) 5 is not meant for entering cases of persons sent to Civil imprisonment under section 514 (4) Cr. P. C. This register is meant for accused persons sentenced to imprisonment. A surety whose bond is forfeited is not an accused, although a penalty in respect of the amount of the bond forfeited is to be recovered from him by attachment and sale of immovable property in the first instance and where such a recovery is not fruitful then he shall be liable to be sent to Civil prison for a term not exceeding six months. The Court has also discretion to remit any portion of the penalty and enforce payment in part only. Hence, the practice of noting such

cases in the warrant register in some Courts is quite irregular and this must be discontinued forthwith. An unauthorised register may be opened for such cases, as such instances are very few and far between.

Yours faithfully,

Sd. T. V. RAO  
Registrar

No. 6847(13)—Cr. Misc.-59/86

From

Shri T. V. Rao, B. A. LL. B.,  
Registrar of the High Court of Orissa.

To

All Additional District Magistrates (J)

Dated Cuttack, the 24th October/4th November 1963

Subject—Effective prosecution of cases initiated on the complaint of courts.

Sir,

I am directed to say that it has come to the notice of the Court that the instructions contained in some of the old General Letters issued by the Patna High Court which are still in force, are not being followed by the Subordinate Courts. In particular, a reference is invited to General Letters No. 1 of 1933 (Criminal) and No. 3 of 1940 (Criminal) published at pages 12-13 and 20-21 of the printed booklet entitled "General Letters (Criminal of the High Court)" regarding efficient prosecution of Criminal cases started on the complaint of a court. It is seen that nobody takes interest in proper prosecution of such cases and very often the accused gains over the prosecution witnesses, with the connivance or indifference of the prosecuting staff and secures an acquittal.

2. The court observed that after the introduction of the separation scheme, the primary responsibility for proper conducting of these cases lies with the Additional District Magistrates (Judicial), although he will have to take the help of the executive officer in seeing that a proper prosecuting authority is engaged. They therefore, expect the Additional District Magistrates (Judicial) to scrutinise with greater care the cases instituted on the complaints of Courts during their frequent scrutiny with a view to ensure that (i) the cases are properly conducted and (ii) the trying magistrates also dispose of them properly and expeditiously.

It is directed that the instructions contained in the aforesaid General Letters should be strictly followed in future.

Yours faithfully,  
Sd. T. V. RAO  
Registrar

Copy of the letter No. 1240, dated 19-2-1964 from the Registrar, Orissa High Court, Cuttack, addressed to the District Judge, Mayurbhanj-Keonjhar, Baripada.

With reference to the paragraph under the heading 'Copying Department' occurring in your notes of inspection of the office of the Additional Munsif, Karamjia, held on 9-2-1963. I am directed to say that rule 24, Part IV, Ch. I at page 104 (136) of G.R. & C.O., Civil, Vol. I, read with the subsequent rules show beyond any shadow of doubt that separate applications are to be filed for copies of running depositions of witnesses examined on each day. Further after the copy is prepared and issued, the different columns in the Register of application for copies against the particular entry are duly filled up and the said item in the Register is for all practical purposes treated as closed. If no separate application for copies is filed and depositions recorded on all the days of trial are supplied on one application filed on the first day, not only this practice will render nugatory the provisions of rules contained in G.R. & C.O., Civil, Vol. I, regulating preparation and issue of copies but also it make it impossible to maintain the Register of application for copies properly and correctly. The Court, therefore, direct that separate applications should be filed for copies of dispositions of witnesses examined on each day.

Copy of Court's letter No. 5366 (16) dated 20-8-1964 from Shri T. V. Rao, B.A.L.L.B., Registrar of the High Court of Orissa, to the all Sessions Judges of the State/ all Additional District Magistrate (Judicial), of the State.

**Subject—Use of handcuffs by the Police and Jail authorities**

In continuation of the Court's letter No. 1242 (15), dated the 19th February, 1962 on the above subject, I am directed to forward, for your information and for favour of communication to the Courts subordinate to you, the accompanying copy of letter No. 13349/P. dated the 15th May, 1964 from the Deputy Secretary to the Government of Orissa, Home Department, Bhubaneswar.

**GOVERNMENT OF ORISSA  
HOME DEPARTMENT**

No. 13349-P.

From

Shri N. C. De, O. A. S., (I),  
Deputy Secretary to Government.

To

The Inspector-General of Police, Orissa, Cuttack,  
Bhubaneswar, the 15th May, 1964

**Subject—Use of handcuffs by the Police and the Jail authorities.**

Sir,

In continuation of this Department letter No. 3374 P—P2R-2/6/60, dated 30th January 1962, I am directed to forward a copy of Government of India, Ministry of Home Affairs letter No. 39-11-64-P-IV dated 28-4-1964, along with its enclosure on the above subject and to say

that handcuffs are normally to be used by the Police only where the prisoner is violent, disorderly, obstructive or is likely to attempt to escape or to commit suicide or charged with certain serious non bailable offence.

The receipt of the same may please be acknowledged.

Yours faithfully,

Sd.-Illegible,

Deputy Secretary to Government.

Copy of letter No. 39-11-1964-P. IV, dated 28-4-1964 from Shri N. Sivagnanam, Deputy Secretary to the Government of India/Ministry of Home Affairs, New Delhi to all State Governments/all Union Territories.

Subject—Use of handcuffs by the Police and the Jail Authorities

I am directed to say that an instance has come to the notice of the Government of India, in which a person was unnecessarily handcuffed while being taken from the Police van to the Judicial lock-up and the Courts. It is also understood that this procedure is being adopted as a normal practice by the concerned Authorities. In this connection, attention is invited to this Ministry's letter No. F-2-13-57-P IV, dated the 26th July, 1957 (copy enclosed) wherein it was clearly stated that handcuffs are normally to be used by the Police only where the prisoner is violent, disorderly, obstructive or is likely to attempt to escape or to commit suicide or is charged with certain serious non-bailable offence. These principles were reiterated by the Committee on privileges of Parliament II Lok Sabha and the attention was again drawn to the earlier letter under this Ministry's letter No. 35-8-58-P-II, dated 24th January 1959, Government of India is advised that these principles are in conformity with the existing instructions in the police Manuals of many State Governments. It is request that the instructions contained in this Ministry's letter cited above many once again be brought to the notice of the Authorities concerned.

Copy of letter No. F. 2/13/57-P. IV, dated the 26th January 1957 from Joint Secretary to the Government of India, Ministry of Home Affairs, New Delhi to all State Governments and Union Territories.

Subject—The use of handcuffs by the Police and Jail Authorities

I am directed to say that instances have recently come to the notice of the Government of India in which persons arrested by the Police, were handcuffed although the circumstances did not seem to justify this course. Handcuffs are normally to be used by the Police only where the prisoner is violent, disorderly, obstructive or is likely to attempt to escape or to commit suicide or is charged with certain serious non-bailable offences. It is, however, observed that in actual

practice prisoners and persons arrested by the Police are handcuffed more or less as a matter of routine. The use of handcuffs not only causes humiliation to the prisoner or arrested person but also destroys his self respect and is contrary to the modern outlook on the treatment of offenders. I am accordingly to suggest for the consideration of the State Government that the use of handcuffs should be restricted to cases where the prisoner is a desperate character or there are reasonable grounds to believe that he will use violence or attempt to escape or where there are other similar reasons. If the State Government have no objection necessary instructions may please be issued to the Police and other authorities.

No. 63—IX-73/64

From

Shri T. V. Rao, B.A., LL.B.  
Registrar of the High Court of Orissa

To

The District and Sessions Judge, Ganjam-Boudh, Berhampur

Dated Cuttack, the 23rd December 1964/the 5th January 1965

Subject—Imprisonment of bailors in Civil Jail under section 514(4) of the Code of Criminal Procedure.

Sir,

I am directed to refer to the paragraph under the heading "Scrutiny of few other cases taken at random" in the notes of Scrutiny of the Additional District Magistrate (Judicial), Berhampur relating to the Courts of the Judicial Magistrates, Aska, dated 18-7-1964 on the above subject, forwarded with your letter No. 2097, dated 19-8-1964 and to say that section 514(4), Cr. P. C. lays down that if the penalty is not paid and the same cannot also be recovered by attachment and sale, the person bound shall be liable by an order of the court which issued the warrant, to imprisonment in a Civil Jail for a term which may extend to six months.

2. Under Rule 815 of the Orissa Jail Manual, the person imprisoned under order of a Criminal Court under sections 318, 332 or 514 of the Code of Criminal Procedure are to be classified as Civil prisoners. Rule 817 says that Civil prisoners imprisoned under order of a Criminal Court under section 318, 332 or 514, Cr. P. C. should be allowed the diet of under trial prisoners at the expense of Government and if specially so ordered by the committing officer, they shall receive the diet, sanctioned for Divisions I and II prisoners. It is thus clear from the above rules that in the case of prisoners committed under order of Criminal Court under section 514(4), Cr. P. C., the diet expenses should be borne by the State Government. Now-a-days, a set of professional bailors roam round the court at some of the stations who are without any means and earn their livelihood by standing as sureties to all and sundry. Unless deterrent action is taken by sending these persons to Civil Prison, whenever it is found that the penalty is not paid or recovered by issue of warrant for the attachment or sale of their moveable property, the present vicious circle in the Criminal Courts cannot be broken. In the circumstances, the court concern

should in all cases of forfeiture of bond take steps for realisation of the penalty and if the same be not paid or realised by attachment and sale of immovable property or remitted as provided under section 514(5), commit the person to imprisonment in Civil Jail.

Yours faithfully

T. V. RAO

Registrar

No 65(8)—IX-51/64

From

Shri T. V. Rao, B.A., LL.B.  
Registrar of the High Court of Orissa, Cuttack

To

All the Sessions Judges of the State

Dated Cuttack, the 22nd December 1964/the 5th January 1965

Sir,

I am directed to say that the court have had occasion to notice that the delay in securing the surrender of the convicted persons on bail after the disposal of appeals and revisions and in recommitting them to jail, has almost become chronic at many stations. This is highly unsatisfactory. It is of utmost importance in the part of the appellate or revisional court as also of the lower court to see that the convicts are recommitted to jail immediately after the disposal of the appeal or revision and no delay whatsoever is caused in that respect.

2. In order to effectively put a stop to the above delay, the court direct that—

(i) In all cases of criminal appeals where the sentence passed by the lower court, is either confirmed or modified, the appellate court shall return the original warrant of commitment or send the modified warrant and bail bond along with the copy of the order in Form No. (M) 17-A with directions to take immediate measures to secure the surrender of the accused and to commit him to jail on the very same date of the delivery of judgment or failing that on the next day positively.

In all such cases, the original warrant of commitment and the bail-bond should invariably be obtained from the lower court as provided under the form of bail order, in (M) 76. The Registrar, Civil Court should scrutinise the appeal register every month and furnish a report to the Sessions Judge, pointing out any delay, committed by the Sessions Clerk in this respect and thereupon the Sessions Judge should take suitable action against the Clerk concerned.

Where there is no Civil Court Registrar, Sheristadar should be asked to remain in charge of this work and put up the report to the Sessions Judge or the Assistant Sessions Judge.

(ii) The S. D. M. or the lower court, receiving the copy of the order should be made personally responsible for the action to be taken in securing the surrender of the accused and his commitment to the jail. He should invariably take prompt action on the copy of this order on the very same day and failing that on the succeeding day positively. In order to effectively scrutinise these matters, the orders received from the appellate court should be entered in a separate receipt register which should be maintained under the personal care and supervision of the Magistrate concerned. In cases of any delay, the Additional District Magistrate (Judicial) should call for the explanation of the officer concerned and furnish the same in the court for necessary action.

I am to request that the above instructions may be strictly followed in future.

Yours faithfully

T. V. RAO

Registrar

No. 1049—XLIXD-8/63

From

Shri T. V. Rao, B.A., LL.B.  
Registrar of the High Court of Orissa

To

The District and Sessions Judge, Balasore

Dated Cuttack, the 12th/15th February 1965

Sir,

I am directed to refer to the paragraph under the heading 'Register of Criminal Fines' of the notes of inspection of the Court of the S. D. M., Balasore, Made by the A. D. M. (Judicial), Balasore on the 6th December 1962, forwarded with your office letter No. XIII-7/3537, dated 20-12-1962 and to say that under Rule 1 at page 106 of the G. R. & C. O. (Criminal), Volume I, a Register of Criminal Fines in Form No. (A) 17 and another register in Form No. (A) 17-A for fines of other districts are to be maintained in the Office of every District Magistrate and Subdivisional Magistrate for the purpose of keeping an account of all Judicial fines and all sums which under any law are realisable as fines. This rule enjoins that only one register in each of these forms shall be maintained in the office. An exception has however, been made for fines levied under Act VI of 1870 for which a separate register in Form No. (A) 17 has to be maintained. Rule 11 at page 110, which specifically deals with fines, imposed under any special or local law, lays down that when under any special or local law, imprisonment in lieu of fine is to be taken as a full satisfaction of the penalty and if the convicted person is sentenced to undergo the imprisonment, the Clerk in-charge of the Fine Register, shall at once obtain a certificate from the court imposing the sentence that fine is not to be realised and the amount



of the fine shall, if entered, be struck out of the Register of Criminal Fines. These provisions contained in the G. R. and C. O. (Criminal), Volume I clearly indicate that only one Register of Criminal Fines for all types of cases is to be maintained in the office. Further column 5 of the Register of Criminal Fines require the nature of offer to be noted therein and from such information entered in this column, the Railway and Municipal fines can be easily distinguished.

In this view of the matter, the court direct that one Register of Criminal Fines in Form No. (A) 17 for all types of cases need only be maintained.

Yours faithfully

T. V. RAO  
Registrar

No. 1588(17)-XLIXD-17/63

From

Shri T. V. Rao, B. A., LL. B.,  
Registrar of the High Court of Orissa

To

All Sessions Judges of Separation Districts  
All District Magistrates of Non-Separation Districts  
All Additional District Magistrates (Judicial)

Dated Cuttack, the 25th February 1965

Sir,

I am directed to say that the following points, namely—

(i) Whether the foil of the fine cheque should be retained in the concerned record or with the counterfoil thereof ;

(ii) Whether the Clerk-in-charge of the Register of Criminal fines should make an endorsement on the foil to the effect that he has made the necessary entries in the Register of Fines before the foil is filed in the record or pasted on the back of the counterfoil, and

(iii) Whether when the accused prays for time or the realisation of fine is stayed in appeal, the foil instead of being torn be kept with the counterfoil with necessary endorsements on the counterfoil and in the Register of Fines and when the actual time for payment comes it be torn and sent to the Nazir, were raised for clarification by the Court.

(2) On careful consideration of the rules and orders regulating the subject, the Court direct that after the fine is paid in full and there and necessary entries to the effect are made in the Fine Register, the foil becomes a part of the Original record and it is appropriate that it should be tagged on to the said record. Under the instructions issued

in General Letter No. 4 of 1957 (Criminal) whenever a Magistrate convicts an accused and sentences him to fine, a separate order should be passed in the order-sheet mentioning whether the fine has been paid or not, and in case where the fine amount is paid in full and an order to that effect is recorded in the order-sheet on the basis of the report made by the Nazir on the fine cheque, necessarily the foil should be kept in the trial Court record. This General Letter further directs that if the fine is not paid, an order should be passed in the order-sheet to start a Misc. case and the Magistrate should then take action in the Misc. Case record either to grant time under section 388 Cr. P. C. or issue distress warrant straight off. Since this order is also passed on the basis of the Nazir's report that the Fine amount is not paid or paid in part, the concerned foil should be kept in the Misc. Case record.

(3) Rule 8 (b) at page 110 of the G. R. and C. O., Criminal volume-I lays down that the foils with the Nazir's report thereon shall be shown to the clerk-in-charge of the Fine Register without delay in order to enable him to make entries in the Register of Criminal Fines. Doubtless, under rule 15 at page 112 of the G. R. & C. O., Criminal Volume-I, it is the duty of the Fine Moharir of each court to examine daily the fine register and, similarly, rule 16 requires that each Magistrate should also examine this register daily and both the Fine Moharir and the Magistrate are required to put their initials in columns 10 and 11 of the Register of Criminal Fines, but this does not absolve the clerk-in-charge of the Fine Register of his primary duty and responsibility in the proper and correct maintenance of the register. Since he fills up this register with reference to the foils containing the Nazir's report, it is incumbent on him to make an endorsement on the foil to the effect that necessary entries in this register has been duly made.

(4) With regard to the third point, it may be stated that under the instructions issued in General letter No. 4 of 1957 (Criminal) a Misc. Case record has to be started in all cases where the fine is not paid up immediately and hence the foil has to be torn off from the cheque book and after the usual report of the Nazir thereon and it is shown to the clerk-in-charge of the Fine Register for making necessary entries in the Register of Criminal Fines, it has to be kept in the Misc. Case record.

I am to request that aforesaid instructions may be strictly followed by all courts subordinate to you in future.

Yours faithfully

T. V. RAO

Registrar

Copy of Court's letter No. 2324, dated the 5th April 1965 from Shri T. V. Rao, B.A., LL.B., Registrar of the High Court of Orissa to the District and Sessions Judge, Koraput, Jeypore.

I am directed to refer to Paragraph 122 of your notes of inspection of the court of the Munsif Rayagada made on the 10th May, 1963 and to say that under rule 8 at page 68 of the G. R. & C. O., Criminal Vol. I a case should not be entered in the returns as received or disposed of by transfer unless the transfer was from one district to another, or from one kind of court to another. Accordingly, instructions have been issued in the court's letter No. 135, dated the 19th February 1965 to the effect that cases received or disposed of by transfer should not be shown under column 17 'brought to trial' or column 19 'Disposed of' of the Criminal statement in form No. (S) 3 but the same should be included in or excluded from column 18 under the heading 'Total for disposal' with a note in the 'Remarks' column against each court indicating the number of cases received by transfer or transferred to other courts. A case disposed of by transfer is no disposal at all and the same is not to be entered in the Register of cases decided in form No. (R) 18. Accepting new numbers by making fresh entries in the trial Register will involve unnecessary clerical labour and frequent change in the number of the case will also create confusion in the minds of the parties.

In the circumstances, the Court direct that the same trial Register number should be continued when a case on the file of the outgoing Magistrate is withdrawn and subsequently transferred to the successor officer with a note in the "Remark", column about the fact of withdrawal and subsequent receipt on transfer and the dates thereof.

I am to request that the aforesaid instructions may be brought to the notice of all the courts concerned, for being strictly followed in future.

No. 5763(8)—XXIX-69/64

From

Shri A. Mishra, B.L.,  
Registrar of the High Court of Orissa.

To

The District Judge, Cuttack-Dhenkanal, Cuttack/Puri/Balasore/Sambalpur-Sundargarh, Sambalpur/Mayurbhanj/Konjhar-Banipada/Ganjam-Boudh-Berhampur.

Dated Cuttack, the 25th August, 1965

Subject—Simultaneous method of hearing Civil Suits and Criminal cases by officers.

Sir,

I am directed to say that the court have had under consideration the question whether the recommendation made in paragraph 42 of the Narasimham-Senapati report would be suitably changed in the

interests of the parties and witnesses. Under the arrangement of 'Simultaneous method' made in paragraph 42 of the Narasimhan-Senapati report, the same officer sitting in the same Court should try Civil suits as a Munsif and Criminal Cases as a Magistrate on the same day after attending to the General file and first hearing matters. This system however, does not work satisfactorily at stations where one or more judicial officers function both as Munsif and Judicial officers function both as Munsif and Judicial Magistrate. Instances have come to the notice of the Court where abnormal delay was committed by such officers in the disposal of civil and criminal cases by adjourning suits and cases from time to time either as parheard or for want of time. Such a course has resulted in unnecessary trouble and expenses to the parties and their witnesses. The Court, therefore, on careful consideration are pleased to direct that at stations where one or more judicial officers function both as Munsif and S.D.M. they may, subject to the direction of the A. D. M. (Judicial) earmark some of the days in the week exclusively for hearing of Civil suits and cases and the remaining days exclusively for criminal cases. Doubtless, they must attend to the first hearing work in civil cases and the general file in Criminal cases every day. The Court further direct that, if after such division of the week days for criminal and Civil work, the officer does not have full and adequate work on any particular day, he should devote the remaining hours of the day by inspection, of the records and registers and exercising supervision over the work of the clerical staff. Such a contingency may not arise at places where more than one officer function both as Munsif and S.D.M. as he can get ready matters transferred from the other Court and hear the same.

The above instructions may be brought to the notice of Additional District Magistrate (Judicial) and all officers functioning both as and S. D. M. as he can get ready matters transferred from the other Court and hear the same.

Yours faithfully,  
A. MISHRA  
Registrar

No. 6186—XLJXD-10/63

From

Shri A. Mishra, B.L.,  
Registrar of the High Court of Orissa.

To

The District Judge, Balasore

Dated Cuttack, the 28th August/7th September 1965

Sir,

I am directed to refer to paragraph 14 under the heading "G. R. 37 of 62 T. R. 161 of -62/u/s. 380 I. P. C." of the notes of scrutiny of Records and Registers of the Court of the Munsif-Magistrate, Nilgiri made by the then A. D. M. (Judicial) on 21st January, 1963 and to

say that under rule 11 at page 69 of the G. R. and C. O. (Criminal) Volume-I, duration of cases pending before the Magistrate has to be calculated from the date of the apprehension of the accused or of his appearance in Court whichever was earlier. In his case, the accused was apprehended on 11-4-1962, but was released on bail by the Police and final report of mistake of fact was submitted on 11-5-1962 which was accepted by the S. D. O. Thus the matter would have practically ended there, had not the Police after further investigation found some fresh materials against the accused and filed charge-sheet before the S. D. M., on 11-9-1962. The S. D. M. took cognizance of the offence and summoned the accused who appeared in his court on 18-10-1962. It cannot be said that during the period from the date the S.D.O., accepted the final report, the case will be deemed to be pending before the Magistrate to justify calculation of the duration from the date of original appearance. Hence the latter proceeding can not appropriately, for purposes of calculation of duration, be treated as one in continuation of the former proceeding before the S. D. O. and the pendency of the case counted from the date of apprehension by the Police on 11-4-62.

2. The Court consider that the spirit and intention of Rull II at page 69 of the G. R. & C. O., Criminal Volume-I is that the pendency of a case has to be counted from the date of previous apprehension but not from the date of his subsequent appearance in the Court when the F. I. R. lodged is followed by a charge-sheet. This case however stands on a different footing in as much as the Police submitted final report and it is only subsequently they filed a charge-sheet before the Subdivisional Magistrate. Accordingly, they direct that in such cases the duration is to be calculated from the date of appearance of the accused after submission of the charge-sheet.

I am, therefore, to request that the aforesaid instructions may kindly be brought to the notice of all Judicial Magistrates subordinate to you for their information and guidance.

Yours faithfully,

A. MISHRA

Registrar

No. 7482(14)—IX-43/64

From

Shri A. Mishra, B. L.,  
Registrar of the High Court of Orissa

To

All Sessions Judges of Separation Districts/  
All District Magistrates of Non-Separation Districts

Dated Cuttack, the 6th November 1965

Subject—Prosecution cases under sections 112 and 113 of the Indian Railways Act.

Sir,

I am directed to refer to the Court's letter No. 4691 (10), dated the 14th July, 1964, on the above subject and to say that on careful consideration, the Court direct that in all charge-sheet cases of

ticketless or other irregular travel punishable under sections 112 and 113 of the Indian Railways Act, the fare and excess charges realised should be deposited in the Treasury by challans and the related charge-sheet or hand over memo. number be noted in the challan for facility of check by the Railway Administration. This instruction will not, however, be applicable to the Special Railway Magistrate, as he has to move from place to place, and hold camp courts and as such it will not be possible for him to carry all the money realised as fare and excess charges at different places to his headquarters and deposit it there in the Treasury by challan. Hence, he will be making over the amount to the Station Master of the concerned railway station where the camp courts are held, with a list of cases mentioning therein the charge-sheet number or the hand over memo. number, and the Station Master who receives the amount will communicate a copy of that list to the railway authorities for enabling them to connect the realisation with the particular cases, in which they had been made.

I am to request that the aforesaid instructions may be strictly followed in future.

Yours faithfully,

A. MISHRA

Registrar

ORISSA HIGH COURT  
No. 8191(10), dated 3-12-1965

From

Shri B. Choudhury, LL. B.,

Additional Deputy Registrar of the High Court of Orissa

To

All the District Magistrate of non-separation districts/  
All the Additional District Magistrate (Judicial) of  
separation district

Subject—Mentioning of Thana case number in the non-F. I. R. case registers maintained by the trying courts.

Sir,

I am directed to say that it has come to the notice of the Court that the trying courts at some stations are not mentioning the Thana case numbers in the register of Non-F. I. R. cases as a result difficulty is experienced by the Police in tracing out the cases for noting the results.

On careful consideration, the court direct that the Thana case number should henceforth be noted in the register of Non-F. I. R. cases maintained in the trying court. This will make the register complete in all respects I am to request that the officers subordinate to you may be asked to see that the aforesaid instructions are followed strictly in future.

Yours faithfully

B. CHOUDHURY

Additional Deputy Registrar

No. 2432, dated 29-3-1966

From

Shri B. Choudhury, LL. B.,  
Additional Deputy Registrar of the High Court of Orissa

To

The District Judge,  
Sambalpur-Sundargarh, Sambalpur.

Sir,

With reference to item 13 of the proceedings of the Police-Magistracy Co-operation meeting held on 5-2-1965 at Sundargarh, a copy where of was sent to you by the A. D. M. (J) with his letter No. 1066-Judl., dated the 15-3-1965, I am directed to say that after careful consideration the court direct that the names and addresses of the bailors be clearly noted in red ink on the warrants to facilitate the work of tracing out the absconded accused persons through the bailors.

The officers subordinate to you may be informed of this

Yours faithfully,

B. CHOUDHURY

Additional Deputy Registrar

No. 2513—V-8/62

From

Shri A. Mishra, B. L.,  
Registrar, Orissa High Court, Cuttack

To

All District and Sessions Judges of Separation Districts

Dated Cuttack, the 3rd/31st March 1966

Sir,

I am directed to refer to para 3 of the circular letter No. 107(7), dated 6-1-1961 and paragraph 7 of the confidential circular No. 623(6)—V-8/62, dated the 6th March, 1962 and to say that the Court, on careful consideration direct that the sentence "Ordinarily 5 and 6 witnesses can be examined every day" "occurring in the circular No. 107(7), dated 6-1-1961 should be deleted and that paragraph 7 of the confidential circular No. 1623(6)—V-8/62, dated 6-3-1962 be modified as follows:—

"7. It has also been noticed that in many instances witnesses other than official witnesses though present in Court have been sent away without being examined, or are detained for more than the second day. The diary shows that the

Magistrates had not other work to do and yet they sent away these witnesses brought by the party at considerable expense from distant places. This causes harassment to the party besides causing delay. Instances of lengthy examination of witnesses are very rare. The Magistrate should hence devote themselves to work throughout the working hours and exercise proper and effective control over examination and cross-examination of witnesses. The success of the scheme of separation depends on this and the Additional District Magistrates (Judicial) should give personal instructions to all Magistrates to see that undue detention of witnesses except under unavoidable circumstances, is avoided".

The aforesaid revised instruction may be brought to the notice of all Judicial Magistrates under you for their information and guidance.

Yours faithfully,

A. MISHRA

Registrar

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No. 3887(12)—XIX-22/64

From

Shri B. Choudhury, LL.B.

Additional Deputy Registrar of the High Court of Orissa

To

All Sessions Judges of the State/

All Additional Sessions Judges of the State

Dated Cuttack, the 24th May 1966

Sir,

I am directed to say that it has come to the notice of the court that some of the Sessions Judges are adjourning part heard Sessions trials taken up before the summer vacation to the other side of the vacation on some grounds or other with a view to availing of the vacation. Such a course puts the parties and witnesses to much inconvenience and in case of any transfer, it necessitate issue of a notification appointing the officer as Additional Sessions Judge as his previous station which involves additional expenditure to State. The court strongly disfavours this practice and they direct that all part heard Sessions cases taken up before the Summer vacation, should be continued and finished during the Summer vacation. As the Sessions Judges are Criminal Courts, there is no bar to the trial of Sessions cases during the vacation. In no circumstances, such Sessions cases should be adjourned beyond Summer vacation without prior permission of the court therefor.

The above instructions may also be brought to the notice of all Assistant Sessions Judges working under you for their information and guidance.

Yours faithfully

B. CHOUDHURY

Additional Deputy Registrar



From

Shri A. Misra, B.L.  
Registrar of the High Court of Orissa

To

The Director of Treasuries and Inspection, Orissa,  
Bhubaneswar.

Dated Cuttack, the 14th October 1966

Subject—Procedure for deposit of money relating to Criminal Court deposits.

Sir,

With reference to your letter No. Ins. A-119/66-5405-DTI., dated the 9th August 1966 on the above subject, I am directed to clarify the points as desired.

1. Under Rule 3 at page 84 of the General Rules and Circular Orders, Criminal Volume I, Criminal Court deposits constitute seven Heads of Account, namely (a) Criminal deposits including compensation fines and costs in Criminal cases not paid on the spot in Open Court, (b) Fines (Judicial) refunds of the same, (c) Stamp duty and penalties realised in court, (d) Value of the unclaimed property credited to Government, (e) Other general fees, fines and forfeiture, (f) Miscellaneous receipts that is other items, (g) Sale proceeds of old stores and materials (h) Peremptory receipts. Rule 4 lays down that receipt and payments under head (a) must appear in the court's accounts in detail but in the Treasury account in which a personal ledger account only is maintained for this head, the daily totals of receipts and payments made at the court and the individual items of receipts and payments at the Treasury will appear. All receipts and payments under heads (b), (c) and (g) above must appear in the court's account and in the Treasury account in detail. An account in detail of all receipts under heads (e) to (f) must be kept in court, but only the daily totals of each kind of receipt will appear in the Treasury Books. Thus it would appear that only so far as head (a), namely Criminal deposits is concerned, a personal ledger account is maintained in the Treasury. Hence only the receipts and payments under (a) should be brought into P.L. Accounts maintained for criminal courts in the Treasury.

2. The amount deposited under heads (b), (d), (e) and (f) are refundable in some cases. So far as head (b) is concerned fines paid by the accused may be ordered to be refunded by the appealable court. Similarly, the value of the unclaimed property credited to Government may be claimed by some heir at a latter stage and such claim may be allowed by the court. Fines imposed on the court peons and process-servers in Departmental Proceedings may have to be refunded, if any appeal filed by the incumbent is allowed. There is also some possibility of refund of deposits made under head (f). Necessarily, the receipts and payments under these heads namely under heads (b) and (d) to (f) must appear in the courts accounts and also in the Treasury accounts in detail. So far as heads (c) and (g), namely stamp duty and penalty realised in the court sale proceeds of old stores and materials are concerned, any question of refund of such

deposits does not arise. Hence, deposits coming under other heads which are refundable at a latter stage, should appear in the Treasury account in detail.

In order to bring Rule 4 at page 84 in conformity with Rule 24 (a) at page 92 of the G. R. and C. O. Criminal, Volume I and Rule 6 at page 185 in conformity with Rule 33 at page 195 of the G. R. and C. O. Civil, Volume I, the State Government are being addressed to accord approval, under the proviso to clause (2) of Article 227 of Constitution, to the draft amendments to Rule 4 at page 84, G.R. and C.O. Criminal, Volume I and Rule 6 at page 185 of the G. R. and C. O. Civil, Volume I. Copies of the draft amendment are enclosed for information Volume I. Copies of the draft amendment are enclosed for information Government approval to the same.

3. Rule 28 at page 94 of the G.R. and C.O., Criminal Volume I lays down that every chalan or money receipt under heads (a) to (g) shall be shown in detail in pass book and the head of account shall be noted against each, so as to enable the Treasury Officer to bring the transaction in detail upon his books and classify them correctly. As pointed out above, it is only the deposits coming under the heads (b) and (d) to (f) which are refundable at a latter stage in some cases are to be shown in the Treasury accounts in detail and not the other deposits, namely (a), (c) and (g). This rule is controlled by Rule 4 at page 84 of the G. R. and C.O., Criminal, Volume I.

4. The Pass Book along with the net amount in cash and the challans in respect of all deposits coming under the different heads, are to be sent to the Treasury under Rule 30(a) at page 95 of the G. R. and C. O., Criminal, Volume I. The note below Rule 28 is in accordance with Rule 30(a).

5. Compensation fines are deposited under head (a), judicial fines under head (b) and fines imposed on the Peons and Process-servers and other class IV staff, working in the Criminal Courts under head (e) of Rule 3 at page 84 of G. R. and C. O., Criminal, Volume I. So far as compensation fines are concerned, they are deposited in the Personal Ledger Account, while the other kinds of fines are credited to the State revenue. The Register of Criminal Fines in Form No. (A) 17 is sent to the Treasury along with the chalan and pass books by way of abundant caution, but under note I to Rule 12(a), Appendix IV at page 111 of the G. R. and C. O., Criminal, Volume I the District Magistrate has got the discretion not to send the Register of Criminal Fines, if it is found inconvenient for any reason or other.

6. A Pass Book is invariably maintained in all Subdivisional and also outlying stations although under note 1 to Rule 12(a), Appendix IV at page 111 of the G. R. and C. O., Criminal, Volume I, it is not strictly necessary to maintain a pass book at such stations. In case it is so desired, the court have no objection to issue a Circular to all District Judges of separation district to maintain pass books in the Criminal Courts, functioning at all Subdivisional and outlying headquarters.

Yours faithfully

A. MISRA  
Registrar

No. 89 (17) 17/67

From

The Registrar, Orissa High Court, Cuttack

fo

All the District &amp; Sessions Judges of the State

Dated Cuttack, the 2nd/4th January 1967

Subject—Realisation of fines imposed in other Districts

Sir,

I am directed to say that it has come to the notice of the Court that some judicial Officers, at times, issue distress warrants to the Magistrate of another district for realisation of fines without any note or endorsement as to the manner in which the amount of fine is to be credited, as required under the note to rule 53(e) at page 120 of the General Rules & Circular Orders, Criminal, Volume I, with the result that the amount of fines are remitted by Money-orders after deducting the money-order commission.

2. Since the entire amount realised towards fines is to be credited to Government, the Court direct that the instructions contained in rule referred to above should be strictly followed by all the Courts of Magistrates in the State.

3. This may be brought to the notice of all Judicial Magistrates under you.

Yours faithfully

B. CHOUDHURY

For Registrar

No. 1280(15)—XLIXED-16/66

From

Shri A. Misra, B.L.,  
Registrar of the High Court of Orissa, Cuttack.

To

All Sessions Judges of the State  
All District Magistrates of Non-separation district  
All Additional District Magistrates (J)  
Dated Cuttack, the 11th January 1967

Sir,

I am directed to say that a question has been raised as to whether after service of summons it should be the duty of the P. I. to intimate the next date to the official witnesses on the analogy of Sessions cases, and as such issue of summons to such witnesses for the second time would not be necessary.

2. on careful consideration, the Court observed that under the provisions of section 251-A Cr. P. C. as clarified in the Court's judgement passed in Government Appeal No. 17/61, there should be speedy disposal of warrant cases instituted upon police report. Sub-Section (7) provides for production of prosecution witnesses and it runs as follows—

"On the date so fixed, the Sessions Judge shall proceed to take all such evidence, as may be produced in support of the prosecution".

It has been held that the word "produced occurring in the above sub-section can not be given a restricted meaning so as to saddle the prosecution with the entire responsibility of producing the evidence and a duty is also cast upon the Court for enforcing attendance of the witnesses by the process provided in the Criminal Procedure Code. Accordingly, instructions have already been issued in the Court's General Letter No. 3 of 1962 (Criminal) to all Subordinate Courts for strict observance.

3. In this view of the matter, the Court direct that the existing practice of issuing fresh summon to official witnesses for their attendance in Court, should be allowed to continue. In order however to ensure the attendance of the official witnesses, on the next date of adjournment, they observe that while granting Courts certificate, to the official witnesses an endorsement to be the effect that "Directed to appear on..... should be made at the foot of the certificate in form No. (M)9 under the signature of the Presiding Officer of the Court, so that the official witnesses will obtain permission from their superior officers sufficiently in advance and attend the Court, on the date fixed positively.

Yours faithfully

A. MISRA

Registrar

No. 712 (15) V. 2-65.

Dated Cuttack, the 31st January 1967

From

Shri A. Misra, B.L.,  
Registrar, Orissa High Court, Cuttack.

To

All the District & Sections Judges  
All the A. D. M. (J)

Sir.

I am directed to say that it has come to the notice of the Court that some of the Subordinate Magistrates award inadequate sentences specially in Motor Vehicle and other non-F.I.R. cases. After careful consideration, the court direct that the Addl. District Magistrate (J) should invariably report to the Court the names of the Magistrates who inspite of instructions issued by him, persists in avoiding

inadequate sentences of fines in Motor Vehicles cases etc. So that such reports will be taken in to account while recording the C. C. R. of the Officers.

The court further direct that such reports should be sent through the District and Sessions Judges so that they may make some attempts to pull up the officers concerned.

Yours faithfully

A. MISRA,

Registrar.

No. 1434(6)—XX/X-49/61.

From

Shri A. Misra, B. L.,  
Registrar, Orissa High Court.

To

All District Judges of the Separation Districts

Subject—Deputation of Judicial Magistrate on Mobile Court duty.

Dated, Cuttack the 13th, February, 1967.

Sir,

I am directed to say that it has been brought to the notice of the court that certain malpractices are being adopted in Mobile Courts, while giving receipts in support of realisation of fines from drivers or owners of the vehicles found guilty of violation of certain provisions of the M. V. Act. It has been indicated that the column meant for the amount is kept blank and after receipt of money from the accused the blank column is filled up by mentioning a lesser amount after deducting the amount which is misappropriated. All the persons like Magistrates and Police Officers are alleged to have been involved.

2. In order to minimise such mal-practices, the Court direct that you should see that, in future, senior selected and experienced officers are deputed for functioning as Mobile Court /Courts. The A. D. M. (J) may also hold surprise check once or twice in a month of the work of the Mobile Courts while engaged on duty.

Yours faithfully

A. MISRA

Registrar

No. 2932—V.-10/66

From

Shri B Choudhury, LL. B.,  
Additional Deputy Registrar, Orissa High Court, Cuttack

To

The Deputy Secretary to Government, Home Department,  
Bhubaneswar.

Dated Cuttack, the 15th March 1967

Sir,

With reference to your letter No. 8289-H.C., dated the 19th September 1966, I am directed to say that the rules contained in Chapter IV of the Jail Manual, regulating the appointment, duties and functions of the visitors, are statutory ones having been framed under section 59 of the Prisons Act, 1894. Under Rule 41 of the Orissa Jail Manual, the District and Sessions Judge, the District Magistrate, the S D.M. at District Headquarters, the Inspector of Schools and the Civil Surgeon have been appointed as ex officio visitors of Jail and the District Magistrate functions as ex officio Chairman of the Board, constituting the above official and also non-official visitors. A quarterly meeting of the Board of Visitors is required to be held and the Board shall inspect the buildings and prisoners, hear any complaints and also inspect the food in order to see whether it is of good quality and properly cooked. It is also the duty of the visitor satisfy himself that the law, rules and orders are duly carried out in the Jail. In the circumstances, the court consider it necessary that the District and Sessions Judge and the S. D. Ms. at District Headquarters should visit the Jail periodically. Such a course will also help in effectively controlling the cases in which under trial prisoners are involved. Necessary instructions are being issued to all District and Sessions Judges of the State, for visiting the Jail at District Headquarters periodically.

Yours faithfully,

B. CHOUDHURY

Additional Deputy Registrar

No. 2489—XXIX-44/60

From

Shri A. Mishra, B.L.  
Registrar of the High Court of Orissa

To

The District Judge, Puri

Dated Cuttack, the 3rd/8th April 1967

Subject—Arrangement during the absence of the Judicial  
Magistrate and Executive Magistrate in the outlying  
courts.

Sir,

With reference to your letter No. 2088, dated the 18th August 1966, on the above subject, I am directed to say that the instances of

both the Judicial Magistrate and Executive Magistrate remaining absent from the Station, are very few and far between. In such a case, the Sharistadar or the Senior Clerk of the Office of the Judicial Magistrate should be kept in-charge of the files to pass routine orders and where any accused or witness is produced on arrest, he should be brought before the nearest Magistrate either for orders of remand or release on bail, etc..

Yours faithfully,

A. MISHRA  
Registrar

No. 4868-XXIX-14/67

From

Shri B. K. Patro, B.L.  
Registrar of High Court of Orissa

To

All the District and Sessions Judges of the State

Dated Cuttack, the 19th July 1967

Sir,

I am directed to forward the accompanying copy of the High Court's judgement in Criminal Reference No. 18 of 1966 and to say that the court observe that Judicial decisions should not be influenced by matters which are wholly foreign. They felt that a notion has gained ground amongst the Judicial Magistrates that quick disposal of cases would earn certificate of a efficiency, however, slipshod the judgment may be. This impression is totally erroneous. While on the one hand, the Magistrates have the paramount duty of exercising proper control over the conduct of cases from the initial stage to avoid delay in disposal, it is equally their duty on the other hand to see that justice is not hurried and that cases are decided according to law Judicial ethics. They must be fully conversant with law and hear cases with patience and care so as to inspire confidence in the public mind.

You are requested to impress upon the Subordinate Judicial Officers under you that the court not only insist upon adequate outturn but also on quality of work and that in no circumstances, quality can be sacrificed for hurried outturn of work.

Yours faithfully,

B. K. PATRO  
21-7-67

Registrar

CRIMINAL REFERENCE NO. 18 OF 1966

In the matter of a Reference made by Shri T. Misra, Sessions Judge, Ganjam-Boudh at Berhampur, dated the 11th February 1966.

Suma Naiko—*Petitioner*

*Versus*

State and 33 others—*Opposite-parties*

For *Petitioner*—M/s. R. N. Mishra and R. C. Patnaik

For *Opposite-parties*—Mr. R. C. Misra and Standing Counsel

Present—

The Honourable Mr. Justice G. K. Misra

Misra, J.—The Revenue Inspector, Aska and the Medical Officer, Gangpur had been summoned as witnesses to 20-10-1966. They did not appear. Without adjourning the case to procure their presence, the learned Magistrate passed the following order :—

Service return of summons in respect of Revenue Inspector, Aska and Medical Officer, Gangpur, not back despite repeated summons. The case is a year-old case and it is desirable that it should be disposed of without any further delay. As per the remark of the Additional District Magistrate (J) in his Inspection note, dated 17-9-1965, there is a lot of evidence regarding injury and assertion of same by the victims, there is no necessity to wait for him. As to the evidence of the R. I., he cannot throw any light as to the factum of possession of the disputed land. He is not a charge-sheet witness and in view of the above position, I see no reason to wait for him for any further specially when the prosecution is not keen enough to supply their address or to produce them in the court. Accordingly the prosecution is closed.

Against this order a Revision was filed before the learned Sessions Judge, Ganjam. He is of opinion that these witnesses are material witnesses for the prosecution and that the order of the learned Magistrate should be set aside and these two witnesses should be examined for the prosecution after being resummoned.

2. When the service return of summons had not been back, the learned Magistrate should not have dispensed with the examination of these two important witnesses merely because the case had been year-old or because the learned A. D. M. (J) made some remarks about delay in the disposal of this case in his inspection notes. Both these matters were thoroughly irrelevant to the point in issue, namely, whether the evidence of these two witnesses would be dispensed with. The inspection note is not a part of the Judicial record. It relates to the matter of administration wherein a superior supervision authority gives certain instructions regarding disposal of cases to further the cause of justice. The learned Magistrate should not have taken into consideration any of these two matters and should have taken necessary steps for procuring the presence of the two material witnesses. These considerations should be foreign to Judicial decisions.



3. The accused persons caused various injuries to 11 persons. The Doctor was clearly a material witness. The Revenue Inspector was a material witness to the factum of possession. The learned Sessions Judge was therefore, right in holding that the prosecution should be given further opportunity to get these two witnesses examined.

4. The reference is accepted. The learned Magistrate is directed to resubmit these witnesses and dispose of the case in accordance with law.

Orissa High Court, Cuttack  
The 6th July 1967

G. K. MISRA

No. 8408 (17)-XI-2/67

From

Shri B. K. Patro, B. L.,  
Registrar, High Court of Orissa, Cuttack.

To

All the Sessions Judges of the State  
All the Additional District Magistrates (J) of the State

Dated Cuttack, the 19th December, 1967.

Subject:—Whether the Additional District Magistrates (J) should be permitted to attend Jail and Crimes meetings.

Sir,

I am directed to say that as per item number 18 of the proceedings of the last District Judge's Conference, held on the 6th and 7th December, 1966 on the above subject, it has been decided that it will be useful for the Additional District Magistrates to visit Jails and attend Crime meetings convened by the Executive, but in order that this work may not duly interfere with their normal duties, the Additional District Magistrates (J) should attend such meetings only at headquarters station while at the out standing stations this may be done by the Subdivisional Magistrates.

The Subdivisional Magistrates (J) may be informed accordingly.

Yours faithfully

B. K. PATRO

Registrar

No. 419 (21)-XLIV-10/67

From

Shri B. K. Patro, B.L.,  
Registrar of the High Court of Orissa

To

All the District Judges of the State

All the District Magistrates of the State

Dated Cuttack, the 15th January 1968.

Subject :—Submission of accurate statements and reports on the administration of Civil and Criminal Justice, punctually.

Sir,

I am directed to say that according to the rules contained in the Court's General Rules and Circular Orders (both Civil and Criminal), Volume-I, the annual statements and tables along the annual report are required to be submitted to the Court by the 15th of February every year. It is brought to the notice of the Court that such statements and report are not furnished by some of the District Judges and District Magistrate in the due time. Also, the statements, in many cases, contain a number of mistakes and take much time for removal of the defects, with the result that the preparation and publication of the consolidated reports on the Administration of Civil and Criminal Justice by the Court is being unusually delayed.

As the District Judges and the District Magistrates are primary responsible for the submission of accurate statements and reports punctually, with a view to avoid unusual delay in future, the Court direct that such statements and reports should be submitted to the Court accurately and punctually in time.

Yours faithfully

B. K. PATRO

Registrar

No. 800-XLIX-D-14/67

From

Shri B. K. Patro, B. L.,  
Registrar, High Court of Orissa, Cuttack.

To

The District and Sessions Judge,  
Sambalpur-Sundargarh, Sambalpur

Dated, Cuttack, the 15th/27th January 1968

Subject—Submission of charge-sheet by the police as a condition precedent to recording of evidence and taking cognizance of the offence under section 512 Cr. P. C. by the Judicial Magistrate.

Sir,

With reference to your Memo. No. 1464, dated, the 6th April 1967 forwarding Letter No. 1173, dated the 29th March 1967 of the Additional District Magistrate (Judl.) Sambalpur on the above subject, I am directed to say that under the "Executive Instructions on separation of Judiciary from the Executive" a Judicial Magistrate has nothing to do with the investigation till a charge-sheet is submitted before him. But the final report, if any, should be filed before the Judicial Magistrate empowered to take cognizance and a duplicate copy of the same should be sent to the Executive Magistrate who shall have the power of directing the police to further investigate the case or submit the charge-sheet, as the case may be schedule 1 of the Executive Instructions relates to the allocation of powers under the Criminal Procedure Code between the Judicial and the Executive Magistrates. Section 512 of the code has not been specified in this schedule, schedule 2 relates to the allocation of functions under the Orissa Police Manual and it has clearly been laid down at page 19 of the Executive Instructions that evidence under section 512 Cr. P. C. in pursuance of rule 290 of the Orissa Police Manual, has to be recorded by the Judicial Magistrate. Paragraph 22 of the Executive Instructions provides that allocation of functions have been made under the Code of Criminal Procedure, the Police Manual, the Police Act and Jail Manual and this should be read as forming a part of these instructions. Hence there can be no scope for any doubt or controversy that recording of evidence under section 512 Cr. P. C. is a function purely for Judicial Magistrates and as such the action of the Subdivisional Magistrate, Rairakhol refusing to record the deposition of witnesses under the said section is not correct.

2. Further, section 512 Cr. P. C. provides that if it is proved that an accused person has absconded and that there is no immediate prospect to arrest him, the Court competent to try and commit for trial such person for offence complained of, may in his absence examine the witnesses, if any, produced on behalf of the prosecution and

record their depositions. Any such deposition may, on arrest of person, be given in evidence against him on the enquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or his attendance cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable. Thus it is only the Court which is *competent to try or commit the accused for trial*, namely the Court of the Judicial Magistrate who should record evidence in such cases.

3. The Additional District Magistrate (Judl.), Sambalpur may be informed accordingly.

Yours faithfully  
Sd. B. K. PATRO  
Registrar

No. 1200-XII-1/65

Dated the 6th February 1968

To

The District and Sessions Judge, Ganjam-Boudh, Berhampur

Subject—Clarification regarding the correct procedure to be adopted in the matter of hearing and disposal of cases under section 130 of the Motor Vehicles Act.

Sir,

With reference to your letter No. 180-XII-B-8/64, dated the 20th January 1965 on the above subject, I am directed to say that the object of the provisions of section 130 of the M.V. Act is to afford facilities to the accused person who commit minor offences specified in part A or part B of the 5th schedule of the Act. In A. I. R. 1965, Supreme Court, 1583, it has been held that the Magistrate has got the option to issue a summon with an endorsement in terms of sub-section (1) (a) or sub-section (1) (b) and only if a summons is issued with the endorsement specified by sub-section (1) (b), it is open to the accused to avail of the option to plead guilty and to claim the privilege mentioned in sub-section (3). It has also been indicated that section 130 is enacted with a view to protect from harassment a person, guilty of a minor infraction of the M.V. Act by dispensing with his presence before the Magistrate and giving him an option to plead guilty to the charge and to remit the amount which can, in no case, exceed Rs. 25. Section (1) (b) provides that the accused should be a specified date prior to the hearing of the charge plead guilty by registered letter and remit to the court such amount not exceeding Rs. 25 as the court may specify. Sub-section (2) further lays down that in an offence specified in part B of the 5th Schedule, the accused shall, if he pleads guilty of the charge, forward his licence to the charge, forward his licence to the court with the letter, containing his plea in order that the conviction may be endorsed in the licence.

Doubtless, this is a beneficial provision made to protect the accused from harassment, but the procedure indicated herein, namely, the accused should plead guilty by registered letter and simultaneously remit the amount specified by M. O. and also forward his licence, in an offence specified in part B of the 5th Schedule, is mandatory. The requirements of this section cannot, hence, be satisfied if the plea of guilty is endorsed in the M. O. coupon. Of course the accused cannot be held responsible for any postal delay and some times the M. O. may be received in court first and thereafter the registered letter, containing the plea of guilty.

2. In the circumstances, the court direct that the following procedure should be followed in future :—

I. The accused should by the specified date, prior to the hearing of the charge, plead guilty to the charge by registered letter and remit to the court the specified amount.

II. The requirements of the section will not be satisfied, if the plea of guilty is endorsed in the coupon.

III. If the M. O. reaches earlier, the amount may be received and entered in the cash book as anticipatory fine amount and after the register letter, containing the plea of guilty is received, the amount be transferred to the fine head and then credited to the Treasury.

IV. In cases covered by section 130 (2), the accused while pleading guilty to the charge, shall also forward his licence to the court, in order that the conviction may be endorsed in the licence.

3. The above instructions may be brought to the notice of all Judicial Magistrates under you for their guidance.

Yours faithfully,

B. CHOUDHURY

For Registrar

No. 1333—XLIXD-9/67

From

Shri B. Choudhury, LL.B.  
Additional Deputy Registrar, Orissa High Court, Cuttack

To

The Sessions Judge, Balasore

Dated Cuttack, the 15th February 1968

Subject—Safe custody of the Motor vehicle on the eve of the Motor driver, being taken to Jail custody for undergoing default sentence.

Sir,

I am directed to refer to paragraph 19 under the heading "Register of unimportant cases, 1966" of the notes of Annual Inspection of the Court of the Subdivisional Magistrate, Nilgiri made by the

Additional District Magistrate (Judicial), Balasore from the 25th to the 28th May 1966 and to say that the court observe that when any truck or Motor vehicle driver has committed an offence, punishable under the Motor Vehicle Act, the Traffic Inspector accompanying the Mobile Court Magistrate should under no circumstances feel hesitant to file prosecution report on the grounds that in case the convict does not pay the fine amount he is sent to Jail for undergoing the default sentence, the vehicle may remain uncared for and the Police may come under Civil liability. It is his bounden duty to submit P.R. and prosecute the accused for the offence committed by him. After the accused is convicted, it is for the court to consider whether the convict is to be sent to Jail for undergoing default sentence or to take action under section 388, Cr. P. C. by suspending the execution of sentence of imprisonment and granting time for payment of the fine amount in one or more instalments as laid down in the said section. In case, however, the court decide to send the convict to the Jail for non-payment of the fine amount, it is the duty to pass such orders as it thinks fit for the safe custody of the vehicle and the goods, if any, therein. For this purpose, the court may direct preparation of the list of goods, etc. and make over the vehicle to the Officer in-charge of the nearest Police-Station or pass such other for further orders as may be deemed fit and proper in the circumstances. If in any case, the court find that the Traffic Inspector express reluctance or unwillingness to submit the prosecution report, it should bring the matter to the notice of the Superintendent of Police for taking suitable action against the officer concerned and if it has got powers to take action against the culprit, u/s 190(1)(c), Cr. P. C.

Yours faithfully,

B. CHAUDHURY

Additional Deputy Registrar

-----  
No. 5063—XLIX-D-25/67

From

Shri B. Chaudhury. LL. B.,  
Joint Registrar of the High Court of Orissa

To

All the District and Sessions Judges

Dated Cuttack, the 26th July 1968

Subject—Powers of Additional or Assistant Sessions Judges, empowered, u/s 17(4), Cr. P. C. to receive appeals.

Sir,

I am directed to refer to the Court's Circular letter No. 2016, dated 8-3-1968 on the above subject and to say that the question of amending suitably the provisions of the Code of Criminal Procedure, empowering the Sessions Judges to authorise in their absence the Additional or Assistant Sessions Judges to receive Criminal Appeals and applications is under consideration of the State Government.

2. Pending amendment of the provisions of the Code, the court direct that the Sessions Judge may authorise an official of the Court of the Additional or Assistant Sessions Judge or the Additional or Assistant Sessions Judge himself to receive in his absence, Criminal Appeals and applications on his behalf with the direction that on presentation, the papers should be transmitted to his own court for registration of the Appeal and for further orders, soon after the Additional or Assistant Sessions Judge disposes of the urgent application in accordance with the provisions of section 17, sub-section 4 of the Code.

Court's Circular Order, dated 8-3-1968 is hereby withdrawn.

Yours faithfully,

B. CHAUDHURY

Joint Registrar

Copy of letter No. 5526(8), dated 13-8-1968 from the Registrar, Orissa High Court, addressed to all D. Js. of the State.

Subject—Common list of holidays for the Civil and Criminal Courts.

I am directed to say that it has come to the notice of the High Court that some doubts are expressed in certain quarters regarding observance of Civil Court holidays and summer vacation by the Judicial Magistrates. Since a number of circulars have been issued on this subject from time to time, some difficulty is also felt whether or not the instruction contained in the recent circular are in supersession of the previous ones. In order to set at rest all doubts the matter is clarified as follows :—

- (1) Under the Court's letter No. 6434, dated 1-2-1961, Judicial Magistrates who have not been vested with powers of a Munsif should only observe executive holidays. Munsifs exercising Magisterial powers or Magistrates exercising powers of a Munsif should observe Civil Court holidays excluding the summer vacation. Judicial Magistrates exercising Civil powers should observe all executive holidays which fall during the period of summer vacation. Additional Munsifs who are exclusively doing Criminal work may be treated as Judicial Magistrates for the purpose.
- (2) In Court's letter No. 6546(13), dated 17-10-1963, instructions were issued that Judicial Officers, working as Subdivisional Magistrates or Judicial Magistrates in outlying stations, where there is only one Officer should not be permitted to avail of the Civil Court holidays. They should observe the executive holidays only.

- (3) In the Court's memo. No. 7821(3), dated 30-11-1967, instructions were issued that the Courts of the A. D. M. (J), S. D. M., Judicial Magistrate and their offices should remain closed on such occasions which are declared as holidays full or half for festival purposes by the R. D. C.
- (4) In the Court's letter No. 3615(8), dated 8-5-1968, Government decision to have a common list of holidays for the Civil and Criminal Courts on experimental basis for three years on the Bombay Model has been communicated in supersession of all instructions mentioned in paras. 1 to 3 above. The main features of the Bombay Model are as follows :—
- (i) All Judicial Officers doing both Civil and Criminal work are borne in one combined Cadre of Judicial Service ;
  - (ii) So far as the enjoyment of holidays is concerned, all Judicial Officers are eligible to enjoy Civil Court holidays that is to say, the Criminal Courts are closed on such days as the Civil Courts remain closed. However, the Magistrates become available at the headquarters on such days to attend to any urgent business. But if there are more than a Magistrate at the station and one of the officers wants to be away, he may be permitted to go after making arrangement with the Presiding Officer of any other court who may be present on the spot to attend to the urgent work of the court, if any, in his absence ;
  - (iii) So far as the summer vacation is concerned, the members of the Judicial Service of the State belong to the Vacation Department and the Judicial Officers doing purely Civil work can be permitted to avail of the entire vacation. But regarding officers, purely working on the Criminal side and where there are more than one Magistrate, District Judges are authorised to permit the Munsif-Magistrates to enjoy the vacation in full or in part, keeping in view that the normal disposal is not seriously affected and additional expenditure is not caused to Government. A Magistrate will not be permitted to enjoy the vacation or any part of it, unless at that particular station there are more than one Magistrate or a Munsif-Magistrate and the work should be so adjusted that it would be possible for one of them to do the entire Criminal work so that the other can avail the vacation or in the alternative, they can enjoy the vacation in part.

I am to request that the aforesaid instructions may be brought to the notice of all the Judicial Officers under you for their strict observance.

S. K. PATRO

Registrar

6-8-68



No. 5560—(17)/V-8/62 Dated 14-8-1968

From

Shri S. K. Patro, B. L.,  
Registrar of the High Court of Orissa.

To

All the District and Sessions Judges in the State

Sir,

I am directed to refer to pragraph 5 of the Confidential Circular letter No. 1623(6), dated the 6th March 1962 and to say that the Court after careful consideration, direct that the said paragraph be modified as follows:—

The Criminal cases before Magistrates are generally of a simple nature and it should be possible to dispose of such cases within six months from the date of apperance of the accused. In Police cases charge should be framed on the very day on which police papers are given to the accused. The Magistrate should make it a point to read the case records at home and come to Court fully prepared to frame the charge. Two or three adjournments of short duration, says 15 days each time, will suffice for completing examination and Cross-examination of the witnesses for the prosecution. The statement of the accused should be recorded as soon as Cross-examination is over and no separate adjournment should ordinarily be granted for that purpose. Only in cases of a somewhat complicated nature, the parties should be given some time for arguments, although such cases may be few. If a Magistrate keeps himself alert from the very beginning of the trial and refuses to grant adjournments except for compelling reasons, he should be able to control the proceedings effectively.

The aforesaid revised instructions may be brought to the notice of all Judicial Magistrates under you for their information and guidance.

Yours faithfully,

S. K. PATRO

Registrar

Letter No. 4005(8)—XXIX-60/67.

Dated Cuttack, the 11th July 1969

To

All the District Judges of the State, (except Koraput).

Subject—Appointment of Registrars, Civil Courts to work as Inspector of Processes.

Sir,

I am directed to say that the Court direct that in order to avoid fraud and suppression in the service of Civil and Criminal Processes,

the Registrar Civil Courts shall go out for atleast 3 days every month for checking service of processes by the Process Servers and make surprise visits to mufasil areas for the purpose. The Additional expenditure on this account by way of T. A. etc. of the Registrar may be met out of the grant for the current financial year under the head T. A. A report as to the working of the system and its impact on, effective service of Processes may be furnished to the Court by February, 1970.

Yours faithfully,

B. CHAUDHURY

Joint Registrar.

No. 5035(17)—XXIX.33/69

From

Shri S. K. Patro, B. L.  
Registrar, High Court of Orissa, Cuttack

To

All District Judges  
All Additional District Magistrate (J) of the State

Dated Cuttack, the 28th August 1969

Sir,

I am directed to say that it has come to the notice of the Court that some of the Judicial Magistrates issued certificates which they were not authorised under law to issue and in one case Government inadvertently gave stipend on the basis of such certificate issued by a Judicial Magistrate.

2. In order to avoid such irregularity, the Court direct that no Judicial Officer should issue any certificate which under any law or rule is required to be issued by officers of Revenue or other Departments and if it ever comes to the notice of the Court that a Judicial Officer has issued any such certificate or a certificate containing incorrect facts, severe disciplinary action will be taken against him.

This may kindly be brought to the notice of all Judicial Officers posted in your Judgeship for their information and guidance.

Yours faithfully

S. K. PATRO

Registrar

No. 5770—X/IXD 28/69

From

Shri S. K. Patro, B.L.,  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State  
Dated Cuttack, the 11th September 1969

Subject—Service of summons and other processes in Vigilance cases pending before the different Courts of the State exercising Criminal Jurisdiction.

Sir,

I am directed to say that it has been brought to the notice of the Court that divergent practice exists in the subordinate courts in the matter of service of summons and other processes issued in Vigilance cases. Sometimes the processes are being served by Nizarat agency, while at other times the same are sent to the vigilance department for service and return. It appears that in many instances summons issued for service through the Nizarat could not be personally served with the result that the trial of the cases had to be adjourned causing unnecessary trouble and expenses to the parties.

2. In order to ensure prompt and effective service of summons on the accused and witnesses, Government in the Political & Services Department (Vigilance Branch) have expressed their willingness to take up the service of all kinds of processes in pending Vigilance cases. In the circumstances, the court direct that, in future, all summonses/processes issued in Vigilance cases should be sent to the Vigilance Agency for service and return.

The above instructions may be brought to the notice of all courts subordinate to you.

Yours faithfully

S. K. PATRO

Registrar

No. 5964-(17)—XLIXD-28/68

From

Shri B. Chaudhury, LL. B.,  
Joint Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State

All the A. D. M. (J) of the State

Dated Cuttack, the 11th September 1969

Subject—Payment of expenses for the removal of under trial prisoners from one Jail to another and from Jail to Court.

Sir,

I am directed to forward, for favour of information and communication to the courts subordinate to you the accompanying

copies of letter No. 26629-Jls., dated the 21st August 1969 and its enclosure from the Deputy Secretary to the Government of Orissa, Home Department, Bhubaneswar on the above subject.

Yours faithfully,

B. CHAUDHURY

Joint Registrar

GOVERNMENT OF ORISSA

HOME DEPARTMENT

No. 26629—Jls.-IP-7/69-Jls.

From

Shri B. K. Mohanty, O. A. S. (I)  
Deputy Secretary to Government.

To

The Registrar of the High Court of Orissa, Cuttack

Dated, Bhubaneswar, the 25th August 1969

Subject :—Payment of expenses for the removal of undertrial prisoners from the Jail another and from Jail to Court.

Sir,

I am directed to refer to your letter number 3612, dated 6-5-66 on the above subject and to say that the Superintendent of Police who are the drawing, disbursing and estimating officers in respect of 2-22—Jails—K—charges for police custody (i) Court Van charges have also been declared a ssuch under the above Head of account for (ii) other than Court Van charges in G. O. No. 23554-FS., dated 30-7-69 and No. 23578 (13)/F.S., dated 31-7-69 with effect from dated 1-9-69 (copy enclosed).

The expenses necessary for the diet and journey of U. T. Prisoners during their transit will be met from the above Head of Account.

Yours faithfully

B. K. MOHANTY

Deputy Secretary to Government

## GOVERNMENT OF ORISSA

## HOME DEPARTMENT

No. 23554-FS.

From

Shri M. R. V. Rao, O. F. S.  
Assistant Financial Adviser-cum-  
Under-Secretary to Government.

To

The A. G., Orissa, Bhubaneswar  
(Through Finance Department)

Dated, Bhubaneswar the 30th July 1969

Subject—Declaring S. P. as drawing disbursing and estimating officers  
in respect of 2-22 Jails-a-Jails-K-charges for police custody,  
(i) charges other than court van charges.

Sir,

I am directed to say that after careful consideration, Government  
have been pleased to declare the S. P. as drawing disbursing and  
estimating officers in their respective jurisdictions under the head  
"Demand No. 2-22-Jails-a-Jails-K-Charges for police custody.

(i) Charges other than court van charges

The District Magistrates who were declared as such in respect of  
the above head of account will no longer function as such.

This has been concurred in by the Finance Department in their  
U. O. R. No. 1784 II dated 24th June 1969.

Yours faithfully

M. R. V. RAO

Assistant Financial Adviser-cum-

Under-Secretary to Government

## GOVERNMENT OF ORISSA

## HOME DEPARTMENT

No. 23578(13)-F.S.

From

Shri M. R. V. Rao, O. F. S.,  
Assistant Financial Adviser-cum-Under-Secretary to  
Government.

To

All District Magistrate,

Dated, Bhubaneswar, the 31st July 1969.

Subject—Declaring the Superintendent of Police as drawing disbursing and estimating officers in respect of 2-22 Jails(a) Jails-K. Charges for Police custody (1) charges other than court van charges.

Sir,

Consequent upon the declaration of the S. P. as drawing disbursing and estimating officers under the Sub-head mentioned above in G. O. No. 23534-F.S., dated the 30th July 1969, I am directed to say that Government have been pleased to decide that the transfer will take effect from 1st September 1969.

All the records and connected papers should be made available to the Superintendent of Police. The allotment for the current financial year placed at your disposal under this Sub-head may be transferred to the Superintendent of Police.

Yurs faithfully,

Sd. M. R. V. RAO  
Assistant Financial Adviser-cum-  
Under-Secretary to Government

No. 6425(8)—Dated the 26-9-69/File No. XII-2/69

From

Shri B. Chaudhury, LL.B.,  
Joint Registrar, Orissa High Court, Cuttack.

To

All the District Judges of the State.

Dated the 26th September 1969.

Subject—Monthly Sessions statements.

Sir,

I am directed to say that the Court have had occasion to notice that, ordinarily, some delay occurs in the trial and disposal of Sessions cases by the A. D. M. (J) exercising powers of the Assistant Sessions Judge. Evidently this is due to the fact that this officer remains busy for a

number of days during the month on inspection and other administrative work. When administrative duties are heavy, lesser number of Sessions Cases should be transferred to his file for trial but delay in disposal should scrupulously be avoided.

I am, therefore, to request that the above observation of the Court may be borne in mind while transferring Sessions cases to the file of A. D. M. and A. S. J. for trial and disposal.

Yours faithfully  
B. CHAUDHURY  
Joint Registrar

Copy of the Letter No. 269(8)—XII-11/69, dated the 10-1-1970 from the Registrar, Orissa High Court, Cuttack to all the Sessions Judges in the State

Subject—Communication of the adverse comments made by the Sessions Judges on the explanations furnished for delay of more than 2 months between the dates of apprehension and the commitment of the accused persons, furnished by the Committing Magistrates as required in rule 36 at page 13 of the G. R. & C. O. (Criminal), Volume I.

I am directed to say that according to the existing rules there seems to be no process by which the comments made by the Sessions Judges would reach the Subordinate Magistrates who are expected to improve on the basis of such comments. After due consideration, the Court have been pleased to direct that the Sessions Judges should, henceforth, send copies of their adverse comments for the delay committed by the Committing Magistrates through the A. D. M. (J) concerned for their guidance. Regarding the delay at the Stage of investigation, the copies of adverse comments may be sent to the Executive Magistrate through the District Magistrate concerned, for their guidance.

Yours faithfully  
S. K. PATRO  
Registrar

No. 856(8)—XVIII-1/69

From

Shri S. K. Patro, B. L.,  
Registrar, High Court of Orissa, Cuttack.

To

All District Judges of the State

Dated Cuttack, (the 31st January 1970.

Sir,

I am directed to say that the Court direct that the Additional District Magistrate (Judl.) working under you should hereafter withdraw to his file important heavy Criminal cases particularly those under

section 409 I.P.C. from the file of the local Subdivisional Magistrate for hearing and disposal by the A. D. M. (J) himself. The aforesaid instructions may be brought to the notice of the A. D. M. (J) for strict observance in future.

Yours faithfully,  
S. K. PATRO  
Registrar

No. 4450(8)—XI-5/68

From

Shri A. C. Das, B.A. (Hons.), LL.B.  
Joint Registrar of the High Court of Orissa

To

The District and Sessions Judge

Dated Cuttack, the 23rd June 1970

Subject—Arrest and detention of Members of Parliament—Intimaion  
in respect of.

Sir,

In continuation of the Court's letter No. 836(8), dated the 1-2-1969 on the above subject, I am directed to forward for favour of your information and guidance and for communication to and the guidance of all the Courts subordinate to you, the accompanying copies of letters No. 12/1/69-PIV, dated 24-3-1969 and No. 32/261/68-Poll.I(A), U. S. I., dated the 19th July 1969 from the Deputy Secretary to Government of India Ministry of Home Affairs, New Delhi.

For ready reference a copy of the Court's letter No. 836(8), dated 1-2-1969 with its enclosure is attached hereunto.

I am to request that every Court within your Judgeship and Sessions Division may be furnished with a copy of this letter together with its enclosure.

Yours faithfully

A. C. DAS

Joint Registrar



No. 12/1/69-P.IV  
**GOVERNMENT OF INDIA**  
**MINISTRY OF HOME AFFAIRS**

**To**

All State Governments and Union Administrations  
 New Delhi-1, the 24th March 1969

**Subject**—Arrest and detention of members of Parliament—Intimation in respect of.

**Sir,**

I am directed to refer to this Ministry's letter No. 12/2/67-PIV., dated February 21, 1968, forwarding a copy of the Pamphlet containing the instructions to be followed in regard to communicating the information relating to the arrest, detention, etc. of Members of Parliament to the Speaker/Chairman, Lok Sabha/Rajya Sabha, and to say that the Lok Sabha Secretariat have brought to our notice that in a recent case when a member of Parliament was transferred from one prison to another on Saturday evening, the intimation about the transfer was communicated to the Speaker, Lok Sabha, on the following Monday. Lok Sabha have taken a serious view of the delay in intimating the Speaker. I am, therefore, to request that, in future, all information about the arrest, detention, transfer, etc. from one Jail to another of a Member of Parliament should please be communicated to the Speaker/Chairman, Lok Sabha/Rajya Sabha immediately by the quickest possible means, irrespective of a Sunday or a holiday.

2. It is requested that these instructions may please be brought to the notice of all authorities concerned in the State/Administrations.

Yours faithfully,

**D. D. JOSHI**

**Deputy Secretary to the Government of India**

Immediate

No. 32/261/68-Poll-I(A)/USI.

**GOVERNMENT OF INDIA**  
**MINISTRY OF HOME AFFAIRS**

New Delhi-1, dated the 19th July 1969

**To**

All the Chief Secretaries of States/Union Territories

**Subject**—Arrest and detention of Members of Parliament—Instructions regarding timely intimation of their arrest.

**Sir,**

I am directed to refer to this Ministry's letter No. 12/2/67-PIV., dated the 21st February 1968, enclosing a Pamphlet containing instructions regarding the arrest of Members of Parliament and to the

subsequent letter No. 32/261/68-Poll. I(A)/U. S. I., dated the 10th January 1969 regarding timely intimation of the arrest of the grounds of arrest and of release of Members of Parliament in order to ensure that there is no lapse in complying with the instructions contained in the pamphlet, it is suggested that action may kindly be taken on the following points :—

(i) It may be ensured that the prescribed forms in which information has to be sent to the Lok Sabha and the Rajya Sabha secretariat are available at the District and Subdivisional Headquarters and also at the Police Stations.

(ii) Copies of instructions issued in the Ministry of Home Affairs letter No. 12/2/67-P. IV, dated the 21st February 1968, should be carefully kept in Guard Files and should invariably be handed over by officers relinquishing charge to their successors so that every one is clearly aware of the procedure to be followed.

(iii) Intimations of arrest should be sent by telegrams and also by post irrespective of the day on which the arrest is made. The fact that the day of arrest happens to be a holiday, does not mean that the intimation can be held over till the next working day.

(iv) In case the arrest is made under the orders of the Sub-divisional Officer, he should clearly explain in his report to the District Magistrate the circumstances of arrest and the legal provisions under which the arrest was effected. Similarly, if the arrest has been made under the orders of the District Magistrate, a report should be submitted to the State Government indicating the relevant facts clearly.

(v) It is not merely arrest under law in respect of which the intimation has to be sent to the Speaker of the Lok Sabha or to the Chairman of the Rajya Sabha, as the case may be. Intimation has also to be sent even if the M. P. has been subjected to any kind of restraint or detention by the police which is not within the strict legal meaning of the term "Arrest".

I am, therefore, to request that necessary instructions may kindly be issued to the District Magistrates accordingly.

2. Recently there were some cases about the arrest of some Members of Parliament which have been referred to the Committee of Privileges on the Lok Sabha. The findings of the Committee will be intimated to the State Governments in due course.

G. K. ARORA

Deputy Secretary to the Government of India

Copy of letter No. 836 (8), dated 1-2-69 from the Joint Registrar, Orissa High Court, Cuttack addressed to all District & Sessions Judges of the State.

**Subject—Intimation to Speaker regarding arrest, detention, conviction, release, etc. of M. Ps.**

I am directed to forward, for your information and guidance and for favour of communication to and guidance of the Courts subordinate to you, the accompanying copy of letter No. F-12/3/68-P-IV, dated the 21st June, 1968 together with a copy of letter No. 12/2/67-P-IV of 21-2-68 and its enclosure from the Under-Secretary to the Government of India, Ministry of Home Affairs, New Delhi, on the subject noted above.

Registered.

No. 12/2/67-P-IV

GOVERNMENT OF INDIA  
MINISTRY OF HOME AFFAIRS

To

All State Governments & Union Territories

New Delhi-1, the 21st February 1968.

**Subject—Arrest and detention of Members of Parliament.**

Sir,

I am directed to forward herewith a Pamphlet containing instructions to be followed in regard to the service of summons and warrants within the precincts of Parliament House, had suffing of Members of Parliament and communication of information relating to arrest/detention of Members of Parliament to the Speaker/Chairman, Lok Sabha/Rajya Sabha.

It is requested that these instructions may be brought to the notice of all authority concerned in the State.

G. S. KAPOOR

Under-Secretary to the Government of India

Instructions circulated by the Ministry of Home Affairs to All Government of States/Union Territories. Regarding :—

1. Seeking the Speaker's permission for service of summons within the precincts of the House;
2. Seeking the Speaker's permission for service of warrant within the precincts of the House;
3. Hand-cuffing of a Member of Parliament under arrest, and
4. Intimation to the speaker of the arrest, detention, etc., and the release of an M. P.

Note :—In case of Rajya Sabha Members, Please read "Chairman" for "Speaker" and the Lok Sabha Rules (briefly referred to as LSR) quoted below apply, mutatis mutandis, in the case of Rajya Sabha Members also).

Precincts of the House means and includes the Chamber, the Lobbies, the Gallaries and such other places as the Speaker may from time to time specify vide the definition in the Rules of Procedure and conduct of Business in Lok Sabha, Fifty Edition, 1967 (hereinafter briefly referred to as LSR) Rule 2 (1). The Speaker's Direction No. 124 provides that except for the purpose of Rule 374" the term precincts of the house/Parliament house shall also include the following namely :—

- (i) The Central Hall and its Lobbies,
- (ii) Members waiting Rooms,
- (iii) Committee Rooms,
- (iv) Parliament Library,
- (v) Members Refreshment Rooms,
- (vi) Lok Sabha Offices located in Parliament House and the hutments adjoining the Parliament House,
- (vii) Corriders and passages connecting or leading to the various rooms referred to in (i) to (iv) above, and
- (viii) Parliament House Estate and approaches to the Parliament House.

2. The permission of the Speaker, Lok Sabha, is required to be obtained for the service of a legal process within the precincts of the House on any person, whether a Member of Lok Sabha or a stranger vide L. S. R. 233. In the case of a Member of the Rajya Sabha however, permission of the Chairman of the Rajya Sabha will have to be obtained with simultaneous intimation to the Speaker, Lok Sabha.

- Rule 374 is about suspension of member and his withdrawal from the precincts or the House.

3. It is not a desirable practice to send legal processes for service on the Members of Parliament or to attempt to serve such legal processes on them through the Presiding Officers of the Lok Sabha/Rajya Sabha or through the Lok Sabha Secretariat/Rajya Sabha Secretariat. The appropriate procedure would be to serve such processes direct on the Members concerned outside the precincts of Parliament, i.e., at their residence or at some other place. In an exceptional case, if at all it becomes necessary to seek the Speaker/Chairman's permission to serve a legal process within the precincts of the House, the Speaker/Chairman desires that he should be addressed through the Ministry of Home Affairs and the authority, issuing the legal process should send along with it a brief statement containing a well-reasoned request setting out the grounds why it has become necessary to serve the process within the precincts of the House.

4. LSR 232 requires that no arrest shall be made within the precincts of the House without obtaining the permission of the Speaker.

5. To enable the Presiding Officer to decide whether he should grant or withhold permission for arrest within the precincts of the House, it is necessary that in making a request for such arrest, the warrant should be accompanied by a brined statement containing a well-reasoned request setting out the grounds therefore, and explaining why it is desired that the arrest be made within the precincts of the House and why the matter can not wait till the House adjourns for the day. In the absence of such a statement, it is often not possible for the Presiding Officer to come to a decision whether permission should be granted or withheld. The authority issuing the warrant or charged with the responsibility of serving the warrant must, therefore, attach with the warrant of arrest a statement containing a well-reasoned request why arrest within the precincts of the House is necessary. The Subordinate authorities should not address the Presiding Officer direct in this connection and any such request must be made through the Ministry of Home Affairs.

6. (1). The fourth and fifth combined Reports of the Committee of Privileges (Second Lok Sabha) laid on the Table of the House on the 27th September 1958, recommended that the Ministry of Home Affairs may be requested to bring to the notice of the State Governments the instructions already issued by the Home Ministry and contained in Police Rules/Manuals and executive instructions of various State Governments that persons in Police custody and prisoners, whether under trial or convicts should not be handcuffed as matter of routine and that the use of handcuffs should be restricted to cases where the prisoner is a desperate character or where there are reasonable grounds to believe that he will use violence or attempt to escape or where there are other similar reasons. The Committee recommended that the Home Ministry may stress the desirability of strictly complying with these instructions, especially in the case of Members of Parliament, in view of their "High Status". The Committee also suggested for the consideration of the Home Ministry whether in the interest of uniformity, the State Governments would like to make similar provisions in respect of Members of State Legislatures.

(2) If a Member of Parliament is arrested and handcuffed, the matter is likely, indeed almost certain to be raised in Parliament. This by itself should not influence the judgment of the Police Officer but the fact that a person arrested is a M. P., has to be borne in mind by the Police and by other authorities who have to deal with the arrested Member.

(3) For any person arrested, handcuffs are used by the Police, if the person is violent, disorderly obstructive or is likely to attempt to escape or commit suicide, or is charged with certain-non-bailable offences. Handcuffs are not used as a matter of routine. Discretion must rest with the Police Officer who is responsible for effecting the arrest and taking the persons in custody to the lock-up.

7. If a Member is arrested/detained/convicted or released, whether on bail or on completion of his term or due to any other reason, or transferred from one place of detention to another, intimation should be sent to the Speaker at the earliest, that is by telegram followed by a formal written communication. A copy of the intimation should be endorsed invariably to the Home Ministry. Arrest includes surrender to custody on cancellation of bail or otherwise. The form of intimation is given in L.S.R. Third Schedule and this form should be scrupulously used in the formal written communication. The 1st intimation by telegram should also contain the essential information, namely, in the case of an arrest, the place of arrest, the law and the section under which the arrest was made, where the member is lodged, the name and designation of the sender of the intimation and the authority which ordered the arrest.

8. Questions of privilege are raised when a Member of Parliament is arrested. In all matters connected with the arrest detention, etc., of a Member of Parliament, the concerned authorities should keep this carefully in view Article 105, Clause (3) of the Constitution provides that the privileges of Members of Parliament shall be such as may from time to time be defined by Parliament by law, and until so defined shall be those of the Members of the House of Commons of Parliament of the United Kingdom. Our Parliament has not enacted any law so far. In respect of the privileges of the Member of Parliaments in the United Kingdom, the Standard work is May's Parliamentary Practice.

9. A copy of Article 105 of the Constitution and a copy of L.S.R. 229, 230, 232, 233 and the Third Schedule are enclosed for ready reference.

## EXTRACTS FROM THE CONSTITUTION OF INDIA

### Powers, Privileges and Immunities of Parliament and its Member :

105. (1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

(2) No Member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of each House of Parliament and of the members of the committees of each House, shall be such as may from time to time be defined by Parliament by law and until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution.

(4) The provisions of Clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of a House of Parliament or any committee thereof as they apply in relation to members of Parliament.

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(2) Powers, privileges, etc. of the Houses of Parliament and of the Members and Committees thereof.

## EXTRACTS FROM U. S. R.

229. When a member is arrested on a criminal charge or for a Criminal offence or is sentenced to imprisonment by a court or is detained under an executive order, the committing judge, magistrate or executive authority, as the case may be, shall immediately intimate such fact to the Speaker indicating the reasons for the arrest detention or conviction, as the case may be as also the place of detention or imprisonment of the member in the appropriate form set out in the Third Schedule.

230. When a member is arrested and after conviction released on bail pending an appeal or otherwise released such fact shall also be intimated to the Speaker by the authority concerned in the appropriate form set out in the Third Schedule.

232. No arrest shall be made within the precincts of the House without obtaining the permission of the Speaker.

233. A legal process, civil or criminal shall not be served within the precincts of the House without obtaining the permission of the Speaker.

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229. Intimation to Speaker by Magistrate of arrest, detention, etc. of a member.

230. Intimation to Speaker on release of a member.

232. Arrest within the precincts of House.

233. Service of legal process.



No. 6277(8)

Dated the 21st August 1970

From

Shri A. C. Das, B.A. (Hons.), LL.B.  
Joint Registrar of the High Court of Orissa, Cuttack

To

All the Sessions Judges of the State

Subject—Time of preservation of the records of criminal cases where statements of witnesses under section 512, Cr. P. C. are recorded.

Sir,

I am directed to refer to the minutes of the proceedings of the District Judges' Conference of 1968 on item No. 37(i) of the agenda and to say that Proviso 1 to rule 42 of Chapter V, Part III at page 45 of the Court's General Rules and Circular Orders (Criminal) Volume-I enjoins in para. (i) that the record of any case in which any of the accused or parties proceeded against has not been apprehended shall be treated as permanent for the purpose of preservation. This provision, however, is to be read with the explanatory Note occurring at the foot of the proviso. In the result, the record of a case where in the sole accused or all the accused, if their number exceeds one, are treated as absconders shall, after evidence is recorded in accordance with section 512 of the Criminal Procedure Code, be liable to destruction after being preserved for the maximum period of thirty years. In these circumstances, the Court do not consider that any amendment of the provisions of the Court's General Rules and Circular Orders (Criminal) Volume I, is necessary.

I am to request that the above observations of the Court may kindly brought to the notice of all concerned in your sessions division for guidance.

Yours faithfully

A. C. DAS

Joint Registrar

No. 9715(8)-XLIX-D 21/69

From

Shri A. C. Das, B. A. (Hons.), LL. B.,  
Joint Registrar of the High Court of Orissa.

To

All the Sessions Judges of the State.

Dated Cuttack, the 31st December 1970

Subject—Register of Warrants of Imprisonment in Form No. (R) 5  
(Criminal).

Sir,

I am directed to say that instances have come to light in course of inspection of the subordinate Criminal Courts that column 8 under the title 'Date on which the imprisonment would ordinarily terminate' in the Register of Warrants of Imprisonment prescribed in Form No. (R) 5 at page 49 of the Court's General Rules and Circular Orders (Criminal) Volume II, 1962 edition is left unfilled in a many Courts till long after judgement of conviction and sentence is passed in the following types of cases:—

- (i) Where the sentence awarded is one of imprisonment for life, and
- (ii) Where the accused is released on bail the day the judgement is pronounced.

2. Opinion has been expressed that it is not possible to enter a date in column 8 of the Register in cases of the type mentioned at (i) above because it can not be easily calculated when a term of imprisonment for life will terminate which term is provided in section 57 of the Indian Penal Code to be reckoned as equivalent to imprisonment for twenty years for the purpose of remissions and commutation etc. In case of the category stated at (ii) of the above paragraph, it is stated, the sentence of imprisonment begins to run from an uncertain date, that is from the date of commitment of the accused to prison the event of the Appeal preferred or the Revision filed by him being decided against him with the sentence of imprisonment wholly or partly upheld by the Court of Appeal or Revision. Without a starting point of computation, the date of termination of a period of imprisonment is not possible to be arrived at.

3. On a careful consideration of the matter the Court are of opinion that any possible remission or commutation of a sentence of imprisonment for life need not be taken into account for commutation of the date of termination of such imprisonment. It has been ruled in the case of Gopal Vinayak Godse-Vrs.-the State of Maharashtra reported in A. I. R. 1961 Supreme Court 600 that a sentence of imprisonment for life must *prima facie* be treated as "imprisonment for the whole of the remaining period of the convicted person's natural life." Therefore on a case where the accused is sentenced to imprisonment for life the proper entry in column 8 of the Register of Warrants of Imprisonment in Form No. (R) 5, shall be "The whole of the remaining period of the convicted person's life."

4. In cases where an accused is released on bail the day the judgment is pronounced it is true that the person convicted is not committed to the prison until the Appeal preferred and the Revision filed, if any, is decided against him with the sentence of imprisonment confirmed in whole or in part or until, for adequate reasons, bail is cancelled. The date from which the term of the imprisonment is to run cannot in the circumstances, be calculated on the date of the order of conviction and sentence. Besides, not until the Appeal or Revision is disposed of it is possible to know whether the sentence of imprisonment shall be confirmed or modified. In such cases the date of expiration of the sentence of imprisonment would necessarily remain imaginary and unascertained till the Appeal or Revision is decided. Column 5 of the Register is meant for noting "the date of release on bail." The entry made in this column is sufficient to give an indication of the reason why no date is filled up in column 8 in the second category of cases. Therefore, in cases where bail is granted on the day the judgment is delivered, no date need be entered in column 8. If however, the convicted person is not released on bail immediately after his conviction necessary entry regarding the date on which the imprisonment would ordinarily terminate shall have to be made in column 8. On his subsequent release on bail the warrant of commitment shall be recalled and the date originally mentioned in column 8 may be scored through.

5. I am, accordingly, to request that the above instructions of the Court may be strictly observed by all the courts exercising criminal jurisdiction in your sessions division.

Yours faithfully

A. C. DAS

Joint Registrar

No. 1945(8)—XLIX-E-1/71

From

Shri K. P. Mohapatra, B. L.,  
Registrar of the High Court of Orissa.

To

All the District & Sessions Judges in the State.

Dated Cuttack, the 8th March 1971

Subject:—

Transmission of records for reference in the High Court in Appeals and Revisions.

Sir,

I am directed to invite a reference to Court's Circular Letter No. 6339(28) dated the 10th October, 1963 on the above subject (copy enclosed) and to say that instances have come to the notice of the Court

of default by the Presiding Officers of subordinate courts in observing the instructions contained therein. Failure in strictly following the instructions results in great inconvenience to the Court in the hearing of Appeals and Revisions arising from the judgments and orders of subordinate courts and valuable time of the Court is lost by making protracted correspondence for the purpose of obtaining the relevant papers from the courts concerned. It is the primary responsibility of Presiding Officers to send the records free from defects. In order to discharge the said responsibility the Presiding Officers are required to exercise active supervision over their ministerial staff. The Court except that in future no complaints are brought to their notice regarding sending defective records called for in Appeals and Revisions.

I am, accordingly, to request that the instruction conveyed in the said Circular Letter, in particular the necessity for the Presiding Officers personally examining the matter before forwarding the relevant records and furnishing a certificate to that effect, may please be brought to the notice of the judicial officers in your judgship and sessions division with a view to ensure strict observance of the instructions in future.

Yours faithfully

K. P. Mohapatra

Registrar

No. 6339—(28)-XLIXE-2/63

From

Shri T. V. Rao, B.A., LL.B.  
Registrar of the High Court of  
Orissa, Cuttack

To

All District Judges  
District Magistrates  
Additional District Magistrates (Judicial).

Dated, Cuttack, the 10th October 1963

Sir,

It has come to the notice of the Court in some cases that the Subordinate Courts while forwarding lower court records called for in Civil Revision or Misc. Appeal, as the case may be, by this Court do not take proper care to see if the entire relevant records are transmitted. For instance, when a revision is directed against any appellate order of any subordinate court, the said court on receipt of intimation forwards only the records of appeal of his Court and does not take steps to transmit the relevant records of the trial Court subordinate to him whose order it dealt with in connection with the appeal. Similarly, when any revision is directed against an interlocutory matter of any Court, the said Court on receipt of intimation mechanically transmits the

petition, counterpetition and order connected with the proceedings and does not care to see if any other document such as pleadings would also be relevant in the matter. The non-receipt of complete lower Court records in such circumstances delays the proceeding in the Court.

The Court, therefore, after careful consideration direct that the Presiding Officers of subordinate Courts on receipt of intimation of Revision or Appeal from this Court should personally examine the matter and forward all the relevant lower Court records or part of such record, as the case may be, and furnish a certificate to that effect.

By order of the High Court

F. V. RAO

Registrar

(Criminal)

No. 8219(8)—XLIX-D.-30/71

From

Shri K. P. Mohapatra, B. L.  
Registrar of the High Court of Orissa

To

All Sessions Judges of the State

Dated Cuttack, the 22nd November 1971

Sir,

I am directed to say that it has come to the notice of the Court that when the records are called for in Criminal cases, the Sessions Judges generally send the records in time but the connected commitment records are not promptly forwarded which leads to unnecessary correspondence; delay in inconvenience.

The Court, therefore, direct that the commitment records of Sessions Trials should not be returned to the lower Courts for a period of six months after disposal of the Sessions Case so that when requisition goes from the High Court, the Sessions Judge would himself despatch the Sessions Records along with the commitment records.

I am to request that the aforesaid instructions of the Court may be strictly observed in future.

Yours faithfully

K. P. MOHAPATRA

Registrar

No. 2240(8)—XI-4/72

From

Shri A. C. Das, B. A. (Hons.), LLB.  
Joint Registrar of the High Court of Orissa

To

The Sessions Judge

Dated, Cuttack, the 24th March 1972

Subject—Adjournment of Sessions Trials for non-receipt of the  
Chemical Examiner's Report and Material Objects.

Sir,

I am directed to say that the Court have had occasion to notice that Sessions cases posted for Trial without ensuring before hand that the Chemical Examiner's Report along with the material objects sent to him for examination are received back by the date fixed for hearing, are very often adjourned, after being heard in part, for non-receipt of the said report and the material objects sometimes witnesses in attendance supposed to give evidence relevant to the matter are returned without being examined, in consequence of which unnecessary expenditure is incurred in the payment of batta and the witnesses are compelled to appear before the Court once again, if not more. Adjournment of the Trial of Sessions cases at places of circuit is attended with the further evil of undue expenditure on account of the travelling allowances, etc. of the Judge and his staff and wastage of the valuable time of the Judge. Needless to say that adjournment of Sessions Trials, especially at places of Sessions circuit is most undesirable and is very much deprecated.

With a view to avoiding undue adjournments and the evils ensuing therefrom, the Court direct that Sessions cases should not be posted for Trial before making sure that the report of the Chemical Examiner and the material objects sent to him are received back in due time.

I am to request that the above directions of the Court may be strictly followed by all the Courts Trying Sessions cases.

I am further directed to request that copies of this letter may be communicated to all the Courts in your Sessions Division competent to try Sessions cases.

Yours faithfully

A. C. DAS

Joint Registrar

No. 3073(8)—XI-1/72

From

Shri K. P. Mohapatra, B.L.  
Registrar of the High Court of Orissa

To

The Sessions Judge,

Dated, Cuttack, the 2nd May, 1972

Subject—Non-realisation of criminal fines due to non-execution of warrants u/s. 386 Cr. P.C.

Sir,

I am directed to say that it has come to the notice of the Court that heavy amounts of criminal fine amounting to rupees ten lakhs and odd remained unrealised till the end of the year 1971. The reasons for such non-realisation are partly due to stay of realisation of criminal fines by the appellate courts and mostly due to non-execution of warrants issued by the criminal courts according to section 386(1)(a) of the Code of Criminal Procedure. The criminal courts however, hardly take recourse to the procedure laid down in sub-clause (b) of sub-section (1) of section 386 which provides for issue of a warrant to the Collector of the district authorising him to realise the amount by execution according to civil process against the movable or immoveable property, or both, of the defaulter. A warrant issued to the Collector of the district is executable in the manner laid down in sub-section (3) of section 386. If the criminal courts shall issue warrants to the Collectors of the district, it may have the effect of lessening the burden of the Police in the matter of execution of such warrants so that they will be more prompt and particular in properly executing the warrants entrusted to them and further the warrants shall have the effect of a decree before the Collector for realisation of the criminal fine.

The Court after careful consideration observe that the criminal courts should also issue warrants to the Collectors of the district for realisation of criminal fines according to section 386(1)(b) of Criminal Procedure Code.

The aforesaid instructions may be brought to the notice of the subordinate Judicial Magistrates under your control for their guidance.

Yours faithfully

K. P. MOHAPATRA

Registrar

No. 3075(8)—XI-1/72

From

Shri K. P. Mohapatra, B. L.,  
Registrar of the High Court of Orissa.

To

The Sessions Judge,

Dated Cuttack, the 2nd May, 1972

Subject—Delay in the disposal of criminal cases and committal inquiries due to non-supply of copies of documents u/s. 173(4), Cr. P. C., non-attendance of Investigating Officers in Courts and other causes.

Sir,

I am directed to say that delay in the disposal of criminal cases and committal enquiries in the courts of Judicial Magistrates in the State has been viewed by the Court with deep concern. Among other causes, failure to furnish to accused persons in due time copies of the documents provided in sub-section (4) of section 173 of the Criminal Procedure Code and a default of Investigating officers in attending the trying courts for giving evidence on the dates to which they are summoned largely on tribute to delay. I may refer in this connection to the proceedings of the District Judges' Conference on 1971 on item No. 30, of the agenda on the subject of delay in completing commitment proceedings owing to default in making timely compliance of the provisions of Section 173(4) Cr. P. C.

In the meanwhile, the Court have had the benefit of hearing the view points of the State Government and of the Inspector-General of Police. On careful consideration the Court observe that—

- (i) In cases of undue delay in furnishing to the accused copies of the documents required under section 173(4), Cr. P. C. it is open to the Magistrate in suitable cases to initiate in the appropriate manner prosecution against the concerned officer of police for the offence punishable under section 166 of the Indian Penal Code.
- (ii) It is always open to the courts to take necessary action according to law against the Investigating Officers of Police who do not attend the Court to give evidence on the date fixed, without giving prior intimation of their inability to do so.
- (iii) Besides the above, the Court direct that the Additional District Magistrate (Judicial) and the Superintendent of Police of each district should meet during the first week and failing that in the second week of every month to discuss mutual problems and to find out ways and means to solve them. Besides non-supply of copies of documents and non-attendance of police officers. Other causes which contribute to delay in the disposal of criminal proceedings, such as non-execution of warrants issued against accused



persons and witnesses, delay in submission of charge-sheets, etc., can be profitably discussed in such meetings. During these meetings, it will be possible for the additional District Magistrate (Judicial) to discuss and settle different matters on the basis of concrete data which he shall have to collect from the Judicial Magistrates under him.

- (iv) The meetings stated above shall, of course, be in addition to the quarterly Crime Prevention Meetings.

Action is being taken by the Inspector-General of Police for issuance of suitable instructions to the Superintendents of Police and to other officers of the police Department to ensure that delay on the part of the police is avoided in every respect and also to facilitate the monthly meetings between the Additional District Magistrate (Judicial) and the Superintendent of Police of each district.

I am, accordingly, to request that these directions of the Court may be strictly followed in future.

Yours faithfully

K. P. MOHAPATRA

Registrar

No. 4057-XII-4/71

From

Shri K. P. Mohapatra, B.L.,  
Registrar of the High Court of Orissa.

To

All the District and Sessions Judges of the State

Dated Cuttack, the 21st June 1972

Subject—Inclusion of cases under the Probation of Offenders Act in the Annual Report on the Administration of Criminal Justice.

Sir.

I am directed to say that, in-pursuance of the recommendations of the National Conference on Probation and Allied Measures held in October 1971, the Director of Central Bureau of Correctional Services, Department of Social Welfare, New Delhi-22, has suggested for inclusion of cases, in which action is taken by the courts under the different provisions of the Probation of Offenders Act in the Annual Reports of the Judicial Administration.

All the Sessions Judges were consulted in the matter and they have agreed that the statistical data pertaining to disposal of cases under the said Act shall be very useful and that the same should find place in the Annual Administration Report.

The Court agree with the above suggestion of the Central Bureau of Correctional Services, Department of Social Welfare, New-Delhi and direct that statistical data relating to the cases under the provisions of the probation of offenders Act should find place in the Annual Reports on the Administration of Criminal Justice, in the enclosed *pro forma*, as the same is likely to be very useful for comparing the progress in Probation services in the State from year to year.

I am to request that the aforesaid instructions may be brought to the notice of all the Magistrates under you for strict guidance, in future.

Yours faithfully

K. P. MOHAPATRA

Registrar

Proforma

Number of persons dealt with under Probation of Offenders Act during the year.....

	Below 21 years of age	21 years of age and above
1. Released on Adconition	...	...
2. Released on Probation without supervision.	...	...
3. Released on Probation on furnishing surety or in charge of Probation Officer specifically appointed by the Court.	...	...
4. Released on Probation and required to reside at Probation Home, Hostel or other places.	...	...
5. Released on Probation and placed under the supervision of a Probation Officer.	...	...
6. Released on Probation with requirement to pay compensation to the victim.	...	...
<b>Total</b>	...	...

No. 4867(8)—XII-4/71

From

Shri K. P. Mohapatra, B.L.,  
Registrar of the High Court of Orissa

To

The Sessions Judge

Dated Cuttack, the 20th July 1972

Sir,

I am directed to say that recently it came to the notice of the Court that a case was committed by a Subdivisional Magistrate to the Court of Sessions. The accused preferred a Criminal Revision in the High Court for quashing the commitment order prayed for stay of the sessions trial. The stay order was communicated to the Subdivisional Magistrate with a copy to the Additional District Magistrate (Judicial). The Subdivisional Magistrate intimated the fact of stay of the trial of sessions case to the Court of Sessions who accordingly stayed the proceeding. After disposal of the Criminal Revision whereby the order of commitment was quashed, the copy of the judgment along with the lower court records was sent to the Additional District Magistrate (Judicial) in accordance with the provisions of section 442 read with section 425 of the Code of Criminal Procedure. The Additional District Magistrate (Judicial) in his turn sent the copy of the judgment along with the lower court record to the Subdivisional Magistrate. But neither the Subdivisional Magistrate sent a copy of the judgment of the Criminal Revision to the Court of Sessions nor any intimation was sent to the said court that the order of commitment was quashed. As a result the sessions trial was shown to be stayed in the sessions returns even after the commitment order was quashed by the High Court. As both the Additional District Magistrate (Judicial) and the Subdivisional Magistrate were fully aware of the order of the High Court staying the trial of the sessions case pending in the Court of Sessions they should have communicated the result of the Criminal Revision to the Court of Sessions and had they done so, the Sessions trial would not have been kept pending as stayed and an incorrect sessions returns would not have been submitted to the High Court.

2. In a case like the above, it is the duty of the Additional District Magistrate (Judicial) and the committing Magistrate to keep the court of Sessions informed of the order passed by the High Court and it is necessary that they should do so in future.

3. The Court, therefore, direct that the Additional District Magistrate (Judicial) and the Committing Magistrates should follow the instructions.

I am, therefore, to request that the attention of Additional District Magistrates (Judicial) and the Judicial Magistrate be drawn to the above instructions for strict observance in future.

Yours faithfully

K. P. MOHAPATRA.

Registrar

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No. 6094—VI-39/72

From

Shri K. P. Mohapatra, B. L.,  
Registrar of the High Court of Orissa.

To

The District Judges of the State

Subject—Preparation of plans and estimates for building projects in triplicate.

Dated, Cuttack, the 30-8-72

Sir,

I am directed to say that it has been noticed that copies of plans and estimates of buildings already constructed and proposed to be constructed are not preserved either in the District Courts or in the High Court. So whenever necessity arises to make reference to the plans etc. much difficulty is experienced in the absence of the same. In order to obviate the difficulties in future it has been decided that plans and estimates for the projects of building, electrical and public health should be obtained in triplicate so that one set will remain in the District Court and 2 sets will be forwarded to the High Court, one set out of which will be sent to the Government for according administrative approval and allotment of funds.

I am therefore to request that henceforward you should obtain necessary plans and estimates for the projects in respect of building electrical and public health relating to the subordinate courts in triplicate from the concerned Executive Engineers and submit two sets of the same to the court after your counter signature thereon for taking further action in the matter and keep the other set in your office for future reference.

Yours faithfully

K. P. MOHAPATRA

Registrar

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## C R I M I N A L

No. 6381 (8) XLIX-D-12/70

From :

Shri K. P. Mohapatra, B. L.,  
Registrar of the High Court of Orissa,

To

All the District &amp; Sessions Judges of the State.

Dated Cuttack, the 9th September, 1972.

Subject—Powers of the Additional Sessions Judges and Assistant Sessions Judges to receive appeals.

Sir,

In continuation of Court's circular letter on the above subject communicated in Memo. No. 4927 (8), dated the 13th July 1970, I am directed to say that in their order contained in No. 24771/H.C., dated the 16th July 1970, (Copy enclosed) the State Government in the Home Department in exercise of the powers conferred by Sub-section (2) of section 409 of the Code of Criminal Procedure (Act V of 1898) have directed that the Additional Sessions Judges and the Assistant Sessions Judges in the Sessions divisions in the State of Orissa stationed at the places declared to be additional places of sitting of the Courts of session in the State under sub-section (2) of section 9 of the said Court, may hear Criminal appeals arising out of their respective jurisdiction.

In view of the proviso to Sub-section (2) of section 409 of the Code of Criminal Procedure as amended in Orissa (copy enclosed) read with the aforesaid order of the Government in the Home Department, the Additional Sessions Judges and the Assistant Sessions Judges in the Sessions Divisions of the State of Orissa stationed at places declared as Additional places of sitting of the Courts of session in the State are competent to receive and hear Criminal appeals arising out of their respective jurisdiction.

I am, therefore, to request that this aspect of the matter may kindly be brought to the notice of all Additional Sessions Judges and Assistant Sessions Judges of your sessions division.

Yours faithfully,

K. P. MOHAPATRA,

Registrar.

**GOVERNMENT OF ORISSA  
HOME DEPARTMENT**

**ORDER**

Dated, Bhubaneswar, the 16th July, 1970.

No. 24771—Reforms 5/70/2-H.C.—In exercise of the powers conferred by Sub-section (2) of Section 409 of the Code of Criminal Procedure, 1898 (Act V of 1898), the State Government do hereby direct that the Additional Sessions Judges and the Assistant Sessions Judges in the Sessions Divisions of the State of Orissa Stationed at the places declared to be Additional places of sitting of the Courts of Sessions in the State under Sub-section (2) of Section 9 of the said Code, may here Criminal appeals arising out of their respective jurisdiction.

By order of the Governor

B. B. RATH,

Secretary to Government

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**EXTRAORDINARY**

**PUBLISHED BY AUTHORITY,**

**LAW DEPARTMENT**

**NOTIFICATION**

The 20th May 1970

No. 6006-Legis.—The following Act of the Orissa Legislative Assembly having been assented to by the President on the 4th May 1970, is hereby published for general information.

**ORISSA ACT 14 OF 1970**

**THE CODE OF CRIMINAL PROCEDURE**

**(ORISSA AMENDMENT) ACT, 1970.**

An Act to amend the Code of Criminal Procedure, 1898 in its Application to the State of Orissa.

BE it enacted by the Legislature of the State of Orissa in the Twenty-first Year of the Republic of India, as follows:—

1. (1) This Act may be called the Code of Criminal Procedure (Orissa Amendment) Act, 1970.

(2) It shall come into force at once

2. In section 409 of the Code of Criminal Procedure 5 of 1898 to sub-section (2), the following proviso shall be added, namely:—

“Provided that where any such appeal is directed by State Government to be heard by an Additional Sessions Judge or Assistant Sessions Judge, that appeal may be preferred to him”.

By order of the Governor

T. MISRA

Secretary to Government.

No. 359(8)—XXIX-36/72

From

Shri K. P. Mohapatra, B. L.,  
Registrar of the High Court of Orissa.

To

All Sessions Judges of the State

Dated Cuttack, the 12th January 1973

Subject—Fixation of Sessions Circuits.

Sir,

I am directed to invite reference to Court's circular letter No. 6581(8), dated the 23rd September 1966 in Para. 3 whereof the Court had directed that ordinarily, the Sessions Judge should not leave a part-heard case and come back from circuit and fix a fresh circuit for the remaining part or for delivery of Judgement. If any such occasion arises, he should bring it to the notice of the Court.

Instances came to the notice of the Court that some of the Sessions Judges/Additional Sessions Judges/Assistant Sessions Judges kept Sessions Cases part-heard, came back from the circuits and fixed fresh circuits for the remaining part, and did not bring such facts to the notice of the Court.

In the District Judges' Conferences, 1972 the matter relating to adjournment of Sessions Cases was thoroughly discussed and the Sessions Judges were impressed to avoid adjournments of Sessions Cases as far as practicable.

If, however, due unavoidable reasons a Sessions Case is adjourned to the next circuit, the fact should be brought to the notice of the Court in separate letters in compliance with Court's earlier circular letter referred to above. The Court further wish to impress upon the Sessions Judges, Additional Sessions Judges and Assistant Sessions Judges that if in future it is noticed that the required intimation is not given, they will take a serious view of such lapses.

I am, therefore, to request that the directions may be strictly followed and the same be brought to the notice of the Additional Sessions Judges and Assistant Sessions Judges working in your Sessions division.

Yours faithfully,  
K. P. MOHAPATRA,  
Registrar

No. 4446=XLIXD-19/73

From

Shri K. P. Mohapatra, B. L.,  
Registrar of the High Court of Orissa

To

All District and Sessions Judges of the State

Dated, Cuttack, the 19th June, 1973

Subject—Trial of important cases by Subdivisional Magistrates—Item No. XIX of the Proceedings of the District Judges' Conference, 1972.

Sir,

I am directed to say that the Court have had occasion to notice that at stations where there are Judicial Magistrate/Magistrates besides the Subdivisional Magistrates, the latter transfer old, important and complicated cases to the courts of the former retaining unimportant cases relating to minor offences, such as Excise and Forest cases, etc. so as to secure their early disposal for the purpose of showing better outturn. It has also come to the notice of the Court that Judicial Magistrates do likewise and while they show more anxiety for disposal of unimportant cases relating to minor offences, neglect the comparatively old, important and complicated cases. As a result of such attitude being shown, the old, important and complicated cases remain pending for years. The Court strongly deprecate such a practice. They want to bring it home to the subordinate criminal courts and emphasise that disposal of old, important and complicated cases should, on no account, be neglected with a view to secure better outturn by disposing of minor cases as such a practice should completely vanish. The Subdivisional Magistrates being more experienced than Judicial Magistrates should retain the old, important and complicated cases on their own files and should make strenuous endeavour for their early disposal. They should only transfer relatively unimportant and cases of minor importance to the Judicial Magistrates. Whenever there are old, important and complicated cases on their files, the Judicial Magistrates should also make similar endeavour for their early disposal. It shall be the duty of the Additional District Magistrates (Judicial) at the time of inspection to verify particularly the old, important and complicated cases and impart suitable instructions for their early disposal. If they find that any such cases are being neglected and instead, more preference is given for disposal of unimportant and minor cases, the fact should be immediately brought to the notice of the District & Sessions Judges concerned with copy to the High Court for taking necessary action.



I am to request that the aforesaid instructions may be brought to the notice of the courts subordinate to you for their strict observance.

Yours faithfully

K. P. MOHAPATRA

Registrar

No. 4448(8)≡XLIXD.21/73

From

Shri K. P. Mohapatra, B.L.,  
Registrar of the High Court of Orissa

To

All District and Sessions Judges of the State

Dated Cuttack, the 19th June 1973

Subject—Personal verification of important Registers such as Register of Bail Orders, Register of Warrants of Imprisonment and Register of Criminal Fines—Item No. XI of the Proceedings of the District Judges' Conference, 1972.

Sir,

I am directed to invite a reference of Court's letter No. 6447, dated the 16th September 1965 (Copy enclosed) and to say that instructions were issued to the effect that the Register of Bail Orders, Register of Warrants of Imprisonment and Register of Criminal Fines should be regularly scrutinised by the Judicial Magistrates concerned every week and the other Registers every month and necessary endorsements with dated signature indicating whether the entries have been made up-to-date should be recorded in the Registers. At the time of inspection of the Courts of Judicial Magistrates, the Additional District Magistrates (Judicial) should verify if such scrutiny is duly made. In spite of the aforesaid clear instructions, the Court have had occasion to notice that Judicial Magistrates and Additional District Magistrates (Judicial) are not following the same scrupulously as a result of which important Registers like the Register of Bail Orders, Register of Warrants of Imprisonment, Register of Criminal Fines and such other Registers are not maintained properly.

2. The matter was discussed in the District Judges' Conference, 1972 and it was decided that besides verification of each entry of the important Registers referred to above by the Judicial Magistrates, a duty be cast upon the Additional District Magistrates (Judicial) to verify all the entries in these Registers during their inspection.

3. The Court accordingly direct that the instructions contained in letter No. 6447, dated the 17th September 1965 should be scrupulously followed in the matter of scrutiny and proper maintenances of important Registers, such as Register of Bail Orders, Register of Warrants of Imprisonment and Register of Criminal Fines and the other Registers. In default, personal responsibility will be fixed on the concerned Judicial Magistrate as well as on the Additional District Magistrate (Judicial). At the time of writing the annual confidential Character

Rolls of Additional District Magistrates (Judicial), the District Judges would specifically refer to this aspect of their duty.

I am, therefore, to request that the above instructions may be brought to the notice of the Additional District Magistrates (Judicial) and the Judicial Magistrates working under your control for strict observance.

Yours faithfully

K. P. MOHAPATRA

Registrar

No. 6447—XLVIB.-4/63

From

Shri A. Mishra, B.L.,  
Registrar of the High Court of Orissa.

To

All Additional District Magistrate (Judicial) of the State

Dated Cuttack, the 16th September 1965

Subject—Maintenance of Register of Bail Orders, Register of Warrant of Imprisonment and Register of Fines.

Sir,

I am directed to invite a reference to the Court's letters No. 2653(7), dated 19-4-1963 and No. 8479, dated 16-12-1964 on the above subject and to say that the Court direct that the Register of Bail Orders, Register of Warrant of Imprisonment and Register of Criminal Fines should regularly scrutinised by the Judicial Magistrates concerned every week and the other Registers monthly and necessary endorsements with dated signature indicating whether the entries have been made up-to-date should be made in the Registers. The verification of such scrutiny should be made by you while inspecting those Courts.

I am to request that the aforesaid instructions may kindly be brought to the notice of the Judicial Magistrates under your control.

Yours faithfully

A. MISRA

Registrar

No. 4449(8)—XLIXD-20/73

From

Shri K. P. Mohapatra, B.L.,  
Registrar of the High Court of Orissa

To

All District and Sessions Judges of the State

Dated Cuttack, the 19th June 1973

Sir,

Subject—Proper arrangement of records of subordinate courts—Item No. XVII of the Proceedings of the District Judges' Conference, 1972.

I am directed to invite a reference to Part III, Chapters I and II at page 84 of the G. R. and C. O. (Civil) Volume I and Part III, Chapters I and II at page 31 of the G. R. & C. O. (Criminal) Volume-I regarding classification and arrangement of records of judicial proceedings and to say that provision has been made therein regarding the manner of classification and arrangement of judicial records of all categories in the subordinate civil and criminal courts.

2. The Court have had occasion to notice that the rules referred to above are not being strictly followed as a result of which records, both pending and disposed of, are not being classified and arranged properly. Owing to this, avoidable delay occurs at the time of despatching records to the appellate and revisional courts as well as for consignment of records to the Record Room. The matter was discussed, as per item No. XVII of the Proceedings of the District Judges' Conference, 1972 and it was decided that the presiding officers should pay personal attention to the proper arrangement and classification of pending and disposed of records according to rules.

3. The Court, therefore, expect and accordingly direct that the presiding officers of the subordinate courts should bestow their personal attention and guide the ministerial officers concerned for arrangement of the records from day to day and their classification at the appropriate time according to rules without leaving the matter entirely to the discretion of the latter. For breach of the rules personal responsibility will be fixed on the presiding officers.

I am to request that these instructions may be brought to the notice of the subordinate courts under your control for ensuring strict observance of the rules referred to above.

Yours faithfully

K. P. MOHAPATRA

Registrar

No. 4695—XLVI-A-23/73

From

Shri K. P. Mohapatra, B.L.,  
Registrar of the High Court of Orissa

To

The District and Sessions Judge,  
Cuttack-Dhenkanal, Cuttack.

Dated Cuttack, the 28th June 1973

Subject—Inspection of the Court of the Judicial Magistrate, Kendrapara by the District Judge, Cuttack in May 1973—Procedure for conducting criminal cases and to avoid delay in complying with the Court's orders, execution of warrants, return of unexecuted documents and maintenance of the Register of Warrants of imprisonments (R)5, etc.

Sir,

With reference to your demi-official letter No. 2705, dated the 6th June 1973 on the above subject, I am directed to say that the Court, after careful consideration, are pleased to approve of your following instructions, issued to the Judicial Magistrate, Kendrapara at pages 11—13 of your notes of inspection dated the 25th May 1973.

1. The orders of the Magistrate should be promptly carried out by the office failing which disciplinary action should be taken against the clerk concerned.

2. The charge framed in a criminal case should not be vague. It should be specific. In cases of rioting, the common object of the unlawful assembly should invariably be mentioned. A charge u/s 504. I. P. C. should contain the objectionable words used.

3. Examination of the accused u/s. 342, Cr. P. C. should not be done in a perfunctory manner. All incriminating circumstances should be brought to the notice of the accused by putting questions which will be easily understood by him and he should be asked to state with regard to the incriminating circumstances. No question should be put to the accused regarding a matter when there is no evidence about it.

4. The unexhibited documents should be returned to the parties at the conclusion of the trial on proper receipt.

5. The procedure of forfeiture of bail bonds u/s. 514, Cr. P. C. should be strictly followed.

6. The sentencing court, u/s. 426(a), Cr. P. C. can grant bail for a limited period to enable the convict to prefer an appeal and obtain orders of the appellate Court under sub-section (1) of that Section.

7. A warrant u/s. 75, Cr. P. C. once issued remains valid till it is executed or cancelled even if there be a returnable date. Hence during the validity of the warrant it is not necessary to issue a fresh warrant simply because the warrant previously issued has not been executed.

8. If the summons issued by the court is not returned after service on the date fixed, the Magistrate should enquire about the delay and any delinquency on the part of the process-server should be severely dealt with.

9. It is the duty of the Magistrate to see that the Register of Warrants of Imprisonment (R)5, is properly maintained.

10. It should be the endeavour of the Magistrate to dispose of committal proceedings as expeditiously as possible and in any event within a period of not exceeding two months from the date of submission of charge-sheet.

11. Non-execution of warrants should be reported to the Superintendent of Police and the Additional District Magistrate (J) so that the matter may be discussed in the police-magistrates co-operative meetings.

The above instructions may be brought to the notice of the Subordinate courts under you for their guidance.

Yours faithfully,

K. P. MOHAPATRA

Registrar

No. 5357(8)—XI-12/73

From

Shri K. P. Mohapatra, B.L.,  
Registrar of the High Court of Orissa.

To

The District and Sessions Judge, (All)  
Dated Cuttack, the 19th July 1973

Subject—Relief to judicial Magistrates with regard to uncontested cases disposed of by them in assessing their outturn.

Sir,

I am directed to refer to item No. 36 of the agenda of the District Judges' Conference, 1972 and to say that the proposal to fix a yardstick for assessment of the outturn of the Judicial Magistrates for disposal of uncontested criminal cases was duly considered. It was observed that if a Judicial Magistrate is sincere and spends the working hours of the day in doing judicial work and yet his outturn becomes

inadequate, if would be possible for the District and Sessions Judge to scrutinise his outturn and submit a special report to the Court along with the quarterly statement to the effect that the outturn of the Judicial Magistrate was adequate. The report on being received will be further scrutinised in the court to find out if the work of the Judicial Magistrate concerned was adequate or not.

2. The Court, therefore, direct that the District and Sessions Judges after scrutiny of the outturn of Judicial Magistrates should submit reports in appropriate cases along with quarterly statements with their recommendation as to whether the outturn of a particular Magistrate was adequate or not.

I am, therefore, to request that the aforesaid instructions may be strictly followed.

Yours faithfully

K. P. MOHAPATRA

Registrar

No. 8365(8)-XII-5/73

From

Shri K. P. Mohapatra, B.L.,  
Registrar of the High Court of Orissa

To

All Sessions Judges of the State.  
Dated, Cuttack the 6th September 1973

Subject—Trial of kidnapping and abduction cases in Camera

Sir,

I am directed to say that according to the existing practice trial of cases of kidnapping, abduction, rape and those under sections 493, 497 and 498 of the Indian Penal Code take place in open court. Usually these cases are of a touchy and emotional nature involving minor girls and young women. It might facilitate the course of justice, if these types of cases are tried in camera wherever possible.

The Court, after careful consideration direct that cases of the aforesaid nature may be tried in camera wherever possible.

I am to request that the aforesaid instructions may be brought to the notice of the subordinate judicial officers working under your control for their guidance.

Yours faithfully,

K. P. MOHAPATRA

Registrar

No. 11035=XXIX-11/72

From

Shri K. P. Mohapatra, B. L.,  
Registrar of the High Court of Orissa

To

All District and Sessions Judges of the State

Dated Cuttack, the 15th November, 1973

Subject—Periodicity of inspections by the Additional District Magistrates (Judicial)-Item No. 8 of District Judges' Conference, 1972.

S.r.,

I am directed to refer to the discussions held under item No.8 of the proceedings of the District Judges' Conference, 1972 and to say that in Court's letter No. 124 (6), dated the 10th January 1966, the frequency of the inspections of the subordinate courts of the Judicial Magistrates by the Additional District Magistrates (Judicial) was reduced and their tours were regulated in the manner indicated therein. On a further review of the inspections done by the Additional District Magistrates (Judicial), the Court noticed that the quarterly, half-yearly and annual inspections done by them were neither detailed nor thorough and they did not give a clear picture of the condition of the courts inspected. The Court therefore, in their letter No. 9280(6)--XLVIC-12-66, dated 6-12-66 pointed out that it was the primary duty of the Additional District Magistrates (Judicial) to see that the work of the court both judicial and ministerial is done strictly according to law, rules and instructions issued by the Court and their regularity, punctuality and efficiency are maintained in all respects. The method in which annual, half-yearly and quarterly inspections should be made were clearly indicated in that letter. The Court are constrained to observe that in spite of such clear instructions, the inspection made by the Additional District Magistrate (Judicial) have been found to be perfunctory. Most of the inspections are mechanical without any since effort to improve the conditions of the court and office inspected. They, therefore, direct that the Additional District Magistrates (Judicial), during their inspection of the courts of Judicial Magistrates should check each pending record, scrutinise each item of entry in all important registers and check and cross-check the entires with the relevant registers. They should also see that defects pointed out in previous inspections have been actually rectified and the same are no longer repeated. If in spite of such thorough inspection, noticeable important mistakes are detected, responsibility therefor should be fixed on the inspecting Additional District Magistrate (Judicial).

2. The Court in partial modification of the instructions contained in Court's letter No. 124 (6), dated the 10th January, 1966 further direct that the Additional District Magistrates (Judicial) should make half-yearly inspection of the Courts of the Subdivisional Magistrates and Judicial Magistrates in the stations mentioned below.

**CUTTACK DISTRICT**

1. Cuttack Subdivision
2. Jagatsinghpur Subdivision
3. Jajpur Subdivision
4. Kendrapara Subdivision

**DHENKANAL DISTRICT**

1. Dhenkanal Subdivision
2. Angul Subdivision
3. Talcher Subdivision
4. Kamakshyanagar Subdivision

**PURI DISTRICT**

1. Puri Subdivision
2. Bhubaneswar Subdivision
3. Khurda Subdivision
4. Special Railway Magistrate, Khurda Road

**BALASORE DISTRICT**

1. Balasore Subdivision
2. Bhadrak Subdivision

**MAYURBHANJ DISTRICT**

1. Baripada Subdivision
2. Rairangpur Subdivision

**KEONJHAR DISTRICT**

1. Keonjhar Subdivision
2. Champua Subdivision
3. Anandapur Subdivision

**KORAPUT DISTRICT**

1. Jeypore Subdivision
2. Koraput Subdivision
3. Malkangiri Subdivision



4. Rayagada Subdivision
5. Nawarangpur Subdivision
6. Gunpur [Vide C. I., No. 7312(23) XXIX 45-74, dated 12-8-1974]

#### GANJAM DISTRICT

1. Ferhampur Subdivision
2. Aska Subdivision
3. Parlakhemundi Subdivision
4. Chatrapur Subdivision
5. Bhanjanagar Subdivision

#### SAMBALPUR DISTRICT

1. Sambalpur Subdivision
2. Bargarh Subdivision
3. Padampur Subdivision

#### SUNDARGARH DISTRICT

1. Sundargarh Subdivision
2. Panposh Subdivision

#### BALANGIR DISTRICT

1. Balangir Subdivision
2. Sonapur Subdivision
3. Patnagarh Subdivision
4. Special Railways Magistrate, Kantabanji
5. Titilagarh Subdivision

#### KALAHANDI DISTRICT

1. Bhawanipatna Subdivision
2. Dharmagarh Subdivision
3. Nawpara Subdivision

I am, therefore, to request that the above instructions may be brought to the notice of the Additional District Magistrates (Judicial) and Judicial Magistrates working under your control for their guidance.

Yours faithfully,

K. P. MOHAPATRA,

Registrar

No. 12003—IX-28/73.

From

Shri K. P. Mohapatra, B L.,  
Registrar of the High Court of Orissa.

To

All District & Sessions Judges of the State.  
Dated, Cuttack, the 16th November 1973.

Subject:—Deposit of fine amounts into the treasury on due dates and entry in the Fine Registrar (A) 17—Item No. V of the Agenda of the District Judges' Conference, 1972.

Sir,

I am directed to invite reference to rule 12 Appendix-II of Chapter XI at page 111 of G. R. & C. O. (Criminal), Volume I and to say that instructions have been issued therein as to the due dates for deposit of fines or part of fines received by the Nazir in the Treasury or the State Bank of India, as the case may be. In spite of such clear instructions, the Court have had occasion to notice that Criminal fines are not being deposited on due dates and necessary entries are not being made in the Register of the Criminal Fines (A) 17. Failure to deposit Criminal fines on due dates is not only contravention of the rule referred to above but also encourages misappropriation thereof. If, however, the Judicial Magistrates and the Judges in charge of the Nizarat become vigilant and insist upon strict compliance of the aforesaid rule and proper maintenance of the Register of Criminal Fines (A) 17, there may not be any scope for such misappropriation. In order to see if the aforesaid instruction is being strictly followed or not and the Judicial Magistrates and the Judges in Charge of Nizarat are vigilant over the matter or not, it shall be the duty of the Additional District Magistrates (Judicial) to make necessary verification at the time of their periodical inspection and to bring to the notice of the District and Sessions Judge of any irregularity noticed by them.

2. The Court, therefore, direct that provisions of rule 12 as referred to above should be strictly followed, criminal fines should be deposited on due dates and the Register of Criminal Fines (A) 17 shall also be properly maintained.

I am, therefore, to request that the aforesaid instructions may be brought to the notice of the courts subordinate to you for their guidance.

Yours faithfully

K. P. MOHAPATRA

Registrar

No. 13593—XLIXD-39/73

Cuttack

Shri K. P. Mohapatra, B. L.,  
Registrar of the High Court of Orissa.

To

All District and Sessions Judges of the State.  
All Additional District Magistrates (Judicial)  
of the State.

Dated Cuttack, the 11th December 1973.

Subject—Non-maintenance of important registers Item No. X of the  
agenda of the District Judges' Conference, 1972.

Sir,

I am directed to invite your reference to item No. X of the agenda of the District Judges' Conference, 1972 and to say that after discussion it was decided that each court must maintain all registers prescribed according to rules and if at the time of inspection it is detected that some important registers have not been opened, the inspecting Judge should immediately take steps to get the same opened in his presence.

2. The Court expect that the presiding officers should take due care to see that all prescribed Registers have been opened and maintained in their respective courts. If, however, at the time inspection it is detected that some Registers have not been opened it shall be the duty of the inspecting Judge to get the same opened and maintained in his presence.

I am, therefore, to request that the above instructions may be brought to the notice of the subordinate courts working under you for guidance.

Yours faithfully

K. P. MOHAPATRA

Registrar.

No. 13904--XLIX.-D.-35/73

From

Shri K. P. Mohapatra, B. L.  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State

Dated, Cuttack, the 20th December 1973

Subject—Dispensing with the requirement of getting the signature of  
the Treasury Moharir in the Fine Register (A) 17-Crl.

Sir,

I am directed to invite a reference to item No. 48 of the agenda of the proceedings of the Conference of the District and Sessions Judges held in December 1972 and to say that since sometime past the question of obtaining the signature of the Treasury Moharir in Column 16 of the Fine Register Form No. (A) 17 (Criminal) had been under consideration of the Court.

2. According to the instructions contained in Note 1 to rule 12 (a) of Appendix XII at page 111 of the Court's G. R. & C. O. (Criminal) Volume I, the officers working at headquarters may either send the Fine Register, Chalan and Treasury Pass Book or the Chalan in duplicate and the Pass Book to the Treasury. The duplicate Chalan duly received by the Treasury is required to be given to the Clerk-in-charge of the Fine Register, the Nazir keeping the Pass Book as his acquittance. If the latter Procedure is followed, the necessity of obtaining the signature of the Treasury Moharir in the Fine Register can be dispensed with.

3. The Court accordingly, direct that in Stations where cash transactions are generally carried through the State Bank, the fine amounts should be sent along with duplicate Chalan's and the Pass Book. One copy of the Chalan received back from the Treasury shall be retained by the Clerk-in-charge of the Fine Register and the Nazir shall keep the Pass Book as his acquittance thus dispensing with the signature of the Treasury Moharir in Column 16 of the Fine Register. But in cases where such facility is not available and cash transactions are done through Treasury, the present system of taking the signature of the Treasury Moharir in the Register of Fines should continue.

I am accordingly to request that the instructions may be brought to the notice of the Subordinate Courts working under you for their information and guidance.

Yours faithfully,

K. P. MOHAPATRA

Registrar

No. 3865—XLVIC-12/73

From

Shri A. C. Das, B. A. (Hons.) L.L. B.,  
Joint Registrar of the High Court of Orissa

To

The District and Sessions Judges of the State

Dated Cuttack, the 19th April 1974

Sir,

I am directed to say that the Court have had occasion to notice that the Additional District Magistrates (Judicial) while inspecting the Subordinate Criminal Courts do not verify whether defects pointed out in earlier notes of inspection are repeated subsequently. Since repetition of similar defects and irregularities from time to time defeats the purpose of inspection, the Court after careful consideration direct that Chief Judicial Magistrates should henceforth note at the time of inspection whether the defects pointed out earlier are still recurring and also to mention about the same particularly in their inspection notes, failure of which will be seriously viewed.

I am, therefore, to request that the aforesaid instructions may be strictly followed.

Yours faithfully

A. C. DAS

Joint Registrar

No. 5049—XXIX-72/71.

From

Shri K. P. Mohapatra, B. L.,  
Registrar of the High Court of Orissa.

To

The Inspector General of Police, Orissa, Cuttack

Dated, Cuttack, 1st June 1974

Subject—Permission to hold Mobile Court on National Highways during night hours.

Sir,

With reference to your letter No. 5089/CB., dated 10th April, 1974 on the above subject, I am directed to say that in view of the difficulties pointed out by you in your aforesaid letter, the Court are

pleased to relax the restrictions contained in Circular letter No. 7332 dated the 5th November 1964 temporarily and as an experimental measure, and direct that the Magistrate and his staff, going on mobile court duty, may be allowed to travel to and fro the place of destination with the police staff in the same vehicle. But it should however, be ensured that the moment, the place of destination is reached, the Magistrate with his staff, and the police party should separate themselves, so that the Magistrate should dissociate himself from the investigation or detection of offences by the police and will take cognizance on police reports according to law.

2. The Court further direct that suitable instructions should also be issued so that the Magistrate should be given adequate police protection at the place chosen by him to hold court during night hours,

3. The Judicial Magistrates are being informed accordingly.

Yours faithfully,

K. P. MOHAPATRA  
Registrar.

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No. 5271(8)—XLIXD-42/72

From

The Registrar of the High Court of Orissa

To

All District and Sessions Judges of the State  
Dated Cuttack, the 12th June 1974

Subject—Administrative work by the District and Sessions Judges on Saturdays—Item No. 8 of the Agenda of the District Judges' Conference 1972.

Sir,

I am directed to refer to Court's Memo. No. 11038(8), dated the 15th November 1973 on the above subject and to say that the Court, in continuation of the instructions contained therein, direct that whenever the District and Sessions Judges make inspection of the Subordinate Courts, it should be thorough and made at a stretch and not sporadically on different days.

I am accordingly to request that the aforesaid instructions be strictly followed in future.

Yours faithfully,

A. C. DAS  
For Registrar

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No. 5484 (21)-XLIXD-23/74

From

Shri K. P. Mohapatra, B.L.,  
Registrar of the High Court of Orissa.

To

All District and Sessions Judges of the State  
All District Magistrates of the State  
Dated Cuttack, the 19th June 1974

Subject—Swearing of affidavits by the Judicial and Executive Magistrates as per section 297 of the Code of Criminal Procedure.

Sir,

I am directed to say that according to sub-section (1) of Section 297 of the Code of Criminal Procedure, 1973 affidavits to be used before any Court under the said Code may be sworn or affirmed before.

- (a) any Judge or Magistrate, or
- (b) any Commissioner of Oaths appointed by a High Court or Court of Sessions; or
- (c) any Notary appointed under the Notaries Act, 1952 (54 of 1952).

2. Similarly as provided in Section 4 of the Oaths Act, all Courts and persons, having, by law or consent of parties, authority to receive evidence, are authorised to administer by themselves or by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law.

3. It will appear from the aforesaid provisions that affidavits can be sworn or affirmed before the Judicial Magistrate, as well as, Executive Magistrates.

4. But for administrative convenience, the Court after careful consideration have been pleased to issue the following instructions—

- (i) Affidavits to be used in the Courts of Judicial Magistrates should be sworn before them.

At headquarters stations such affidavits may be sworn before the Registrar, Civil Courts who is a Judicial Magistrate of the First Class.

- (ii) Affidavits to be used in the Courts of Executive Magistrates should be sworn before them.
- (iii) All other affidavits which are not required to be used in a Court in connection with a Judicial proceeding should be sworn before the Executive Magistrates.

I am, therefore, to request that the above instructions may be brought to the notice of the Courts subordinate to you for their guidance.

Yours faithfully

K. P. MOHAPATRA

Registrar

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No. 5973(8)—XLIXD:26/74

From

Shri K. P. Mohapatra, B.L.,  
Registrar of the High Court of Orissa

To

All the Sessions Judges of the State  
Dated Cuttack, the 4th July 1974

Subject—Discontinuance of the practice of checking of the solvency of the bailors by the Bench-Clerks and the C. S. Is.

Sir,

I am directed to say that it has come to the notice of the Court that in some Sessions Divisions the Judicial Magistrates entrust the duty of checking the bail-bonds and the fitness or otherwise of the solvency of bailors to their Bench-Clerks or the C.S.I. in-charge of the case. The Criminal Procedure Code does not envisage checking of bail-bonds either by the Bench-Clerks or by the C. S. Is. Section 441(4) of the Cr. P. C. makes it clear that the duty of checking the solvency of the sureties lies with the Presiding Officers of the Criminal Courts. They should normally accept affidavits in proof of the solvency of the sureties. In cases where they doubt the solvency of the surety they may themselves hold enquiry as they deem fit.

In the above premises the Court, after careful consideration, direct that the practice of getting the solvency of sureties checked by the Branch-Clerks and C. S. Is. wherever they exist should be discontinued forthwith.

This may be brought to the notice of all the Subordinate Criminal Courts under you for information and strict compliance.

Yours faithfully

K. P. MOHAPATRA

Registrar

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No. 5974--XLIXD-26/74

From

Shri K. P. Mohapatra, B. L.,  
Registrar of the High Court of Orissa.

To

The District &amp; Sessions Judge, Puri

Dated, Cuttack, the 4th July, 1974

Subject—Memorandum of discussion held in the chamber of the District Judge, Puri on 20-4-1974 to find out ways and means to solve the problems arising during the trial of criminal cases.

Sir,

With reference to your letter No. 1627, dated 5-6-74 on the above subject, I am directed to say that the Court have carefully considered the resolutions and have been pleased to observe as follows :—

1. It appears that default on the part of the I.O.'s in attending Courts inspite of service of summons has been noticed. Section 69 of the Criminal Procedure Code authorises the Criminal Courts to issue summons to witnesses by registered posts in addition to the usual mode of service of summons. The Courts may therefore, issue summons by registered post to the I O's and other such official witnesses direct. If inspite of service of summons by registered post, any such witness fails to attend the court without any valid ground the court concerned would be at liberty to take action against the witness under section 350 of the Criminal Procedure Code.

2. So far as non-Official witnesses are concerned, apart from implementation of the decision taken by you in the conference, vigilance on the part of the judicial Magistrates, the Judge-in-charge, Nizarat and Nazir Civil Courts would always be necessary.

3. The arrangement of posting of only complaint cases for hearing on specific dates would work satisfactory if there are sufficient number of complaint cases in the file of the Magistrates to keep them engaged on whose particular dates. You may watch the working of this arrangement for sometime and submit a report after a period of 3 months if it has been working properly.

4. The decision that the Magistrates should as far as practicable take up arguments in the first hour and on the days there are no arguments to be heard, they may get themselves engaged in the hearing of complaint cases may not be fully effective in view of the earlier decision that Magistrate should set apart specific dates for hearing of complaint cases. Moreover, if as a general rule arguments are to be heard in the first hour of every day, several complications may arise. It may so happen that in one day the evidence in two to three criminal cases may be closed. In such cases, arguments of all the two to three cases may be adjourned to the first hour on the next day. If on the next day the arguments of even one case is not finished during

the first hour, the Magistrate would be required to adjourn hearing of argument of that case along with other cases to the first hour of the next day. In course of time, a situation may arise when the Magistrate will have in his hand a number of arguments to be heard. The advocates, in view of the decision that arguments should be heard only in the first hour of the day, would try to defer the arguments on several pleas. Therefore, this arrangement instead of solving the problem would create many. True witnesses in some police cases do not turn up in time. But if the Magistrates are firm and create an impression in the mind of litigant public that witnesses who do not turn up in time in obedience to summons would be suitably punished according to law, instances may be rare, where the Magistrates would find that witnesses do not attend the Court in time.

Yours faithfully,

K. P. MOHAPATRA

Registrar

No. 6118(21)—IX-8/71

From

Shri K. P. Mohapatra, B. L.,  
Registrar of the High Court of Orissa

To

All the District Judges of the State  
Dated Cuttack, the 6th/9th July 1974

Subject—Preservation of the Register of appeals under the provisions of the House Rent Control Act.

Sir,

I am directed to refer to the minutes of the proceedings of the Conference of the District Judges, of 1970 under item No. 23 of the agenda on the above subject and to say that after careful consideration the Court are pleased to direct that the period of preservation of the Register of Appeals under the provisions of the House Rent Control Act should be for a period of 12 years irrespective of whether the appeal is for fixation of fair rent or for ejection or other purposes.

I am, to request that the aforesaid instructions may be brought to the notice of all the Courts subordinate to you for their information and guidance.

Yours faithfully,

K. P. MOHAPATRA

Registrar

No. 6193(36)---XII-10/73

From

Shri K. P. Mohapatra, B.L.,  
 Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State  
 Dated Cuttack, the 10th/11th July 1974

Subject—Inquiry into the character and antecedents of offenders under 21 years of age under the provisions of the Probation of offenders Act, 1958 (Act No. 20 of 1958).

Sir,

I am directed to invite a reference to the proceedings of the Conference of the District and Sessions Judges' held in December 1972 under item No. 25 of the agenda and to say that the question of obtaining a report from the probation officers regarding the character and antecedents of offenders under 21 years of age under the provisions of the Probation of Offenders Act, 1958 (Act 20 of 1958) was under discussion in the Conference.

(2) Section 6 of the Probation of Offenders Act, 1958 read with rule 22 of the Orissa Probation of Offenders Rules, 1962 require that if any person under 21 years of age is found guilty of having committed an offence punishable with imprisonment and not with imprisonment for life, the Court by which the person is found guilty shall not sentence him to imprisonment unless it is satisfied from the report of the Probation Officer who enquire into the character and antecedents of the accused the circumstances in which the offence was committed and submit the report on a prescribed date, which should ordinarily be before the expected date of delivering judgement.

(3) The Court in agreement with the decision arrived at the Conference direct that such a report should be called for from the Probation Officer in the manner laid down below—

- (1) If the accused below the age of twenty-one years is committed to the Court of Sessions, that Court shall after receiving commitment order and the record, call for a report.
- (2) In a warrant case the Magistrate shall call for a report after the charge is framed.
- (3) In summons case the Magistrate shall call for the report after the substance of the accusation is read over and explained.
- (4) In a case in which the accused is under the age of 21 years and he pleads guilty the Magistrate shall call for a report before convicting him and till their remand the accused to jail custody as an under-trial prisoner.

- (4) I am to request that the above instructions may be strictly followed in future by all the subordinate courts in your Sessions Division.

Yours faithfully

K. P. MOHAPATRA

Register

No. 7064(18)--XLIXD-15/73

From

Shri D. Hota, B.L.,  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State  
Dated Cuttack the 1st/2nd August 1974

Subject—Inspection of the offices of the Subordinate Courts by the Presiding Officers.

Sir,

I am directed to say that the question of lying down a procedure for effective supervision and inspection of the offices of the subordinate Courts by the Presiding Officers of the respective Courts was under consideration of the Court. The Court, have on more than one occasion, noticed with grave concern that inspection notes prepared by the Presiding Officers are mechanical and superficial and they do not serve the real purpose of inspection. They have also reasons to believe that inspection notes are mostly prepared by the ministerial officers. This practice apart from being irregular is highly undesirable. It is the primary duty of the Presiding Officer himself to casually inspect his own office at short intervals and thoroughly once in a year.

The Court, accordingly, direct that the Presiding Officers of the subordinate Courts should inspect their own offices without the assistance of any ministerial officer and furnish a certificate to that effect.

This may be brought to the notice of all the Presiding Officers of the subordinate Courts working under you for their information and strict guidance in future.

Yours faithfully

D. HOTA

Registrar

No. 7065(21)—XLIXD-12/74

From

Shri D. Hota, B. L.,  
Registrar of the High Court of Orissa.

To

All the District &amp; Sessions Judges of the State

Dated, Cuttack, the 2nd August, 1974.

Subject—Transfer of the amount from temporary cash to permanent advance for meeting Government expenses.

Sir,

I am directed to say that the Court had occasion to notice in course of inspection of some Subordinate Courts that certain amounts were taken on loan from the peremptory cash to permanent advance to meet the Government expenses on certain occasions.

Since the peremptory cash are deposited by the litigant public in connection with the witnesses' expenses, prisoners' diet money, costs of adjournments, Commissioners' fee, etc., the Court disapprove the practice of taking such loan from the peremptory cash to permanent advance. They accordingly direct that the practice being highly irregular, should be discontinued forthwith.

I am to request that the above instructions should be brought to the notice of all the Judicial Officers working in your judgeship for their information and guidance.

From

Yours faithfully,

D. HOTA,

Registrar.

No. 7098—XLIXD-46/74.

From

Shri D. Hota, B. L.,  
Registrar of the High Court of Orissa

To

All the District &amp; Sessions Judges of the State.

Dated, Cuttack, the 1st/2nd August 1974

Subject—Submission of statement requiring the Judicial Magistrates to indicate the number of convicts recommitted to jail along with the Criminal monthly statement.

Sir,

I am directed to refer to the proceedings of the conference of the District and Sessions Judges of 1973 under item No. 47 of the agenda

and to say that it was decided that the Judicial Magistrates should submit statements containing the names and other particulars of the convicts recommitted to jail along with the monthly criminal statements. The Court concur in the above proposal and direct that the Judicial Magistrates in future shall append to the monthly Criminal statements a certificate showing.

- (1) the total number of convicts recommitted to jail after disposal of the appeals or revisions; and
- (2) the number of the case, the number of the appeal or revision, the name of the accused and the date of recommitment.

I am to request that the aforesaid instructions may be brought to the notice of all the Judicial Magistrates working under you for their information and guidance.

Yours faithfully,

D. HOTA,

Registrar.

No. 7723—IX-1/74

From

Shri D. Hota, B. L.,  
Registrar of the High Court of Orissa

To

All the District & Sessions Judges of the State

Dated Cuttack, the 22nd August, 1974

Subject—Avoidance of adjournment and continuance of trial of sessions cases from day to day till their conclusion.

Sir,

I am directed to say that the Court have had occasion to notice in course of inspection of some of the subordinate courts that in trial of sessions cases serious steps are not being taken to summon the witnesses and merely because the witnesses are not present, the cases are mechanically adjourned from day to day and nobody appears to have bothered as to why the witnesses have not come and why necessary steps have not been taken to summon them in proper time. Adjournment of sessions cases was a thing unheard of in the past but at the present moment, adjournment of sessions cases appears to be a rule rather than an exception.

2. The Court consider this practice to be highly irregular and while reiterating their views communicated in their letter No. 1662(8) —XXIX-46/61, dated the 7th March, 1962 they direct that the sessions cases, except for very extraordinary reasons which must be sufficiently explained, should be tried from day to day and should not be adjourned. If in any particular case adjournment is brought about by the laches of any officer, that should be immediately brought to the notice of the Court for necessary action against such officer or officers.

3. They further direct that at the end of each quarter, Sessions Judges will report to the High Court the number of sessions cases, if any, which had to be adjourned together with necessary explanations from the Presiding Officers and others concerned.

4. I am to request that the above instructions should be brought to the notice of all the Additional Sessions Judges and Assistant Sessions Judges of your Sessions Division for their information and strict observance in future.

Yours faithfully,

D. HOTA

Registrar

No. 7767 (8)—XI-7/74

From

Shri D. Hota, B. L.,  
Registrar of the High Court of Orissa.

To

All the District & Sessions Judges of the State

Dated, Cuttack, the 24th August, 1974

Subject—Periodical inspection of fine registers by the Chief Judicial Magistrates.

Sir,

I am directed to refer to Court's general letter No. 1/72 in which instructions have been issued that Additional District Magistrates (Judicial) (Now Chief Judicial Magistrates) should prepare a list showing the balance amount of criminal fines outstanding at the half year ending on the 30th June and 31st December of each year and to furnish a certificate that there is no case pending in which steps for recommitment of accused persons to jail have not been taken after disposal of appeals or revisions. Having regard to the work load of

the Chief Judicial Magistrates the question of revising the aforesaid G. L. came up for discussion in item No. 26 of the last District Judges' Conference. Hon'ble Chief Justice was pleased to observe in the conference that the General letter might be modified to the extent that the Judicial Magistrates after verification of all the relevant registers and records would furnish the above certificate and the Chief Judicial Magistrates would at the time of periodical inspection verify the correctness of the certificates. The court are of the view that if the above procedure is followed, the Judicial Magistrates would be on their guard and would find occasion to have periodical inspection of the working of the fine branch. The Chief Judicial Magistrates, as the inspection authority would check the correctness of the certificates by cross-checking some of the entries with reference to records and other registers.

The Court accordingly direct that General Letter No. 1 of 1972 would stand modified as follows :—

In item Nos. (i) and (iii) of the Procedure laid down in the General Letter, the place of the words 'Additional District Magistrates' the words 'Subdivisional Judicial Magistrates' or 'Judicial Magistrates' as the case may be, be substituted.

A new item No. (iv) may be inserted to the following effect.

"The Chief Judicial Magistrates during his inspection shall check the correctness of the certificates and make an endorsement that he has done so and it to be correct. If he finds that any entry is not correct, he would take steps to rectify the defect.

Item Nos. (iv) and (vi) may be renumbered as item Nos. (v), (vi) and (vii) respectively.

The above instructions may be brought to the notice of the Courts subordinate to you for their information and guidance.

Yours faithfully,

D. HOTA

Registrar



No. 7809—XI-10/74

From

Shri D. Hota, B. L.  
Registrar of the High Court of Orissa

To

The Inspector-General of Police  
Orissa, Cuttack.

Subject—Monthly meeting between the Superintendents of Police and the A. D. Ms. (Judicial), now, Chief Judicial Magistrates.

Dated Cuttack, the 27th August 1974

Sir,

I am directed to refer to Court's Memo. No. 3079(5), dated 7-5-1972 and your letter No. Law-7/72/8767(15)/C.B., dated 19-4-1972 on the above subject and to say that as agreed to in the meeting referred to in the above mentioned letters, instructions were issued by the Court and the Inspector-General of Police to the A. D. Ms. (Judicial) and the Superintendents of Police separately directing them to hold monthly meetings as between themselves during the first week of every month failing which during the second week to discuss the mutual problems and to find out ways and means to solve them.

2. It has however, come to the notice of the Court that some of the Superintendents of Police attach no importance to such monthly meetings in spite of the initiative taken by the A. D. Ms. (Judicial), now Chief Judicial Magistrates in the matter with the result that the wholesome arrangement of ironing out problems by mutual discussion has fallen through.

3. The Court though alive to the fact that the discontinuance of the system would have its adverse impact on the administration of Criminal Justice yet in view of the callousness shown at the other end propose to stop the practice.

Yours faithfully

D. HOTA

Registrar

No. 7871—XLIXD-55/74.

From

Shri D. Hota, B. L.,  
Registrar of the High Court of Orissa.

To

The District & Sessions Judge, Cuttack-Dhenkhal, Cuttack

Dated Cuttack, the 29th August, 1974.

Subject—Whether before transfer of a Sessions case to the Court of the Assistant Sessions Judge under section 194 Cr. P. C. which is triable by such Assistant Sessions Judge, the Sessions Judge should frame charge or after transfer the Assistant Sessions Judge shall frame charge against the accused.

Sir,

With reference to your letter No. 4060, dated the 6th August 1974 on the subject noted above, I am directed to say that the Sessions Judge is competent to transfer sessions cases to the file of Additional and Assistant Sessions Judge for trial before the charge is framed. The Additional and Assistant Sessions Judge should however inappropriate cases follow the instructions of the Court conveyed in Court's letter No. 4549, dated the 11th May 1974.

2. The Court have been pleased to observe that the Chief Judicial Magistrate, Cuttack acted contrary to law, in retransmitting the case record to the Court of Sessions instead of making a separate reference in that regard. This may be brought to his notice.

3. The Chief Judicial Magistrate may also be instructed not to act in accordance with the draft inspection notes prepared by the Inspecting District Judge. He should wait till the notes of inspection are finally approved by the Court.

Yours faithfully,

D. HOTA,

Registrar.

No. 8164—IX-14/74

From

Shri D. Hota, B. L.,  
Registrar of the High Court of Orissa

To

All the Sessions Judges of the State

Dated Cuttack, the 4th September 1974

Subject—Maintenance of a guard file of chalans in the Accounts Section on the Criminal side in respect of deposits made into the treasury under the provision of the G. R. & C. O. Criminal, Vol. I.

Sir,

I am directed to say that the question of prescribing the maintenance of a guard file of chalans for the Subordinate Criminal Courts of the State was for sometime past under the consideration of the Court. This was also discussed in item No. 5 of the last District Judges Conference. It was suggested that the procedure laid down in rule II of Chapter I, part X at page 232 of the General Rules & Circular Orders Civil Vol. I, which enjoins that all Chalans should be consecutively numbered and a copy of each chalan shall be kept in the guard file, need be followed with regard to the chalans on the Criminal side.

The above procedure, if followed would facilitate the business of the Accounts Section. This would no doubt require the amendment of relevant rules of the G. R. & C. O. Criminal Vol. I Pending amendment of the rules, the Court direct that the procedure laid down in Rule 11 of the Chapter I, Part X at page 232 of the G.R. & C.O. Civil Vol. I with regard to the maintenance of Guard File of Chalans may be followed by the Subordinate Criminal Courts.

This may be brought to the notice of all the Subordinate Criminal Courts working under you for their guidance and strict Compliance.

Yours faithfully

D: HOTA

Registrar

No. 8735—XLIXD.-29/74

From

Shri D. Hota, B. L.,  
Registrar of the High Court of Orissa

To

The District & Sessions Judge,  
Sambalpur-Sundergarh, Sambalpur

Dated Cuttack, the 20th September 1974

Subject—Trial of cases of juvenile offenders u/s. 27 of the Code of Criminal Procedure, 1973 by the Chief Judicial Magistrates

Sir,

I am directed to refer to your letter No. 2464, dated 8-6-1974 forwarding there with the proceedings of the Conference of the Presiding Officers of the Criminal Courts of your Judgeship held at Sambalpur on 1-6-1974 and to say that in the said conference the Chief Judicial Magistrate, Sambalpur sought for a clarification as to whether the trial of all the juvenile offenders should take place at the headquarters of the Chief Judicial Magistrate or whether the Chief Judicial Magistrate should go on circuit to the respective subdivision headquarters. It further appears that the matter was discussed and as there was difference of opinion, the matter was referred to the Court.

2. Section 27 of the Criminal Procedure Code, 1973 which corresponds to section 29-B of the Cr. P. C. 1898 runs as follows:—

"27. Jurisdiction in the case of juveniles. Any offence not punishable with a death or imprisonment for life, committed by any person who at the date when he appears or is brought before the Court is under the age of sixteen years, may be tried by the Court of a Chief Judicial Magistrate or by any Court specially empowered under the Children Act, 1960 (60 of 1960) or any other law for the time being in force providing for the treatment, training and rehabilitation of youthful offenders".

3. The Court on a careful consideration of the matter observe that the trial of the juvenile offenders does not rest exclusively with the Chief Judicial Magistrates. There may, however, be cases where a juvenile offender is found to have committed an offence not punishable with the death or imprisonment for life, but an offence which cannot be appropriately dealt with by a Judicial Magistrate First Class. The Chief Judicial Magistrate may try such a case. In the above view of the matter, the question of Chief Judicial Magistrate's holding circuits for the purpose of trying cases of juvenile offenders throughout the district does not arise.

4. I am, accordingly, to request that the above observations of the Court may be brought to the notice of the Chief Judicial Magistrates and other Judicial Magistrates working under you for their information and guidance.

5. This disposes of your letter No. 2493, dated 10-6-1974.

Yours faithfully

D. HOTA'

Registrar

No. 9379—IX-28/74

From

Shri R. N. Panda, M. A., LL. B.,  
Special Officer of the High Court of Orissa

To

All the District & Sessions Judges of the State

Dated, Cuttack, the 9th October 1974

Subject—Affixture of the seal of the Court on all Chalang and payment orders.

Sir,

I am directed to say that the question regarding affixture of the seal of the concerned Court on all chalang and payment orders had engaged the attention of the Court since some time past. In a joint meeting of the officers of the Court including the Director of Treasuries and Inspection, Orissa, Bhubaneswar and the representative of the Accountant-General, Orissa, Bhubaneswar, the matter was discussed. It was decided in the Conference that all chalang and payment orders should bear the seal of the Court concerned.

The Court, on a careful consideration concur in the aforesaid decision of the Conference. They accordingly direct that all chalang and payment orders in future, should bear the seal of the Court concerned.

Yours faithfully

R. N. PANDA

Special Officer

No. 10196—XII-9/74

**From**

Shri D. Hota, B. L.,  
Registrar of the High Court of Orissa

**To**

The Sessions Judges of the State

Dated Cuttack, the 14th November 1974

**Subject**—Presentation of Criminal appeals before the Additional Sessions Judges and Assistant Sessions Judges at the Circuit places.

Sir,

I am directed to refer to Section 409 of the Criminal Procedure Code, 1898 and the Orissa Amendment (Orissa Act 14 of 1970) thereto which provided that where any Criminal appeal is directed by the State Government to be heard by an Additional Sessions Judge or Assistant Sessions Judge, that appeal may be preferred to him. The State Government in the Home Department in their Order, dated the 16th July 1970, directed that the Additional Sessions Judges and Assistant Sessions Judges in the Sessions Division of the State of Orissa stationed at the places declared to be additional places of sittings of the Court of Sessions in the State under sub-section (2) of Section 9 of the Criminal Procedure Code, 1898 may hear Criminal appeals arising out of their respective jurisdiction. The Court had, accordingly in their letter No. 6381, dated 9-9-1972 issued instruction to all the Additional and Assistant Sessions Judges of the State to receive and hear Criminal Appeals arising out of their respective jurisdictions.

After the enforcement of the Criminal Procedure Code, 1973, with effect from 1-4-1974, Section 409 of the Criminal Procedure Code, 1898 along with the Orissa Amendment (Orissa Act 14 of 1970) have stood repealed. Consequently the aforesaid Government order and instruction of the Court conveyed in the Court's letter No. 6382, dated 9-9-1972, have lost their force. Section 381 of the Criminal Procedure Code, 1973 which corresponds to Section 409 of the Criminal Procedure Code, 1898 has made no provision for presentation of any Criminal appeal either before an Additional Sessions Judge or an Assistant Sessions Judge. As provided in sub-section (2) of Section 381 of the Criminal Procedure Code, 1973, an Additional Sessions Judge, Assistant Sessions Judge or Chief Judicial Magistrate shall hear only such appeals as the Sessions Judge of the division may be general or special order make over to him or as the High Court may by special order direct him to hear.

It has however, come to the notice of the Court that one Additional Sessions Judge even after 1-4-1974 has allowed Criminal Appeals along with urgent application under section 10(3) of the new Criminal

Procedure Code to be preferred before him and has heard and disposed them of. Such action of the Additional Sessions Judge contravenes the provisions of Section 381 of the Criminal Procedure Code. The powers of the Additional and Assistant Sessions Judges to entertain Criminal Appeals along with urgent application if any ceased with the coming into force of the new Criminal Procedure Code and it was not within the competence of the Additional Sessions Judge to receive any Criminal Appeal and deal with any urgent application filed along with the Appeal petition.

The Court, therefore, in supersession of the previous instructions in the matter direct that no Criminal appeal shall be preferred to any Additional Sessions Judge or Assistant Sessions Judge or Chief Judicial Magistrate of the State. All Criminal Appeals shall be presented before the Sessions Judge of the respective Sessions Division. It would then be open to the Sessions Judge either by general or special order make over any such appeals to any Additional Sessions Judge, Assistant Sessions Judge or Chief Judicial Magistrate for hearing.

I am, accordingly, to request that the above instructions may be brought to the notice of all Additional Sessions Judges and Assistant Sessions Judges working under you for their information and guidance.

Yours faithfully,

D. HOTA

Registrar

No. 10268(8)—XLIXD-1/73

From

Shri R. N. Panda, M.A., LL.B.,  
Special Officer of the High Court of Orissa.

To

The District and Sessions Judge

Subject—Instructions with regard to mentioning the age of the accused in the charge-sheet/prosecution report.

Dated Cuttack, the 15th November 1974

Sir,

In continuation of Court's letter No. 1380(8), dated the 12th February 1974, I am directed to enclose herewith copy of letter No. 34189(13), dated the 4th November 1974 from the Deputy Secretary to Government of Orissa, Food and Civil Supplies Department, Bhubaneswar on the above subject and to say that copies of the same may be sent down to all the Judicial Officers working under you with a direction to see if the

instructions are being strictly followed or not by the Departments concerned. If it is noticed that officers of any Department are not following the instructions, the same may be brought to the notice of the Court for necessary action.

Yours faithfully,  
R. N. PANDA  
Special Officer

Copy of letter No. 34189 (13), dated 4th November, 1974 from Shri U. P. Guru, Deputy Secretary to Government, Food and Civil Supplies Department addressed to all Collectors, (C. S. Sections)

Subject—Mentioning the age of accused persons in the charge-sheet/prosecution report.

I am directed to enclose a copy of letter No. 394, dated the 13th January 1974 of the Registrar, High Court of Orissa addressed to the Inspector-General of Police, Orissa and to say that so far as civil supplies administration is concerned, the Inspectors of Supplies, Supervisors of Supplies, Assistant Civil Supplies Officers and Civil Supplies Officers have been vested with powers to book cases where provisions of various control orders are contravened. Similarly, in matters relating to Weights and Measures the Inspectors, Senior Inspectors, Assistant Controller and Deputy Controllers Weights and Measures have been empowered to prosecute persons for any act of contraventions of provisions of the Orissa Weights and Measures (Enforcement) Act, 1958 and rules made thereunder. All these officers book cases and submit prosecution reports to the Courts of. It has been ruled by the Supreme Court that while in the case of offenders, who are above 21 years of age, the Court has the absolute discretion to release the offenders after admonition or on probation of food conduct subject to the conditions under sections 3 and 4 of the Probation of Offenders Act, 1958, in the case of offenders below 21 years, of age, the court cannot sentence the offenders to imprisonment in view of the provisions under section 6 of the Act unless it is satisfied with regard to the nature of the offence and the character of the offenders that it is not desirable to deal with them under sections 3 and 4 of the Act. The relevant sections of the Act are enclosed. In view of this, it is necessary for the court to have positive information about the age of the accused. If the prosecuting agencies do not verify and mention the age of the accused persons in the charge-sheet/prosecution report, at the time of prosecution it is quite likely that the accused persons during trial by the Court may conceal their real age and reduce their age to below 21 years with a view to get the benefit of provisions of section 6 of the Probation of Offenders Act. It is, therefore, essential that prosecuting officers should make it a point to verify and mention the age of the accused persons invariably in the charge sheet/prosecution report. You are therefore, requested to issue suitable instructions to the concerned officers working under you, having powers to prosecute cases, so far as the Civil Supplies Administration is concerned.

2. Copy of instructions issued may please be furnished to this Department.

3. Receipt of this letter may please be acknowledged.



## THE ORISSA GAZETTE

Extraordinary

Published by Authority

No. 1667, Cuttack, Thursday, October 31, 1974/Kartick 9, 1896

## LAW DEPARTMENT

## NOTIFICATION

The 29th October 1974

No. 12260-Legis.—The following ordinance promulgated by the Governor of Orissa on the 29th October 1974, is hereby published for general information.

ORISSA ORDINANCE NO. 11 OF 1974  
 THE ORISSA STAMP (IMPOSITION OF SURCHARGE)  
 ORDINANCE, 1974  
 And  
 ORDINANCE

TO IMPOSE SURCHARGE ON STAMP DUTIES PAYABLE UNDER  
 THE INDIAN STAMP ACT, 1899 AS APPLICABLE TO THE STATE  
 OF ORISSA

Whereas the Legislature of the State of Orissa is not in session ;

And whereas the Governor of Orissa is satisfied that circumstances exist which render it necessary for him to take immediate action to provide for imposition of surcharge on stamp duties payable under the Indian Stamp Act, 1899 as applicable to the State of Orissa in the manner hereinafter appearing;

Now, therefore, in exercise of the powers conferred by clause (1) or Article 213 of the Constitution of India, the Governor of Orissa is pleased to make and promulgate the following ordinance in the twenty-fifth year of the Republic of India—

- 1 (1) This ordinance may be called the Orissa Stamp (Imposition of Surcharge) Ordinance, 1974.
- (2) It shall extend to the whole of the State of Orissa, .
- (3) It shall come into force on the 1st day of November, 1974.

2. Notwithstanding anything contained in the Indian Stamp Act, 1899, all stamp duties leviable in accordance with Schedule 1-A of the said Act as applicable to the State of Orissa shall be increased by a surcharge at the rate of ten per centum thereof:

Provided that in the determination of the amount of duty including the surcharge, fractions of five paise, if any shall be rounded off to the next higher multiple of five paise.

3. The provisions of the Indian Stamp Act, 1899 shall in so far as they are not inconsistent with the provisions of this Ordinance, in respect of the surcharge leviable under this Ordinance.

AKBARALI KHAN

Governor of Orissa

L. MOHAPATRA

Secretary to Government

No. 11825—XXIX.33/74

From

Shri D. Hota, B. L.,  
Registrar of the High Court of Orissa

To

The Sessions Judges of the State

Dated Cuttack, the 31st December 1974

Subject—Appointment of Special Judicial Magistrates under section 13 of the Criminal Procedure Code, 1973.

Sir,

I am directed to say that with a view to remove the difficulties in the matter of recording confessions, and statements u/s. 164 Cr. P. C. and remanding prisoners to jail custody u/s. 167 Cr. P. C. and such other urgent Criminal matters in the stations where there is only one Judicial Magistrate, the Court have recently issued notifications appointing the Executive Magistrates of such stations with directions that they would remain in charge of the current duties of such Judicial Magistrates and to dispose of urgent criminal matters without taking up trial of any cases in the event of any of the Judicial Magistrates either remaining absent from headquarters or is incapable of acting.

In the last District Judges' Conference the working of the aforesaid arrangement was discussed and it was the consensus of opinion of all the District and Sessions Judges that the Judicial Magistrates in order that they may find sufficient time to tackle the heavy pendency

of Criminal case in their file should not be entrusted with the duties of recording confessions and statements under section 164 Cr. P. C., holding T.I. Parades of suspects and properties, recording dying declaration even when they are present in the stations. The Court on a careful consideration of the matter concur in the said opinion and direct that henceforward the Special Judicial Magistrates of the respective station shall, even during the presence of the Judicial Magistrate in the station record confessions of accused persons and statements of witnesses. 164 Cr. P.C. hold T. I. Parade of suspects and properties and record dying declarations. The Judicial Magistrates shall perform aforesaid functions when the Special Judicial Magistrate is either absent from the station or is incapable of acting.

I am, therefore, to say that the above instructions may be brought to the notice of all Special Judicial Magistrates and Judicial Magistrates working under you for their information and strict observance in future.

Yours faithfully

D. HOTA

Registrar

No. 497(21)—XI-10/74.

From

Shri D. Hota, B. L.,  
Registrar of the High Court of Orissa.

To

The District and Sessions Judges of the State  
The Chief Judicial Magistrates of the State.

Dated Cuttack, the 21st January 1975

Subject—Monthly meetings between the Chief Judicial Magistrates and the Superintendents of Police.

Sir,

With reference to Court's Memo. No. 7810 (21), dated the 27th August 1974, I am directed to enclose herewith a copy of the letter No. 18609/C.B., dated the 10th December 1974 from the Inspector-General of Police, Orissa to the Court and to say that in view of the assurance given by the Inspector-General of Police, the Court direct that the Chief Judicial Magistrates should continue to hold monthly meetings with the respective Superintendents of Police.

The Court further direct that in case any callousness is shown by any particular Superintendents of Police in the matter of holding such meetings, the Chief Judicial Magistrate concerned should bring it to the notice of the Court through the Sessions Judge for appropriate action.

Yours faithfully

D. HOTA

Registrar

ORISSA POLICE  
STATE HEADQUARTERS, CUTTACK.

No. 18609—CB.

The 10th December 1974

From

Shri N. Swain, I. P. S.  
Inspector-General of Police, Orissa, Cuttack.

To

Shri D. Hota, B. L.,  
Registrar of High Court of Orissa, Cuttack.

Subject—Monthly meetings between the Superintendents of Police and Chief Judicial Magistrates.

Reference—Your Circular letter No. 7809—XI-10/74, dated the 27th August 1974 and subsequent letter No. 10516—XI.1/74 dated the 21st November 1974.

Sir,

There can be no doubt in the fact that monthly meetings between the Chief Judicial Magistrates and the Superintendents of Police are essential in the interest of the Criminal administration of the District. These meetings are now all the more necessary when a big change is about to take place in the prosecution pattern throughout the State. I am taking necessary steps to ensure punctual attendance in these meeting of Superintendent of Police and sincere participation in the proceedings as it is also in their interest that such meetings should be held regularly in prior consultation with the Chief Judicial Magistrates. From the few aberrations we may not conclude that the District Superintendents of Police are callous towards such monthly meetings. I am issuing necessary instructions to them for correction of defects and short-comings which have come to our notice.

I am, therefore, to request you to review the matter and issue orders for resumption of the monthly meetings.

Yours faithfully

N. SWAIN

Inspector-General of Police, Orissa

No. 543—XLIXD-64/74.

From

Shri D. Hota, B. L.,  
Registrar of the High Court of Orissa.

To

The District and Sessions Judge, Cuttack-Dhenkanal, Cuttack

Dated Cuttack, the 2nd January 1975

Subject—Issue of summons to witnesses by Sessions Court.

Sir,

With reference to your letter No. 1245-A, dated the 28th November 1974 on the above subject, I am directed to say that in view of sections 209 and 230 of the Criminal Procedure Code, 1973, it is no longer the duty of the committing courts to issue process for compelling the attendance of any witness or production of any document or other thing. These functions are to be discharged by the Court of Session. Steps are being taken to amend Rule-20 at Page-9 of the G. R. and C. O. (Criminal), Volume-I in the light of the aforesaid provisions.

This may kindly be brought to the notice of the Additional Sessions Judge, Dhenkanal for his information and guidance.

Yours faithfully

D. HOTA

Registrar,

No. 870—XLIXD-28/74.

**From**

Shri D. Hota, B. U.,  
Registrar of the High Court of Orissa,

**To**

All the Sessions Judges of the State.  
All the Chief Judicial Magistrates of the State.

Dated Cuttack, the 31st January 1975

Sir,

I am directed to say that it has come to the notice of the Court that after the introduction of the new Criminal Procedure Code, the Assistant Public Prosecutors are not appearing at the initial stages of the cases instituted by the police such as when a petition for bail or for release of seized properties is moved on behalf of the accused. It is the duty of the Assistant Public Prosecutors to attend to the Criminal cases started at the instance of the State from the date of institution till their closure. There may, however, be instances where the concerned Assistant Public Prosecutor has no information about the institution of any such case and consequently unable to appear at the initial stage. This difficulty can be solved if the accused is required to serve the copy of the petitions of the aforesaid nature on the concerned Assistant Public Prosecutor with notice that he wants to move the petition on the particular date. If despite such notice the concerned Assistant Public Prosecutor fails to appear in the Court when the petition is moved, the Court would be free to dispose of the petition according to law in the absence of the Assistant Public Prosecutor.

It has been noticed that at some places, the Rangers of the Forest Department and Inspectors of the Supply Department are being allowed to conduct cases under the Forest Act and Essential Commodities Act respectively. It is no doubt, open to the State Government to appoint such officials as Public Prosecutors in respect of the cases concerning their respective Departments in which case they would be competent to conduct the Prosecutions. In cases where there has been no such appointment, it would be the duty of the concerned Assistant Public Prosecutor to appear and conduct those cases.

A question has been raised as to whether under Section 242 Criminal Procedure Code, it is obligatory on the part of the Judicial Magistrates to direct issue of summon to the witnesses mentioned in the charge sheet whether the prosecutor applies for or not. Section 242 Criminal Procedure Code does not cast a duty on the Judicial Magistrate to issue summons unless a prayer to that effect is made by the Prosecutor. Such a prayer may be either oral or in the form of a written petition. If the Prosecutor chooses not to make any prayer, the Judicial Magistrate would simply fix a date of hearing and then it would be the responsibility of the concerned Assistant Public Prosecutor to produce the witnesses in support of the prosecution.

I am to request that the above instructions may be brought to the notice of the Courts subordinate to you for their information and guidance.

Yours faithfully,

D. HOTA

Registrar

No. 901—XLIX-D-31/74

From

Shri D. Hota, B. L.,  
Registrar of the High Court of Orissa.

To

All the Sessions Judges of the State.

Dated Cuttack, the 31st January 1975

Sir,

I am directed to say that a question has been raised whether on receipt of the forwarding report seizure list etc. in respect of cases under the special Acts along with the accused, the Judicial Magistrate should register a case in his file. In this connection reference may be made to the definition of 'complaint' contained in Section 2(d) of the Criminal Procedure Code which provides that any allegation made orally in writing to a Magistrate with a view to his taking action under the Cr. P. C. that some persons whether known or unknown has committed an offence would amount to complaint. A forwarding report in which allegations of commission of offence under any special Act are made would, therefore, be undoubtedly a complaint. On receipt of such a complaint, the Subdivisional Judicial Magistrate will have to register a case, notwithstanding fact the formal prosecution report may be submitted at a later stage.

The Court, accordingly, direct that on receipt of forwarding reports under the various Special Acts, the Subdivisional Judicial Magistrates should register them as complaint cases under the appropriate heading.

This may be brought to the notice of all the courts subordinate to you for their information and guidance.

Yours faithfully,

D. HOTA

Registrar

No. 903—XLIXD-30/74

From

Shri D. Hota, B. L.,  
Registrar of the High Court of Orissa

To

All the Sessions Judges of the State

Dated Cuttack, the 31st January 1975

Sir,

I am directed to say that a question has been raised whether after the commencement of the new Criminal Procedure Code, it is necessary for magistrates other than Subdivisional Judicial Magistrates to furnish statement relating to committal enquiries. G. R. cases coming within the purview of Section 209, Criminal Procedure Code, in pursuance of the instructions issued by the Court in their letter No. 2922, dated the 1st April 1974, would be exclusively dealt with by the Subdivisional Judicial Magistrates and accordingly there would be no occasion for other Judicial Magistrates to commit such cases. But on presentation of private complaints in which allegations of commission of offences triable by the Court of Sessions are made it would be open either to the Chief Judicial Magistrate or the Subdivisional Judicial Magistrate empowered in that behalf to make over such cases, after taking cognizance of the offence to any other Judicial Magistrate for enquiry. Such Judicial Magistrate after holding necessary enquiry, if he finds that the case is exclusively triable by the Court of Sessions, would take necessary steps for commitment of the case to the Court of Sessions. The Court therefore direct that the Judicial Magistrates should continue to furnish the statement relating to commitment proceedings.

I am, accordingly, to request that the above instructions may be brought to the notice of the courts subordinate to you for their information and guidance.

Yours faithfully,

D. HOTA

Registrar

No. 905—XLIXD-38/74

From

Shri D. Hota, B. L.,  
Registrar of the High Court of Orissa

To

All District and Sessions Judges of the State

Dated Cuttack, the 31st January 1975

Subject—Supply of documents alongwith warrants of arrest issued  
u/s. 78(2) of the Cr. P. C. 1973.

Sir,

I am directed to say that a question has been raised whether a form should be prescribed u/s. 78(2), Cr. P. C. so as to facilitate the



business of the Judicial Magistrates in issuing warrants to places outside their respective jurisdictions and the procedure to be followed in cases where an accused jumps bail in the midst of trial and a warrant of arrest is required to be issued. Sub-section (2) of section 78 of the new Criminal Procedure Code provides that the Magistrates shall forward along with the warrant, the substance of the information and the documents to enable the Court acting under section 81 to decide whether bail should or should not be granted to the prisoners.

The Court, after careful consideration observe that it is not necessary to prescribe any form u/s. 78(2), Cr. P. C. The requirements of Sub-section (2) of section 78 Criminal Procedure Code would be met if along with the usual warrant of arrest, the Court issuing warrant forwards the substance of information in a separate sheet of paper and document which he considers necessary to be enclosed to the warrant. The Court further observe that while issuing warrant u/s. 78(2), Cr. P. C. in cases pending trials, it would be sufficient if the nature of charges framed against the accused is indicated in the form of warrant.

I am, therefore, to request that the aforesaid instructions may be brought to the notice of all Courts subordinate to you for their guidance and strict compliance.

Yours faithfully,

D. HOTA

Registrar

No. 908—XLIXD-38/74

From

Shri D. Hota, B. L.,  
Registrar of the High Court of Orissa

To

All District and Sessions Judges of the State  
Dated Cuttack, the 31st January 1975

Sir,

I am directed to say that a question has been raised whether it is necessary to supply the brief to the public prosecutor in cases in which the Magistrates commits a case to the Court of Sessions. The Court on a careful consideration of the matter observe that though in the new Criminal Procedure Code commitment enquiry has been dispensed with, clear provisions have been made in section 209(d) that commitment shall have to be notified to the Public Prosecutor. Unless the public prosecutor is supplied with the copies of the statement of witnesses, documents and the records of the case, it will not be possible for him to make arrangements for conducting the case in the Sessions Court.

Another question that has been raised is whether it is necessary for the committing Magistrates to submit explanation in cases of delay in commitment. Section 209 of the Criminal Procedure Code provides that the Magistrate while committing a case to the Court of

essions shall send to the Court the records of the case and documents and articles, if any, which will be produced in evidence and that he shall notify to the public prosecutor about the commitment of the case to the Court of sessions. The possibility of committing delay in complying with the requirements before actually committing the case to the Court of sessions may not be altogether ruled out.

It is, therefore, not-expedient to do away with the system of the Magistrates furnishing explanation for delay in commitment of cases to the Court of session. The Court, therefore, direct that along with the notification of commitment, a brief of the records including the statements of witnesses and documents should be supplied to the public prosecutor. The committing Magistrate shall as before submit explanation for delay in the commitment of the case to the Sessions Judge.

I am, therefore, to request that the above directions may be brought to the notice of all Courts subordinate to you for their guidance and strict compliance.

Yours faithfully,

D. HOTA

Registrar

No. 911—XLIXD-38/74

From

Shri D. Hota, B. L.,  
Registrar of the High Court of Orissa

To

All the Sessions Judges of the State

Dated Cuttack, the 31st January 1975

Sir,

I am directed to refer to Court's Circular letter No. 4554(8), dated the 11th May 1974 in which instructions were issued that all the Judicial Magistrates should bind all the accused persons committed u/s. 209, Cr. P. C. with bonds with an undertaking to appear before the Court of sessions on a particular date to be fixed by them and to intimate the fact of having done so to the Court of Sessions. On a reconsideration of the matter the Court are inclined to feel that the procedure indicated in the aforesaid Court's letter is likely to cause inconvenience to persons committed to the Court of Sessions by the Judicial Magistrates of the stations other than the headquarters stations of the Sessions Judge. But at the same time sufficient safeguard should be there to ensure the attendance of these persons in the Court of Sessions on the date of trial of the sessions case. This can be properly achieved if the committing Magistrates, while committing a case, would take a bond from the accused to appear before the Court of session, when called upon to do so. This bond should be forwarded to the Court of Session along with the records of commitment. The Sessions Judge, Additional Sessions Judge or the Assistant Sessions Judge, who actually takes up the trial of the

case should then issue notice to the accused to appear on the date fixed by him for trial of the case, and to the security to cause production of the accused on that date. If the accused fails to appear on the date fixed for trial, the Sessions Judge, Additional Sessions Judge or the Assistant Sessions Judge, as the case may be, would be competent to pass orders for forfeiture of the bail bond and then call upon both the accused and the surety to show cause why the bail amount should not be realised from them. At the same time, a non-bailable warrant should also be issued against the accused.

3. The aforesaid revised instructions may be brought to the notice of all the subordinate Courts working under you for their information and guidance.

.... Yours faithfully,

D. HOTA

Registrar

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No. 1279—IX-29/74

From

Shri D. Hota, B. L.  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State

Dated Cuttack, the 25th February 1976

Subject—Presentation of payment orders issued for drawal of peremptory cash to the Treasury with the Book of Drawal.

Sir,

I am directed to say that the Court has had under consideration the question of presentation of payment order issued for drawal of peremptory cash to the Treasury with the Book of Drawal.

All the District Judges were consulted in the matter. They are all in favour of the introduction of procedure for presentation of the payment order issued for drawal of peremptory cash to the Treasury with the Book of Drawal.

The Court concur with the unanimous opinion of the District Judges and direct that, until further provisions are made in the Court's General Rules and Circular Orders, Civil, the instructions issued by the State Government in the Finance Department letter No. TRA-11/72-47676(114)/F., dated the 27th October 1972 (copy enclosed) regarding maintenance of Book of Drawal should be adhered to.

Yours faithfully,

D. HOTA

Registrar

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Copy of Government of Orissa, Finance Department

Letter No. TRA-11/74-47676(114)-F.

Dated the 27th October 1972

From

Shri L. S. Panda, O. A. S.  
Deputy Secretary to Government addressed  
to all Controlling Officers

Subject—Maintenance of Book of Drawal

Sir,

It is observed that Book of Drawals presented in the Treasuries Sub-Treasuries are being retained along with the Bills for an unlimited period of time for scrutiny and check and are returned to the Drawing Officers after the Bills are checked and thereby the Drawing Officers find no proof in support of presentation of Bills in the Treasury/Sub-Treasury. Though the Book of Drawal is maintained in two volumes in order to enable the Drawing Officers to present Bills more fragmently retention of both the volumes in Treasury/Sub-Treasury at a time defeats the very purpose and presentation of Bill is delayed. This is probably due to submission of different types of Bills in a bulk at the end of the month which puts the Treasury staff into hardship to scrutinise all the Bills at a time and observe three days rules to dispose of the Bills.

In order to remove such difficulty it has been decided by Government that the Drawing Officers should present the salary Bills in time i.e., five days before the close of each month and start presenting the arrear claims, T. A. Bills etc., after 7th of each month so that the Treasury/Sub-Treasury Officers should receive the Bills and return the Book of Drawal to the messenger after passing or objecting the Bills by observing the three day's rule, So maintenance of a second volume of Book of Drawal is not necessary.

Besides, it has further been decided by Government that the Drawing Officers should number the pages of the Book of Drawal with certificate of paying the entries in the Book of Drawal should also bear serial numbers and get the initial of the Drawing Officer against each entry to avoid any fraud. The drawing Officers should furnish an advance information to the concerned Treasury/Sub-Treasury Officers before the Old Book is exhausted and a New Book in its place is opened failing which the Treasury/Sub-Treasury Officers would not entertain a New Book.

You are therefore requested to issue necessary instructions to the Subordinate Officers under your control to strictly adhere to the above principles meticulously.

Yours faithfully,

Sd. L. S. PANDA

26-10-1972

Deputy Secretary to Government

No. 2406—XLVIB-6/74

From

Shri D. Hota, B. L.,  
Registrar of the High Court of Orissa.

To

All the District &amp; Sessions Judges of the State

Dated Cuttack, the 12th March 1975

Subject :—Return of the warrant for release of the prisoner on bail to the Court of Appeal or Revision on the inability of the prisoner to furnish the bail.

Sir,

I am directed to refer to rule 69 of Chapter XII, part I at page 20 of the General Rules and Circular Orders (Criminal), Volume I according to which when an Appellate Court or Revisional Court directs the release of a prisoner on bail pending the hearing of an appeal or an application for revision, such Court shall send the warrant for his release on bail to the District Magistrate (New Chief Judicial Magistrate) or if the order under appeal or revision passed by a Court in an outlying subdivision, in the alternative to the Subdivisional Magistrate (now Subdivisional Judicial Magistrate) of such Subdivision or, if the said order was passed by a court not at the Subdivisional headquarters to the Judicial Magistrate concerned. If such person is unable to furnish the bail required of him, the Court requiring the warrant for the release of the prisoner on bail shall forthwith return the same to the Appellate Court or Revision Court which issued it with an endorsement thereon to the effect that the prisoner is unable to furnish the bail.

It has come to the notice of the Court that the instructions contained in the aforesaid rule are not being followed by some of the Subordinate Criminal Courts. Non-compliance of the rule mentioned above leaves the Appellate Court and Revisional Court without any information whether the prisoner has in fact been released in bail and consequently no anxiety is shown to dispose of the appeal or application for revision expeditiously. There may be occasion where the appeal or application for revision is disposed of in favour of the prisoner after the expiry of the sentence. The Court, therefore, direct that the provisions contained in Rule 69 of Chapter XII, Part I at page 20 of the G. R. & C. O. (Criminal), Volume I should be scrupulously followed. Any deviation in this regard in future would be seriously viewed.

I am accordingly to request that the above directions may be brought to the notice of the Subordinate Courts working under you for their information and strict observance.

Yours faithfully,

D. HOTA

Registrar

No. 2965—XLIXD 22/74

From

Shri D. Hota, B. L.  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State

Dated Cuttack, the 3rd April 1975

Subject—Application for bail of accused persons charged with offences under section 395 I. P. C. shall not be dealt with by the Assistant Sessions Judges Item No. 8 of the proceedings of the Conference of the District and Sessions Judges held in December 1974.

Sir,

I am directed to invite a reference to the item No. 2 of the Courts Circular letter No. 6083(28), dated 6-7-1974, in which instructions have been issued restricting the powers of the Assistant Sessions Judges and Chief Judicial Magistrates that application for bail of accused persons charged with offences under section 302 and 396 I. P. C. shall not be disposed of by them.

It has come to the notice of the Court that some Assistant Sessions Judges granted bail to persons charged with offences under section 395 I. P. C. despite the fact that there were eye witnesses to the occurrence. This matter was also discussed in the last District Judges' Conference and it was decided that instructions contained in the aforesaid Court's letter should be suitably revised restricting the powers of Assistant Sessions Judges and Chief Judicial Magistrates in granting bail to accused persons who are alleged to have committed offences under section 395 I. P. C. The Court are pleased to agree with the above view and direct that the item No. 2 of Court's letter No. 6083 dated 6-7-1974 should be revised to the effect that application for bail of accused persons charged with offences under sections 302, 395 and 396 I. P. C. shall be disposed of by the Sessions Judge or in his absence by the Additional Sessions Judge and not by the Assistant Sessions Judges or the Chief Judicial Magistrates.

The aforesaid revised instructions may be brought to the notice of all Subordinate Courts working under you for their information and guidance.

Yours faithfully,

D. HOTA

Registrar

No. 2967—XLIXD-13/75

From

Shri D. Hota, B. L.  
Registrar of the High Court of Orissa

To

The District and Sessions Judge (All)

Dated Cuttack, the 3rd April 1975

Subject—Posting of Civil and Criminal Appeals for hearing along with Sessions cases at the places of circuit—Item No. 12 of the proceedings of the conference of the District Judges held in the month of December 1974.

Sir,

I am directed to invite a reference to the instructions issued in Court's letter No. 7313, dated 12-8-1974 in which directions have been given that the Sessions Judges should post, as far as practicable, at least two Sessions cases along with some Civil and Criminal Appeals for hearing. The purpose of issue of such instruction was to provide the Sessions Judges with sufficient work at the places of circuit. In the last District Judges Conference some of the difficulties arising out of issue of the aforesaid instructions came up for discussion. It was pointed out that most of the Civil and Criminal Appeals at the places of circuit are filed by the Advocates of the headquarters station and they insist that such appeals should be heard only at the headquarters station. It is also not possible for the appellants to engage separate Lawyers at the circuit places. It was the consensus of opinion of all the Sessions Judges who attended the conference that only minor appeals which are filed before the Sessions Judges on circuit by the Local Lawyers may be heard at the circuit places. The Court, on a careful consideration of the matter, are in agreement with the said opinion. They, therefore, in modification of item No. 1 of the circular letter No. 7313, dated 12-8-1974 direct that such of the minor appeals as are filed before the Sessions Judges in the circuit sittings may be combined with other Sessions cases for the purpose of hearing.

I am accordingly, to request that the modified instruction as mentioned above may be brought to the notice of all the Additional and Assistant Sessions Judges of your judgeship for their information and guidance.

Yours faithfully

D. HOTA

Registrar

No. 3029—XLIX-D-61/74

From

Shri D. Hota, B. L.,  
Registrar of the High Court of Orissa

To

All the Sessions Judges of the State

Dated Cuttack, the 4th April 1975

Subject—Whether an offence can be compounded after the order of conviction is recorded and before the sentence is passed.

Sir,

I am directed to say that doubts have been expressed whether in a case it would be legal for a Judicial Magistrate to allow composition of an offence after recording an order of conviction and before passing the sentence. In this connection, I am to refer to sub-section (5) of section 320 of the Criminal Procedure Code, 1973 which is reproduced below:—

“320. (5) When the accused has been committed for trial or when he has been convicted and an appeal is pending no composition for the offence shall be allowed without the leave of the Court to which he is committed, or as the case may be, before which the appeal is to be heard”.

The aforesaid provision makes it clear that leave of the Court has to be taken only in cases where the accused has been committed for trial and where he has been convicted and appeal is pending. It does not contemplate of a case in which order of conviction has been recorded but the sentence remains to be passed. In Court's G. L. No. 4 of 1974 instructions have been issued that ordinarily the hearing of argument on the question of sentence should be taken up soon after the pronouncement of the order of conviction. If, however, it is considered necessary to adjourn the hearing on the question of sentence, a short adjournment should be granted, Judgement in the case would not be deemed to be complete unless the sentence is passed. In view of the above position the Magistrate would be in seisin of the case until the sentence is passed. Composition of an offence between the stage of delivery of the order of conviction and the passing of the order of sentence can be validly made if the composition is otherwise permissible.

I am, accordingly to request that the above instructions may be brought to the notice of the Courts subordinate to you for their information and guidance.

Yours faithfully

Sd. D. HOTA

Registrar



No. 5016 (10)—XLIX-D.-35/74

**From**

Shri D. Hota, B. L.  
Registrar of the High Court of Orissa

**To**

The District & Sessions Judge,  
Special Judge

Dated Cuttack, the 10th April 1975

**Subject**—Entrustment of warrants of arrest to the Crime Branch,  
Orissa for execution.

Sir,

I am directed to say that it has been brought to the notice of the Court by the Inspector-General of Police, Orissa, that Superintendents of Police, C. I. D. (Criminal Branch) receive warrants of arrest from different Courts of the State for execution. The Crime Branch as indicated by the Inspector-General of Police, Orissa, is a specialized unit with a limited staff for specific jobs. They are however, at times entrusted with investigation of some important and complicated cases. The Crime Branch Officers are not generally to put on uniforms except in matters of arrests only. When executive functions like execution of warrants of arrest are entrusted to the officers of the Crime Branch, they are compelled to delay and neglect their legitimate work.

2. Doubtless, Section 72 of the Code of Criminal Procedure, 1973 authorises the Magistrates to issue warrants of arrest to any police officer for execution. But in view of the practical difficulties pointed out by the Inspector-General of Police, Orissa, the Court direct that the warrants of arrest should not be issued to the Superintendents of Police C. I. D. (Criminal Branch) for execution except in rare cases in which charge-sheets are filed by the Crime Branch and the regular police fails to execute such warrants of arrest.

3. The above instructions may be brought to the notice of all the Courts subordinate to you for information and guidance.

Yours faithfully

D. HOTA

Registrar

No. 7030—XLIXD-62/74

From

Shri D. Hota, B. L.,  
Registrar of the High Court of Orissa

To

All the District & Sessions Judges of the State

Dated Cuttack, the 16th April, 1975

Subject—Implementation of the provisions of section 294 of the Code of Criminal Procedure, 1973 (Act II of 1974).

Sir,

I am directed to refer to section 294 of the Code of Criminal Procedure, 1973 (Act II of 1974) which provides the procedure for reception of documents as evidence in a criminal trial without formal proof.

2. Unlike the Code of Civil Procedure provisions have not been made in the section as to the stage of a criminal trial when the parties or their pleaders may be required to either admit or deny the genuineness of documents filed by their adversary. In a criminal case it is also not permissible to compel the accused either to file any document or to submit a list of documents on which he seeks to rely at any particular stage of the trial. It is only after the accused is called to enter upon his defence and adduce evidence, if any, that the question of his filing documents may arise. In the above premises it has become necessary to issue instructions determining the stage at which the parties may be called upon to admit or deny the genuineness of documents filed in a criminal case. The Court after careful consideration of the different provisions relating to the procedure for trial of criminal cases are of the view, that for a proper implementation of the provisions contained in section 294 Criminal Procedure Code, 1973 the following procedure should be followed.

(1) In cases instituted on police report, all documents filed by the prosecution including the report under Section 173 Cr. P. C. shall be enclosed in the list as may be prescribed by the State Government under sub-section (2) of Section 294 Cr. P. C.

(2) In cases instituted otherwise than on police report any document filed by the prosecution at the commencement of the trial shall be included in the said list.

(3) In sessions cases and warrant cases instituted on police report, the accused may be called upon to admit or deny the genuineness of each of such document immediately after the charge is framed and before a date for examination of witnesses is fixed.

(4) In warrant cases instituted otherwise than on police report the accused may be called upon to admit or deny the genuineness of any document filed by the prosecution before the Court takes evidence as may be produced by the prosecution.

(5) In summons cases the accused may be called upon to admit or deny the genuineness or otherwise of any document filed by prosecution immediately after the substance of the accusation is explained and before the date fixed for taking evidence as may be produced in support of the prosecution.

(6) In all cases, the prosecution may be called upon to admit or deny the genuineness of any document that may be filed by the accused after he is called to enter upon his defence.

(7) By laying the above procedure, the Court do not wish to fetter the discretion of the Subordinate Courts to receive documents at any stage other than the stages referred to above.

The State Government do not appear to have prescribed any form as contemplated in sub-section (2) of Section 294 Cr. P. C., 1973 and they are being requested to prescribe a suitable form. Pending prescription of such a form by the State Government the Court direct that the Subordinate Criminal Courts may require the parties to enter the documents filed by them in the lists, in Form No. (M) 22-A of the G. R. & C. O. (Criminal) Volume II at page 134.

I am, accordingly, to request that the above instructions may be brought to the notice of the Courts subordinate to you for their information and guidance.

Yours faithfully

D. HOTA

Registrar

No. 9169—XLIXD-29/74

From

Shri D. Hota, B.L.,  
Registrar of the High Court of Orissa

To

The District and Sessions Judge,  
Sambalpur-Sundargarh, Sambalpur.  
Dated Cuttack, the 26th April 1975

Subject—Transmission of commitment case records, documents, etc. produced in evidence to the Court of Sessions under section 209 of the Code of Criminal Procedure, 1973.

Sir,

I am directed to refer to your letter No. 2464, dated the 8th June 1974, forwarding a copy of the proceedings of the conference of the

Presiding Officers of the Criminal Courts of your judgship held on the 1st June 1974 and to say that a doubt has been expressed as to whether the transmission of case records, documents, etc., to the Court of sessions under section 209 of the Code of Criminal Procedure, 1973 should be withheld pending receipt of the report of the Chemical Examiner/Serologist and material objects.

Undoubtedly section 209 of the Code provides that, while committing a case, the Magistrate is required to forward the records of the case and the documents and articles, if any, which are to be produced in the Court of sessions. But there is every likelihood of commitment of a case being delayed if it is held up on account of non-receipt of the report of the Chemical Examiner/Serologist and the materials objects.

In order to avoid delay in commitment proceedings and consequently the trial of sessions cases, the Court feel that it is not desirable to withhold the commitment of a case awaiting receipt of the reports of the Chemical Examiner/Serologist and the material objects. Accordingly, they direct that if the Magistrate despite his best efforts is not in a position to obtain such reports and the material objects by the date of commitment, he should indicate in the letter of notification the particular reference number and the date of despatch of the material objects to the Chemical Examiner/or the Serologist to enable the Sessions Court to take necessary steps to obtain such reports and material objects before commencement of the trial.

I am to request that the above instructions may be brought to the notice of all the Criminal Courts working under you for their information and guidance.

Yours faithfully

D. HOTA

Registrar

No. 9171—XLIXD-29/74

From

Shri D. Hota, B.L.,  
Registrar of the High Court of Orissa

To

The District and Sessions Judge, Balangir-Ka'ahandi, Balangir.

Dated Cuttack, the 26th April 1975

Subject—Use of local language in recording depositions of witnesses.

Sir,

With reference to your letter No. 3410, dated the 7th June, 1974 on the above subject, I am directed to say in the meeting of the judicial officers of your judgship a question was raised whether it would be permissible to record the depositions of witnesses in the local dialect in which they happen to give evidence. Section 277(a) of the Criminal Procedure Code authorises the Courts to take the

evidence of the witnesses in the Court language if the witness deposes in that language. The majority of witnesses in the State do give evidence in Oriya language with variation in dialect from region to region. From this it cannot be construed that every dialect is a separate language. Whenever a witness deposes in any local dialect, it must be deemed that he is doing so in oriya language and there need not be any difficulty in recording the evidence in oriya language.

I am, therefore, to request that above instructions may be brought to the notice of all the Courts subordinate to you for their information and guidance.

Yours faithfully

D. HOTA

Registrar

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No. 9191—XLIXD-17/75

From

Shri D. Hota, B.L.,  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges in the State  
Dated Cuttack, the 28th April 1975

Subject—Rule as to Judicial Precedents

Sir,

I am directed to say that it is noticed on occasions that some Presiding Officers of Courts and Tribunals and authorities discharging Judicial, quasi-judicial and administrative functions sometimes fail to correctly follow judicial precedents when they are confronted with conflicting decisions on a question of law. With a view to removing any misconception in this regard, the Court wish that the instruction herein below set out should be borne in mind by all concerned.

(a) The law stated by the High Court of the State is binding upon, and must be followed by, all Courts, tribunals and other authorities entrusted with judicial, quasi-judicial and administrative functions in the State.

(b) Where the Supreme Court enunciates the law differently from the decision of the High Court, the Decision of the Supreme Court shall always prevail and in all cases, no matter whether that decision of the Supreme Court was rendered while sitting in appeal from the decision of the High Court, to the contrary or not. Where the Supreme Court not sitting in appeal from the decision of the

High Court, enunciates the law, it shall be deemed to have overruled the conflicting High Court decision previously rendered, in all cases, by necessary implication.

(c) As between conflicting decisions given by Single Judges of a High Court, at different time, the decision rendered earlier in point of time, though not reported earlier in point of time or not reported at all, shall prevail over all subsequent decisions of Single Judges of the Court, irrespective of the number of such subsequent conflicting decisions rendered either by the same Judge or by different Judges sitting singly Similarly, and earlier decision of a Bench of two Judges of a High Court on a question of law shall prevail over a latter decision of the Bench of the same strength.

(d) The decision of a larger Bench shall always Prevail over that of a Bench of smaller strength in case of inconsistency.

(e) In cases where there is conflict between the earlier Single Bench decision and a Division Bench decision of the same question of law, the decisions of the Division Bench shall always prevail. If the Division Bench decision is rendered subsequent to the Single Bench decision, the latter shall be deemed to be overruled, by necessary implication, by the former.

I am to request that the above principles in following Judicial Precedents may be carefully followed as some guidelines.

Yours faithfully

D. HOTA

Registrar

No. 10612—XII-1/75

From

Shri D. Hota, B.L.,  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State

Dated Cuttack, the 26th June 1975

Subject—Applicability of the Provisions of Section 360 Criminal Procedure Code, 1973 to the State of Orissa.

Sir,

I am directed to refer to Section 360 of the Criminal Procedure Code, 1973 and to say that a question has been raised whether the provisions contained in Section 360 Criminal Procedure Code, 1973 have any application to the areas where the Probation of Offenders

Act, 1958 has been brought into force. Section 19 of the Probation of Offenders Act provides that subject to the provisions of Section 18, Section 562 of the Criminal Procedure Code, 1898 shall cease to apply to the State or parts thereof in which this Act is brought into force. Sub-section (10) of Section 360, Cr. P. C., 1973 similarly provides that nothing in this Section shall affect the provisions of the Probation of Offenders Act, 1958. Section 562, Cr. P. C., 1898 has been substituted by Section 360 of the Criminal Procedure Code, 1973. It, therefore, necessarily follows that the provisions contained in Section 360, Cr. P. C., 1973 shall not apply to the areas to which the Probation of Offenders Act, 1958 has been extended.

2. In Home Department notification No. 27941, dated the 30th November 1962 published in the Orissa Gazette, Extraordinary No. 700, dated the 1st December 1962, the Probation of Offenders Act has been extended to the districts of Cuttack, Puri, Ganjam, Koraput, Sambalpur, Balasore and Mayurbhanj. In Home Department notification No. 21050, dated the 31st August 1966 published in the Orissa Gazette, Extraordinary No. 1056, dated the 3rd September 1966, the Act has been enforced in the districts of Balangir, Dhenkanal, Keonjhar, Kalahandi, Sundargarh and Phulbani. Thus, the Probation of Offenders Act, 1958 has been brought into force throughout the State. In the above premises the Court observe that the provisions of Section 360, Criminal Procedure Code, 1973 have no application to any part of the State of Orissa.

I am, accordingly, to request that the aforesaid position of law may be brought to the notice of all the subordinate Criminal Courts working under you for their information and guidance.

Yours faithfully

D. HOTA

Registrar

No. 10752-A—XI-4/72

From

Shri D. Hota, B.L.,  
Registrar of the High Court of Orissa

To

All the Sessions Judges of the State

Subject—Adjournment of Sessions Trial for the non-receipt of  
Chemical Examiner's report and Material objects.

Dated Cuttack, the 1st July 1975

Sir,

I am directed to refer to Court's Memo. No. 2241(2), dated the 24th March 1972 on the above subject and to say that in order to

avoid frequent adjournments of Sessions Trial due to non-receipt of report of the Chemical Examiner and the Material objects and the consequent undue expenditure, the Court had directed in the said letter that Sessions Cases should not be posted for trial before making sure that the report of the Chemical Examiner and the Material objects sent to him are received back in due time. The Court, have in the mean time reviewed the working of the aforesaid instructions. It has come to the notice of the Court that relying on the aforesaid letter the Sessions Judges have been putting off the trial of Sessions Cases without making any sincere efforts to secure the report of the Chemical Examiner and Material Objects. Consequently, the purpose for which the aforesaid letter was issued is not being served.

2. With the introduction of the new Criminal Procedure Code, there has been radical change in the procedure for trial of Sessions Cases. In the changed procedure the trial of a Sessions Case has to pass through different stages. When the accused appears or is brought before the Court, the Prosecutor is to open his case. The Sessions Judge after considering the records of the Case and documents and after hearing the parties may either discharge the accused, transfer the case to the concerned Chief Judicial Magistrate for disposal, if the case is not exclusively triable by him, or frame a charge against the accused, if the case is exclusively triable by the Court of Sessions. Thereafter he would fix a date for examination of prosecution witnesses and production of Material objects. Therefore, withholding the trial of Sessions Cases on the ground of the non-receipt of report of the Chemical Examiner and the Material objects would not be in accordance with the procedure for trial of Sessions Cases prescribed in the new Criminal Procedure Code. There may also be instances where production of the Material objects and the proof of the Chemical Examiner's report are not essential for the effective decision of the cases and in such cases there will be hardly any justification to hold up trial of the Sessions Cases on the ground that the Material objects and the report of the Chemical Examiner have not been received. In the above premises the Court direct that the posting of Sessions Cases for trial should not await the report of the Chemical Examiner and the Materials objects. If by the date of commitment, the Material objects and the report of the Chemical Examiner have not been received back, the committing Magistrate should in his forwarding letter intimate the Sessions Judge the number and date of the letter in which the Material objects were sent to the Chemical Examiner for his examination and report. On receipt of the notification of the commitment the Sessions Judge should verify whether production of the Material objects and proof of the report of the Chemical Examiner are necessary for the decision of the case. If he finds that they are necessary. But have not been received, he should take effective steps for securing them from the Chemical Examiner concerned with reference to the correspondence of the committing Magistrate with the Chemical Examiner. Simultaneously, he should fix up the trial of the case and should always be on guard that the Material objects and the Chemical Examiner's report are received by him by the date fixed for taking evidence in the case. The Court further direct that if a Sessions Trial is adjourned on the ground of either non-receipt of Material objects or Chemical Examiner's report the Court concerned should furnish a detailed report as to the steps taken for securing them along with the statement of adjournment of Sessions Cases.



3. The direction given in Court's letter No. 2241, dated the 24th March 1973 may be treated as withdrawn.

I am to request that the above directions of the Court be brought to the notice of all the Subordinate Criminal Courts for their information and guidance.

Yours faithfully,

D. HOTA

Registrar

No. 11103—XI-2/75

From

Shri S. Misra, LL.B.,  
 Ind Dy. Registrar of the  
 High Court of Orissa.

To

All the District and Sessions Judges of the State.  
 All the Chief Judicial Magistrates of the State.

Dated Cuttack, the 11th July 1975

Subject—Procedure for arrest and detention of M. L. A giving information to the Hon'ble Speaker as per rule 154 of the Rules of Procedure and Conduct of Business of the Orissa Legislative Assembly by the Executive Authorities.

Sir,

I am directed to forward for your information and guidance and for communication to and guidance of the Courts subordinate to you the accompanying copy of letter No. 48725(13)—P-3-A-41/74., dated the 31st December 1974 from the Secretary to Government of Orissa, Home Department, Bhubaneswar, on the subject indicated above.

Yours faithfully,

S. MISRA,

Ind Deputy Registrar

GOVERNMENT OF ORISSA  
HOME DEPARTMENT.  
No. 48725.(13)—P3A-41/74

From

Shri P. Misra,  
Secretary to Government.

To

All District Magistrates.

Dated Bhubaneswar, the 31st December 1974

Subject—Procedure of arrest and detention of an M. L. A. giving intimation to the Hon'able Speaker of the O. L. A. as per rule 154 of the Rules of Procedure and Conduct of Business in the O. L. A. by the Executive Authorities.

Reference—This Department Memo. No. 25576-P., dated the 19th July 1974.

Sir,

I am directed to say that rule 154 of Rules of Procedure and Conduct of Business in the O. L. A. provides that when a member is arrested on a criminal charge or for a criminal offence or is sentenced to imprisonment by a Court or is detained under an executive order, the Committing Judge, Magistrate or Executive Authority, as the case may be, shall immediately intimate such fact to the Speaker indicating the reasons for the arrest, detention or conviction as the case may be, as also the place of detention or imprisonment of the member in the appropriate form set out in the Sch. I Rule 155 of the aforesaid rules provides that "when a member is arrested and after conviction released on bail pending an appeal or otherwise released, such fact shall also be intimated to the Speaker by the concerned authority in appropriate form set out in the schedule referred to above." The rules made it obligatory on the part of the executive authority or the Magistrate or the Committing Judge to send intimation directly to the Speaker in the event of arrest or detention or imprisonment or release of a member of the Legislative Assembly, as the case may. Rules 154 and 155 and the appropriate form set out in Sch. I are reproduced below :

154. When a member is arrested on a criminal charge or for criminal offence or is sentenced to imprisonment by a Court or is detained under an executive order, the Committing Judge, Magistrate or Executive Authority, as the case may be, shall immediately intimate such fact to the Speaker indicating the reasons for the arrest, detention or conviction, as the case may be, as also the place of detention or imprisonment of the member in the appropriate form set out in the Schedule.

155. When a member is arrested and after conviction released on bail pending an appeal or otherwise released such fact shall also be intimated to the Speaker by the concerned authority in appropriate form set out in the Schedule.

154. Intimation to Speaker by Magistrate of arrest, detention, etc., of a Member.

155. Intimation to Speaker on release of a Member

## Schedule I.

(See Rules 154 and 155)

Form of communication regarding arrest detention, conviction or release, as the case may be, of member.

Place

Date.

To

The Speaker  
Orissa Legislative Assembly,  
New Capital, Bhubaneswar.

A

Dear Mr. Speaker,

I have the honour to inform you that I have found it my duty, in the exercise of my powers under section.....of the.....(Act), to direct that Shri.....M. L. A., be arrested/detained for.....(reasons for the arrest or detention as the case may)..... Shri M. L. A. was accordingly,..... arrested/taken into custody (time) on.....(date).....and is at present lodged in the.....jail.....(place).

B

I have the honour to inform you that Shri.....M. L. A., was tried at the.....Court (reasons for the conviction), before me on a charge (or charge) of.....on.....(date) after a trial lasting for.....days I found him guilty of.....and sentenced him to imprisonment for.....(Period). (His application for leave to appeal\*.....is pending consideration).

C

I have the honour to inform you that Shri.....M. L. A., who has convicted on.....(date) and imprisonment for.....(Period) for.....(reasons for conviction) was released on bail pending appeal for, as the case may be released on the sentence being set aside on appeal on the .....(date).

\*Name of the Court.

Yours faithfully,

(Judge, Magistrate or  
Executive Authority).

It is, therefore, necessary to bring home to the concerned authority, the procedure outlined in the aforesaid rules for giving intimation to the Speaker in the event of arrest, detention, imprisonment or release of a member of Legislative Assembly to avoid any possible penal consequences.

I would, therefore, request you to issue a set of instructions to the executive authority under your administrative control to follow the rule scrupulously and intimate the facts leading to arrest, detention and release of M. L. A., on a criminal charge or criminal offence directly to the Hon'ble Speaker of Orissa Legislative Assembly forthwith in the aforesaid form whenever such occasion arises.

Yours faithfully,

P. MISRA,

Secretary to Government.

No. 11258—XLIX-D-31/75

From

Shri D. Hota, B. L.,  
Registrar of the High Court of Orissa

To

All the Sessions Judges of the State

Dated Cuttack, the 16th July, 1975

Subject—Service of summons on official witnesses through wireless message.

Sir,

I am directed to say that it has come to the notice of the Court, that inordinate delay is caused in the disposal of cases in the Courts of the Sessions Judges and the Judicial Magistrates on account of non-attendance of official witnesses such as Medical Officers, Investigating Officers and Officers who have either recorded the confessional statement of the accused persons or conducted T. I. Parade. There are also instances where quick service of summons on such official witnesses is not possible owing to the transfer of such officers to distant places by the time the case is ready for hearing. This problem was discussed in the conference of the District and Sessions Judges of the year 1974 and it was decided that the aid of wireless message should be freely taken for service of summons on official witnesses. The Court concur in the said decision and observe that where such a facility is available the concerned Sessions Judges and the Judicial Magistrates

should take the help of the agency for transmission of wireless messages with a view to secure the attendance of official witnesses on due dates.

I am, accordingly, to request that the above instructions may be brought to the notice of the Criminal Courts subordinate to you for their information and guidance.

Yours faithfully

D. HOTA

Registrar

No. 11610--XLIX-D 1/75

From

Shri D. Hota, B. L.,  
Registrar of the High Court  
of Orissa.

To

All the Sessions Judges of the State

Dated, Cuttack the 24th July, 1975

Subject—Finding out ways and means to eradicate the evils of perjury

Sir,

I am directed to refer to item No. 10 of the proceedings of the Conference of the District Judges held in the year 1974 and to say that during discussion of the subject a question arose whether a witness resiling from his previous statement recorded u/s. 164 Cr. P. C. can be proceeded against for perjury. It was decided that the District and Sessions Judges should furnish their considered views in the matter after examining the law on the subject.

On a careful consideration of the views furnished by the district and sessions Judges and the various judicial pronouncements on the subjects, the Court refrain from expressing any opinion in the matter. They, however, without in any way fettering the judicial discretion of the criminal courts, wish to point out that in order to sustain a conviction u/s 193 I. P. C., the Court has to be satisfied that the statement made by a witness in the court during the course of trial is false. To arrive at such a finding the court may have to take into consideration the statement made by the witness recorded under section 164 Cr. P. C. and other pieces of evidence and circumstances appearing on the record. It has to record a further finding that it would be expedient in the interest of justice to proceed against the witness for perjury. The Court further observe that the Sessions Judges and Magistrates should bear in mind the growing tendency on the part of the witnesses

to let down the prosecution at the trial stage and should not, in appropriate cases, hesitate to exercise their powers u/s. 344 Criminal Procedure Code, 1973.

I am, accordingly, to request that the above instructions may be brought to the notice of the Courts subordinate to you for their information and guidance.

Yours faithfully,

D. HOTA

Registrar

No. 12435—XLVI-F-8/75

From

Shri D. Hota, B. L.,  
Registrar,  
of the High Court of Orissa.

To

All the District and Sessions Judges  
of the State.

Dated, Cuttack the 16th August, 1975

Subject—Holding inspection of the Accounts Section of the District Judges' Office by the District Judges themselves twice a year.

Sir,

I am directed to say that it has come to the notice of the Court that the condition of the Accounts Section of many of the District Courts is not satisfactory. Accounts Registers are not properly maintained and entries therein are not verified by the Judge-in-charge of Accounts. Rules in the G. R. & C. O. (Civil) Volume-I are not strictly followed in transacting the accounts business. The instructions contained in General Letter Nos. 1 of 1966, 4 of 1966, 5 of 1958, Circular Letters No. 4237, dated the 25th September 1959, 561 dated the 25th January 1962 and 560, dated the 17th June 1973 are not strictly followed. The Service Books are not properly maintained and the pension papers of the clerks who have either retired or are due to retire are not timely prepared. Unusual delay in noticed in dealing with payment order applications. The Court have viewed this state of affairs with grave concern. They felt that this evil can be remedied if the District Judges devoted their attention to the working of this important branch of their offices.

2. Further, according to rule 3 of Chapter I, Part X at page 227 of the G. R. & C. O. (Civil) Volume-I a District Judge cannot delegate his powers as regards accounts to any of his subordinates. What he can do, when absolutely necessary, is to place any of the officers subordinate to him in charge of accounts, without in any way relieving himself of the responsibility for the due accounting of all receipts and payments. The District Judges are the controlling authority and are responsible for the proper and efficient conduct of the accounts business of the Court. This is their personal responsibility which they must exercise by keeping close and constant watch over the working of the Accounts Section. A close scrutiny of the Accounts Registrar 12435 at frequent intervals is essential for the improvement of the condition of the Accounts Section.

3. In the above view of the matter the Court direct that the District Judges should themselves inspect the Accounts Section, twice a year, once in the month of June and again in the month of December every year and forward their notes of inspection to the Court. They should particularly examine the contingent accounts, the deposit registers, the Payment order Registers the Cash Book, the Guard file of chalangis pay and T. A. Accounts, Service Stamp Accounts, Stationery Accounts, Accounts of Saleable Forms, Audit Objections, Treasury Advice Lists, Pension Cases, Register showing deduction of festival advances as per G. O. No. 31981-F., dated 3-10-1958 and 11823-F., dated 30-3-1967, Register of Valuable movables as per C. O. No. 8 of 1950, Advance From G. P. Fund and utilisation certificates for the same, leave accounts, etc.

While conducting such inspections efforts should be made to ensure that errors and omissions do not recur. When such error or fault is detected, the way to avoid it should be explained and the manner in which the matter should have been dealt with should be pointed out. Constructive suggestions should be made and guidance given for overcoming the difficulties, if any. Minor matters should be disposed of on personal discussion with the Accountant and the Judge-in-charge of accounts, but all the important points should find place in the notes of inspection to be submitted to the Court. They may also carry out surprise inspections when they deem proper to do so.

The aforesaid instructions should be strictly followed.

Yours faithfully

D. HOTA

Registrar

No. 12761--XLIXD-14/75

From

Shri D. Hota, B. L.,  
Registrar of the High Court of Orissa

To

All the Sessions Judges of the State

Dated, Cuttack the 28th August, 1975

Subject—Procedure to be followed for realisation of the fine amounts.

Sir,

I am directed to refer to General Letter No. 4 of 1957 in which it is provided that whenever a Magistrate convicts an accused and sentences him to fine either with or without any substantive sentence of imprisonment and the fine is not paid forthwith, the Magistrate should take action in a separate miscellaneous case record either to grant time under Section 388-Criminal Procedure Code, 1898 (corresponding to Section 424 Criminal Procedure Code, 1973) or to issue distress warrant straight off whereafter he should send the accused to jail custody.

2. The Court had, on an earlier occasion, to consider the import of General Letter No. 4/57 in the light of the proviso to Section 386 Criminal Procedure Code, 1898 which provided that if the offender has undergone the whole of the imprisonment in default of payment of fine, no Court shall issue warrant for realisation of fine unless for special reasons to be recorded in writing it considers necessary to do so. The Court in their Memo. No. 1480, dated 26/28th February, 1962 observed that the Magistrate should consider each case on its individual merit and decide whether or not any special reason exists for issue of warrant in case where the defaulter has undergone imprisonment for the full term for non-payment of fine. Despite these instructions, the Judicial Magistrates are found issuing distress warrants for realisation of fine amounts as a matter of course without paying any regard to the mandatory provisions contained in the proviso to Section 421 of the Criminal Procedure Code, 1973. A perusal of the proviso to Section 421 makes it clear that it would not be legal for a Court passing the sentence of fine to issue a warrant for its realisation against an accused who has undergone the whole of the default sentence unless it records special reasons for doing so or unless it has made an order for payment of expenses or compensation out of the fine under section 357 Cr. P. C., 1973. No distress warrant can, therefore, ordinarily be issued against an accused who has suffered the whole of the default sentence.

3. With a view to disposal all doubts in the matter, the Court direct that when an offender has been sentenced to pay a fine and in default of payment of fine to undergo certain term of imprisonment and the fine is not paid forthwith the Court imposing the sentence may either proceed under section 424 Cr. P. C., 1973 to grant time to pay the fine amount and thereby suspend the execution of sentence or direct that the default sentence be carried into execution at once. In



the latter case he should send the accused to the jail custody. He should decide the question of issue of distress warrant after return of the jail warrant from the concerned jail and may issue such warrant if there are special reasons for doing so.

4. Another question that has engaged the attention of the Court is that a large number of miscellaneous cases started for realisation of fine are pending in the Courts of Judicial Magistrates in the State awaiting execution of distress warrants issued to the different Police Stations. This problem was discussed in the District Judges' Conference of the year 1974 and it was the consensus of opinion of all the Sessions Judges of the State that such miscellaneous cases should be closed if the distress warrants issued are not received back within a reasonable time. The Court have also carefully considered the matter and observe that no useful purpose is being served in allowing such miscellaneous cases to continue on the files of the Judicial Magistrates if the Police Officers whose primary duty it is to execute such warrants, do not discharge their duties with expedition. In this connection, the Court wish to draw the attention of all the Judicial Magistrates of the State to the provisions contained in Section 421 Criminal Procedure Code, 1973, which authorises the Court passing the sentence of fine to take action for recovery of the fine in either or both of the following ways, that is to say, it may:—

- (a) issue a warrant for levy of the amount by attachment or sale of any movable property belonging to the offender,
- (b) issue a warrant to the Collector of the district authorising him to realise the amount as arrears of land revenue from the movable or immovable property, or both, of the defaulter.

5. In view of this provision, as soon as the Court sentencing the fine decides to take action for the recovery of the fine amount, it may resort to both the methods of realisation of the fine as indicated in clause (a) and (b) of Section 421 Cr. P. C., 1973. If the distress warrant is not received back within a reasonable time it should close the miscellaneous case and intimate the fact to the Collector of the district and thereafter consign the miscellaneous case record to the district Record Room. Thereafter it should be the responsibility of the Collector of the district to take all steps for realisation of the fine amount according to the procedure laid down for recovery of arrears of land revenue. The question of writing off the fine amount may be taken up either after receipt of final report from the Collector or on return of the warrant after execution or on receipt of report of no assets'. If during the period intervening the issue of intimation to the Collector and receipt of report of realisation of fine by the Collector, the distress warrant is returned after execution. The fact should be reported to the Collector so that the proceeding pending before the Collector may be dropped.

6. I am, accordingly, to request that the above instructions may be brought to the notice of the Courts subordinate to you for their information and strict guidance.

Yours faithfully,

D. HOTA

Registrar

No. 13372—XLIX-D-39/72

From

Shri D. Hota, B.L.,  
Registrar of the High Court of Orissa, Cuttack

To

All the Sessions Judges of the State

Dated Cuttack, the 18th September 1975

Subject—Item No. 2 of the proceedings of the District Judges' Conference, 1973—Modification of the instructions issued in the Court's G. L. No. 1 of 1973 (Criminal).

Sir,

I am directed to refer to the instructions issued in G. L. No. 1 of 1973 and item No. 2 of the proceedings of the District Judges' Conference, 1973 and to say that the question as to how far the instructions for relegating cases to the dormant file had been implemented and whether revision of the instructions contained in the aforesaid general letter is necessary was discussed in the conference. It was felt that the use of the word 'Unimportant' in the said general letter limited the scope of operation of the general letter to specified Criminal cases thereby defeating the purpose of issue of the letter. It was, accordingly, decided that the word 'Unimportant' should be omitted from the general letter.

2. It was also expressed in the conference that before placing a case on the dormant file, the concerned Judicial Magistrate instead of merely referring to the date of issue of processes should verify the despatch number which shall always be noted by the clerk issuing it in the order-sheet. The maintenance of the separate dormant file register in the Courts of all the Judicial Magistrates was also considered to be unnecessary and the consensus was that such a register should be maintained only by the Court of Subdivisional Judicial Magistrate.

3. The Court have carefully considered the aforesaid suggestions and direct as follows—

(a) The word 'Unimportant' wherever it occurs in the general letter No. 1 of 1973 shall be omitted.

(b) The Judicial Magistrates while considering whether a particular case should be transferred to the dormant file instead of merely referring to the date of issue of the required processes shall verify the despatch number of the process. It shall be the duty of the clerk issuing the processes to note the despatch number in the order-sheet of records.

(c) The dormant file register shall be maintained only in the Court of Subdivisional Magistrates in the Sadar and other Subdivisional headquarters and by the Judicial Magistrates in

the stations where there is a single Judicial Magistrate. The Judicial Magistrates on being satisfied that a particular case should be transferred to the dormant file shall submit the record to the Subdivisional Judicial Magistrate who shall pass the orders of placing the case on the dormant file. The ministerial staff attached to his Court would then make necessary entries in the dormant file register and take further necessary action. In the stations where there is a single Judicial Magistrate, he would himself pass orders for transferring cases to the dormant file.

(d) The Chief Judicial Magistrates during their periodical inspection should examine whether the Judicial Magistrates are properly following the instructions relating to placing of records on the dormant file.

4. I am, accordingly, to request that the above instructions may be brought to the notice of the Courts subordinate to you for their information and strict observance in future.

Yours faithfully

D. HOTA

Registrar

No. 14881—XI-7/75

From

Shri D. Hota, B. L.,  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State

Dated Cuttack, the 27th November 1975

Subject—Entitlement of Assistant Public Prosecutors to conduct sessions trials.

Sir,

I am directed to say that the Court had occasion to examine the question of entitlement of Assistant Public Prosecutors to appear in sessions cases and to conduct the trial for the prosecution.

The Court, after giving due consideration to the matter, are of opinion that Assistant Public Prosecutors as such are not entitled to conduct sessions trials on behalf of the prosecution. Section 225 of the Code of Criminal Procedure, 1973 prescribes that in every trial

before a Court of Session, the prosecution shall be conducted by a Public Prosecutor. Section 24 of the Code provides that no person shall be eligible for appointment as a Public Prosecutor if he has not been in practice as an Advocate for not less than seven years. Section 25 deals with appointment of Assistant Public Prosecutors for conducting prosecution in the Courts of Magistrates and no period of practice is a qualification for them. The expression 'Public Prosecutor' has been defined in section 2 (u) of the Code as meaning "any person appointed under section 24, and includes any person acting under the directions of a Public Prosecutor". The inclusive part of the definition cannot be given so wide a meaning as to nullify the scheme and the purpose behind the provision in section 24. Where an Advocate does not satisfy the qualification laid down in section 24, merely because he is an Assistant Public Prosecutor he cannot conduct the prosecution in a Court of Session because he happens to act under the directions of the Public Prosecutor. An Advocate appointed as Assistant Public Prosecutor may, however, where he satisfies the requirements laid down under section 24 of the Code, conduct the prosecution, not qua Assistant Public Prosecutor, but as an Advocate possessing the requisite qualification prescribed under section 24 of the Code and acting under the directions of the Public Prosecutor.

I am to request that necessary action may be taken in appropriate cases keeping in mind the above views of the Court clarifying the position.

Yours faithfully

D. HOTA  
Registrar

No. 1470—XLJXD-44/75

From

Shri D. Hota, B.L.,  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State

Dated Cuttack, 4th March 1976

Subject—Checking up the records placed in the dormant file by the Record-keeper to ensure that the conditions laid down in G. L. 1/73 (Criminal) have duly been fulfilled.

Sir,

I am directed to say that a question has been raised as to whether the records placed on the dormant file should be checked by the Record-keeper to find out, whether conditions for placing records on the dormant file have been fulfilled.

2. Under the instructions issued in Court's Circular letter No. 13372, dated the 18th September 1975 before a case is placed on the dormant file and consigned to the Record Room sufficient precautions are taken by the Magistrates to ensure that the cases are really fit to be consigned to the Record Room for being placed on the dormant file. The Sessions Judges and the Chief Judicial Magistrates during their periodical inspection are also expected to examine whether the Judicial Magistrates are properly following the instructions relating to placing of records on the dormant file. Besides the records placed on the dormant file are called back by the Magistrates after the accused persons are apprehended and are again consigned to the Record Room as disposed of records. As such, the Court consider that no useful purpose will be served in directing the Record-Keeper to check the records consigned to the Record Room for being placed on the dormant file.

I am to request that the aforesaid instructions may be brought to the notice of all Courts subordinate to you for their information and guidance.

Yours faithfully

D. HOTA

Registrar

No. 1533—IX-27/74

From

Shri D. Hota, B.L.,  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State

Dated Cuttack, the 6th March 1976

Subject—Noting of the detailed particulars of Criminal Court deposits and the amount along with date of refund of fine after acquittal in the General Cash Book (A) 16 and the Fine Register (A) 17 respectively.

Sir,

I am directed to say that the Court have had under consideration the question whether detailed particulars of the Criminal Court deposit as also the amount and date of refund of the amount of fine after the conviction is set aside by the appellate Court should be shown in the General Cash Register and the Fine Register respectively.

The District and Sessions Judges of the State were consulted and the Court agree with the majority view that—

- (1) the amount of fine refunded to the accused along with the date of refund should be entered of the "Remarks" column of the Register of criminal fines (A) 17 in cases where the conviction is set aside by the appellate Court.
- (2) the Daily total of Criminal Court deposits should be carried over to the General Cash Register (A) 16 and it is not necessary to show the details of the criminal fines in the cash-book.

I am to request that the aforesaid instructions should be strictly adhered to.

Yours faithfully

D. HOTA  
Registrar

No. 2129—XLV-A-5/76

From

Shri R. N. Panda; M. A., LL. B.,  
Special Officer of the High Court of Orissa

To

All the Sessions Judges of the State  
Dated Cuttack, the 3rd April 1976.

Sir,

I am directed to refer to item No. 29 of the proceedings of the District Judges' Conference held on the 15th January 1976 and the 16th January 1976 and to say that it was the consensus of opinion of all the Sessions Judges of the State that a yardstick should be prescribed for bail matters heard by the Assistant Sessions Judges and the Chief Judicial Magistrates. It was decided in the said Conference that the yardstick for disposal of a miscellaneous cases per day fixed for Sessions Judges will apply to the Assistant Sessions Judges and the Chief Judicial Magistrates.

The Court after careful consideration concur in the said decision and direct that hereafter in assessing the outturn of the Assistant Sessions Judges and Chief Judicial Magistrates the yardstick aforesaid may be kept in view.

Yours faithfully

R. N. PANDA  
Special Officer

No. 2151—IX-9/76

From

Shri D. Hota, B.L.,  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State  
Dated Cuttack, the 3rd/4th April 1976

Subject—Assignment of page marks and recording of certificate by the Presiding Officers in the front page of all the registers maintained in the subordinate Civil and Criminal Courts.

Sir,

I am directed to refer to the proceeding of the conference of the District and Sessions Judges held in January, 1976 under item No. 6 of the agenda and to say that the question whether the registers other than the Account Registers, need be page marked came up for consideration before the conference. It was decided that all registers maintained by the subordinate Civil and Criminal Courts should be pagemarked.

The Court concur in the said decision and direct that the pages of all the registers, maintained in the subordinate Civil and Criminal Courts should be numbered. They further direct that the concerned Presiding Officer should append a certificate on the front page of the register as to the number of pages the register contains.

I am accordingly to request that the above instructions may be brought to the notice of the Courts subordinate to you for their information and guidance.

Yours faithfully,

D. HOTA

Registrar

No. 2406—XLIXD-13/76

From

Shri D. Hota, B.L.,  
Registrar of the High Court of Orissa

To

All the Sessions Judges of the State  
Dated Cuttack, the 8th April 1976

Subject—Item No. 40 of the Proceedings of the District Judges' Conference, 1975 Revision of the instructions issued in the Court's G. L. No. 1 of 1973 (Crl.).

Sir,

I am directed to refer to the instructions issued in G. L. I. of 1973 (Criminal) and item No. 40 of the District Judges' Conference held in January 1976 and to say that the question whether a case, in

which the accused persons have absconded after examination of some of the witnesses, are to be placed on the dormant file was discussed in the Conference. It was decided that such cases should be taken to the dormant file and G. L. 1/73 (Criminal) should be accordingly revised. The Court concur in the decision taken in the Conference and in partial modification of G. L. 1 of 1973 direct that even cases where accused persons have absconded after examination of some of the witnesses and other conditions of the aforesaid general letter are fulfilled should be placed on the dormant file.

2. In this connection the Court wish to observe that in such cases the accused persons initially appear and some progress is made by examining the witnesses and the cases are shown in the trial file and consequently included in the periodical returns. After the accused persons abscond and the cases are placed on the dormant file they have to be necessarily excluded from statistical returns from the date they are transferred to the dormant file. This fact should therefore be indicated in the remarks column of the periodical returns so as to avoid any discrepancy in the compilation of such returns.

3. I am accordingly to request, that the above instructions may be brought to the notice of the Courts subordinate to you for their information and strict observance in future.

Yours faithfully,

D. HOTA

Registrar

No. 2645—XLIXD-14/76

From

Shri D. Hota, B.L.,  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State  
Dated Cuttack, the 20th April 1976

Subject—Entry of the particulars of the cases placed in the dormant file in the Register of cases decided in Form No. (R)18.

Sir,

I am directed to refer to the proceedings of the Conference of the District and Sessions Judges held in January 1976 under item No. 32 of the agenda and to say that the question whether cases placed in the dormant file should be entered in the Register of cases decided in Form (R)18 came up for discussion before the conference,



It was decided that cases placed in the dormant file need not be entered in the register of cases decided. Placing a case on the dormant file has neither the effect of acquittal nor discharge. Therefore, such a case cannot be deemed to have been disposed of and decided so as to enter it in the Register of cases decided (R)18. The Court have been pleased to concur in the aforesaid decision and accordingly direct that the cases placed in the dormant file need not be entered in the Register of cases decided in Form No. (R)18.

The above instructions may kindly be brought to the notice of all the subordinate Criminal Courts in your sessions division for their information and guidance.

Yours faithfully

D. HOTA

Registrar

No. 2647—XXIX-35/60

From

Shri D. Hota, B.L.,  
Registrar of the High Court of Orissa.

To

All the District and Sessions Judges of the State  
Dated Cuttack, the 20th April 1976

Subject—Item No. 42 of the proceedings of the District Judges' Conference held in January 1976.

Sir,

I am directed to refer to item No. 42 of the proceedings of the District Judges' Conference held in January 1976 wherein it was decided that Chief Judicial Magistrates may be allowed to avail of a portion of the vacation when the Sessions Judges or Additional Sessions Judges or Assistant Sessions Judges are available in the station. So far as Judicial Magistrate are concerned, the existing practice would continue. The staff working in Criminal Courts may be permitted to avail of a portion of vacation with the prior permission of the District and Sessions Judge.

2. The Court concur in the said decision

3. The Court direct that the District and Sessions Judges may permit the Chief Judicial Magistrates working under them to avail of a portion of the vacation when the Sessions Judges or Additional Sessions Judges or Assistant Sessions Judges are available in the station.

I am to request that the aforesaid decision of the Court may be followed in future.

Yours faithfully,

D. HOTA

Registrar

No. 2802—IX-10/76

From

Shri D. Hota, B.L.,  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State  
Dated Cuttack, the 23rd April 1976

Subject—Extension of the time limit for submission of Annual Inspection Notes of their own Courts by the Presiding Officers.

Sir,

I am directed to refer to item No. 17 of the proceedings of the Conference of the District Judges held in January 1976 on the above subject and to say that in the Conference it was the consensus of opinion of all the District Judges that the time limit for submission of Annual notes of Inspection of their own Courts by the Presiding Officer both on the Civil and Criminal side shall be 15th February of every year. The Court concur in the above view and direct that henceforward, the Presiding Officers of the Civil and Criminal Courts shall submit annual notes of inspection of their own Courts by the 15th February of every year.

2. Doubts seems to have been entertained in some quarters whether the Presiding Officers can utilise working days for the purpose of Annual inspection of their own offices. There is no rule prohibiting the Presiding Officers to utilise the working days for holding inspection of their offices. Annual inspection ought to be quite thorough and exhaustive. The Court realise that it is not possible for the Presiding Officers to do such inspection on working days after performing normal judicial business. They observe that the Presiding Officers of subordinate Civil and Criminal Courts may utilise working days for annual inspection of their own offices. They should indicate the time taken in holding the annual inspections of their offices in the monthly and quarterly statements. The District and Sessions Judges should however on perusal of the notes of inspection satisfy themselves that in doing such inspection the Presiding Officers actually devoted the time indicated in the statements. The time spent by the Presiding Officer for the purpose should be taken in to consideration while assessing their outturn.

3. I am to request that the aforesaid instructions may be brought to the notice of all the Courts Subordinate to you for their information and guidance.

Yours faithfully,

D. HOTA  
Registrar

No. 2804—XLV-A.4/76

From

Shri D. Hota, B. L.,  
Registrar, of the High Court of Orissa,

To

All the District and Sessions Judges of the State.

Subject—Observation of the second Friday of the month as administrative day by the District and Sessions Judges and the Chief Judicial Magistrates.

Dated Cuttack the 23rd April, 1976.

Sir,

I am directed to refer to Court's letter No. 12491, dated 19-8-1975 in which the Court observed that in view of the increased office hours in consequences of the acceptance of the Fourth Pay Committee of 1974 it was not necessary to set apart the Friday preceding the second Saturday of the month as an Administrative day. In the last District Judges' Conference the question of relaxation of the yardstick of disposal of cases by the District and Sessions Judges came up for discussion. It was the consensus of opinion that instead of effecting any relaxation in the yardstick the District and Sessions Judges should be given facility of observing the second Friday of the month as an administrative day. The Court after careful consideration have been pleased to concur in the said decision. The Court have further decided that the same facility should also be extended to the Chief Judicial Magistrates of the State.

The Court, accordingly, direct that henceforward the District and Sessions Judge as well as the Chief Judicial Magistrates of the State should observe the Friday preceding the second Saturday of the month as an administrative day. This supersedes the instructions issued in Court's letter No. 12491, dated 19-8-1975.

Yours faithfully,

D. HOTA,  
Registrar.

No. 2957—

From

Shri D. Hota, B. L.,  
Registrar of the High Court, of Orissa,

To

\*All the District & Sessions Judges of the State..

Dated Cuttack the 30th April, 1976.

Subject—Entry of particulars regarding the number of witnesses examined in Sessions cases in the Criminal diary.

Sir,

I am directed to refer to the proceedings of the Conference of the District & Sessions Judges held in January, 1976 under item No. 39, of the agenda and to say that the question of the necessity of entering the particulars of the witnesses in the criminal diary in respect of sessions cases, as is being done in criminal cases in pursuance of the instructions issued in the Court's General letter No. 6 of 1962 (Criminal), came up for discussion before the Conference.

In Court's Circular letter No. 3033, dated 9-4-1975, the Court have directed that the Chief Judicial Magistrates and Assistant Sessions Judges should maintain one diary in respect of sessions and criminal cases dealt with by them. In the fitness of things therefore the instructions issued in G. L. 6, of 1962 in the matter of noting the particulars of witnesses should be followed in respect of sessions cases.

The Court after careful consideration direct that the Sessions Judges and Assistant Sessions Judges, in the criminal diary maintained by them should in respect of sessions cases also indicate the running total of number of witnesses in attendance, number examined and discharged and the number declined and discharged in separate column.

I am to request that the aforesaid instructions may be brought to the notice of all the Additional and Assistant Sessions Judges working under you for their information and guidance.

Yours faithfully

D. HOTA

Registrar

No. 2959/XI-5/76.

From

Shri D. Hota, B. L.,  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges  
of the State.

Dated Cuttack, the 30th April 1976

Subject—Question whether there has been appreciable reduction of  
embezzlement cases pending in the Courts of the Chief Judicial  
Magistrates and Judicial Magistrates ..... Item No. 26, of  
the Proceedings of the District Judges, Conference, 1975

Sir,

I am directed to refer to item No. 26 of the proceedings of the District Judges' Conference held on 15th and 16th January 1976 on the above subject and to say that on a review of the statement relating to the embezzlement cases pending in the courts of the Judicial Magistrates it transpired that many old cases were pending in different Courts. It is needless to emphasise that embezzlement cases should have received due attention of the Courts concerned and they should be disposed of expeditiously as possible. The Court desire that all Judicial Magistrates of the State should make sincere efforts to clear up the year-old pendency of embezzlement cases without any further delay.

(2) I am further directed to say that hereafter in the quarterly statement of embezzlement cases only the cases in which State is a party should be included and those started by private parties be excluded.

(3) I am, therefore, to request that the above instructions may be brought to the notice of all the Subordinate Criminal courts working under you for their information and guidance.

Yours faithfully,

Sd. D. HOTA

Registrar

No. 4554(22)

From

Shri D. Hota, B. L.,  
Registrar of the High Court of Orissa

To

All the District Judges of the State

Dated Cuttack, the 9th July, 1976

Subject—Preservation of the Register of cases under the House Rent  
Control Act.

Sir,

I am directed to refer to the minutes of the proceedings of the Conference of the District Judges of 1975 under item No. 14 of the

agenda on the above subject and to say that after careful consideration the Court are pleased to direct that the period of preservation of the Register of cases under the provisions of the House Rent Control Act should be for a period of 25 years.

I am, to request that the aforesaid instructions may be brought to the notice of all the Courts subordinate to you for their information and guidance.

Yours faithfully

Sd. D. HOTA

Registrar

No. 4572(8)—IX-18-75.

From

Shri B. N. Patnaik, LL. M.,  
Ind. Deputy Registrar of the High Court of Orissa.

Dated Cuttack, the 15th June 1976

To

The District and Sessions Judge,  
1. Cuttack-Dhenkanal, Cuttack  
2. Ganjam-Boudh, Berhampur  
3. Sambalpur-Sundargarh, Sambalpur  
4. Balangir-Kalahandi, Balangir  
5. Mayurbhanj-Keonjhar, Baripada  
6. Koraput, Jeypore  
7. Balasore,  
8. Puri

Subject—Methods adopted for preservation of valuable records and documents in the District Record Room.

Sir,

I am directed to forward herewith a copy of "Hints on Storage and Preservation of Records" received from the Superintendent of Orissa State Archives, Bhubaneswar and to request that the instructions contained therein may be followed as far as possible for the preservation of old and valuable records and documents in the District Record Room.

Yours faithfully,

B. N. PATNAIK

Ind Deputy Registrar

## A NOTE ON PRESERVATION OF RECORDS IN A SCIENTIFIC MANNER

Deterioration of papers is caused by the following factors:—

- (i) Chemical Changes brought about by moisture and atmospheric gases.
- (ii) Acid fumes condensing on dust particles
- (iii) Ordinary wear and tear

Records are mainly made of paper and ink. The quality of paper determines the longevity of the records. Excessive acidity in the ink used results in discolouration of writing within a short space of time. It is therefore, necessary, that special paper and ink should be used for records intended for long preservation. It is found by practice that hand-made paper lasts for much longer time than the mill-made paper. The Indian Standard Institution has prescribed special inks for permanent records. So, hand-made paper or paper with little chemical processing and ink recommended by Indian Standard Institution should be used for records meant for permanent or long preservation.

Climatic conditions, i.e. temperature and humidity, affect the condition of records stored in Record Rooms. High temperature, too high or too low humidity, dust and acidic gasses in the atmosphere and direct sun light are very injurious to the records. Heat causes brittleness in records. Leather and boards used for binding of records in volumes are desiccated under similar conditions. Presence in excessive humidity in the air lends to the cause the paper to crumple and become soggy. Extreme variation in temperature in winter and summer also affects flexibility of paper and binding materials. Hot and humid condition of the air flowers growth of pests like book-worm, silver-fish cockroaches termites etc. The atmospheric gasses, especially sulphur dioxide or sulphurated hydrozen. in the air combined with dust particles on the records of the books cause deterioration of the strength of paper and helps propagation of midew and other pests. Direct sunlight is also injurious to the records. It causes brittleness of paper and discolouration of ink.

### CONDITIONS CONDUCTIVE TO PRESERVATION OF RECORDS AND POSSIBLE MEASURES TO BE TAKEN FOR THE PURPOSE

To avoid the above factors injurious to records stored in record room conditions should be as much scientific as the circumstances may permit. All possible precautions should be taken to see that the records are exposed to the possible minimum effects of the above noted conditions injurious to the preservation of records.

Causes of deterioration of paper.

Paper and ink for permanent records.

Effect of temperature, humidity, dust, etc. on records

Direct sunlight causes brittleness of paper.

**Heat and humidity :**

It has been found by scientific experiments that temperature and relative humidity ideal for preservation of records are 20°C—25°C (72°—78°F) and 45—55% respective. Control of temperature and relative humidity can only be possible in air conditioned Record Room, but it is not possible in an ordinary Record-room, so some dehydrating chemicals like, silica Jel or anhydrous Calcium Chloride are use for reducing excessive humidity of record room 4-5 lbs silica jel is sufficient for a room of about 600—800 cubic feet. The Chemical may be spread in dishes and kept in different places in the room. It gets Saturated in about 3 or 4 hours requiring fresh chemical to replace it. The used silica jel can be reactivated for further use by heating.

**Proper ventilation of Record room :**

Since stagnant air is very injurious to the health of records arrangements for free circulation of air in the Record room should be made. There would be cross windows for facilitating free flow of air. The racks should be so placed that they are not be exposed direct current of air or direct sunlight. The racks should be placed in the space between two pairs of windows on two opposite walls so that they may be well ventilated without being exposed to direct air or sunlight. Open racks are preferable to closed almirahs for storage of records.

**DAMPNESS**

Dampness not only accelerates decay of organic materials but also provides favourable conditions for propagation of mildew and other pests like, Silver-fish, termite. It is, therefore essential to see that the Record-room is not damp and its walls and floor have no crevices. Painted iron racks are preferable to wooden racks. The racks should be placed a little away from the walls. All precaution should be taken to eliminate damp and dark pockets where insects breed. Racks should be provided with adjustable shelves so that spacing of shelves can be adjusted according to requirements. Cracks in the walls or floor should be inspected; they should at once filled up to avoid breeding of insects in them.

**INSECTS AND PESTS INJURIOUS TO RECORDS.**

Presence mildew or mold in books and volumes is a common feature in hot and humid climate. These micro-organic cause stains on the paper. They generally appear when books and volumes are kept tightly pressed. It is, therefore, necessary that books and volumes should be loosely shelved to avoid growth of mildew. Proper ventilation and control of humidity are generally deterrant to the growth of mildew. But when there was already been mildew infestation it can be eliminated by means of Thymol fumigation.

Ordinary way of reducing humidity in the record room.

Proper position of racks in the record room.

Steps for elimination of dampness is very necessary.

Measures to prevent growth of mildew.



## Cockroaches and Silver-fish

Cockroaches and silver-fish to considerable damage records. They are, however, surfact feeders and are found on damp dark walls in warm and humid climate. As a preventive against their attacks Nephthalene bricks should be placed every six feet on the shelves. Occasionally the shelves and dark damp spaces or cracks in walls or floors should be spread with poisonous powder like D. D. T. Sodium flouride or commercial insecticides. Precaution should be taken to see that records are not sprayed. The records should be taken out before the shelves are sprayed with poisonous insecticides.

## BOOK-WORMS, BOOK-LICE AND WHITE ANTS

Besides, cockroaches and silver-fish there are two other dangerous common enemies of books and records, they are book-worms and book-lice or psocides. They generally start in the spine and joint between the boards of the bound volumes of books and proceed on with their work of destruction without being detected, till the next stage when they attack the pages in the volumes and cause small pinholes in them. It is very difficult to get rid of them excepting by method of fumigation. White ants are the most destructive of all pests. It is always safe to adopt measures to check their breeding in the building where the records are stored. For this purpose or joints, cracks and crevices in the floor or walls should be filled with cement and concrete, wood works in contact with the walls should be painted with creasote oil at least twice a year. The legs of almirahs or racks should be painted with coaltar or greasote oil at least twice a year, especially just before the rains start. All dark corners of the record room should be sprayed with white arsenic or D. D. T. Powder occasionally to be on the safe side.

## DUST

Accumulation of dust on the records is one of the factors causing their deterioration. therefore, the records should be regularly dusted. Hand dusting with a piece of cloth is not very helpful, because the dust particles remain floating inside the rooms and they again settle down on the records after sometime. Regular dusting with the help of electric vacuum cleaners is the best for the purpose.

Floor of the record room should be kept very neat and clean and swept regularly. Unwanted records and papers should be kept in bags or baskets but should not be heaped in corners or other parts of the room. It is easy to check infestation of different insects and pests among the records in the Record room which is kept neat and clean and well-lighted and ventilated.

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Preventive against cockroaches and silver-fish attacks.

Precautionary measure against attack of book-worms, book-lice and white ants.

Regular dusting of records is necessary for their proper preservation.

Record room should be kept neat and clean.

**CARE OF FILES :**

Collection of files should be kept tied between 2 pieces of ply wood boards of slightly larger size than the files. By this system papers in the files are kept straight. The bundles of files tied between ply-wood boards should be kept straight, horizontally, but if they are kept vertically, care should be taken to see that they are in upright position, not leaning against others.

The records should be handled with care, any damage to records noted should be repaired immediately. With the first sign of infestation of the records steps should be taken for elimination of the infestation pests or insects. Strict Vigilance should be kept against any out break of fire in the Record Room. There should be fire fighting arrangements to meet any emergency as precaution against out break of fire in the Record Room. Smoking inside or near the record room is strictly prohibited. The electric wire in the walls should run through conduits. No inflammable materials should be kept in the record room.

**FUMIGATION :**

Fumigation with para-dicholore-benzene is one of the most effective means of getting rid of infestation in ordinary Record-room, through vacuum fumigation with ethylene oxide with carbodioxide (1-9) is the most ideal way. Paradicholore-benzene fumigation can be easily made in an air tight steel almirah with perforated shelves. Records or books for fumigation are kept on the shelves in inverted (V) shape with the bound part for apex. Paradicholore-benzene is placed in a glass jar at the bottom of the fumigation chamber. The Chemical being volatile vaporises at ordinary temperature. The records or books kept in the chamber are saturated with the gas in about a week. The pests and worms inside the books or volumes are all killed. A second fumigation after three weeks of the first fumigation renders the volumes or books completely free of all infestations. One pound of the chemical is required for 10 cubic feet of space.

**REHABILITATION OF OLD RECORDS****Flattening and Minor Repairs :**

Much damage is done to records due to folding of papers or crumpling of edges. Folded papers should be flattened by application of heat by means of electrical iron on the points where papers is folded. Moderate heat should be applied after wetting the folded portion.

After flattening minor damages into the records should be attended to. Small tears should be repaired with hand made paper. In case of papers that are very old and frail and have become brittle they have to be reinforced with tissue paper or they have to be reinforced the papers it does minimum interference with the legi-

Collection should be kept bound between two ply wood boards.

Precaution against sudden out break of fire.

Lamination

bility. Lamination is best done by a laminating machine but it can also be done by application of moderate heat on the acetate foil placed on the record with a tissue paper in between the foil and record. Since acetate foils of the required quality are not available in India. Lamination cannot be undertaken in ordinary record room. Tissueing by means of good quality tissue, paper or Japanese tissue paper is possible in all Record rooms. Gum used for the purpose has to be specially made according to a formula (vide enclosure No. 1).

Old files can be best preserved by binding them into volumes. In such cases there is less chance of damage by use than when the papers are kept loosely in the files.

#### ENCLOSURE No. II

##### Procedure :

Water is kept for boiling in a shallow brass vessel (degchi). When the temperature of water has risen to about 90°C. maida powder is slowly added to the hot water with constant and vigorous stirring so that formation of nodules of maida in water is avoided. After the addition of maida is complete (5 lbs.) of maida may take approximately 30—40 minutes) lead carbonate is added to the paste while stirring. Then oil of cloves and saffrol are added, well mixed with the paste and the preparation of the paste is completed by cooking over fire for 6—8 minutes only.

#### FORMULA AND PREPARATION OF THIN STARCH PASTES

##### FORMULA

Starch (Maida)	1½	lb.
Water	10	lb.
Oil of Cloves	1¼	Oz.
Saffrol	1¼	Oz.
Lead carbonate	2½	Oz.

(Lead carbonate can be replaced by barium carbonate)

#### FORMULA AND PREPARATION OF STARCH (MAIDA) PASTE FOR GENERAL REPAIR AND BINDING WORK.

##### FORMULA

Starch	Pt. by weight
Water	4—5 Pts. by weight
Copper sulphate	2—5—3% of starch
Glycerine	1-2% of starch

**PREPARATION :**

Small quantities of starch (miada, are mixed with water (requisite quantity) taken in a shallow brass vessel (degchi) and made into a paste taking care that no lumps or nodules are formed at the base. After the requisite quantity of starch has been so mixed copper sulphate dissolved in minimum quantity of water 10 c.c. for every 5 gm. is added to the paste. The paste so prepared is then cooked on fire or electric stove till it starts frothing. During cooking paste is kept well stirred so that there may not be any charring of starch at the bottom due to over heating Glycerine is mixed to it at this stage and the paste well stirred.

**HINTS ON STORAGE AND PRESERVATION OF RECORDS :**

1. Store all records in well-ventilated rooms which should be kept clean and free from dust and Cob-webs. Damp and stagnant air is harmful for records as they favour growth of mildews (Fungus).
2. Records should not be stored loose. Loose sheets should be kept in docket covers and put inside carton boxes or in bundles tied between two pieces of 5-ply-boards. The sizes of the boards should at least be 1" more than those of the records so that the edges of the records do not get frayed by the logline used in tying the bundles.
3. Steel shelves are preferable to wooden ones which are susceptible to attack by insects. Shelves and almirahs should be kept at least 15 C.M. away from the walls, floors and ceiling. There should be adequate space between them for proper ventilation and cleaning.
4. Sunlight, direct or diffused, is harmful for records. Windows in Record Rooms should be provided preferable with light yellow or saffron coloured thick screens. They should also be provided with wire net to prevent pilferage or sabotage.
5. Excessive heat, humidity and dryness are harmful for records. Temperature and Relative humidity between 22°C-25°C (72°F-78°F) and 45% to 55% respectively are ideal for record preservation. These ranges can be maintained only by air-conditioning the stock rooms for 24 hours. If, however complete air-conditioning, is not possible the stock rooms should have adequate arrangements for air-circulation.
6. As a protection against fire, carbon dioxide and foam type fire extinguishers should be provided in the record rooms. Electric wiring in the Record Room should be through conduit pipes staff should be trained to handle fire fighting equipment.
7. Naphthalene in 1 lb. brick form or balls of naphthalene tied in a cloth should be kept on the shelves in the Record Rooms. Naphthalene vapour works as a deterrent to insects.

8. Water damaged records and books should not be dried in the sun nor should they be dried by placing them near fire. They should be dried in the shade preferable under a fan and fumigated by thymovapur before storage. Prints and maps having coating of varnishes should not be exposed to thymol vapour.

9. Repair of damages or dilapidated books and Mass should be undertaken only under the guidance of experts. Repair done by untrained staff may damage them beyond recovery.

10. No. chemical or insecticide should be sprayed on the records, document books, etc., for protection against insect damage, fumigation and spraying of records and record room should be undertaken under the guidance of experts. Chemical treatment or spraying by untested chemicals/insecticides/Commercial products may damage the records permanently.

11. Dusting the shelves or stacks with dusters suspends dust particles in the room which will settle down after some time. Such dusting should be avoided. Special dusting should be introduced in all Record rooms for proper preservation of the records, books, Mass., etc., in their custody. The dusting is to be done in the following manner. Bundles/Vols., etc., of records should be taken out from the shelves which should then be cleaned by rubbing with slightly wet cloth so that all dust on the shelves is removed. The shelves are then allowed to dry. Meanwhile the records taken out from the shelves should be dusted with dry cloth and when the shelves are completely dry, the records, etc., should be replaced on the shelves. Special dusting should be undertaken at least twice annually.

12. Smoking and taking of food in the stack area should not be allowed. Entry in the stacks should be restricted and limited only to those who are connected with the work.

No. 5135—X-2/76

Shri D. Hota, B. L.,  
Registrar of the High Court of Orissa

To

All the Sessions Judges of the State  
Dated Cuttack, the 30th July 1976

Subject—Forwarding of police case diary along with the records when called for in Criminal revisions.

Sir,

I am directed to say that according to the existing practice whenever the original records of a case are called for in connection with Criminal revisions filed in the High Court, the Police case diary

is forwarded along with the records. During the course of hearing of the Criminal revisions, the Court rarely refer to the papers contained in the police case diary. The Court, therefore, do not consider it desirable that invariably in all cases the Police case diary should accompany the original records of the case when they are called for in connection with Criminal revisions. They, accordingly, direct that in the absence of specific direction to the contrary the Police case diary should not be forwarded along with the original records of the case called for in connection with Criminal revisions. They further direct that with a view to prevent the loss or misplacement of Police case diary the Judicial Magistrate concerned while forwarding the original records of the case should ensure that the Police case diary is carefully detached from the record and preserved in his office with an order sheet attached to it wherein a specific order should be recorded to the effect that the original records have been forwarded to the Court in connection with particular Criminal revision. The order sheet should also be placed before the Judicial Magistrate from time to time till the original records of the case are received back and soon after the receipt of the records, the Police case diary should be kept in the appropriate file of the record.

I am accordingly to request that the above instructions should be strictly followed in future.

Yours faithfully

D. HOTA

Registrar

No. 5469—XLIXD-4/76

From

Shri D. Hota, B. L.,  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State  
Dated Cuttack, the 12th August 1976

Subject—Issuance fresh escort requisition in lieu of making endorsements in the command certificate in the event of adjournments of Criminal cases.

Sir,

I am directed to say that the Inspector-General of Police has brought it to the notice of the Court that some of the Sessions Judges of the State have been making entries in the command certificates of the escort parties asking them to report on the next date when the cases are adjourned either to next month or by few days. This procedure, it is stated, puts both the Court and police into difficulties.

It so may happen that the same escort party personnel are not available on the next date on account of their engagement in other duties, transfer sickness, etc. Unless the command certificate reaches the Reserve Inspector in time and he takes notes of the date of adjournment and also deposes the escort party, there is possibility of missing the date resulting in failure to depute an escort party.

2. All the Sessions Judges of the State were consulted in the matter. The unanimous opinion of all the Sessions Judges is that a fresh requisition for escort party may be issued in the event of the trial of a case being adjourned to a longer date. In the case of day to day trial it is not necessary to issue any fresh requisition and necessary endorsements may be made on the command certificate of the same escort party to produce the accused persons and to attend the Court from day to day. The view expressed by the Sessions Judges is not in conflict with the provision contained in Rule 535(a) of the Police Manual and is also based on expediency and general convenience. The Court are accordingly pleased to observe that when a Criminal case is adjourned to a longer date the Court concerned should issue a fresh requisition for escort party to attend the Courts in course of a trial at least 74 hours before the date fixed as provided under Rule 535(c) of the Police Manual, Volume-I. In the cases of day to day trial endorsements may be made on the command certificate of the escort party to attend the Court on the day following.

3. I am accordingly to request that the aforesaid instructions may be brought to the notice of all the subordinate Criminal Courts in your Sessions Division for their information and guidance.

Yours faithfully

D. HOTA

Registrar

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No. 6630—IX-11/75

From

Shri D. Hota, B. L.,  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State  
Dated Cuttack, the 21st September 1976

Subject—Maintenance of a Separate Receipt Register for avoidance of delay in securing the surrender of the accused on bail and to recommit them to jail to undergo the sentence after disposal of the appeals or revisions.

Sir,

I am directed to refer to the Court's letter No. 65—IX-51/64, dated the 5th January 1965 on the above subject wherein instructions were issued that the Subdivisional Judicial Magistrate or the lower

Court receiving a copy of the order of confirmation or modification of the lower Court from the Court of appeal or revision should be personally responsible for prompt action to be taken in securing the surrender of the accused and his commitment to the jail. In order to effectively scrutinise these matters the orders received from the appellate Court should be entered in a Special Receipt Register which should be maintained under the personal care and supervision of the Magistrate concerned.

A question has been raised whether in respect of cases in which the appellate Court passes an order for releasing the accused under section 3 of the Probation of Offenders Act or when the appeal is allowed in full and the sentence is set aside, any entry is required to be made in the Separate Receipt Register.

Enquiries from the District Judges have shown that in some judgements such particulars are not being mentioned in the Separate Receipt Register while in others the prevalent practice is not to mention the particulars in the said register. The Court after careful consideration of the matter direct that it is not necessary to make any entry regarding the order passed by the appellate Court for releasing the accused under section 3 of the Probation of Offenders Act or allowing the appeal in full and thereby setting aside the sentence in the Separate Receipt Register. It is sufficient if the aforesaid particulars find place both in the Register of Warrant of Imprisonment (R)5 Criminal and the Register of Bail Orders (R)24 Criminal.

I am to request that the above instructions may be strictly followed in future.

Yours faithfully

D. HOTA

Registrar

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Copy of letter No. 7987—XXIX-54/76, dated Cuttack, the 14th November 1976 from Shri A. C. Das, Joint Registrar of the High Court of Orissa, addressed to the District and Sessions Judges, Puri.

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Subject—Holding of Mobile Court during night hours

Sir,

With reference to your letter No. 3692, dated the 21st September 1976 on the above subject, I am directed to refer to Court's memo. No. 5050, dated the 1st June 1974 forwarding a copy of Court's letter No. 5049, dated the 1st June 1974 to the Inspector-General of Police, Orissa and to say that in view of the assurance given by the Superintendent of Police, Bhubaneswar in his D. O. No. 699, dated the 7th September 1976 for providing adequate protection to the Judicial Magistrates holding mobile Court between 6 P.M. to 9 P.M., the Court have no serious objection to Judicial Magistrates of Bhubaneswar holding mobile Court during those hours.



The Court, after due consideration of the difficulties pointed out in your letter, are pleased to observe that the holding of mobile Courts during night hours ought not to be a regular feature and the Judicial Magistrates detailed for mobile Court duty may be allowed to leave the Court after lunch interval. It is only in exceptional circumstances, when the District Judge and in his absence the Chief Judicial Magistrate is so satisfied, Judicial Magistrates may be asked to attend to Mobil Court duty beyond Court hours. In order, however, that the Judicial Magistrates are not put to any difficulty, the concerned Superintendent of Police may be asked to fix up a time schedule in consultation with the District Judge or in his absence with the Chief Judicial Magistrate and make timely arrangements for providing vehicles and the requisite police staff so that the Judicial Magistrates are not subjected to work in odd hours of the night or to any sort of difficulty.

Yours faithfully

A. C. DAS

Joint Registrar

No. 273(9)—XLIXD-27/76

From

Shri D. Hota, B.L.,  
Registrar of the High Court of Orissa of Cuttack

To

The District and Sessions Judge  
Dated Cuttack, the 11th January 1977

Subject—Delay in disposal of sessions cases due to want of material objects and chemical Examiners' Report.

Sir,

I am directed to forward herewith a copy of letter No. 53937-P—34-14/75, dated the 26th November 1976 from the Under-Secretary to Government of Orissa, Home Department on the subject noted above and to say that the Judicial Magistrates working under you may be instructed that henceforth they should send the material objects for chemical examination to the Director, State Forensic Science Laboratory.

Yours faithfully

D. HOTA

Registrar

Copy of letter No. 53937/P-34-14/75 from Shri A. K. Mohapatra, O.A.S. under Secretary to Government, Home Department, Bhubaneswar, addressed to the Registrar, Orissa, High Court, Cuttack.

Subject—Delay in disposal of Sessions cases due to want of material objects and Chemical Examiner's Reports.

I am, directed to say that instances of delay in disposal of sessions cases for want of material objects and Chemical Examiner's report in time have come to the notice of Government. Delay in giving expert opinion can be minimised if the Subdivisional Judicial

Magistrates send the exhibits to the Director, State Forensic Science Laboratory promptly. The Inspector-General of Police has already issued instructions that Visceras should be sent for Chemical Examination immediately after seizure without waiting for submission of charge-sheet.

It is requested that if there is no objection, instructions may kindly be issued to Subdivisional Judicial Magistrates to send the exhibits to the Director of Forensic Science Laboratory promptly on receipt from Police.

No. 2372—LVII-45/76

From

Shri D. Hota, B.L.,  
Registrar of the High Court of Orissa

To

The District and Sessions Judges of the State  
Dated Cuttack, the 28th March 1977

Subject—Payment of outstanding dues against the judicial Magistrates to serologists for analysis for medico legal cases.

Sir,

In forwarding herewith copy of letter No. 151-F.S.L., dated the 12th January 1977 from the Director and Chemical Examiner, Government of Orissa, State Forensic Science Laboratory, Bhubaneswar to the address of the Subdivisional Magistrate along with its enclosure on the above subject, I am directed to say that the procedure for payment of fees relating to chemical and serologist examination of material objects indicated in the aforesaid letter should be followed by the Courts of the Judicial Magistrates in the State. This may be brought to the notice of the Subordinate Courts working under you for their information and guidance.

Yours faithfully

D. HOTA  
Registrar

State Forensic Science Laboratory, Bhubaneswar

No. 151/FSL dated 12-1-1977

From

Director & Chemical Examiner  
Government of Orissa  
State Forensic Laboratory,  
Bhubaneswar-10, Orissa.

To

The Subdivisional Magistrate

Subject—Examination of medico-legal exhibits Serologist to the Government of India, Calcutta payment of his examination fee.

Sir,

As you are aware, for the examination of medico-legal exhibits by the Serologist at Calcutta fee of Rs. 25 is to be paid to him for each case. According to the existing practice this amount was being

deposited in the Treasury by Challan in his favour under the appropriate Government of India head and the challan was being sent to him. The Serologist, however, in a very recent communication in his letter No. 40-1/76/SER/4003, dated 15-12-1976 has intimated that a new procedure is to be followed for payment of his dues with effect from 1-10-1976. A copy of the annexure received from him and which is self-explanatory is enclosed herewith. Out of the two procedures outlined therein, since the payment of the dues are met from the allotments placed under your disposal, it is considered that it will be more expedient and convenient if recourse is taken to the second method wherein payments have to be made directly to the pay and Accounts Officer, Government of India, Ministry of Health & F. P., Calcutta through Bank Draft of Rs. 25 for each case payable at any Bank at Calcutta preferably the Bank of Baroda, Calcutta.

It is, therefore, requested that for all dues since 1-10-1976 and prior to it towards examination fees for cases referred to this laboratory exhibits of which have been sent to the Serologist under intimation to you, payments be made in the manner now prescribed.

The Serologist, Government of India has been pointing out from time to time about the non-payment of his dues for cases of this State and the consequent adverse audit objections. Since the financial year is coming to a close very soon, it is requested that all outstanding dues may please be cleared as early as possible.

Yours faithfully

(Director)

Copy of letter No. 40-1/76/SER/4003, dated 15-12-1976 of the Serologist & Chemical Examiner to the Government of India.

The Accounting system in the Ministry of Health & Family Planning, Government of India to which this is a subordinate office, has been departmentalised w.e.f. 1-10-1976. The specified Pay and Accounts Officer of the office is the "Accounts Officer, Pay and Accounts Office, Ministry of Health and Family Planning, Calcutta" and the 'Bank' specified for the transactions of this office is the 'Bank of Baroda, India Exchange place Branch'. Since 1-10-1976 the system of book adjustment with any other department of Central Government as well as of State Governments have been stopped. In the system of departmentalisation of Accounting the provision of payment of fees for analysis of medico-legal cases and also for all receipts due to this office i.e. the Ministry of Health and Family Planning, Government of India by depositing cash in the Treasuries has not been abolished, but in that case i.e., in case of paying the dues of this office through Treasury Challans, as is being due by the Judicial Authorities of the State Government of Orissa at your advice, the Accountant-General of the Government of Orissa will have to be advised by you immediately to issue a Bank Draft on any Bank at Calcutta in favour of the 'Accounts Officer, Pay Accounts Office, Calcutta, Ministry of Health and Family

Planning, Calcutta, consolidating all the amounts paid to the Treasuries through Treasury Challans during a specified period, say during a particular month. The Bank Draft is required to be sent to this office by the Accountant-General, Orissa under a forwarding letter, indicating the Treasury Challans Nos. and dates and the designations of the Judicial Authorities which deposited the money in the Treasuries to enable this office to forward the Bank Draft to the 'Pay and Accounts Officer, Ministry of Health and Family Planning, Calcutta,' after linking the copies of the Treasury Challans which must be received by this office earlier from the Judicial Authorities. This procedure is rather complicated one. It is, therefore, suggested that not only in respect of this particular payment, but in case of all payments for dues of this office receivable by this office from 1-10-1976 may be arranged to be made through Bank Drafts only, which should be drawn as suggested above by the Authority competent to draw the Bank Drafts. The Bank Drafts should be sent to this office undtr "Registered Post" instead of the copies of Treasury Challans and the forwarding letter should show the following particulars:—

- (i) Your letter No. and date, i.e., The Requisition
- (ii) F. I. R. Case No. and date
- (iii) Name of P. S.
- (iv) This office Report No.
- (v) The designation of Judicial Authorities on whose behalf the payment is made.

It is suggested that the revised procedure of issuing Bank Drafts as stated above be advised to all the Judicial Authorities and others concerned, for information and necessary action.

No. 2491(6)—XLV-A-13/76

From

Shri D. Hota, B.L.  
Registrar of the High Court of Orissa

To

The District Judges (All)

Dated Cuttack, the 30th March 1977

Subject—Distribution of business between the Motor Accidents Claims Tribunals and the Second Motor Accidents Claims Tribunal.

Sir,

I am directed to say that it has been proposed to Government to issue notification appointing the State Transport Appellate Tribunal as the Second Motor Accidents Claims Tribunal in respect of the cases arising out of your judgeship in addition to the existing Motor Accidents

claims Tribunals. The notification in question is expected to be issued soon. After issue of notification the following procedure should be followed in the matter of distribution of business between the existing Motor Accidents Claims Tribunals and the Second Motor Accidents Claims Tribunal:—

(1) All Motor Accidents Claims Cases shall be instituted before the existing Motor Accidents Claims Tribunals. All steps should be taken before such Tribunals who will make the cases ready.

(2) For affording facilities to the parties to inspect the records, call for documents, summons witnesses and such other steps which may be deemed necessary, the records of the Motor Accidents Claims cases after becoming ready shall actually remain on the file of the existing Motor Accidents Claims Tribunals.

(3) The Second Motor Accidents Claims Tribunal will fix up circuits in your judgeship for disposal of the Motor Accidents Claims Cases after making prior consultation with the existing Motor Accidents Claims Tribunals regarding availability of ready cases. On the dates fixed for hearing of the Motor Accidents Claims Cases the clerk in charge in your office will place the records before the Second Motor Accidents Claims Tribunal.

(4) After the disposal of the Motor Accidents Claims Cases the Second Motor Accidents Claims Tribunal shall return the records to the existing Motor Accidents Claims Tribunals who on their turn will take steps according to rules regarding consignment of disposed of records to the respective record rooms or for despatching the same to Court of Appeal, if necessary.

(5) In order to post the Second Motor Accidents Claims Tribunal with information about the ready Motor Accidents Claims Cases, the existing Motor Accidents Claims Tribunal shall on the first week of the every month send the list of ready cases to the former who after receipt thereof shall be in a position to assess the work-load before he proceeds on circuit.

(6) The Second Motor Accidents Claims Tribunal shall try the cases on circuits in respective District Courts.

I am accordingly to request that the above procedure may be followed and same may be brought to the notice of the Bar Association.

Yours faithfully

D. HOTA

Registrar

No. 4849—XLIX-D-22/74

From

Shri L. Mohapatra, B. L.,  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State

Dated Cuttack, the 6th July 1977

Subject—Revision of the instructions issued in the Court's letter No. 2893—XII-10/75., dated 27-4-1976. Grant of anticipatory bail under section 438, Cr. P. C., 1973 by the Court of Sessions.

Sir,

I am directed to refer to the Court's letter No. 2893—XII-10/75., dated the 27th April, 1976 in which instructions were issued that having regard to the ambit and scope of Section 438 of the Code of Criminal Procedure, 1973, all the Courts of Sessions including the Additional and Assistant Sessions Judges have powers to deal with the anticipatory bail applications when they are authorised by the High Court under section 9(5) or by the Sessions Judges under section 10 (3) of the Code. The Sessions Judges were, however, directed that they would in appropriate circumstances, restrict the powers of the Additional and Assistant Sessions Judges in entertaining and disposing of the applications for grant of anticipatory bail under section 438 while issuing authorisation under section 10(3) Cr. P. C., 1973.

On a reconsideration of the matter, the Court, keeping in view of the fact, that the Additional Sessions Judges are fairly experienced officers and that there may be not be any instance of misuse of powers envisaged in section 438, Cr. P. C., 1973, observe that the instructions already issued in the aforesaid circular restricting the powers of the Additional Sessions Judges in entertaining and disposing of the applications, for anticipatory bail be lifted and that the restrictions imposed on the Assistant Sessions Judges in such matters should continue, in the event of the authorisation being issued by the High Court or Sessions Judges under the provisions of the Code.

I am, to request that the modified instructions, as observed by the Court above should be strictly adhered to hereafter.

Yours faithfully,

L. MOHAPATRA

Registrar

No. 5861--XLIX-D-19/76

From

Shri L. Mohapatra, B. L.,  
Registrar of the High Court of Orissa.

To

All the District and Sessions Judges of the State  
Dated Cuttack, the 6th August 1977

Subject—Taking signature of witnesses on the memoranda of  
substance of the evidence recorded under section 274  
Cr. P. C., 1973.

Sir,

I am directed to say that the attention of the Court has been drawn to the divergence of practice in the Judgeships of the State in the matter of obtaining the signatures of the witnesses on the memoranda of substance of the evidence recorded under section 274 of the Code of Criminal Procedure, 1973.

The Court considers that, in the absence of express provisions in the Code, it is not necessary to take the signatures of the witnesses on the memoranda of substance of evidence recorded under section 274 of the Code of Criminal Procedure, 1973.

The above instructions may be brought to the notice of all the Courts under your sessions division.

Yours faithfully,

L. MOHAPATRA

Registrar

No. 5943—IX-16/76

From

Shri L. Mohapatra, B. L.,  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State  
Dated Cuttack, the 9th August, 1977

Subject—Noting the particulars regarding the bail orders issued by the courts of appeal and revision in respect of the convict in the Register of Bail Orders (R)24 Criminal.

Sir,

I am directed to say that the Court have had an occasion to notice that the particulars relating to the bail orders issued by the appellate and revisional Courts are shown in the Register of Bail Orders in

Form No. (R) 24 more than once in respect of the same convict on receipt of the bail orders from the courts of appeal and revision in the same case in which the trial court had already released him earlier on bail.

Since the aforesaid register is meant for noting the particulars of the convicts who are released on bail either by the appellate or revisional Court direct that there is no necessity to make separate entries in the Register of Bail Orders, (R)24 in respect of the same convict more than once merely because the convict has been released on bail by the appellate court and at some other time by the revisional court.

Yours faithfully,

L. MOHAPATRA

Registrar

No. 6179—XLIX-D-40/77

From

Shri L. Mohapatra, B. L.,  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State

Dated Cuttack, the 18th August, 1977

Subject—Preservation and destruction of counter foils of witness batta cheques.

Sir,

I am directed to say that the Court had occasions to notice divergence of practice in the judgements regarding preservation and destruction of the counter foils of batta cheques after payment of batta to witness.

The Court, after due consideration, direct that the counter foils of batta cheques be preserved for one year only after payment of batta to the witnesses.

Yours faithfully,

L. MOHAPATRA

Registrar



No. 674(22)—XLIXD-36/77

From

Shri L. Mohapatra, B. L.,  
Registrar of the High Court of Orissa

To

Dated Cuttack, the 18th January, 1978

Subject—Arrest of foreigners in India—Measures to prevent their disappearance.

Sir,

I am directed to enclose herewith a copy of letter No. 25018/107/75-F-II., dated the 19th September 1977 issued by the Government of India, Ministry of Home Affairs, New Delhi for your information and guidance and for issue of necessary instructions with a copy of the said letter of the Government of India to the Subordinate courts under your jurisdiction for their guidance.

Yours faithfully,

L. MOHAPATRA

Registrar

No. 25018/105/75-F.H.

From

Government of India/Bharat Sarkar  
Ministry of Home Affairs/Grih Mantralaya

To

All State Governments/Union Territories

New Delhi-110001, the 19th September 1977

Subject—Arrest of foreigners in India—Measurements to present their disappearance.

Some instances have come to the notice of the Government of India where foreigners who had been arrested and were being prosecuted for narcotic and other offences become untraceable while the cases were still pending in Courts of Law. Investigations conducted into the matter indicated that the reasons for disappearance of the foreigners were mainly the easy conditions on which they had been granted bail and the delay in the disposal of the difficult for the foreigner concerned to support himself outside his country for a long period due to lack of funds and as such he was forced to disappear.

2. The possibility of preventing the disappearance of foreigners in this type of cases has been examined and it is felt that the following steps may be useful to ensure that foreigners facing trial in a Court of law do not become untracable:—

(a) Prompt investigation of the cases and putting up the person concerned for trial in the Court quickly. The costs concerned could also be requested to expedite the disposal of the cases.

(b) Suitable restrictions on the movements of the foreigner concerned, including daily report to police station, under paragraph 11 of the Foreigners order, 1958 when the offence which he is accused is of a heinous nature, of narcotic smuggling etc. This will assist the police in keeping track of the concerned foreigner.

(c) While granting bail, the Court could be moved to make the bail subject to conditions similar to those in (b) above. The Court could also be moved to have the cases disposed of on a high priority basis.

3. Besides foreigners involved in narcotic offence there is a possibility that those involved in other Crimes may also disappear in similar circumstances. The State Government/Union Territory Governments are therefore, requested to issue necessary instructions to all concerned in the matter to ensure that the cases of foreigners are disposed of quickly and at the same time they do not jump bail and disappear from India.

R. A. S. MANI

Deputy Secretary to Government  
of India

Authorised for Issue

Sd. Mrs. J. N. MOHAN

Section Officer

No. 1076(9)—XIX 5/77

From

Shri D. Mohapatra, B.L.  
Registrar of the High Court of Orissa

To

The Sessions Judge, (All)

Dated Cuttack, the 27th January 1978

Subject—Monthly statement of committal proceedings

Sir,

I am directed to say that on a review of the monthly statements of committal proceedings relating to the Courts of the Judicial Magistrates furnished by the respective Sessions Judges of the State, the

Court have had occasion to notice that the requests made by the Sessions Judges to the concerned S.Ps. of the State for avoidance of delay on the part of the police agency in the matter of submission of C. S., execution of warrants of arrest and apprehension of the accused persons do not yield the desired result. The Court are therefore, pleased to direct that once a quarter, a comprehensive list of cases with detailed particulars may be drawn up by the respective Sessions Judges and sent to the District Officials clearly pointing out inaction and on the basis of such list, discussion may take place in the co-ordination meetings.

I am accordingly, to request that the above instructions of the Court may be strictly followed in future.

Yours faithfully,

L. MOHAPATRA

Registrar

No. 3053—XIX-4/77

From

Shri L. Mohapatra, B. L.,  
Registrar of the High Court of Orissa

To

All the Sessions Judges of the State

Dated Cuttack, the 23rd March 1978

Subject—Monthly statements of committal proceedings

Sir,

I am directed to say that the question of discontinuance of submission of monthly statements of committal proceedings by the Judicial Magistrates was under consideration of the Court. After the due consideration the Court are pleased to direct that submission of such statements to the Court should be discontinued and in lieu thereof the Sessions Judges should submit a report to the Court along with the quarterly criminal statements indicating if any improvement has been achieved by taking recourse to the Court's directions contained in their circular letter dated the 27th January 1978 on the subject and communicated to all the Sessions Judges in their Memo No. 1076(9) of even date. They should also indicate in the quarterly criminal statements if any case was committed to the Court of Sessions after an unreasonably long lapse of time.

2. The Court are further pleased to direct that the Sessions Judges should ensure that a case exclusively triable by the Court of Session

is committed to the Court of Session and the records be sent to that Court without least practicable delay soon after the case is committed to the Court of Sessions as provided under section 209 of the Code of Criminal Procedure, 1973 read with rule 50 of the General Rules and Circular Orders of the High Court of Judicature, Orissa (Criminal) Volume-I, 1977 - (Third Edition).

3. The previous instructions of the Court contained in their Circular letter No. 13438(8)/XI-8/73 dated the 1st December 1973 and 904(21)/XLIXD-30/74, dated the 31st January 1975\* are hereby withdrawn.

I am accordingly to request that the above instructions of the Court may be brought to the notice of all the subordinate criminal courts under you for their information and future guidance.

Yours faithfully,  
L. MOHAPATRA  
Registrar

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No. 4840—XXIX-41/75

From

Shri B. N. Misra, L.L.B.,  
Joint Registrar of the High Court of Orissa

To

All the District Judges of the State  
All the Chief Judicial Magistrates of the State.

Dated Cuttack, the 10th May 1978

Subject—Holding of T. I. Parades

Sir,

I am directed to say that it has been brought to the notice of the Court that abnormal delay is caused in holding T. I. Parades inspite of frequent approach by the Investigating Officers for the same. As a result, the Criminal Cases are not disposed of promptly.

The Court, therefore, direct that necessary instructions may be issued to the Chief Judicial Magistrates and other Subordinate Magistrates to see that the Judicial Magistrates and Special Judicial Magistrates hold T. I. Parades promptly on being approached by the Investigating Officers.

I am to request that the above instructions may be followed scrupulously in future.

Yours faithfully,  
B. N. MISRA  
Joint Registrar

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No. 10969--IX-36/77

From

Shri B. K. Behera, LL.B.,  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State  
Dated Cuttack, the 31st August 1978.

Subject—Disposal of cases under Section 9 of the Probation of Offenders Act, 1958 in the Original case record.

Sir,

I am directed to say that the question as to whether cases under Section 9 of the Probation of Offenders Act, 1958 (Act 20 of 1958) are to be dealt with in the Original case records, in which orders under section 4 thereof have been passed or they are to be registered as separate Criminal Miscellaneous Cases was under examination for some time past.

The Court, after careful consideration, direct that cases under section 9 of the Probation of Offenders Act, 1958 should be dealt with in the original case records in which orders under section 4 thereof have been passed and that no separate Criminal Miscellaneous cases need be registered.

The aforesaid instructions may be brought to the notice of the Judicial Magistrates working under your jurisdiction for their information and guidance.

Yours faithfully,

B. K. BEHERA  
Registrar

No. 14118(10)—IX-33/77.

From

Shri B. K. Behera, LL.B.,  
Registrar of the High Court of Orissa

To

All District & Sessions Judges of the State  
Dated, Cuttack, the 15th December 1978

Subject—Destruction of (1) Requisitions for supply of briefs and free copies (2) Register of requisition and application for free copies required by Public Officers.

Sir,

I am directed to say that it has been brought to the notice of the Court that disposed of requisitions for supply of briefs and free copies etc. and the Register of requisitions and applications for free copies

required by Public Officers, Prescribed as per instructions issued in Court's General Letter No. 2 of 1964 (Criminal), are kept for an unlimited period without being destroyed after the purpose is over.

With a view to avoiding unnecessary accumulation of such papers, the Court, after careful consideration direct that the requisitions for supply of briefs and free copies shall be treated like the disposed of copy applications filed by private parties and destroyed at the end of each quarter on the analogy of the instructions contained in rule 280 at page 78 of the General Rules and Circular Orders (Criminal), Volume I.

The Court further direct that the Register of requisitions and applications for free copies required by Public Officers prescribed in Court's General Letter No. 2 of 1964 (Criminal) shall be preserved for three years.

Yours faithfully

B. K. BEHERA

Registrar

No. 14244—XLIXD-15/78.

From

Shri B. K. Behera, LL.B.,  
Registrar of the High Court of Orissa

To

The District & Sessions Judge

Dated, Cuttack, the 19th December 1978

Subject—Certificate of attendance of Law Officers for their engagement in Court on each day.

Sir,

I am directed to invite a reference to clause (5) of Rule 32 of the Orissa Law Officers' Rules, 1971 (Extract enclosed) published in the Extraordinary issue of the *Orissa Gazette* dated the 1st April 1971 on the above subject and to say that the instructions contained therein should be strictly followed by all the subordinate courts in the State in future.

Yours faithfully

B. K. BEHERA

Registrar

Extract of Rules 32(5) of the Orissa Law Officer's Rules, 1971

"32(5) The Law Officers should obtain from the Courts concerned certificates of attendance showing the time when the case was taken up and when it ended and the work done on each day.

No. 14246—XLIXD-12/76

From

Shri B. K. Behera, LL. B.,  
Registrar of the High Court of Orissa

To

All the Sessions Judges of the State.

Dated Cuttack, the 19th December 1978

Subject—Placing the records of Fine Misc. Cases on the Dormant File in which distress warrants remain unexecuted...Entry in the Fine Register (A) 17 in respect of outstanding criminal fines.

Sir,

I am directed to refer to Court's letter No. 12761, dated the 28th August 1975 wherein instructions have been issued, *inter alia* that the Court passing the fine is to take action for recovery of the fine amount in either or both of the ways, i. e. (i) issue a warrant for levy of the amount by attachment or sale of any movable property belonging to the offender; and (ii) issue a warrant to the Collector of the District authorising him to realise the amount as arrears of land revenue from the movable or immovable property or both of the defaulter under the provisions contained in Section 421 of the Code of Criminal Procedure, 1973. If the distress warrant is not received back within a reasonable time, the miscellaneous case is to be closed and after intimation to the Collector, it is to be consigned to the District Record Room. Doubts have been entertained in some of the Subordinate Criminal Courts as to the manner of consignment of such records and also as to how the entires relating to such records in the Fine Register have to be dealt with.

The Court, on a careful consideration of the matter, direct that after the fine miscellaneous cases are closed for want of execution of distress warrants within a reasonable time, such records should be placed on the dormant file in the same manner as the records of Criminal cases when the accused persons remain untraced, and consigned to the District Record Room and that the entries relating to such cases should remain as outstanding in the Fine Register until return of the warrants after execution or on receipt of a report of "No assets" or return final report from the Collector.

The above instructions may be strictly followed in future.

Yours faithfully

B. K. BEHERA

Registrar

No. 3189—LVIII-5/77

Confidential

From

Shri B. K. Behera, LL. B.,  
Registrar of the High Court of Orissa.

To

District &amp; Sessions Judges of the State;

Dated, Cuttack, the 7th April, 1979

Subject—Holding of periodical inspections.

Sir,

I am directed to say that in course of disposal of an appeal under the provisions of the Orissa Civil Services (Classification, Control and Appeal) Rules, 1962, preferred by the Bench Clerk of a Criminal Court against the order of penalty imposed in a departmental proceeding, the Court have had the occasion to notice certain serious irregularities in maintaining the Criminal Court records and observed, "From the records of this proceeding we find that in the order sheets in several cases, the Bench Clerk has written out the entire order excepting the actual punishment to be imposed. The order sheets have not been signed by the Presiding Officer of the Court. The cases have not been posted in the diary. It is one of the duties of the Chief Judicial Magistrate during periodical inspections to ensure that the proceedings before Magistrates are properly carried on, order sheets are maintained and cases are duly posted in the diary. If appropriate inspection had been carried out in these cases, the defects could not have been overlooked and there would have been no necessity to reopen the cases after a gap of two or three years".

Accordingly I am directed to request that the periodical inspections should be made keeping in view the above observation of the Court.

Yours faithfully,

B. K. BEHERA

Registrar



No. 7051--IX-5/78

From

Shri B. K. Behera, LL. B.,  
Registrar of the High Court of Orissa.

To

All the District and Sessions Judges of the State.

Dated, Cuttack, the 7th September, 1979

Subject—Maintenance of Court-fee register in the Courts of Chief Judicial Magistrates-cum-Assistant Sessions Judges and Subordinate Judges-cum-Assistant Sessions Judges for the sessions and criminal cases separately. Item No. 4 of the agenda of the District Judge's Conference, 1978.

Sir,

I am directed to say that the Court have noticed divergence of practice regarding maintenance of court-fee registers for sessions and criminal cases in the Courts of Chief Judicial Magistrates-cum-Assistant Sessions Judges and Subordinate Judges-cum-Assistant Sessions Judges in the different sessions divisions of the State. In some courts, only one court-fee register is maintained for sessions and criminal cases whereas in other Courts, two such registers are maintained separately. This was discussed in the Conference of the District Judges held in 1978 under item No. 4 of the agenda and it was decided that the practice of maintaining two registers, one for the sessions and the other for the criminal cases, should continue.

2. The Court, with a view to keeping uniformity in the practice of maintaining such registers throughout the State, concur in the decision taken in the Conference and direct that two court-fee registers, one for the sessions cases and another for the criminal cases, should be maintained separately in the Courts of the Chief Judicial Magistrates-cum-Assistant Sessions Judges and Subordinate Judges-cum-Assistant Sessions Judges of the State.

Yours faithfully,

B. K. BEHERA

Registrar

No. 7091(10)—XLIX-55/77

From :

Shri B. K. Behera, LL.B.  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State

Dated, the 7th September 1979

Subject—Registration of applications filed before the Chief Judicial Magistrate authorised, Under Section 10(3) Cr. P. C. during the absence of the Sessions Judge, in the Register of Miscellaneous Cases (R) 25 CrI. maintained in the Sessions Court.

Sir,

I am directed to say that some doubt has been expressed on the question as to whether the applications made before the Chief Judicial Magistrate, authorised under section 10 (3) of the Code of Criminal Procedure, 1973 to hear such matters during the absence of the Sessions Judge, are to be entered in the Register of Miscellaneous Cases in for (R)-25 CrI. in the Court of the Chief Judicial Magistrate or in the Register of the Court of the Sessions Judge.

The views of the District and Sessions Judges have been obtained. The Court agree with their views that such applications should be entered in the Register of Miscellaneous Cases (R) 25 CrI. maintained in the Court of the Sessions Judge.

The above instructions may be followed.

Yours faithfully

B. K. BEHERA

Registrar

No. 8572--XLIX-D-28/79

From

Shri B. K. Behera, LL. B.,  
Registrar of the High Court of Orissa

To

The District and Sessions Judge

Dated, the 1st November 1979

Subject—Transmission of copies of orders by the Appellate Court regarding result of the appeal in Form No. (M) 15 CrI. to the Chief Judicial Magistrate.....item No. 24 of the agenda of the District Judges' Conference of 1978.

Sir,

I am directed to say that the subject noted above came up for discussion in the Conference of the District and Sessions Judges held in December, 1978 under Item No. 24 of the agenda. The proposal

requiring the Sessions Court to forward copies of orders of the appeals in Form No. 15-(M) CrI. to the Chief Judicial Magistrate was accepted in the Conference.

The Court concur in the decision taken in the conference and direct that a copy of the order of the appellate Court indicating the result of the appeal communicated to the trial court under Rule 160 of the Court's G. R. & C. O., Criminal Vol. I, (1977 Edition), in Form No. 15 (M) CrI. may be also sent to the Chief Judicial Magistrate for effective check of the omissions, if any, in making entries in the relevant registers by the trial court and giving effect to the orders of the appellate court.

The above instructions may strictly be followed in future.

Yours faithfully

B. K. BEHERA

Registrar

No. 8636—XXIX-32/79.

From

Shri. B. K. Behera, LL.B.,  
Registrar of the High Court of Orissa, Cuttack

To

All the Sessions Judges of the State

Dated, Cuttack, the 2nd Novembr, 1979

Subject—Withdrawal of Criminal cases under Section 321 of the Code of Criminal Procedure—relaxation of the instruction issued in Court's letter No. 7672, dated the 8th November 1972. Item No. 50, of the District Judges Conference, 1978.

Sir,

I am directed to say that the court have had the occasion to consider the question of relaxation of the instructions issued in Court's letter No. 7672, dated the 18th November 1972 regarding the Submission of reports by the Magistrates while passing orders for withdrawal of cases and the submission of reports of the Chief Judicial Magistrates to the Court in the light of the decision taken in the District Judges Conference held in December 1978, to the effect that every Court of Magisrate would note such particulars in the information shet to be placed before the Chief Judicial Magistrate at the time of his inspection and that the Chief Judicial Magistrate would submit a report to the High Court where he considered permission to withdraw as improper.

After careful consideration of the matter, the Court direct that hence forth, every court of Magistrate allowing withdrawal of a case by the prosecution shall forthwith submit a report to the Chief Judicial Magistrate and not to the court direct and that Chief Judicial Magistrate shall submit a report to the Court where he considers permission to withdraw as improper. The previous instructions issued by the Court in the matter stand modified to this extent.

I am accordingly to request that the above instructions may kindly be brought to the notice of the subordinate Magistrates for their information and guidance.

Yours faithfully

B. K. BEHERA

Registrar

No. 2888—XLIX-D-32/79

From

The Registrar, High Court of Orissa, Cuttack

To

The District and Sessions Judges of the State

Dated Cuttack, the 8th April 1980

Subject—Issue of summons to the Magistrates and other public functionaries who have recorded confessional statements, dying declarations etc., or have conducted test identification parades.

Sir,

I am directed to say that after coming into force of the Code of Criminal Procedure, 1973, the Judicial Magistrates record statements under section 164 of the accused persons and/or the witnesses and at times, record dying declarations and conduct test identification parades. It is noticed that a large number of summons are being issued to such Magistrates and other public functionaries by the Sessions Judges, Additional Sessions Judges, Assistant Sessions Judges and Magistrates in and outside the districts to attend the Courts as witnesses without duly considering as to whether their evidence in the Court would be necessary. On some occasions, after such Magistrate appear, the prosecution declines to examine them and in the process, a lot of their time is wasted. Frequent absence of Judicial Magistrates from headquarters to attend courts which can be avoided causes dislocation in the work in their courts. While Magistrates or other public functionaries who have recorded dying declarations or

have conducted test identification parades may have to be called as witnesses as the records cannot be treated as substantive evidence, it may not be necessary to call the Magistrates who have recorded statements of witnesses under Section 164. It may be necessary in certain cases to call Magistrates who have recorded the confessional statements of the accused persons. Before the issue of summons to the Judicial Magistrates and other public functionaries, it is necessary and desirable for the courts to examine as to whether their evidence would be necessary in the interests of justice.

The Court direct that the Presiding Officers of the subordinate courts should carefully scrutinise the necessity of examination of the Magistrates and other public functionaries before issuing summons to them.

Yours faithfully

S. DAS

Joint Registrar, I/C

No. 9404(10)—XLIXD-24/80

From

Shri B. K. Behera, LL. B.,  
Registrar of the High Court of Orissa

To

The District and Sessions Judge

Dated Cuttack, the 18th August 1980

Subject—Examination of obsolete rate-weapons and fire arms kept in Court Malkhana by the Superintendent of the State, Museum before they are put to auction sale for the purpose of their preservation as antiquities.

Sir,

I am directed to forward for your information and guidance and for favour of communication to and guidance of the Courts subordinate to you the accompanying copy of Confidential letter No. 18120(14)-Poll., dated the 14th April 1980 from the Additional Secretary to Government of Orissa, Home Department, Bhubaneswar addressed to the Inspector-General of Police, Orissa, Cuttack on the above subject.

Yours faithfully

B. K. BEHERA

Registrar

Copy of letters No. 18120 (14)-Poll., dated 14-4-1980 from the Additional Secretary to Government of Orissa, Home Department, Bhubaneswar addressed to the Inspector-General of Police, Orissa, Cuttack.

Subject—Expert of fire arms.

It has come to the notice of Government of India that obsolete fire arms kept in Malkhanas when put to auction are often purchased by arms dealers in bulk, primarily with a view to exporting to different countries. Very often such collections include rare weapons and fire arms which are more than 100 years old and deserve preservation as antiquities. Rule 33 (3) of the Arms Rule, 1962 provides that every application for the grant of licence for exporting fire arms shall be accompanied by a certificate from the Director General of Archaeology of the Central Government to the effect that the arms intended to be exported do not fall within the definition 'Antiquity' under the Antiquities (Export-Control) Act, 1947 (31 of 1947). But this in itself is not sufficient to put a check on the export of fire arms of antiquity.

It is, therefore, considered that before such obsolete arms are put to auction, these should be got examined carefully by the officials of the State Museum Bhubaneswar. It is reported that the dealers purchasing these fire arms on auction sale substitute the original looking arrangements which bear the date and trade mark by new plates just to obtain nonantiquity certificates from the Archaeological survey of India. So if a check is introduced before the action is conducted, it may be possible to preserve some of the rare pieces of arms of antique nature. With this aim in view it has been decided in consultation with the Tourism and Cultural Affairs Department that the Superintendent of State Museum will visit the Malkhanas in different districts and check the obsolete weapons if any before they are put to auction for preserving them as antiquities. It is, therefore, necessary that the Superintendent of the State Museum should be kept informed of the programmes of auction sale sufficiently before auction so as to enable him to visit the Malkhanas and check the obsolete arms put to auction.

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CRIMINAL INVESTIGATION DEPARTMENT  
CRIME BRANCH, CUTTACK

No. 9701—XL-IXD-29/74

From

Shri B. K. Behera, LL. B.,  
Registrar of the  
High Court of Orissa

To

The Secretary to Government of Orissa  
Home Department, Bhubaneswar.

Dated Cuttack, the 27th August 1980.

Subject—Implementation of the New Cr. P. C., 1973 (Act II of 1974)—  
Enquiry under Section 202 Cr. P. C. clarification of

Sir,

I am directed to refer to Court's letter No. 9167, dated the 26th April 1975 on the above subject and to say that in the said letter, the Court observed that under Section 202 of the Criminal Procedure Code, 1973

Judicial Magistrates were competent to refer complaints to the Executive Magistrates for enquiry. It was further observed that since there had been no change of law in this regard, the existing procedure of referring complaints against police officers to the Executive Magistrates for enquiry as per Rule 262(a) of the Police Manual read with item No. XII in Schedule II of the Executive Instructions on separation of Executive from Judiciary was to continue.

Under Section 202 of the Code of Criminal Procedure, 1898, a Magistrate receiving the complaint of offence of which he was authorised to take cognizance or which was received by him on transfer under Section 192 of the Code, could either enquire into the case himself or, if he was a Magistrate other than a Magistrate of the 3rd Class, direct an enquiry of investigation to be made by any Magistrate subordinate to him or by a Police Officer or by such other person as he thought fit for the purpose of ascertaining the truth or falsehood of the complaint. Under the Code of Criminal Procedure, 1973, the previous authority of the Magistrate, having power to take cognizance or receiving the complaint on transfer under Section 192, Cr. P. C. to direct an enquiry by a Magistrate subordinate to him appears to have been taken away in view of the definition of "enquiry" given in Section 2 (g) and also Section 3 (a) (i) of the said Code, so the Judicial Magistrates normally need not refer the complaints to the Executive Magistrates for enquiry.

The Court after careful consideration of the matter, observe that the view expressed in Court's letter No. 9167, dated the 26th April 1975 be modified to the extent that normally Judicial Magistrates should not refer enquiries under Section 202, Code of Criminal Procedure, 1973 in respect of complaints against Police Officers to the Executive Magistrates although it would be open to them to refer such matters to the Executive Magistrates if, for some reasons, they consider this course to be necessary and expedient.

In view of the above decision, steps may kindly be taken for effecting necessary amendments to the Orissa Police Manual.

Action taken in the matter may kindly be intimated to the Court.

Yours faithfully,

**B. K. BEHERA**

**Registrar**

No. 10023—IX-18/80

From

Shri B. K. Behera, LL.B.  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State

Dated Cuttack, the 29th August 1980

Sir,

I am directed to say that the question as to whether applications under section 97 of the Code of Criminal Procedure, 1973 are to be registered as Miscellaneous cases, had been under the consideration of the Court. There is no specific provision in the Court's General Rules and Circular Orders (Criminal) in this regard.

The Court, after careful consideration, direct that applications under section 97 of the Code of Criminal Procedure, 1973, shall be registered as Miscellaneous cases.

Yours faithfully

B. K. BEHERA

Registrar

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No. 1294(10)—XLIX-D-12/80

From

Shri B. N. Misra, LL.B.,  
Registrar of High Court of Orissa, Cuttack

To

The District and Sessions Judge

Dated Cuttack, the 6th February 1981

Subject—Service of summons of official witnesses through wireless message.

Sir,

I am directed to say that instructions have been issued in the Court's letter No. 11258, dated the 16th July 1975 that the Sessions Judges and Judicial Magistrates should take the help of the agency for transmission of wireless message to secure the attendance of official witnesses on due dates. Further instructions were also issued in their



letter No. 1273, dated the 25th February 1976 and No. 7304, dated the 1st October 1977 to the effect that the issuing Courts before transmitting such message, should satisfy themselves that the message should be free from defects and that the officers for whom the wireless message is meant is actually available at the station and the messages are made over sufficiently ahead to the person incharge of the wireless station for transmission of the message.

It has since been brought to the notice of the Court by the Inspector-General of Police that under normal conditions the police wireless grid is being used for summoning witnesses and that it would infringe the conditions of licence unless there is failure of P. & T. channel. The cumulative load, being beyond the scope of channel capacity to accomodate is causing undue delay to relay important messages. Of course, the Police Department do not hesitate in accepting messages of the judiciary, but continuance of transmission of summons to secure the attendance of the official witnesses through wireless procedure as a matter of routine may as far as possible be avoided to give way to prompt and effective execution in cases of utmost emergency.

The Court have very carefully considered the matter in the changed circumstances and advise that the police wireless grid may not be used for service of summons on official witnesses except in urgent cases and also in cases when normal channels fail.

I am, accordingly, to request that the above instructions may be brought to the notice of the Criminal Courts subordinate to you for the information and guidance.

Yours faithfully

B. N. MISRA

Registrar

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No. 3952(10)—XXIX-13/81

From

Shri B. N. Misra, LL.B.,  
Registrar of the High Court of Orissa

To

The District Judge,

Dated Cuttack, the 20th April 1981

Subject—Entrustment of trial of Civil Suits of simple nature to the  
Judicial Magistrate of the headquarters stations.

Sir,

I am directed to refer to item No. 10 of the agenda of the District Judges' Conference held in January 1981 and the decision arrived thereon on the above subject, and to say that the Court are pleased

to direct that on experimental basis, every Additional Munsif functioning as the Judicial Magistrates of the headquarters station be entrusted with one suit of simple nature on monthly basis for trial and disposal according to law. The District Judges should transfer one simple ready suit to the file of the Judicial Magistrates (Additional Munsifs) in the first week of each month and the same should be disposed of by the end of the month.

The prescribed registers and the work of drawing up and signing the decrees in cases disposed of by the above Additional Munsifs may be carried out by the regular clerks attached to the Court of the Principal Munsif for the time being.

I am, therefore, to request that the above instructions may kindly be carried out with immediate effect and a report of compliance be furnished to the Court in due course.

Yours faithfully

B. N. MISRA

Registrar

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No. 4052—XLIXD-9/81

From

Shri B. N. Misra, LL.B.,  
Registrar of the High Court of Orissa

To

All the Sessions Judges of the State

Dated Cuttack, the 22nd April 1981

Subject—Periodical inspection of the Malkhana of the Criminal Court by the Chief Judicial Magistrates.

Sir,

I am directed to refer to the decision taken under item No. 23 of the proceedings of the District Judges' Conference held in January 1981 and to say that it was decided therein that the Malkhana of the Criminal Courts should be inspected periodically by the Chief Judicial Magistrates along with regular inspection of Courts unless there be any particular necessity to have it earlier and intimate the result of inspection thereof.

2. The Court, after careful consideration of the same, concur in the aforesaid decision and direct that hereafter the Chief Judicial Magistrates during their periodical inspection of the Courts of Judicial Magistrates should thoroughly inspect the Court Malkhana, scrutinise

the registers maintained there along with the Mal-items kept in the Malkhana and intimate the result of inspection thereof along with the notes of such periodical inspection.

3. I am, therefore, to request that the above instructions may be brought to the notice of the Chief Judicial Magistrates and other subordinate Criminal Courts working under you for their information and guidance.

Yours faithfully

B. N. MISRA

Registrar

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No. 7350

From

Shri B. N. Misra, LL.B.,  
Registrar of the High Court of Orissa

To

The District and Sessions Judge, Koraput-Jeypore

Dated, the 23rd June 1981

Subject—Competancy of a Magistrate, First Class for taking cognizance of an offence on complaints, Police reports, etc., in absence of the S.D.J.M.

Sir,

I am directed to refer to paragraph 7 under the Heading Trial Registrar at page 6-7 of the Notes of Inspection of the Court of the Judicial Magistrate, First Class, Koraput made by the Chief Judicial Magistrate, Jeypore on 27th October, 1979 and to say that the Court have considered the question whether a Magistrate of First Class at a particular station would be competent to take cognizance of offence on complainants, Police reports, etc., in absence of the Subdivisional Judicial Magistrate without being specially empowered in this behalf by the Chief Judicial Magistrate.

The Court, after careful consideration, are of the view that necessary steps should be taken in terms of sub-section (2) of Section 192 of the Code of Criminal Procedure, 1973, in such eventually and the Chief Judicial Magistrate should by general or special order, authorise the Magistrate for the purpose.

The above instructions may be brought to the notice of the Trying Magistrate under you, for their information and guidance.

Yours faithfully

B. N. MISRA

Registrar

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No. 7378—IX-34/74

From

Shri B. N. Misra, LL. B.,  
Registrar of the High Court of Orissa

To

The District and Sessions Judge, Puri

Dated Cuttack, the 24th June 1981

Subject—Noting down the result of appeals and revisions in the Register of substantive warrant of Imprisonment (R) 5 and the Register of Bail Orders (R) 24.

Sir,

With reference to your letter No. 3878—XIII-4/74 dated the 23rd November 1974 on the above subject, I am directed to say that on careful consideration the Court direct that orders passed under the probation of Offenders Act by the appellate or revisional Court should be noted in column 8 of the Register of Warrants of Substantive terms of Imprisonment (R) 5 and in the remarks column of the Register of Bail Orders (R) 24.

Yours faithfully

B. N. MISRA

Registrar

No. 7514—XLIXD-15/81

From

Shri B. N. Misra, LL. B.,  
Registrar of the High Court of Orissa

To

All the Sessions Judges of the State

Dated Cuttack, the 26th June 1981

Subject—Disposal of material objects in the Court Malkhana

Sir,

I am directed to say that the proposal for taking up destruction of material objects in disposed of cases with a view to remove congestion in the Malkhana's attached to various courts in the State came up for discussion under item No. 6 of the District Judges' Conference held in January, 1981. After careful consideration of the

matter the Court are pleased to decide that the following guidelines in the matter of destruction of material objects should have been laid down.

(i) Properties lying in the Malkhana and relating to cases instituted prior to 1975 should be taken up for disposal either by destruction, return or confiscation as the case may be on the assumption that those cases have since been disposed of and the material objects relating to those cases are liable for disposal, except in cases where any material object in the Malkhana is correlatable to a particular case.

(ii) With regard to those objects seized prior to 1975 and where their correlation to a particular case could be established steps should be taken to find out as to whether the cases have been disposed of and whether the stage has reached for disposal of such articles. Their disposal should be taken up in accordance with the direction of the Court in the particular case and if there is no such direction disposal should be according to the legal provisions contained in Sections 457 and 458 of the Code of Criminal Procedure.

(iii) With regard to cases instituted after 1975 steps should be taken to identify each object in the Malkhana with the case with which it is connected and relevant entries should be made in the prescribed registers. If there be any difficulty in the matter the Sessions Judge should look into it and reach his own conclusion.

(iv) Public notice should be issued through a news paper having local circulation fixing a date at least 30 days beyond the date of issue of such notice inviting claims in case it would be covered under section 458 of the Code of Criminal Procedure.

(v) The Sessions Judges should submit a return to the Court regarding action taken to implement these decisions along with a certificate of compliance after 3 months of receipt of this letter.

I am to request that the instructions contained in this circular may be brought to the notice of all subordinate Criminal Courts under you for their information and guidance and to furnish compliance report within the time limit.

Yours faithfully

B. N. MISRA

Registrar

No. 7516(10)—XLIXD-15/81

From

Shri B. N. Mishra, LL. B.,  
Registrar of the High Court of Orissa

To

The District and Sessions Judge

Dated Cuttack, the 28th August 1981

Subject—Verification of the property in the Court Malkhana by the Registrar Civil and Sessions Courts.

Sir,

I am directed to say that the matter of verification of the property in the Court Malkhana came up for discussion under item No. 6 of the proceedings of the District Judges' Conference held in January 1981. It is felt that the existing provisions of Chapter 18 Rule 175 of the G. R. & C. O. (Criminal) Volume-I are not strictly followed. Instances have come to the notice of the Court of default by the Registrar Civil and Sessions Courts in observing the instruction contained in rule 175 along with the other instruction contained in Chapter XVIII of the G. R. & C. O. for custody and disposal of properties in the Court Malkhana. The Court direct that provisions contained in Chapter 18 including rule 175 of the G. R. & C. O. (Criminal) Volume I should be strictly enforced and the quarterly verification of the properties in the Malkhana should be made by the Registrar, Civil Courts and Judge-in-charge of Nizarat as the case may be in future.

2. To enable the Registrar, Civil and Sessions Courts to devote time for the Malkhana work he should be relieved of the work of the Oath Commissioner and the Sheristadar of the respective Courts should be authorised to act as Oath Commissioners.

I am accordingly to request that the above instructions may be brought to the notice of all the concerned officers for their information and strict guidance.

Yours faithfully

B. N. MISRA

Registrar

No. 9103(10)—XLIXD-13/81

From

Shri B. N. Misra, LL.B.,  
Registrar of the High Court of Orissa

To

All the District &amp; Sessions Judges of the State

Dated Cuttack, the 1st August 1981

Subject—Strict compliance of the instructions contained in G. L. No. 4/70 (Civil and Criminal), dated 15-10-1970 and noting the names of counsel for parties in judgments and orders of all Civil and Criminal cases including Sessions Trials.

Sir,

I am directed to invite a reference to Court's General Letter No. 7 of 1954 and General Letter No. 4/70 (Civil and Criminal) and to say that it has come to the notice of the Court that the instructions issued therein are not being followed in the subordinate Courts. The Court take a serious view of the matter that notwithstanding reiteration of the instructions on the subject, violation has become common place and very often instances are coming up where for lack of these particulars there is unusual delay in disposal of cases. Very often names of certain parties are left out and there are instances where the Court cannot exercise control in the absence of details when persons not impleaded in the original proceedings are also included in the category of parties for the first time in the Court. This problem came up for consideration in the last District Judges' Conference held in January 1981 and it has been decided that every District and Sessions Judge should ensure compliance of the instructions at every stage. The Bench Clerk of the concerned Court should be required to see that the first page of the cause title of every suit and case is complete in all respects and the names, addresses and age (as may be described in the plaint application or the charge sheet depending upon the nature of the case) of all persons arrayed as parties to the proceedings are entered therein. The Stenographer while preparing the order or the judgment in every Civil and Criminal cases including Sessions Trials should be required to see that all the details including the names of counsel for parties are specified in the same. The staff connected with grant of certified copies should see while preparing copies of orders and judgments that the names, addresses and age of the parties along with the names of the counsel to the proceedings are entered in the copies and the Judge-in-charge of the Copying Department should be cautioned and directed to enforce full compliance of the instructions in this regard.

I am, accordingly, to request that the above directions of the Court may be strictly followed in future. Any lapse in this regard would be seriously viewed.

Yours faithfully

B. N. MISRA

Registrar

No. 10059—IX-7/79

From

Shri B. N. Misra, LL.B.,  
Registrar of the High Court of Orissa

To

All the District Sessions Judges of the State

Dated Cuttack, the 26th June 1981

Subject—Noting the names of the Courts who pass the orders for sending the cases to the dormant file in column 4 of the Dormant File Register (R)-26.

Sir,

I am directed to say that a proposal has been received for mentioning the name of the Court consigning the record to the dormant file in the register maintained for the purpose in Form No. (R)-26.

2. All the District and Sessions Judges were consulted in the matter and their reports indicate that the existing practice is not uniform. In some sessions divisions the name of the Magistrate who sends the case to the dormant file is being noted in the remarks column of (R)-26 where as in other districts such particulars are not being entered at all in the Register.

3. Noting the name of the Court consigning the record to the dormant file in Form No. (R)-26 would enable the Inspecting Officers to know as to how many cases are being sent to the dormant file by each Court. The Inspecting officer would also be in a position to call for the records and examine whether the rules relating to the procedure to be followed in sending the cases to the dormant file are being followed. The Court accordingly direct that in future the names of the Courts who pass the orders for sending the cases to the dormant file should be noted in column 4 of the Register in Form No. (R)-26 along with the date of order.

I am, therefore, to request that the aforesaid instructions may strictly be followed in future.

Yours faithfully,

B. N. MISRA

Registrar

No. 10160—XII-5/79

From

Shri B. N. Misra, LL.B.,  
Registrar of the High Court of Orissa

To

All the District &amp; Sessions Judges of the State

Dated Cuttack, the 1st September 1981

Subject—Payment of fees to State Defence Council in Sessions Courts

Sir,

I am directed to say that it has been brought to the notice of the Court that there is a divergence of practice in different Sessions divisions in calculating the fees of the State Defence Council in



Sessions Courts. In some Courts, the provisions of Rule 26 of the Orissa Law Officer's Rules, 1971 are being followed while in other Courts such fees are calculated on the basis of the provisions made on the appointment of State Defence Counsel in Sessions Cases Rules 1974.

(2) The Court after careful considerations of the matter direct that in calculating the fees of the State Defence Counsel appearing in Sessions Court, the provisions made in the Appointment of State Defence Counsel in Sessions Cases Rules, 1974 should be followed.

(3) I am to request that the above instructions of the Court should be strictly followed in future.

Yours faithfully

B. N. MISRA

Registrar

No. 10271—XLIXD-30/79

From

Shri B. N. Misra, LL.B.,  
Registrar of the High Court of Orissa, Cuttack

To

The District and Sessions Judge, Dhenkanal

Dated Cuttack, the 4th September 1981

Subject—Maintenance of Registrar of Criminal Fine (A)-17 in the office of the Chief Judicial Magistrate at head quarters stations.

Sir,

With reference to your letter No. 2374, dated 9-8-1979 on the above subject, I am directed to say that the Court after careful consideration of the matter are pleased to observe that in view of the clear provisions contained in Rule 1 of Appendix IV, at page 164 of the G. R. & C. O. (Criminal) Vol. I, it is the Chief Judicial Magistrate who should maintain the Fine Register at headquarters stations. The Fine Register being an important register which requires to be scrutinised very often for realisation of arrear fines and the Chief Judicial Magistrates having been empowered to write off the fine under Rule 145 Chapter XVII, Part I at page 39 of the G. R. and C.O. (Criminal) Volume I, it is meet and proper that the Register of Criminal Fine Form No. (A) 17 should be maintained by the Chief Judicial Magistrate at Headquarters station.

I am accordingly to request that this may kindly be brought to the notice of the Chief Judicial Magistrate, Dhenkanal for his information and future guidance.

Yours faithfully

B. N. MISRA

Registrar

No. 10594—IX-19/79

From

Shri B. N. Misra, LL.B.,  
Registrar of the High Court of Orissa, Cuttack

To

The District and Sessions Judges, Sundargarh

Dated Cuttack, the 10th September 1981

Subject—Entries to be made in Column 6 of the Register of cases decided (R) 18 (Criminal).

Sir,

With reference to your letter No. 1489, dated the 27th October 1978 forwarding the notes of inspection of the Court of the Chief Judicial Magistrate-cum-Additional Subordinate Judge and Assistant Sessions Judge, Sundargarh made on 21st September 1978 on the above subject, I am directed to say that on careful consideration of the question of amendment of column No. 6 of Register R-18 Criminal as suggested in paragraph 27 of the notes of inspection, the Court are pleased to direct that the date on which copies of police papers have been supplied to the accused in Police cases and the date on which all the accused appear in complaint cases as the case may be should be noted in column 6 of the Register of cases decided (R) 18, the column meant for noting the date of appearance of accused persons.

Yours faithfully

B. N. MISRA

Registrar

No. 13617—IX-22/81

From

Shri B. N. Misra, LL.B.,  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State

Dated Cuttack, the 7th December 1981

Subject—Registration of applications filed in the Court of Sessions under Section 116(7), Cr. P. C. and against the orders passed by Courts of Magistrates regarding disposal of seized properties in pending and disposed of cases.

Sir,

I am directed to say that in course of inspection of the Court of the District and Sessions Judge, Cuttack by Hon'ble Justice Shri S. K. Ray (as he then was) in August 1977 doubts were entertained as to how the following types of cases are to be registered—

- (i) Applications filed in the Court of Sessions judges against orders passed by Subordinate Criminal Courts regarding disposal of properties in pending cases.

- (ii) Applications for orders for disposal of properties filed in the Court of Sessions Judge in cases tried and disposed of by Assistant Sessions Judge.
- (iii) Application under Section 116(7) of the Code of Criminal Procedure.

1. The Court, after careful consideration, observe that in view of the provisions laid down in the foot-note to Form No. R-25 at page 81 of the General Rules and Circular Orders (Criminal) Volum-I the application under Section 116(7), Cr. P. C. should be registered as Miscellaneous cases.

2. As there is clear provision in Section 454, Cr. P. C. for filing appeals against orders passed by the Courts of Magistrates regarding disposal of seized properties at the conclusion of the trial, such proceedings should be registered as Criminal Appeals on the filing on a Memorandum of appeal.

3. All the applications filed before the Court of Sessions against order of Magistrate with regard to disposal of seized properties in pending cases, are to be registered as Criminal Revisions in the Court of Sessions. The maintainability or otherwise of the Revision would however depend on the nature of order passed by the Magistrates which are sought to be revised.

I am, accordingly, to request that the aforesaid instructions of the Court may be brought to the notice of all the Courts subordinate you for their information and guidance.

Yours faithfully

B. N. MISRA  
Registrar

No. 13729 XXIX-34/79

From

Shri B. N. Misra, LL.B.,  
Registrar of the High Court of Orissa, Cuttack

To

All the District & Sessions Judges of the State

Dated, the 9th December 1981

Subject—Periodicity of inspection by the Chief Judicial Magistrates—  
Item No. 8 of the District Judges, Conference held during  
January, 1981.

Sir,

I am directed to say that the question of dispensing with the practice of forwarding of notes of inspection by the Chief Judicial Magistrates was discussed in the Conference under item No. 8.

The consensus was that the present practice should not be done away with and it was resolved that the practice be continued but the control should be streamlined with a view to bearing appropriate fruit.

On careful consideration, the Court concur with the aforesaid decision and direct that henceforward the Chief Judicial Magistrate should send his report of inspection within one month of actual inspection being over to the concerned Sessions Judge who in his turn should record his comments thereon and forward the report to the High Court within one month from the date of receipt of the inspection report from the Chief Judicial Magistrate. The report after being received in this Court, should be finally dealt with within two months from the date of receipt and the requirement of compliance should be communicated to the Sessions Judge within that period. Compliance as directed by the Court should be made within two months thereafter by the respective Courts.

I am to request that the aforesaid instructions should strictly be followed in future.

Yours faithfully

B. N. MISRA

Registrar

No. 1133—XLIXD-26/81

From

Shri B. N. Misra, LL.B.,  
Registrar of the High Court of Orissa

To

All the District & Sessions Judges of the State

Dated, Cuttack, the 28th January 1982

Subject—Swearing of Affidavits in Subordinate Courts

Sir,

I am directed to refer the Court's Circular letters No. 5484(21) dated 9-6-1974 and No. 7516, dated 26-6-1981 on the above subject and to say that the question relating to swearing of Affidavits in Courts where there are no posts of Sheristadars came up for consideration of the Court.

The Court, are pleased to decide that the work of swearing of Affidavits at stations where more than one Magistrate is functioning should be entrusted to a Junior Magistrate at the Station. In stations where a Munsif-Magistrate is functioning with a Sheristadar attached to his office, the work of swearing of Affidavits in matters relating to all the Magisterial Courts at the stations should be entrusted to that Sheristadar.

I am, therefore, to request that the above instructions of the Court may be brought to the notice of all the Courts Subordinate to you for their guidance and necessary steps for implementing the decision may be taken.

Yours faithfully

B. N. MISRA

Registrar

No. 1259—IX-25/80

From

The Registrar of the High Court of Orissa

To

The District and Sessions Judge,  
Ganjam-Boudh, Berhampur.

Dated Cuttack, the 3rd February 1982

Subject—Registration of applications filed in Sessions Court under Sections 438 and 439(1) of the Code of Criminal Procedure as Miscellaneous Cases.

Sir,

With reference to your letter No. 12490, dated the 11th/15th December 1980 on the above subject, I am directed to say that the question of registration of applications under Section, 437 and 438 of the Code of Criminal Procedure in Sessions Court as Miscellaneous Cases and their entry in Register of (R) 5 (Criminal) has been considered after obtaining the views of all the District and Sessions Judges of the State.

It has been observed that the Register of Miscellaneous Criminal Cases (R) 25 is to be maintained only in the Courts of Sessions Judges and Additional and Assistant Sessions Judges and there is no scope for entering applications under Section 437 of the Cr. P. C. in that register, as such applications are filed before Magistrates. Therefore there is no question of making any entries with regard to applications under Section 437 in (R) 25 as such matters are dealt with by the Magistrates in the original records of the case. Registration of a Miscellaneous Case every time a bail application is filed in the Court of Magistrates would be cumbersome and inconvenient besides serving no useful purpose, and therefore applications filed under Section 437 Cr. P. C. in Magistrate's Courts should not be registered as Miscellaneous Cases.

The Court have been pleased to decide therefore that applications filed under Sections 438 and 439(1) of the Code of Criminal Procedure in Sessions Courts should be registered as Miscellaneous Cases and be entered in the Register of Miscellaneous Criminal Cases (R) 25 prescribed at page-81 of the General Rules and Circular Orders (Criminal), Volume-II.

The above instructions may be strictly followed in future.

Yours faithfully

S. DAS

Registrar

No. 1993—IX-6/79

From

Shri B. N. Misra, LL. B.,  
Registrar of the High Court of Orissa.

To

All the District and Sessions Judges of the State.

Dated Cuttack, the 19th February 1982

Subject—Maintenance of register of money orders received in the criminal side—Item No. 29 of the agenda of the District Judges Conference held in December 1978.

Sir,

I am directed to say that the Court have had under consideration the question of maintenance of "Register of Money orders received" on the criminal side as in the case of a register maintained on the civil side in Form No. (A)-25-A. As per Court's Circular letter No. 4179/IX-20/77, dated the 26/27th April 1978 in cases where the accused remits the money by money order without pleading guilty in writing as required under Sections 130 of the Motor Vehicles Act and 206 of the Code of Criminal Procedure, 1973, the amount shall be kept in deposit as peremptory cash, presumably by the order of the Magistrate receiving the amount by money order. There however, remains nothing to verify whether the Nazir receiving such anticipatory fine amounts has actually taken them into peremptory cash. The matter came up for discussion under item No. 29 of the agenda of the District Judges' Conference held in December, 1978. It was the consensus opinion of all the District Judges that a register of money orders received in respect of anticipatory fine amounts need be maintained as in the civil side.

2. The Court agree with the opinion expressed by the District Judges and direct that until provision is made in Court's General Rules and Circular Orders (Criminal), Volume-II (1977 Edition), a "Register of Money Orders received" in respect of anticipatory fine amounts be maintained in the pro forma appended herewith by all the Judicial Officers exercising magisterial powers:

3. I am accordingly to request that the aforesaid instructions may be brought to the notice of all the subordinate criminal courts functioning in your sessions division for their information and guidance.

Yours faithfully

B. N. MISRA

Registrar

**Register of Money-Orders received in the Court of.....**

Serial No.	Date of receipt	Amount	By whom remitted	Number of money-order with name of post office	Purpose of the remittance with, number of the case and name of the court in which the money is to be deposited and names of parties	Signature of the Presiding Officer	Signature of the Judge-in-charge	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)

Rs. P.

**Note 1**—This register shall be maintained by the Sheristadar of the Bench Clerk as the case may be

**Note 2**—As soon a money order is received the Sheristadar or the Bench Clerk, as the case may be, shall make an entry in the Register. The entry shall be signed by the Presiding Officer before order directing the Cashier to receive money is passed.

**Note 3**—On the 5th of each month the register should be placed before the Judge-in-charge of Accounts for verification of the entries of the preceding month with the Cashier's Register.

No. 4023—XLIXD-8/82

From

Shri B. N. Misra, LL. B.,  
Registrar of the High Court of Orissa.

To

All the District and Sessions Judges of the State

Dated Cuttack, the 7th April 1982

Subject—Consignment of records of the Trial Court to the Record Room after disposal of the appeal/revision.

Sir,

I am directed to invite a reference to the resolution passed at the last District Judges' Conference under Item No. 9 of the Agenda and to say that it has been decided by the Court that while continuing the practice of sending all the Trial Court records to the concerned Court after disposal of appeal or revision preferred against the order of the Trial Court, the Trial Court should consign the records to the Record Room after finally dealing with the case in terms of the appellate or revisional Court's directions and the Record-Keeper on receipt of the records in the Record Room keep the record with the records of the appeal or revision as the case may be till such time the records are due for destruction.

I would, therefore, request that the above instructions of the Court may kindly be brought to the notice of all the Courts subordinate to you for their information and strict compliance.

Yours faithfully,

B. N. MISRA

Registrar

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No. 5035—XLIX-D-27/80

From

Shri B. N. Misra, LL. B.,  
Registrar of the High Court of Orissa, Cuttack.

To

The District and Sessions Judge, Balasore.

Dated Cuttack, the 3rd May 1982

Subject—Use of Form No. (A) 8-D (Crl.) for issue of receipt when money are received in a Court under Rule 184 (xiv) of the G. R. & C. O. (Crl.) Vol. I.

Sir,

With reference to your letter No. 3390, dated 6-8-1980, on the above subject, I am directed to say that the Court have considered your proposal for prescribing the form of receipt to be issued under Rule 184 (xiv) of the G. R. & C. O. (Crl.) Vol. I, to the persons paying the



price of unclaimed Malkhana properties, purchased in public auction, and after careful consideration, are of the view that Form No. (A) 8-D prescribed in G. R. & C. O. (CrI.) Vol. II, which is a general form, should be used for issue of receipts under Rule 184 (xiv) of the G. R. & C. O. (CrI.), Vol. I.

I am, therefore, to request that the above instructions of the Court may be brought to all the Subordinate Courts under you for their information and guidance.

Yours faithfully,

B. N. MISRA

Registrar

No. 5631—XLIXD-19/82

From

Shri B. N. Misra, LL. B.,  
Registrar of the High Court of Orissa, Cuttack.

To

The District and Sessions Judge,  
The Chief Judicial Magistrate,

Dated the 17th May 1982

Subject—Expeditious disposal of Criminal Appeals preferred by convicted persons who are in jail.

Sir,

I am directed to say that it has been brought to the notice of the Court that jail appeals and Criminal Appeals in which the convicted persons are in jail are not being disposed of expeditiously. Very often it is noticed that by the time the Criminal Appeals or jail appeals are disposed of the sentences awarded by the Trial Court are spent out. In order to prevent such a situation the Court have been pleased to direct that all Criminal Appeals whether preferred from jail or otherwise, by convicts who are in jail should be disposed of by giving them priority over other cases.

I am, therefore, to request that the above instructions should be strictly followed by all the Criminal and Sessions Courts under your Sessions Division.

Yours faithfully

B. N. MISRA

Registrar

No. 7284—XLIXD-27/82

From

Shri B. N. Misra, LL. B.,  
Registrar of the High Court of Orissa.

To

The Director of Public Prosecutions, Orissa, Bhubaneswar.

Dated Cuttack, the 13th/14th July 1982

Subject—Permission to sit in different Courts exercising Criminal Jurisdiction including Court of Sessions to watch the performance of the Counsel appearing for the State and examination of the case records including the case diaries to assess the performance of the Public Prosecutors and Assistant Public Prosecutors.

Sir,

With reference to your semi-official letter No. 29, dated the 8th May 1982 on the above subject, I am directed to say that the Court have been pleased to permit you to inspect in Court case records including the case diaries, with the permission of the Court concerned, in accordance with Rule 209, Chapter III at page 60 of the General Rules and Circular Orders of the High Court of Judicature, Orissa, Criminal, Volume-I, to enable you to properly evaluate the work of the Public Prosecutors and Assistant Public Prosecutors.

Yours faithfully

B. N. MISRA

Registrar

No. 8100(25)—XLIXD-31/82

From

Shri B. N. Misra, LL. B.,  
Registrar of the High Court of Orissa.

To

The District and Sessions Judge  
The Chief Judicial Magistrate

Dated Cuttack, the 29th/30th July 1982

Subject—Non-appearance of Assistant Public Prosecutors against the the State of Orissa.

Sir,

I am directed to forward for your information and guidance and for favour of communication to and guidance of the Criminal Court's

Subordinate to you, the accompanying copy of letter No. 11195(13), dated the 15th July, 1982 from the Legal Remembrancer, Law Department, Bhubaneswar in the matter of prohibiting appearance of Assistant Prosecutors against the State in Criminal cases.

Yours faithfully,

**B. N. MISRA**

Registrar

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GOVERNMENT OF ORISSA

LAW DEPARTMENT

No. I.L.R.-6/82-L.—11195(13)

Dated, the 15th July 1982

From

D. Hota,  
Legal Remembrancer.

To

All District Magistrates

Subject:—Non-appearance of Assistant Public Prosecutors against the State of Orissa.

Sir,

I am directed to say that Government after careful consideration of the matter have decided to prohibit the Assistant Public Prosecutors to appear against the State in any criminal matter in the Courts in their respective jurisdiction.

They may kindly be instructed accordingly.

Yours faithfully

**D. HOTA**

Legal Remembrancer

No. 8966—IX-4/82

From

Shri B. N. Misra, LL.B.  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State

Dated Cuttack, the 25th August 1982

Subject—Sitting inspection by the Chief Judicial Magistrate Amendment of Rule 364 of the G. R. & C. O. (Criminal) Vol. I. dispensing with requirements of Chief Judicial Magistrate sitting on the dias throughout the day.

Sir,

I am directed to refer to the resolution passed on Item No. 13 of the agenda at the last District Judges' Conference held in December 1981 that sitting inspection by the Chief Judicial Magistrate should be limited to half a day instead of full day.

The Court, after careful consideration, have concurred with the said decision and observed that pending amendment of the Rule 364 of the General Rules and Circular Orders (Criminal), Volume-I, sitting inspection of the Courts of Magistrates by the Chief Judicial Magistrate should be limited to half a day instead of holding it for the whole day.

I am, accordingly, to request that the above instructions may be brought to the notice of all the Courts subordinate to you for their information and guidance.

Yours faithfully

B. N. MISRA  
Registrar

No. 9578—XLIX-D-43/82

From

Shri B. N. Misra, LL. B.,  
Registrar of the High Court of Orissa, Cuttack

To

The District and Sessions Judge

Dated the 20th/21st September 1982

Subject—Maintenance of separate receipt Register (R) 5-B in the Courts of Sessions.

Sir,

I am directed to say that a question has been raised as to whether the Maintenance of the Separate Receipt Register in Form No. (R) 5-B, prescribed at

page-60 of the Court's General Rules and Circular Orders, Criminal, Volume-II should be extended to the Sessions Courts for entering the cases of re-commitment of the convicts in Sessions Trials.

In this connection, I am to invite a reference to Court's Circular letter No. 65, dated 5-1-1965, whereunder maintenance of the Separate Register under the personal supervision of the concerned Magistrate has been prescribed in order to secure prompt follow up action by the trial Magistrates on receipt of orders of appellate Courts passed in appeal or revision against their judgements so that convicts released on bail earlier are committed to custody to undergo the sentence imposed on them.

The Court, after careful consideration, direct that Separate Receipt Register in Form No. (R)5-B should be maintained by the Courts of Sessions as well and a note regarding the cases of recommitment of the convicts in Sessions Trials. On disposal of appeals or revisions in higher Courts should be made in the said Register, as provided in Appendix X at page-4 of G. R. and C. O. (Criminal), Volume-11.

I am accordingly, to request that the above instructions may be strictly followed by you and the same be brought to the notice of the other Sessions Courts in your Sessions Division for their information and guidance.

Your faithfully

B. N. MISRA

Registrar

No. 9658—IX-20/80

From

Shri B. N. Misra, I.L.B.  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State

Dated Cuttack, the 23rd September 1982

Subject—Whether entries are to be made in the Separate Register in Form No. (R) 5-B (Criminal) by the Trial Court in cases where a sentence of imprisonment awarded by it is modified to a sentence of fine by the appellate Court.

Sir,

I am directed to say that it has been brought to the notice of the Court that at some stations, entries are being made in the Separate Receipt Register prescribed in Form No. 5-B (Criminal) by the Trial Court in respect of cases where sentence of imprisonment awarded by it is substituted by a sentence of fine only by the Court of Appeal or Revision.

The main purpose for maintaining the Separate Receipt Register in Form No. (R) 5-B (Criminal) is to facilitate the re-commitment of the convicts after disposal of the appeal or the revision. The Court, after careful consideration of the matter, are of the view, that where a sentence of substantive imprisonment awarded by the Trial Court has been modified by the Appellate Court and a sentence of fine is only imposed, the question of re-commitment of the convict to Jail does not arise. Accordingly, they direct that it is not necessary to enter such cases in Separate Receipt Register (R) 5-B (Criminal).

I am, therefore, to request that the aforesaid instructions may be brought to the notice of all the Subordinate Criminal Courts under you for their information and guidance.

Yours faithfully

B. N. MISRA

Registrar

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No. 9660—XLIXD-10/81

From

Shri B. N. Misra, LL.B.  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State

Dated Cuttack, the 23rd September 1982

Subject—Non-payment of Batta to witnesses

Sir,

I am directed to say that it is notice that, the 'witness expenses' are not being paid regularly to the witnesses in Criminal Courts as well as sessions courts. As a result witnesses in Criminal Cases are being put to considerable difficulties and that is one of the reasons for non-appearance of the witnesses in Court. Very often the witnesses are asked to leave their addresses for remitting the Batta amount by Money-Order due to non-availability of funds with the Nazir. This practice not only creates a lot of difficulty to the witnesses, but also gives scope for corruption. The Court, after careful considerations are of the view, that the District and Sessions Judges should ensure payment of Batta to the witnesses on the date of their appearance in Court. It should be the responsibility of the Presiding Officer to see that when witnesses from long distance are summoned, steps are taken in advance to ensure payment of Batta to them on the date of their examination. The Court, therefore, direct that District Judges should take adequate steps to raise the permanent advance at their disposal and get the Batta Bills encashed sufficiently ahead of the date of trial of the case.

I am, accordingly, to request you to take necessary steps in the matter and also move the Government at your level for raising the permanent advance in all Subordinate Courts and see that no difficulties in the matter of payment of Batta to witnesses arise.

Yours faithfully

B. N. MISRA

Registrar

No. 9705—XLIXD-28/80

From

Shri B. N. Misra, LL. B.,  
Registrar of the High Court of Orissa, Cuttack

To

All the District and Sessions Judges of the State

Dated Cuttack, the 24th September 1982

Subject— Discontinuance of the practice of making entries of Criminal fines deposited in the treasury in the Register of Miscellaneous Receipts in Form No. (A) 14 (Criminal).

Sir,

I am directed to say that a question has been raised as to whether criminal fines of the Courts of Judicial Magistrates deposited in the treasury are to be entered in the Register of Miscellaneous Receipts (A) 14 (Criminal). As reported by the District Judges the practice followed in this regard is not uniform. Most of the District Judges are of the view that it is not necessary to enter details of deposits of fines in the Register (A) 14 (Criminal).

Rule 480 at page-156 of the General Rules and Circular Orders (Criminal) Volume-I provides that all receipts are to be posted in the Register (A) 14 (Criminal) other than the deposits referred to in Clauses (A) and (h) of Rule 418 Criminal deposits of fines come under head (a) of Rule 418. Besides, separate set of Rules governing the fines including their mode of deposits and the manner of their accounting are laid down in Appendix-IV of the General Rules and Circular Orders (Criminal). The fine Register printed in Form No. (A) 17 is a self contained one and the date of deposit of fines is also to be noted therein.

In view of the above, the Court direct that deposits relating to Criminal fines need not be entered in the Register of Miscellaneous Receipts in Form No. (A) 14 (Criminal).

I am, accordingly, to request that the above instructions of the Court may be brought to the notice of all the Criminal Courts under you for their information and guidance.

Yours faithfully

B. N. MISRA

Registrar

No. 10901(25)—IX.3/81

From

The Special Officer of the High Court of Orissa

To

All the District & Sessions Judges of the State,  
Chief Judicial Magistrates.

Dated Cuttack, the 19th October 1982

Subject—Deposit of sale proceeds of Saleable Forms and Publications under the receipt head of Process Budget.

Sir,

I am directed to forward for favour of information, the accompanying copies of letter Nos. PR-3/82—2960-Com., dated the 27th March 1982 and No.—PR-1/82-7721 dated the 30th September 1982 from the Under-Secretary to Government of Orissa, Commerce and Transport (Commerce) Department on the above subject.

Yours faithfully

L. PRADHAN

Special Officer

Copy of the letter No. —PR-3/81-2960 Com., dated 27-3-1982 received from Shri G. Sahoo, O. S. S., Under-Secretary to Government Commerce & Transport (Commerce) Department, Bhubaneswar addressed to the Deputy Registrar, Orissa High Court, Cuttack

Subject—Deposit of Sale Proceeds of Saleable Forms & Publication under the receipt head of Press Budget.

I am directed to your Memo. No. 1692, dated 18-2-1981 on the subject mentioned above and to say that all Departments and Heads of Departments were advised vide this Department Circular No. 6935/109)-Com., dated 12-9-1969 to deposit the Sale Proceeds of the Press Budget. A copy of the circular referred to above is enclosed for your reference. The head of the account for the deposit of the Sale Proceeds has been changed to "0-58-Sty. & Prtg.-(d)-Other receipts" in the mean time.



Copy of the letter No.—PR.-1-82-7721-Com., dated the 30th August 1982 received from Shri G. Sahoo, O. S. S., Under-Secretary to Government of Orissa, Commerce & Transport (Commerce) Department, Bhubaneswar addressed to the Special Officer, Orissa High Court, Cuttack.

Sub—Deposit of Sale Proceeds of Saleable Forms & Publication under the receipt head of Press Budget.

I am directed to refer to your letter No. 9585—dated the 22nd September 1982 on the subject mentioned above and to say that the receipt head of Press Budget to deposit the Sale Proceeds of Saleable Forms & Publications and cost of printing is "O-58-S stationery & printing-(C)-Other press Receipts" which has been approved by Government in Commerce Department. No. such letter has been issued by Commerce Department effecting any change to the above head of account.

No. 11779(18)—XVIII-12/82

From

Shri A. L. Rama Rao, M. A. LL, B.,  
Joint Registrar of the High Court of Orissa

To

All the District & Sessions Judges of the State

Dated Cuttack, the 17th November 1982

Sub : Trial of cases involving offences under Essential Commodities (Special Provisions) Act, 1981.

Sir,

I am, directed to say that it has been brought to the notice of the Court that the Judicial Magistrates are sending records of cases under the Essential Commodities Act, 1955 relating to offences committed prior to the coming into force of the Essential Commodities (Special Provisions) Act, 1981, to the Special Courts constituted for trial of cases under Essential Commodities (Special Provisions) Act, 1955.

The Court are, therefore, pleased to direct that only cases in relating to offences committed after coming into force of Essential Commodities (Special Provisions) Act, 1981 shall be tried by the Special Courts constituted under the Act and other cases shall be tried by Magistrates as before.

This may be brought to the notice of all Judicial Magistrates for their guidance.

Yours faithfully

A. V. RAMARAO

Joint Registrar

## NOTIFICATION

Dated the 8th October, 1982

No. A—In exercise of the powers conferred by sub-section (2) of Section 12 A, of the Essential Commodities (Special Provisions) Act, 1981 (18 of 1981) the High Court of Orissa do hereby appoint the District and Sessions Judge of as a Judge of the Special Court under the said Act constituted by Government of Orissa, Home Department notification No. 60264-H.C., dated 25-9-1982 for the District of.....

By order of the High Court

S. K. MISRA

Joint Registrar

No. 2966—XLIXD-11/80

From

Shri B. N. Misra, LL. B.,  
Registrar of the High Court of Orissa, Cuttack.

To

The District and Sessions Judge, Puri.

Dated Cuttack, the 21st March 1983

Subject—Maintenance of Register in Form No. (R) 1 (Criminal) in the courts of the Special Judges for entering the cases under section 446 of the Code of Criminal Procedure.

Sir,

I am directed to refer to paragraph 32 under the caption "Register of Criminal Misc. cases (R) 25" of the notes of inspection of the office of the Special Judge-cum-Additional District and Sessions Judge, Bhubaneswar made by the then District and Sessions Judge, Puri on 3rd August, 1979 communicated with your letter No. 2529—XI-14/79, dated 16th August, 1979 on the above subject and to say that a doubt was entertained as to whether a case under section 446 of the Code of Criminal Procedure started by the Special Judge, Bhubaneswar should be entered in the Register in Form No. (R) 1 (Criminal) in accordance with the provisions contained in foot-note 7 of the Form.

In view of the opinion expressed by the majority of the District and Sessions Judges and having regard to the fact that the Special Judge is not barred from taking cognizance of an offence under the Prevention of Corruption Act on a complaint, the Court consider that

a Register in Form No. (R) 1 should be maintained in the Courts of the Special Judges and the cases registered under section 416 of the Code of Criminal Procedure should be entered therein.

I am accordingly to request that the above instructions may be strictly followed in future.

Yours faithfully

B. N. MISRA

-Registrar

No. 4052

From

Shri B. N. Misra, LL. B.,  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State.

Dated Cuttack, the 30th April 1983

Subject—Periodicity of inspection by the Chief Judicial Magistrates

Sir,

I am directed to refer to rule 363 at page 107 of the General Rules & Circular Orders (Criminal) Volume-I which provides that the Chief Judicial Magistrates shall inspect the Courts of Judicial Magistrates Subordinate to them quarterly, half yearly or annually as may be specified by the Court from time to time. In circular letter No. 2662, dated 19th March 1975, modifying the previous instructions, the court directed that the Chief Judicial Magistrates should inspect the courts of all Judicial Magistrates working under them once a quarter until further orders.

The proposal for reducing the periodicity of inspection of the Magisterial courts by the Chief Judicial Magistrates came up before the Court for consideration. The Court after careful consideration of the matter, are pleased to observe that since the workload of the Chief Judicial Magistrates has immensely increased both on judicial and administrative matters with the establishment of new magisterial courts and their dealing with the cases on the General file, it is not practicable on their part to hold quarterly inspection of the Subordinate Magisterial Courts. Accordingly the Court direct that the present system of quarterly inspection be discontinued and hence forward the Chief Judicial Magistrates should inspect courts of all Judicial Magistrates working under them half yearly and annually until further orders.

I am, therefore, to request that the above directions may be brought to the notice of the Chief Judicial Magistrates and Judicial Magistrates working under you for their information and guidance.

Yours faithfully

B. N. MISRA

Registrar

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No. 3680—XII-4/83

From

Shri B. N. Misra, LL. B.,  
Registrar of the High Court of Orissa

To

All the District & Sessions Judges of the State

Dated Cuttack, the 18th April 1983

Subject—Strict observance of the provisions contained in Section 361 of the Code of Criminal Procedure. Item No. 2 of the proceedings of the District Judges' Conference held in December, 1982.

Sir,

I am directed to say that Section 361 of the Code of Criminal Procedure enjoins on the Courts to record in the Judgments the Special reasons if the Court does not deal with the offenders under section 360 Cr. P. C. or under the provisions of the Probation of Offenders Act or any other Law for the treatment, training or rehabilitation of youthful offenders. It has been brought to the notice of the Court that Magistrates have not been able to appreciate the significance of section 361 of the Code of Criminal Procedure as a result some of them donot give any reason while some others give meaningless reasons.

2. The desirability for strict adherence to the provisions of section 361 of the Code of Criminal Procedure was discussed at the District Judges' Conference held on the 23rd and 24th December, 1982 under item No. 2 of the agenda. The Court, after careful consideration, are pleased to concur with the decision taken at the conference in the matter and direct that Judicial Magistrates should record, in their judgements special reasons for their not having dealt with the accused persons under section 3 and 4 of the Probation of Offenders Act, 1958 (20 of 1958), as required under section 361 of the Code of Criminal Procedure in the light of the decision of the Supreme Court reported in A. I. R. 1979 Supreme Court 1964 (Bishnu Deo Shaw-Vrs.-State of West Bengal).

3. I am, accordingly, request that the above instructions may be strictly followed in future by all the Subordinate Courts in your Sessions Division.

Yours faithfully

B. N. MISRA

Registrar

From

Shri B. N. Misra, LL. B.,  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State

Dated Cuttack, the 3rd May, 1983

Subject—Swearing of Affidavits in Subordinate Courts.

Item No. 29 of the proceedings of the District Judges' Conference held in December, 1982.

Sir,

I am directed to refer to Court's circular letter No. 1133 dated the 28th January 1982 in which instructions were issued that the work of swearing of affidavits at stations where more than one Magistrates are functioning, should be entrusted to a Junior Magistrate at the station. The proposal for modification of the existing instructions referred to above was taken up for consideration at the District Judge's conference held on the 23rd and 24th December, 1982 under item No. 29 of the agenda.

2. The Court, after careful consideration, are pleased to concur with the decision taken at the conference in the matter and direct that at stations where there are more than one Magistrates, the Sheristadar if available at such stations would function as the Commissioner of Oaths. At the headquarters Stations the Head clerk attached to the Chief Judicial Magistrate shall also function as the Commissioner of Oaths. In outlying stations, where there is one Judicial Magistrate exercising only Criminal powers, the Magistrate himself should function as the Commissioner of Oaths.

3. I am, accordingly to request that the above instructions may be strictly followed in future by all the Subordinate Courts in your Sessions Division.

Yours faithfully

B. N. MISRA

Registrar

No. 4506—XLIXD-49/82

From

Shri B. N. Mishra, LL. B.,  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State

Dated Cuttack, the 7th May 1983

Subject—Whether a Judicial Officer should be permitted to leave the Court everyday during recess from 1.30 P.M. to 2.00 P.M. to go home for taking lunch.

Sir,

I am directed to say that the question as to whether a Judicial Officer should be permitted to leave the Court every day during recess from 1.30 P. M. to 2.00 P. M. to go home for taking lunch came up for consideration of the Court.

After careful consideration of the matter the Court are pleased to observed that no Judicial Officer should be permitted to leave the Court during recess from 1.30 P. M. to 2.0/0 P. M. to go home for taking lunch.

I am, therefore, to request that the aforesaid instruction may be brought to the notice of all Subordinate Judicial Officers under you for strict guidance.

Yours faithfully

B. N. MISRA

Registrar

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No. 4795—XLLXD-15/83

From

Shri B. N. Misra, LL. B.,  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State

Dated Cuttack, the 12th May 1983

Subject—Amendment to Form No. (M) 23 at page-165 of the G. R. & C. O. (Crl.) Vol-II making provisions for release of the witnesses on bail.

Sir,

I am directing to refer to item No. 9 of the Agenda of the last District Judges' Conference held in the month of December 1982 wherein the question as to the amendment to Form No. (M) 33 at

page-165 of the G. R. & C. O. (Cr.) Vol-II making provision for release of the witnesses on bail was discussed. It was decided that instead of effecting amendment to Form No. (M) 33, appropriate modification can be made by the Court issuing a warrant providing for release of the witnesses.

The Court after careful consideration of the matter are pleased to concur with the aforesaid decision taken at the conference and direct that the Subordinate Courts, while issuing warrants against witnesses, should make appropriate modifications to the Form No. (M) 33 providing for release of the witness on bail.

I am accordingly, to request that the above instructions may please be brought to the notice of all the Courts subordinate to you for their information and guidance.

Yours faithfully

B. N. MISRA

Registrar

No. 5785—XLIXD-7/78

From

Shri B. N. Misra, L.L. B.,  
Registrar of the High Court of Orissa  
Cuttack.

To

All the District and Sessions Judges  
of the State.

Dated, the 13th/17th June 1983

Subject—Service of summons on police officers

Sir,

I am directed to say that very often the Criminal Courts face the difficulty in procuring the attendance of the police officers to give evidence resulting delay in disposal of the cases pending in their Courts. It is noticed that the Courts while issuing summons to the police officers do not always give sufficient time for their appearance to give evidence and in some cases their orders in this regard are not being complied with promptly. Consequently, service of summons cannot be effected with sufficient time ahead of the date fixed as a result the police officers who mostly remain busy in Law and Order problems find it difficult to attend the Court to give evidence.

The question as to how best the attendance of the police officers can be secured to give evidence in Criminal cases, came up for consideration of the Court. On a careful consideration of the matter,

the Court are pleased to direct that the Court's while issuing summons to the police officers requiring them to give evidence, should give sufficient time and the summons should be issued within three days of the order.

I am accordingly to request that the aforesaid instructions may be brought to the notice of all Criminal Courts subordinate to you for their information and guidance.

Yours faithfully,

B. N. MISRA

Registrar

No. 7712—XI-11/82

From

Shri R. N. Panda, M.A., LL.B.,  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State  
Dated Cuttack, the 9th August 1983

Subject—Maintenance of a separate Register for mentioning the particulars of Under-Trial prisoners.

Sir,

I am directed to say that it has been brought to the notice of the Court that in the figures of under trial prisoners submitted by the subordinate Courts from time to time and the figures submitted by the I.-G. of Prisons serious discrepancies are noticed. The matter was considered by the Court and they after careful consideration of the matter observe that a Register of under trial prisoners should be maintained by each of the Subordinate Criminal Court where the particulars of the under trial prisoners should be noted and revised every day. Before submitting figures and under trial prisoners to any authority, they should get the figures checked up with reference to the relevant Register maintained in the jail. This would go a long way in avoiding the discrepancies noted above.

The Court direct that all the Subordinate Criminal Courts should, hence forward, maintain a separate Register in the enclose *pro forma* in which the particulars of the under trial prisoners should be noted and the said Register should be checked and verified every day with reference to the admission and discharge of under trial prisoners in and from the local Jail. They further direct that before furnishing



figures of under-trial prisoners they should get it checked up with reference to the relevant Register of under-trial prisoners maintained at the local Jail.

I am to request that the above instructions should strictly be followed by all the Subordinate Criminal Courts in the State.

Yours faithfully

R. N. PANDA

Registrar

**PRO FORMA**

Register of the particulars of the under-trial Prisoners  
in the Court of.....

Name & address of the under-trial prisoner	No. of the case and section (s) of law in which the prisoners is facing trial	Date of admission into the jail	Date of Release either from the Court or from Jail	Remarks
(1)	(2)	(3)	(4)	(5)

No. 11481

From

**Shri R. N. Panda, M.A., LL.B.,**  
Registrar of the High Court of Orissa, Cuttack

To

The District and Sessions Judges of the State

Dated Cuttack, the 27th October 1983

**Subject—Expeditious disposal of cases involving persons getting Legal Aid under the State Legal Aid and Advice Scheme, 1981.**

Sir,

I am directed to say that it has been brought to the notice of the Court by the Member-Secretary of the Orissa Legal Aid and Advice Board that the parties getting Legal Aid are required to attend the Courts in connection with their cases on several dates as most of the cases are being adjourned from time to time for various reasons. Under the Orissa State Legal Aid and Advice Scheme, the aided persons are allowed travelling expenses for attending the Courts. When the cases of such persons are adjourned, it causes drainage of public exchequer besides causing delay in disposal of the cases.

The Court, therefore, have been pleased to direct that the Presiding Officers of the Subordinate Civil and Criminal Courts should give priority to the disposal of the cases in which the parties have been given the benefit under the Legal Aid Scheme. However, such cases will have no preference over the criminal cases involving under-trial prisoners and civil cases, which have become three years old.

I am to request that the aforesaid instructions may be brought to the notice of all the Civil and Criminal Courts, in your Judgeship for their information and strict guidance.

Yours faithfully,

R. N. PANDA

Registrar

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 No. 12522—XLIXD-42/79

From

**Shri R. N. Panda, M.A., LL.B.,**  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State

Dated Cuttack, the 24th November 1983

**Subject—Maintenance of a Common Malkhana and Common Register of properties for Sessions and Magisterial Courts.**

Sir,

I am directed to say that a question as to whether there is any necessity for Chief Judicial Magistrates-cum-Assistant Sessions Judges to maintain a register of material objects where there is no Malkhana

under their exclusive control was under consideration of the Court. From the reports of Sessions Judges it revealed that at district head-quarter stations the Sessions Judges are having a separate Malkhana in respect of properties relating to Sessions Cases pending in Courts of all the Sessions Judges and Assistant Sessions Judges of the Station and a separate Register is being maintained by them in respect of such properties kept in that Sessions Malkhana.

For the Court of the Judicial Magistrates, there are separate Malkhanas and separate Registers being maintained for the properties kept therein.

Their reports regarding the Malkhanas of Courts of Judicial Magistrates reveal unsatisfactory State of affairs. Maintenance of a Common Register is likely to lead to confusion in detecting the properties.

In the circumstances, the Court have been pleased to observe that the prevalent practise of maintenance of separate Malkhana for the Sessions Courts and Magisterial Courts should continue. Action is being taken for construction of Malkhana rooms for out lying Courts of Additional Sessions Judges and Assistant Sessions Judges. Pending such constructions the properties relating to the Sessions Cases should be preserved in the Malkhana of the Judicial Magistrates. The Judge-in-charge of the Malkhana shall maintain a separate Register in Form No. R-27 in respect of properties relating to Sessions Cases. He should take steps to produce the properties during the trial of the Sessions Cases and should dispose of the properties in accordance with the direction of the trying Judge.

I am, therefore, to request that the above instructions may be brought to the notice of all Criminal Courts subordinate to you for their future guidance.

Yours faithfully

B. N. DAS

For Registrar

No. 69—XLIXD-61/83

From

Shri R. N. Panda, M.A., LL.B.,  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State

Dated Cuttack, the 4th January 1984

Subject—Making correction in the depositions of witnesses dictated by the Presiding Officers while signing each page of such deposition.

Sir,

I am directed to say that it has come to the notice of the Court that typed depositions of the witnesses are found to contain large number of mistakes. Although Rule 84 at page 23 of General Rules

and Circular Orders (Criminal), Volume-I provides that each page of the deposition typed to the dictation of the Presiding Officer must be attested by his signature, some of the Judicial Officers are found not correcting the depositions of the witnesses before putting their signatures on each page of the same. It has also come to the notice of the Court that the certified copies of the depositions and judgments very often contain several spelling and grammatical mistakes and omissions and at times it becomes difficult for the appellate and revisional Courts to quote any part of the evidence or the judgment.

The Court, accordingly direct that the Presiding Officers should correct the deposition of the witnesses dictated by them, while putting their signature in each page of such deposition. The Court further observe that greater care should be taken by the officers-in-charge of the Copying Department to see that certified copies of depositions and judgments, are free from any mistake and omission.

I am to request that the aforesaid instructions may be brought to the notice of all the Courts subordinate to you for their information and future guidance.

Yours faithfully

R. N. PANDA

Registrar

No. 73—XLIXD-20/80

From

Shri R. N. Panda, M.A., LL.B.,  
Registrar of the High Court of Orissa

To

The District and Sessions Judge, Mayurbhanj, Baripada

Dated Cuttack, the 4th January 1984

Subject—Entries to be made in the different columns of the Register of Warrants of Substantive Terms of Imprisonment (R)-5 and Register of Bail Orders (R)-24 when a convict is committed to Jail for undergoing the sentence awarded by the Trial Court on his failure to furnish bail as ordered by the Appellate Court.

Sir,

With reference to your letter No. 5548, dated 29-11-1979 forwarding the notes of inspection of the Court of Subdivisional Judicial Magistrate, Karanjia made by the Chief Judicial Magistrate, Baripada on 3-9-1979 and 4-9-1979, I am directed to say that a doubt has been

entertained by you as to how the entries are to be made in the Register of Warrants of substantive Imprisonment (R)-5 and Bail Orders (R)-24 when a convict who has been released by a trial Court on bail pending filling of an appeal, is committed to Jail for his failure to produce solvent surety as per order of the Appellate Court but was released subsequently on bail on production of solvent surety.

The Court, after consultation with all the Sessions Judges of the State and careful consideration of the matter, direct that the following procedure shall be followed in making entries in the aforesaid Registers—

- (1) In a case when an accused is committed to Jail for undergoing the sentence awarded by the trial Court on his failure to furnish the bail as ordered by the Appellate Court under Section 389 (1), Cr. P. C., the date on which the accused is committed to Jail should be noted in Column-5 of the Register of Warrant of substantive Imprisonment in Form No. (R)-5 (Criminal).
- (2) The date of release of the accused in pursuance of the order passed by the Appellate Court under Section 389(1) Cr. P. C. should be noted below the date of release by trial Court in Column-6 of the Register of Bail Order in Form No. (R)-24 (Criminal).

Yours faithfully

N. PANDA  
Registrar

No. 693(25)—XLIXD-34/81

From

Shri R. N. Panda, M.A.,LL.B.  
Registrar of the High Court of Orissa Cuttack

To

All the District and Sessions Judges of the State

Dated Cuttack, the 16th January 1984

Subject—Procedure to be followed in a case of sentence of fine when the convict is either represented or absent on the date of delivery of Judgement.

Sir,

I am directed to say that in course of inspection of the Court of Judicial Magistrate First Class, Balasore made by the District and Sessions Judge, -Balasore on 19-4-1980 a doubt was entertained by

him regarding the procedure to be followed for realisation of fine amount in a case of sentence of fine when the convict is either represented or absent on the date of delivery of Judgment. All the Sessions Judges of the State, were consulted in the matter.

The Court after careful consideration of the matter have been pleased to observe that pronouncement of a Judgment of fine is permissible under section 353(6) of the Code of Criminal Procedure in absence of the accused. If a counsel represents the accused and is ready to pay the fine, the matter ends there. In other cases, the Magistrate has to follow the procedure laid down in section 4-21 Cr.P.C. for realisation of the fine amount. If there are no special reasons he has to stop all actions for realisation of fine amount unless there is an order for payment of compensation or expenses out of the fine amount under section 357 Cr.P.C., Rule 133 at page 34 of the G. R. & C. O. (Criminal) Volume-I has no application to such cases.

I am to request that the above instruction of the Court should be followed in future.

Yours faithfully

R. N. PANDA

Registrar

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No. 962—XLIX-D-12/83

From

Shri R. N. Panda, M.A., LL.B.  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State

Dated Cuttack, the 23rd January 1984

Subject—Issue of warrants and recall notices by the Courts to the concerned Officer-in-charge of the Police Stations through the Court Sub-Inspector.

Sir,

I am directed to say that the Court have had the occasion to notice that the instructions given in the Court's Circular Letter No 2557(9), dated 4-4-1977 are not strictly followed in all the Judgeships. It has also been noticed that there is divergent practice in different Judgeships in the matter of issue of orders recalling the warrants to the concerned Officer-in-Charge of the Police-Stations.

On a careful consideration of the matter, the Court direct that the extract of the order recalling the warrants should be prepared in duplicate by the concerned Courts, out of which one copy should be

made over to the Court Sub-Inspector for sending the same to the concerned Police-Station after making necessary entry in the Register of Process maintained by him and the duplicate copy should be sent direct to the concerned Police-Station.

The Court further reiterate their earlier instruction issued in the aforesaid circular letter that all kinds of warrants should be made over by the Courts to the Court Sub-Inspector whose duty shall be to send the same to the concerned Officer-in-Charge of the Police Stations and submit the warrants received back from the Police Stations, whether executed or not, to the concerned Court.

I am, therefore, to request that the above instructions may be brought to the notice of all the Courts subordinate to you for their guidance and strict compliance.

Yours faithfully

R. N. PANDA

Registrar

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Copy of the letter No. 2557(9) Dt. 4-4-1977 addressed to the District and Sessions Judge (All) from Shri D. Hota, B. L., Registrar of the High Court of Orissa

Subject—Despatch of warrants of all categories through the Court Sub-Inspectors.

I am directed to say that it has come to the notice of the Court that the Judicial Magistrates of the State are not following the provisions laid down in Rule 287 of the Police Manual which provides that the warrants should be routed through the C. S. I. with the result that in some cases it has been difficult to watch the movements of the warrants. In view of the appointment of A. P. Ps. for the Courts of Judicial Magistrates in the State, the State Government may decide to discontinue the system of posting C. S. Is. The D. I. G. of Police, C. I. D. and Railways and the Special Officer of the Court have undertaken a sample survey of the Lalbag P.-S. with regard to the heavy pendency of warrants in the said P.-S. On receipt of their joint inspection report the Court would take a final decision whether warrants of all categories should be routed through the C. S. I. Pending final decision in the matter the Court direct that all the Judicial Magistrates of the State should make over all categories of warrants issued by them through the C. S. I. attached to their Courts. It would then be the duty of the C. S. I. to send the warrants to the concerned Police Officer and on return of the warrants whether executed or not he should make them over to the Court concerned. In order to ensure that the movements of the warrants are properly watched, the Judicial Magistrates should maintain a Register in the following *pro forma*.

2. I am therefore, to request that the aforesaid instructions may be brought to the notice of all the Courts Subordinate to you for their information and guidance.

Yours faithfully

D. HOTA

Registrar

Form No. (R) 10

Registrar of processes issued to each Police-Station

Police-Station

Serial No.	Number and year of the case	Name of the person to whom issued	Nature of process	Date when issue of the process was ordered	Date whom sent to Court Snb-Inspector	Date when received back	Remarks
1	2	3	4	5	6	7	8



No. 1673

From

Shri R. N. Panda, M. A., LL.B.  
Registrar of the High Court of Orissa.

To

All the District and Sessions Judges of the State.

Dated Cuttack, the 10th February 1984

Subject—Disposal of properties seized in connection with the offences under the provisions of Orissa Weights and Measures (Enforcement) Act, 1958.

Sir,

I am directed to say that a doubt has been entertained regarding disposal of properties seized in connection with the offences under the provisions of the Orissa Weights and Measures (Enforcement) Act, 1958. The Court, after careful consideration of the matter have been pleased to observed that in view of the Specific Provisions contained in Weights and Measures (Enforcement) Rules, the Inspector concerned is required to produce the properties in court and after conclusion of trial, he is to take possession of the properties and deal with them as per the direction of the Court. Accordingly they direct that question of making any further rules in the G. R. and C. O. (Criminal) does not arise as this provision would embrace all situations.

I am, therefore, to request that the aforesaid instructions may be brought to the notice of the Subordinate Criminal Court's for strict compliance in future.

Yours faithfully,

R. N. PANDA

Registrar

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 No. 1677(12)

From

Shri R. N. Panda, M. A., LL.B.  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State.

Dated, Cuttack, the 10th February, 1984

Subject—Verification of the Malkhana Register maintained in the Criminal Court Malkhana by the Court Sub-Inspector.

Sir,

I am directed to say that it has been brought to the notice of the Court that after transfer of the Court Malkhana to Judiciary the C. S. Is. are not in a position to scrutinise the monthly Malkhana Statements of the Police-stations with reference to the Malkhana

Register maintained in Court Malkhana as they have ceased to deal with the same. All the District and Sessions Judges of the State were consulted in the matter.

The Court after careful consideration of the matter are pleased to observe that in order to perform the duties enjoined by Rules 327 and 328 of the Police Manual the Court Sub-Inspectors should be allowed to verify the Court Malkhana Register in presence of the Clerk-in-charge of the Malkhana after obtaining necessary permission of the Judge-in-charge of the Malkhana. This would also contribute to the correct maintenance of the Court Malkhana Register.

I am to request that the aforesaid instructions may be brought to the notice of all the Subordinate Criminal Courts working under you for their information and guidance.

Yours faithfully,

R. N. PANDA  
Registrar

No. 1679(12)

From

Shri R. N. Panda, M. A., LL. B.,  
Registrar of the High Court of Orissa

To

The District and Sessions Judges of the State

Dated Cuttack, the 10th February 1984

Subject—Whether entries in the Register of Enquiry into cases triable by the Court of Sessions (R) 42 should be made soon after the charge-sheet is filed or after orders for commitment are passed.

Sir,

I am directed to say that a question have had under consideration as to whether entries in the Register of Enquiry into case triable by the Court of Sessions (R) 42 should be made soon after the charge-sheet is filed or after orders for commitment are passed. All the District and Sessions Judges of the State were commuted in the matters.

The Court after careful consideration of the matter have been pleased to observe that the cases triable by the Court of Sessions should be entered in the Register (R) 42 as soon as cognizance is taken after receipt of the charge-sheet or complaint petition as the case may be.

I am to request that the above instructions may be brought to the notice of all the courts subordinate to you for their guidance.

Yours faithfully,

R. N. PANDA  
Registrar

No. 1974

From

Shri R. N. Panda, M.A., LL.B.,  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State  
Dated Cuttack, the 15th February 1984

Sir,

I am directed to say that a question has been raised whether cases under section 15 of the Payment of Wages Act are to be entered in the Register of Miscellaneous cases in Form No. (R)-2 (Civil) Or (R) . 1 (Criminal).

All the District and Sessions Judges of the State were consulted in the matter. Their reports reveal that the existing practice in some of the Stations is that cases under Section 15 of the Payment of Wages Act are being treated as Criminal Misc. Cases and entered in the Register (R)-1 (Criminal) while in other Stations such cases are treated as Civil Misc. Cases and entered in the Register (R)-2 (Civil).

Rule <sup>43(a)</sup> 18(b) at page <sup>116</sup> 184, Chapter-I, Part-VI of the G. R. & C. O. (Civil) Volume I provides that applications under section 15 of the payment of Wages Act should be registered as Miscellaneous Judicial cases. The Court have been pleased to observe that in view of the aforesaid rule, application under Section 15 of the Payment of wages Act, should be treated as Civil Misc. cases and entered in the Register (R)-2 (Civil) and this should be uniformly followed throughout the State.

I am accordingly to request that the above instructions should be strictly followed by all Courts in future.

Yours faithfully

R. N. PANDA

Registrar

No. 1978—XLIX-D-18/81

From

Shri R. N. Panda, M.A., LL.B.,  
Registrar of the High Court of Orissa, Cuttack

To

The District and Sessions Judges, Puri  
Dated Cuttack, the 17th February 1984

Subject Whether Railway dues i.e., Railway fare and excess charger can be written off treating the same as fine.

Sir,

I am directed to refer to para. 20 at pages 11-12 under the caption "examination of pending Fine Misc. case Records" of the notes of inspection of the Court of the Special Railway Magistrate, Khurda Road made by the Chief Judicial Magistrate, Puri on 15-1-1981 and

16-1-1981 on the above subject and to say that a doubt has been entertained as to whether the railway dues ordered to be recovered from the accused under section 112 of the Indian Railways Act in addition to the fine imposed, can be treated as 'Fine' so as to enable the Magistrate to write it off in the circumstances mentioned in Rule 145 of the G. R. & C. O. (Criminal) Volume I.

On a careful consideration of the matter the Court have been pleased to observe that the railway dues under section 112 of the Indian Railways Act are payable by virtue of orders passed by the Court and the provisions of Section 431 of the Code of Criminal Procedure, 1973 apply to such cases. Such dues are recoverable as 'fine' and can be written off on the grounds mentioned in Rule 145 at page 39 of the G. R. & C. O. (Criminal) Volume I

I am therefore to request that the aforesaid instruction may be brought to the notice of all the Courts subordinate to you for their information and guidance.

Yours faithfully  
R. N. PANDA  
Registrar

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No. 1981

From

Shri R. N. Panda, M.A., LL.B.,  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State  
Dated, Cuttack, the 15th February, 1984

Subject—Maintenance of a separate Register of bulky documents exhibited in the Criminal side.

Sir,

I am directed to say that a question has been raised whether a separate Registrar of bulky documents in *pro forma* prescribed at page 120 of the G. R. & C. O. (Civil) Volume I. should be maintained in Criminal side.

All the Sessions Judges were consulted in the matter and the majority view is in favour of maintenance of a separate register of bulky documents in the Criminal side. The Court after careful consideration of the matter have been pleased to observe that as is Civil side, a separate register of bulky documents should also be maintained on the criminal side.

I am to request that the above instructions of the Court be followed by all the Subordinate Criminal Courts in future.

Yours faithfully  
R. N. PANDA  
Registrar

No. 1983

From

Shri R. N. Panda, M.A. LL.B.,  
Registrar of the High Court of Orissa

To

All the District & Sessions Judges of the State  
Dated Cuttack, the 17th February 1984

Subject—Maintenance of the Register of the Attendance of witnesses  
(R)-8 Criminal.

Sir,

I am directed to say that a doubt has been entertained whether in the Register of Attendance of witnesses (R)-8 (Criminal) the serial numbers are to be assigned quarterly or annually.

All the District and Sessions Judges were consulted in the matter. Their reports reveal that in some of the Courts quarterly serial numbers are being assigned to the entries in (R)-8 (Criminal) while in other Courts annual consecutive serial numbers are being given to the entries.

On a careful consideration of the matter the Court have been pleased to observe that quarterly serial numbers should be assigned to the entries in the Register of Attendance of witnesses (R)-8 (Criminal) as it would be convenient for compilation and submission of returns.

I am accordingly to request that the aforesaid instructions of the Court be strictly followed in future by all the Criminal Courts.

Yours faithfully

R. N. PANDA

Registrar

No. 2560—IX-8/80

From

Shri R. N. Panda, M. A., LL. B.,  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State  
Dated Cuttack, the 5th March 1984

Subject—Whether the periods of substantive sentence of imprisonment and default sentences are to be clubbed together to be entered in Col. 11 in the Register of Warrants of Imprisonment (R)-5.

Sir,

I am directed to say that a doubt has been entertained as to whether in Column 11 of the Register of Warrant of Imprisonment (R)-5 while noting the date of termination of sentence both the substantive sentence and the sentence in default of payment of fine should be clubbed or shown separately. All the District and Sessions Judges of the State were consulted in the matter.

The Court, after careful consideration of the views of the Sessions Judges, have been pleased to observe that where payment of fine is not made by the date of commitment of the convict to Jail to serve out the sentence, the date of termination of substantive sentence and sentence in default of payment of fine, should be shown separately in Column 11 one below the other with a note in the remarks column of the Register that the fine has not been paid by the date of commitment.

I am, accordingly, to request that the aforesaid instructions of the Court may be brought to the notice of all Courts subordinate to you for their information and guidance.

Yours faithfully,  
K. C. MOHAPATRA  
For Registrar

No. 2562—XLIX-D 45/82

From

Shri R. N. Panda, M. A., LL. B.,  
Registrar, Orissa High Court,  
Cuttack.

To

All the District and Sessions Judges,  
of the State.

Dated Cuttack, the 15th March 1984

Subject—Holding of the T. I. Parades and the recording  
Statements of witnesses under Section 164,  
Cr. P. C.

Sir,

I am directed to invite your attention to Court's letter No. 4840, dated 10-5-1978 in which instructions were issued to hold T.I. Parades promptly whenever approached by the Investigating Officer. It has come to the notice of the Court that inordinate delay is being caused in holding the T. I. Parades and the recording statements of witnesses under Section 164 of the Code of Criminal Procedure by the Judicial Magistrates and specially when the records are held up in a higher Court. The Sessions Judges of the State were consulted in the matter.

On a careful consideration of the views of the Sessions Judges the Court have been pleased to observe that in a case where the higher Courts call for records a part file should be opened by keeping therein the copies of the first and last order, F.I.R. and seizure list while sending the original record to the higher Court so that there may not be any difficulty in holding T. I. Parade and recording the statements of witnesses under Section 164 of the Code of Criminal Procedure and confession of the accused, even if the original record has not been received back from the higher Court.

I am to request that the above instructions should be followed scrupulously in future.

Yours faithfully,  
K. C. MOHAPATRA  
For Registrar

No. 3447—XXXI-1/77

From

Shri R. N. Panda, M.A., LL. B.,  
Registrar of the High Court of Orissa

To

All the District and Sessions Judges of the State

Dated Cuttack, the 30th March 1984

Subject—Furnishing a certificate in the bail petition filed under  
Section 439 of the Code of Crl. Procedure, 1973.

Sir,

I am directed to say that it has come to the notice of the Court that in a particular case a bail petition u/s. 439, Cr. P. C. was filed on behalf of the accused before the Court of Sessions at the headquarters station which was rejected by the said Court but on the very same day the same accused filed another petition for bail before the local Assistant Sessions Judge on the self same grounds and obtained the order of bail resulting in conflicting orders. A question was raised as to how such a situation can be avoided. All the Sessions Judges of the State were consulted in the matter.

The Court after careful consideration of the views expressed, have been pleased to observe that in law there is no bar in entertaining a second application for bail. A second application for bail has however to indicate the subsequent developments, changes circumstances or exceptional situation, if any, entitling the accused to bail.

In the circumstances the Court direct that a petition for bail u/s. 439 of the Code of Criminal Procedure must contain a certificate showing whether an earlier application for bail had been filed or not in the Court in which the application for bail is filed or in any other court having jurisdiction, to entertain such application. In case any earlier application had been filed, the later petition must specify the particulars of the earlier application and state the circumstances in which the subsequent application has been made.

I am to request that the above instructions may be brought to the notice of all Criminal Courts subordinate to you for their information and guidance.

Yours faithfully

R. N. PANDA

Registrar

No. 3570—XLIXD-9/81

From

Shri R. N. Panda, M.A., I.L.B.  
Registrar, Orissa High Court Cuttack

To

All the District and Sessions Judges of the State

Dated Cuttack, the 3rd April 1984

Subject—Modification of Court's Circular letter No. 4052, dated 23-4-1981, regarding periodical inspection of the Malkhana of the Criminal Courts by the Chief Judicial Magistrate.

Sir,

I am directed to invite your attention to Court's Circular letter No. 4052, dated 23-4-1981 in which instructions were issued that the C. J. Ms. during their periodical inspection of the Courts of Judicial Magistrate should thoroughly inspect the Court Malkhana, scrutinise the Registers maintained there along with the mal items kept in the Malkhana and to say that the question of Modification of the said circular letter was raised and discussed in the District Judges' Conference held in the month of December, 1982. It was decided that the aforesaid circular letter be modified to the extent that the requirement indicated therein shall be confined to valuables only which should ordinarily mean gold, silver, jewellery, cash and such other articles as the Court may in any particular case indicate.

2. The Court after careful consideration of the matter, concur in the aforesaid decision and direct that the Chief Judicial Magistrates should during their periodical inspection verify only, valuables like gold, silver, jewellery, cash and such other materials as the Court may in any particular case indicate with reference to Register of Property (R)-27 maintained in the Court Malkhana and intimate the result of such inspection along with the notes of such periodical inspection.

3. I am, therefore to request that the above modified instructions may be brought to the notice of the Chief Judicial Magistrate and other Subordinate Criminal Courts working under you, for their information and guidance.

Yours faithfully

R. N. PANDA

Registrar



No. 3776—XLIX-D-27/81

From

Shri R. N. Panda, M.A., LL.B.,  
Registrar of the High Court of Orissa

To

The District and Sessions Judge, Balasore

Dated Cuttack, the 9th April 1984

Subject—Procedure to be followed for return of documents in  
Criminal cases consigned to the District Record Room.

Sir,

With reference to your letter No. 1958 dated 16-5-1981 on the above subject I am directed to say that instructions issued in Court's Circular letter No. 1472, dated 14-3-1976 on the question of return of documents in Criminal cases are exhaustive and clear. The period of six months prescribed in rule 226 at page 65 of the G. R. and C. O. (Criminal) Volume-I, is to be counted on the Judgement being final which includes the Judgements of the Superior Courts also. It is the responsibility of the Judge-in-charge Record Room to give notice to the parties to take return of the documents. In spite of notice if the parties do not turn up to take their documents, the risk is theirs.

In the circumstances the Court have been pleased to observe that there is neither any necessity to modify the instructions already issued in the matter nor to prescribe a separate form for return of documents in Criminal Cases.

Yours faithfully

R. N. PANDA

Registrar

No. 3866—XLIX-D-17/84.

From

Shri R. N. Panda, M.A., LL.B.,  
Registrar of the High Court of Orissa, Cuttack.

To

All the District and Sessions Judges of the State.

Dated Cuttack, the 11th April 1984

Subject—Recording of confessional statements of the accused persons  
in cases triable exclusively by the Court of Sessions.

Sir,

I am directed to invite your attention to Court's circular letter No. 11825 dated the 31st December 1974, in which instructions have been issued that the Special Judicial Magistrates appointed U/s. 13 of the Code of Criminal Procedure will record the confession of the accused persons, statement of witnesses U/s. 164. Cr. P. C. hold T.I. Parade of suspects and properties and record dying declaration

even during the presence of the Judicial Magistrates in the station. It has been brought to the notice of the Court that the Special Judicial Magistrates are not recording such statements properly as a result valuable piece of evidence in favour of the prosecution is lost and consequently it causes failure of justice. The matter was discussed in the last District Judge's Conference held in the month of December, 1983 and it was unanimously resolved that the confessional statements of accused persons and the statements of witnesses U/s. 164, Cr.P.C. in cases triable exclusively by the Court of Sessions shall be recorded by the S.D.J.M. or the Judicial Magistrate, First Class, available at the station and the confessional statements in those cases shall not be recorded by the Special Judicial Magistrates. In case no Judicial Magistrate, First Class, is available at the station, such confessional statements may be recorded by the Special Judicial Magistrates.

The Court concur with the aforesaid decision and have been pleased to observe that hereafter the Special Judicial Magistrates should not record the confessional statements of the accused persons in cases triable exclusively by the Court of Sessions, but they may do so when the Judicial Magistrate, First Class, is not available at the station.

I am, therefore, to request that the above modified instructions may be brought to the notice of the Subdivisional Judicial Magistrates and Judicial Magistrates, First Class, and Special Judicial Magistrates working under you for their information and guidance.

Yours faithfully  
**R. N. PANDA**  
 Registrar

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 No. 4061—XLIX-D-22/84

From

Shri R. N. Panda, M. A., LL.B.,  
 Registrar of the High Court of Orissa.

To

All the District and Sessions Judges of the State

Dated Cuttack, the 17th April 1984

Subject—Writing off the penalty imposed on bailors

Sir,

I am directed to say that a question was raised as to whether the penalty imposed on bailors can be written off by the Judicial Magistrates. The matter was discussed in the District Judges' conference held in the month of December, 1983. It was decided in the conference that in view of the specific provisions contained in Sections 431 and 446 of the Code of Criminal Procedure, the concerned Magistrates are competent to write off the penalty imposed on bailors provided the conditions laid down in Rule 145 of the General Rules and Circular Orders (Criminal), Volume-I-Page 39, for writing off the fine amount are satisfied.

The Court concur with that decision and are pleased to observe that sub-section (2) of Section 446, Cr. P.C. equates the procedure for recovery of penalty under a forfeited bond with the procedure for recovery of fine imposed by a Court. Rule 145 at page 39 of the General Rules and Circular Orders (Criminal), Volume-I, laying down the principles for writing off irrecoverable fines is therefore applicable for writing off the penalty under a forfeited bond.

I am, therefore, to request that above instructions of the Court may be brought to the notice of all the Courts subordinate to you for their information and guidance.

Yours faithfully

R. N. PANDA

Registrar

No. 6828(13)—XII-10/84

From

Shri S. Misra, LL. B.,  
Special Officer of the High Court of Orissa

To

The District and Sessions Judge  
Dated Cuttack, the 9th July 1984

Subject—Expeditious investigation of cases treatment of offenders belonging to the armed forces.

Sir,

I am directed to invite a reference to Criminal Courts and Court Martial (Adjustment of Jurisdiction) Rules, 1978, which was published as S. O. 488 in the Gazette of India, dated 25-2-1978, in Part-II, Section 3, sub-section (11). A copy of the same has also been sent to all the District and Sessions Judges of the State for their information and communication to and guidance of the Courts Subordinate to them vide Court's letter No. 5620, dated 20th June, 1978. The Court have been pleased to observe that the provisions of the aforesaid rules should be strictly observed while dealing with an accused belonging to Defence Forces.

I am to request that the aforesaid observations of the Court may be brought to the notice of all the Subordinate Courts working under you for their information and guidance.

Yours faithfully

S. MISRA

Special Officer

No. 7128—XLIX-D/28/84.

From

Shri J. M. Mohapatra, M. Com. LL. B.  
Registrar of the High Court of Orissa

To

The District and Sessions Judge of the State

Dated Cuttack, the 19th July, 1984

Subject—Action to be taken according to provisions of Section 446-A of the Code of Criminal Procedure for failure of the conditions mentioned in the bail-bond executed before the Police-Officer.

Sir,

I am directed to invite a reference to the provisions of Sections 169 and 170 of the Code of Criminal Procedure and to say that as provided in Section 169 Cr. P. C. the accused is required to furnish a bond and bail bond with or without sureties in Form No. 28, binding himself to appear in the Court of the Magistrate on the date fixed in that bond or on such other day as he may be directed to attend to answer further to the charge and in case of his making default to bind himself to forfeit the amount for which the bond has been executed. Section 170(1) Cr. P. C. provides that in case of bailable offence, the accused is required to give security before the Officer-in-charge of a Police Station for his appearance before the Magistrate on the date fixed and for his attendance from day to day before such Magistrate until otherwise directed. Section 446-A of the Code of Criminal Procedure makes provisions that in case of failure of the accused to attend the court on the date fixed in pursuance of the bond executed by him in Form No. 28, as required under section 169 or 170(1) Cr. P.C., the bond shall stand cancelled and the accused shall not be released only on his own bond. From the prevalent practice, it appears that when the accused does not appear before the magistrate on the date fixed in the bond executed by him in Form No. 28 the said bond is not being forfeited and fresh summonses are being issued by the Courts to the accused for his appearance in Court which unnecessarily increases the clerical labour and causes delay in disposal of the case.

In the circumstances, the Court have been pleased to observe that coercive action against the accused persons and their bailors may be taken as per the provisions of Section 446-A of the Code, for failure of the conditions mentioned in the bail bond executed in Form No. 28, before the Police Officer.

I am to request that the above instructions of the Court, may be strictly followed by all the Criminal Courts in your sessions division.

Yours faithfully

...

J. M. MOHAPATRA

Registrar (Administration)

No. 7172=XLIXD-13/84.

From

Shri J. M. Mohapatra, M. Com. LL.B.  
Registrar (Administration) of the High Court of Orissa

To

All the District and Sessions Judges of the State

Dated Cuttack, the 19th July, 1984

Subject—Maintenance of Register of Defect Reports for noting the defect reports issued by the District Record Room.

Sir,

I am directed to refer to item No. 8, of the Proceedings of the conference of the District Judges held on 21st and 22nd December, 1983 and to say that in the conference the proposal for prescribing a Register of defect reports to note the defect reports issued by the District Record Room was accepted. It was also decided that necessary instructions for prescribing a register for noting the Defects Reports may be issued.

The Court concur with the said decisions and observe that in order to keep track of the defect reports, requisitions and the records, a Register of Defect Reports as per the enclosed *pro forma* should be maintained in the District Record Room in manuscript form.

I am, accordingly to request that the above instructions of the Court may be strictly followed in future.

Yours faithfully

...  
J. M. MOHAPATRA

Registrar (Administration)

PRO FORMA

Register of Defect Reports issued by the District Record Room

Sl. No.	Name of Court	No. and year of suit or case with date of disposal	No. and date of issue of defect report	Nature of defects found	No. and date of reminder if any	No. and date of requisition received for the record for compliance of defect found	Date of sending requisitioned record to the court concerned from the District Record room	Date of receipt of the record and the original defect report after compliance	Date of restoration of records to its place	Remarks
1	2	3	4	5	6	7	8	9	10	11

No. 7758—XLIX-D 43/82

From

Shri J. M. Mohapatra, M.Com., LL.B.  
Registrar (Administration)  
Orissa High Court, Cuttack

To

The District and Sessions Judges of the State  
Dated Cuttack, the 4th August 1984

Subject—Maintenance of Register of Warrants of imprisonment in  
default of payment of fines in form No. (R) 5A.

Sir,

I am directed to say that the question of maintenance of Register of Warrants of imprisonment in default of payment of fine in form No. (R)-5A came up before the Court for consideration in the recent past.

The Court after careful consideration direct that the Register (R)-5A should not be maintained in the Court of Sessions but it should be maintained in the Courts of all the Chief Judicial Magistrates and the appropriate cases may be dealt with by the Chief Judicial Magistrates as per Rule 136 (a) of the G. R. and C. O. (Criminal) Volume-I as they have to take steps for realisation of the fine imposed by a Court of Sessions.

I am accordingly, to request that the above instructions may be strictly followed by you and the same be brought to the Chief Judicial Magistrates in your Sessions Divisions for their information and guidance.

Yours faithfully

J. M. MOHAPATRA

Registrar (Administration)

No. 8488—XLVIA-38/84

From

Shri R. N. Panda, M. A., LL. B.,  
Registrar (Judicial) of the High Court of Orissa

To

All the District and Sessions Judges of the State  
Dated Cuttack, the 24th August 1984

Sir,

I am directed to say that recent examination of the notes of inspection submitted by District Judges and Chief Judicial Magistrates has revealed that some of the District Judges and Chief Judicial Magistrates are not mentioning the name of Presiding Officer whose

Court they inspect in their notes of inspection. It has been noticed that Presiding Officers commit same mistakes over and above again. By the time the observation of the Court on the notes of inspection are communicated, the concerned Presiding Officers May have been transferred to some other station. It may be necessary to communicate the defects and deficiencies to the concerned Presiding Officers for their future guidance.

I am, therefore, to request that all the District Judges and Chief Judicial Magistrates shall hence-forward mention the name of the Presiding Officer whose court they inspect in the notes of inspection in future and comments on the notes of inspection are made available to the concerned Presiding Officers for their future guidance.

Yours faithfully,

R. N. PANDA

Registrar (Judicial)

No. 8530(13)=XLIX-D-4/82.

From

Shri J. M. Mohapatra, M.Com, LL. B.,  
Registrar of the High Court of Orissa (Administration).

To

All the District and Sessions Judges of the State

Dated Cutlack, the 25th August 1984

Subject—Whether warrant of Imprisonment in Form No. (M)60 is to be prepared in cases where the pre-conviction period of under trial prisoner exceeds the period of Sentence.

Sir,

I am directed to invite a reference to item No. 3 of the Proceedings of the District Judges' Conference held in the month of December, 1981, in which the question was raised as to whether warrants of imprisonment in Form No. (M)60, is to be prepared in cases where the pre-conviction period of under trial prisoner exceeds the period of sentence finally imposed.

In the conference it was decided that the matter should be examined from various aspects whereafter the decision will be taken. Thereafter all the District and Sessions Judges were consulted in the matter.

The Court on a careful consideration of the matter have been pleased to observe that the warrant of imprisonment in Form No. (M)60, shall be prepared in cases where the pre-conviction period



of an under-trial prisoner exceeds the period of sentence finally imposed and he is not required to undergo any sentence and the prisoner, without being released straight away from the Court, should be sent to jail where from he would be released.

I am accordingly, to request that the aforesaid instructions may be brought to the notice of all the Subordinate Criminal Courts under you for their information and guidance.

Yours faithfully

J. M. MOHAPATRA

Registrar (Administration)

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No. 8531-XLIX-D-40/75.

From:

Shri J. M. Mohapatra, M. Com., J.L. B.,  
Registrar of the High Court of Orissa (Admn.)

To

All the District and Sessions Judges of the State.  
Dated Cuttack, the 24th August 1984.

Subject—Preservation and destruction of counterfoils of fine cheques and counterfoils of fine receipts.

Sir,

I am directed to say that the question of prescribing the period of preservation of duplicate copies of fine receipts and counterfoils of fine cheques came before the Court for consideration in the recent past.

All the District & Sessions Judges of the State were consulted in the matter.

On a careful consideration of the matter, the Court have been pleased to observe that the Counterfoils of the fine cheques and fine receipts should be preserved for a period of three years after final disposal of the case including the appeals/revisions, if any.

I am to request that the aforesaid instructions of the Court should be strictly adhered to in future by all the Courts of the State.

Yours faithfully,

J. M. MOHAPATRA,

Registrar (Admn.)

No. 8533

From

Shri J. M. Mohapatra, M. Com., LL.B.  
Registrar of the High Court of Orissa (Administration)

To

All the District and Sessions Judges of the State

Dated Cutiack, the 25th, August 1984

Subject—Criminal Courts Witnesses Expenses—Drawal of witness expenses by Courts through A.C. Bills.

Sir,

I am directed to forward herewith a copy of letter No. 13297-L., dated the 24th July 1984, received from the Joint Secretary to Government of Orissa Law Department in which the Government have been pleased to decide that the requirement of "Witnesses Expenses" be drawn by the Courts for one month through A.C. Bills and the same be recovered through D. C. Bills within a period of two months and have instructed that the Courts may ensure payment to witnesses on the very day of their appearance in Court.

The Court, while agreeing with the aforesaid decision of the Government in the matter of drawal of the witnesses expenses through A. C. Bills; have been pleased to observe that in order to avoid apprehension of misappropriation or loss, the amounts drawn through the A. C. Bills for one month may be kept in Iron Chest with double lock system, the key of one lock may be kept with the Cashier or the Nazir and that of the other with the Judge-in-charge of Accounts. The amount required for payment to witnesses for a day be brought out from the Iron Chest by the Nazir or the Cashier in presence of the Judge-in-charge of the Accounts. The Nazir or the Cashier should be asked to furnish security for handling and retention of huge cash with him. To watch the recouperment of the amount drawn through A. C. Bills by D. C. Bills, a subsidiary register should also be maintained and the same be verified by the Judge-in-charge, Accounts, every month. In the subsidiary register, the amounts drawn for a month through A. C. Bills and the expenditure made from that amount daily for witnesses expenses and the adjustment done by drawal of D. C. Bills should be indicated to avoid complication in maintenance of the accounts.

I am therefore to request that the above instructions of the Court may be brought to the notice of all the Subordinate Criminal Courts under you for their information and guidance.

Yours faithfully

J. M. MOHAPATRA  
Registrar (Admin).

No. 13297—IIJ-16/84(Pt.)-L.

**GOVERNMENT OF ORISSA**  
**LAW DEPARTMENT**

**From**

Shri A. C. Das, LL.B.  
Joint Secretary to Government

**To**

The Registrar, Orissa High Court

Dated Bhubaneswar, the 23rd July 1984

**Subject—Criminal Courts Witnesses Expenses—Drawal of witness expenses by Courts through A. C. Bills.**

**Reference—Courts letter No. 5119, dated 8-5-1984**

Sir,

I am directed to say that in order to overcome the difficulties arising out of non-payment or belated payment of "Witnesses Expenses" to the witnesses appearing in different Criminal Courts due to non-availability of sufficient funds. Government, after careful consideration, have been pleased to decide that the requirement of Witnesses Expenses be drawn by the Courts for one month through A. C. Bills and the same be recovered through D. C. Bills within a period of two months. In other words, amounts drawn in August, 1984 in A. C. Bills would be cleared through D. C. Bills by the end of October 1984. The Courts may ensure payment to witnesses on the very day of their appearance in the Court.

I am to request that the Court may kindly issue necessary instructions in the matter to all concerned.

Yours faithfully

A. C. DAS

Joint Secretary to Government

No. 8537

**From**

Shri J. M. Mohapatra, M. Com., LL.B.  
Registrar of the High Court of Orissa (Admn.)

**To**

All the Sessions Judges of the State

Dated Cuttack, the 25th August 1984

**Subject—Trial of cases of rape or offences under Sections 376, 376-A, 376-B, 376-C and 376-D of I. P. C. in camera.**

Sir,

I am directed to say that it has come to the notice of the Court that enquiry and trial of cases of rape and offences under Section 376, Section 376-A, Section 376-B, Section 376-C or Section 376-D I. P. C.

are not being conducted in camera by some of the Courts. In this connection, I am to draw your attention to the provisions of sub-section (2) of Section 327 of the Code of Criminal Procedure as amended by the Criminal Law (Amendment) Act, 1983 (Act No. 43 of 1983), which lay down that the enquiry into and trial of cases of rape or an offence under Sections 376, 376-A, 376-B, 376-C or Section 376-D of the Indian Penal Code shall be conducted in camera. According to the proviso to the said Section, the Presiding Judge may, if he thinks fit or on an application made by either of the parties, allow any particular person to have access to or be or remain in, the room or building used by the Court.

On a careful consideration of the matter, the Court have been pleased to observe that the aforesaid provisions of Section 327(2) of the Code of Criminal Procedure being statutory should be followed strictly by all the Criminal Courts.

I am to request that the above instructions may be brought to the notice of the Subordinate Judicial Officers working under your control for their guidance.

Yours faithfully

J. M. MOHAPATRA

Registrar (Admn.)

No. 8582—XVIII-12/82

From

Shri J. M. Mohapatra, M. Com., LL.B.  
Registrar of the High Court of Orissa (Admn.)

To

All the District and Sessions Judges of the State

Dated Cuttack, the 27th August 1984

Subject—Procedure to be followed in filing of the charge-sheet and prosecution report in cases triable by the Special Courts as per the Provisions of Essential Commodities (Special Provisions) Act, 1981.

Sir,

I am directed to say that a doubt has been entertained as to whether charge-sheets and prosecution reports in respect of offences under Essential Commodities (Special Provisions) Act, 1981 committed on or after 1-9-1982 should be continued to be filed before the cognizance taking Magistrates or before the Special Courts Constituted under the Act. All the District and Sessions Judges of the State were consulted in the matter.

On a careful consideration of the matter the Court have been pleased to observe that in view of provisions of Section 12 AA(1) (a) and (e) and other Provisions of the Act, cognizance of the offence under the Act has to be taken by the Special Court upon persual of Police report or the report made by a public servant, and as such the prosecution reports/the charge-sheets should be filed before the Special Court constituted under the Act. The Court further observe that in case of filing of charge-sheet by the Police before the Special Court, the fact be noted in the G. R. Register maintained by the C. S. I. with an endorsement that the charge-sheet has been filed before the Special Court and after disposal of the case instituted on Police report by the Special Court the result of the case may be noted in the G. B. Register on collecting the information from the said Court by the C.S.I.

I am, therefore, to request that aforesaid instructions may be brought to the notice of all Special Courts constituted under the Act and other Subordinate Criminal Courts working under you for their information and guidance.

Yours faithfully

J. M. MOHAPATRA

Registrar (Admn.)

ORISSA HIGH COURT, CUTTACK

No. 9369—XLVIC-78/83,

From

Shri R. N. Panda, M.A., LL.B.  
Registrar (Judicial) of the High Court of Orissa

To

All the District and Sessions Judges of the State

Subject—Annual inspection of own offices by the Presiding Officers of the Subordinate Courts.

Dated Cuttack, the 14th September 1984

Sir,

I am directed to say that in Court's letter No. 2802, dated 23-4-1976 instructions were issued that the Presiding Officers of the Subordinate Civil and Criminal Courts may utilise working days for annual inspection of their own offices and indicate the time taken in holding the annual inspections in the monthly and quarterly statements for consideration by the District and Sessions Judges at the time of assessing their outturn. It was never the intention of the Court that the cases posted for hearing on those dates shall not be taken up

and the witnesses present, if any, shall not be examined and sent back without examination. It has come to the notice of the Court that the Presiding Officers, on the dates devoted to inspection returned the witnesses present in the cases previously posted for hearing without examination. Such a practice apart from causing a lot of inconvenience to the witnesses and the parties, puts a burden on the State exchequer.

2. The Court, after careful consideration of the matter, are pleased to observe that the Presiding Officer should not devote those days to inspection when he has posted cases for hearing and the parties and the witnesses are available and ready for hearing. This can be done by fixing dates of annual inspection in advance and not posting any case for hearing. The Presiding Officers may engage themselves in inspection work, if on any day for any valid reasons cases posted for hearing are adjourned and he has no contested judicial work to perform.

I am, therefore, to request that the above instructions of the Court should be strictly followed in future.

Yours faithfully,

R. N. PANDA  
Registrar (Judicial)

No. 9742—XLIX-D-24/84

From

Shri J. M. Mohapatra, M. Com., LL. B.,  
Registrar (Admn.) of the High Court of Orissa, Cuttack.

To

The District and Sessions Judges

Dated Cuttack, the 20th September 1984

Subject—Maintenance of a Register for pending split up records

Sir,

I am directed to say that the question of maintenance of a register for pending split up records in Criminal Courts in respect of the absentee accused persons was under consideration of the Court. All the District and Sessions Judges of the State are consulted in the matter.

After careful consideration of the matter, the Court have been pleased to observe that in order to keep watch over the split up records against the absentee accused persons and to keep track of the matter a register for pending split up records be maintained in all the Criminal Courts in the *pro forma* appended hereto.

I am, therefore to request that the above instruction of the Court may be brought to the notice of the Criminal Courts working under you for their information and guidance.

Yours faithfully,  
J. M. MOHAPATRA  
Registrar (Administration)

*PRO FORMA*

REGISTER FOR PENDING SPLIT UP RECORDS

Sl. No	Case No. & Trial No.	Name of the absentee accused persons with address	Name and address of the bailor for the absentee accused persons.	Order No. & date of split up record.	Date of consignment of the original record to the record room	Action taken against the absentee accused persons	Date of appearance or apprehension of the absentee accused persons	Whether split up records find entry in (R) 1 & (R) 3.	Date of disposal of the split up records and date of consignment the same to record room	Date of transfer of the split up the records to dormant file if any	Remarks
1	2	3	4	5	6	7	8	9	10	11	12

## ORISSA HIGH COURT, CUTTACK

No. 3296—XLVIA-13/85

Dated Cuttack, the 3rd/4th April 1985

From

Shri J. M. Mohapatra, M. Com., LL. B.,  
Registrar (Administration),  
Orissa High Court, Cuttack.

To

All the District and Sessions Judges of the State

Subject—Holding frequent inspection of all Subordinate Courts by the  
District Judges.

(Item No. 9 of the District Judges Conference, 1984)

Sir,

I am directed to invite a reference to item No. 9 of the proceedings of the District Judges Conference, 1984, wherein it was resolved that the District Judges are to furnish to the High Court advance quarterly programme of inspections of different Courts pertaining to their judgship.

The Court after careful consideration of the matter, have been pleased to concur with the aforesaid decision, taken at the conference and direct that all the District and Sessions Judges of the State should submit advance quarterly programme of their inspections to the Court well in advance henceforth.

I am to request that the above instructions of the Court may be strictly followed in future.

Yours faithfully,

J. M. MOHAPATRA

Registrar (Administration)

No. 3620

From

Shri J. M. Mohapatra, M. Com., LL. B.,  
Registrar (Admn.) of the High Court of Orissa

To

All the District &amp; Sessions Judges of the State

Dated Cuttack, the 15th April 1985

Subject—Noting the fine amounts written off by the Magistrates in  
(R) 5 and (R) 5A—Item No. 27 of the Proceedings of the  
District Judges Conference, 1984.

Sir,

In inviting a reference to item No. 27 of the Proceedings of the District Judge's Conference, 1984 I am directed to say that it was unanimously resolved in the conference that the fact whether a certain fine amount has been written off or remitted should fine mentioned in the remarks column of the registers, (R) 5 and (R) 5A.



The Court after careful consideration are pleased to accept the resolution and direct that the fact whether a certain fine amount has been written off or remitted be noted in the remarks column of (R) 5, the Register of warrants of Substantive Terms of Imprisonment and (R) 5A, the Register of warrants of Imprisonment in default of payment of Fine.

I am, therefore to request that the above instructions may be brought to the notice of all the Subordinate Criminal Courts working under you for their information and guidance.

Yours faithfully,

J. M. MOHAPATRA

Registrar (Administration)

No. 3676—XLIXD-14/85

From

Shri J. M. Mohapatra. M. Com., LL. B.,  
Registrar (Administration) of the  
High Court of Orissa, Cuttack.

To

The District and Sessions Judges,  
of the State.

Dated Cuttack the 16th April 1985

Subject—Nothing the trial No. of the case in Column (2) of the Register of Properties (R)-27.

Item No. 25 of the Proceedings of the District Judges' Conference, 1984.

Sir,

I am directed to invite reference to item No. 25 of the proceedings of the District Judges' Conference 1984 and to say that it was unanimously resolved in the Conference that the Trial number of the case pertaining to the Court of the Judicial Magistrate, by whom the case is finally disposed of should be noted in the Register of Properties (R)-27 (Criminal).

The Court after careful consideration have been pleased to approve of the resolution and direct that the Trial number of the case pertaining to the Court of the Judicial Magistrate by whom the case is finally disposed of should be noted in Column 2 of the Register of Properties (R) 27 (Criminal) below the number and year of the case.

I am to request that the above instructions may be brought to the notice of all the Criminal Courts working under you for their information and guidance.

Yours faithfully,

J. M. MOHAPATRA

Registrar (Administration)

No. 4006—XLIXD-13/85

From

Shri J. M. Mohapatra, M. Com. LL. B.,  
Registrar (Admn.) of the High Court  
of Orissa, Cuttack.

To

All the District &amp; Sessions Judges of the State

Dated Cuttack the 26th April, 1985

Subject—Desirability of summoning Judicial Magistrates as witness  
to give evidence in more cases than one at a time.

Sir,

I am directed to refer to item No. 23 of the agenda at the last District Judges' Conference and to say that it was unanimously resolved in the Conference that the Presiding Officers shall as far as practicable post cases for hearing on one day in which any Judicial Officer is required to be examined as a witness.

The Court, after careful consideration, have been pleased to accept the resolution and observe that it shall be the responsibility of the Chief Judicial Magistrates, to implement the resolution (i) by instructing the Presiding Officers of the Trial Courts to so plan their diaries as to enable the Judicial Officers attending their Courts as witnesses to give evidence in as many cases as possible on one day and/or (ii) by transferring, as far as practicable, all such cases to one Court at the Station so that issue of summons will be more or less regulated. The Judicial Officers who are summoned as witnesses in several cases at one station should also intimate the fact of their attendance to the Court on one or two consecutive dates through the District and Sessions Judge. The Court further direct that the above procedure should also be adopted in respect of police officers, particularly the Investigating Officers.

I am, accordingly, to request that the above instructions may be brought to the notice of all the Courts subordinate to you for their information and guidance.

Yours faithfully,

J. M. MOHAPATRA

Registrar (Administration)

4047—XLIXD-30/85.

From

Shri J. M. Mohapatra, M. Com. LL.B.,  
Registrar (Administration) of the High Court of Orissa,  
Cuttack.

To

All the District and Sessions Judges of the State

Dated Cuttack, the 27th April 1985

Subject:—Holding of the half-yearly inspection of the Accounts Section by the District Judge and Judge-in-charge of Accounts of the outlying subordinate courts in the month of April, and October.

Sir,

I am directed to refer to Court's circular letter No. 12435 dated the 16th August 1975 and circular letter No. 3678 dated the 18th April 1983 regarding half-yearly inspection of the Account's Section by the District Judges and Judges-in-charge of Accounts of the outlying subordinate courts in the months of June and December, and to say that in the conference of the District Judges, 1984 it was resolved that the half-yearly inspections of the Accounts Sections both at headquarters and outlying stations be conducted in the months of April and October and the prevailing practice of conducting such inspections in the months of June and December be discontinued.

The Court, after careful consideration are pleased to accept the said resolution and direct that the District Judges and the Judges in charge of Accounts of the outlying subordinate courts should hereafter conducts half-yearly inspections of the Accounts Section, in the months of April and October instead of June and December.

I am, to request that the above instructions should be strictly followed and communicated to all the subordinate courts under your control for their information and guidance.

Accordingly, the instructions issued in Court's Circular letter No. 12435, dated the 16th August 1975 and circular letter No. 3678 dated the 18th April, 1983 stand modified to the extent indicated above

Yours faithfully,

J. M. MOHAPATRA

Registrar (Administration)

## ORISSA HIGH COURT: CUTTACK

No. 4164—XLVIA-62/83

Dated Cuttack, (the 1st May,) 1985

**From:**

Shri K. C. Mohapatra, LL.B.,  
Registrar (Inspection and Enquiry),  
Orissa High Court, Cuttack.

**To**

All the District and Sessions Judges of the State

**Subject:**—Submission of advance tour programme of inspections by the Chief Judicial-Magistrates.

Sir,

I am, directed to say that recent examination of the notes of inspection submitted by the Chief Judicial Magistrates has revealed that the Chief Judicial Magistrates are not inspecting the Subordinate criminal courts under their control regularly in every six months.

2. The Court, after careful consideration of the matter are pleased to observe that the Chief Judicial Magistrates should furnish advance tour programme of inspections of different criminal courts pertaining to their district during each quarter of the year hence-forth to their District Judges and the District Judges should transmit a copy of the said tour programme submitted by the Chief Judicial Magistrates to the High Court after the same is approved by them. The Chief Judicial Magistrate should be impressed upon not to deviate from the programmes of inspection.

3. I am, therefore, to request that the above inspections may be brought to the notice of the Chief Judicial Magistrate working under you, for information and guidance.

Yours faithfully,

K. C. MOHAPATRA

Registrar (I. &amp; E.)

No. 4581—XLIXD-39/85

From

Shri J. M. Mohapatra, M. Com., LL. B.,  
Registrar (Administration)  
of the High Court of Orissa.

To

The District and Sessions Judge/(All)  
Dated Cuttack, the 8th May 1985

Subject—Noting the Section (S) of Law in Column 2 of the U. T. P.  
Registers.

Item No. 63 of the proceedings of the District Judges  
conference, 1984.

Sir,

I am directed to invite reference to item No. 63 of the Proceedings of the District-Judges' Conference, 1984 and to say that it was unanimously resolved in the conference that the section of law for offence for which a prisoner is facing trial should be noted in Column 2 of the U. T. P. Register.

The Court after careful consideration have been pleased to approve of the resolution and direct that the section (S) of law should be noted below the number of case in which the prisoner is facing trial in Column 2 of the U. T. P. Register prescribed in Court's Circular letter No. 7712, dated 9-8-1983.

I am to request that the above instructions may be brought to the notice of all the Criminal Courts working under you for their information and guidance.

Yours faithfully,

J. M. MOHAPATRA

Registrar (Administration)

No. 4583=XLIX-D-38/85

From

Shri J. M. Mohapatra, M. Com., LL. B.,  
Registrar (Administration) of the High Court of Orissa.

To

The District and Sessions Judge (All)

Dated Cuttack, the 8th May 1985

Subject—Putting legible signature in all Judicial Registers and records  
by the Judicial Officers.

Sir,

I am directed to invite reference to item No. 1 of the Proceedings of the District Judges' Conference, 1984 and to say that it has come to the notice of the Court that many Judicial Officers are in the habit of putting illegible signatures in Judicial records and registers which renders the commission of several types of mischief and fabrication of records easy. With a view to putting a check to this untoward trend it was unanimously resolved in the conference that all the Subordinate Judicial Officers should be instructed to put legible signatures in all judicial registers and records.

The Court after careful consideration have been pleased to approve of the resolution and direct that the Judicial Officers of the State should hereafter put legible signatures in all Judicial registers and records.

I am to request that the above instruction may be strictly followed by all concerned.

Yours faithfully,

J. M. MOHAPATRA

Registrar (Administration)

No. 7224(13)≡XLV-4/85

From

Shri R. N. Panda, M. A., LL. B.,  
Registrar (Judicial) of the High Court of Orissa.

To

The District Judges of the State  
Dated Cuttack, the 1st August 1985Subject—Fixation of Yardstick of the cases triable by the Special  
Judge under the Essential Commodities Act. (Item No. 59)  
of the Proceedings of the District Judges, Conference, 1984)

Sir,

I am directed to refer to item No. 59 of the Agenda of the District Judges' Conference, 1984 and the decision taken thereon and to say that the yardstick for deciding cases under the Essential Commodities (Special Provision) Act has been fixed as two contested cases per day.

This is for your information and guidance.

Yours faithfully,

R. N. PANDA

Registrar (Judicial)

No. 8096—XLIXD-49/84

From

Shri P. K. Panigrahi,  
Special Officer, Orissa High Court

To

All the District & Sessions Judges of the State  
Dated Cuttack, the 9th August 1985.Subject—Registration of appeals under section 56(2-e) of the Orissa  
Forest (amendment) Act, 1982 (Orissa Act 9 of 1983).

Sir,

I am directed to say that a question has been raised as to whether appeals under section 56(2-e) of the Orissa Forest (amendment) Act, 1982 (Orissa Act 9 of 1983) should be registered as Title Appeals or Misc. Appeals on the civil side or criminal appeals. All the Sessions Judges of the State were consulted in the matter.

The Court, after careful consideration of the matter are pleased to direct that all appeals instituted under section 56(2-e) of the Orissa Forest (amendment) Act, 1982 should be registered as criminal Appeals henceforth.

I am to request that the above instructions should be observed strictly in future.

Yours faithfully,

P. K. PANIGRAHI

Special Officer

No. 3771

From

Shri J. M. Mohapatra, M. Com., LL. B.,  
Registrar (Admn.) of the  
High Court of Orissa.

To

The District & Sessions Judge,  
Kalahandi, Bhawanipatna.

Dated, Cuttack, the 30th August 1985

Subject—Transfer of criminal cases to the file of Subdivisional  
Judicial Magistrates in which cognizance has been taken by  
the Chief Judicial Magistrates, prior to 1-4-1985.

Sir,

With reference to your letter No. 2185 dated 8-4-1985 on the  
above subject, I am directed to say that the cases which the Sub-  
divisional Judicial Magistrate has received from the Court of the  
Chief Judicial Magistrate by way of transfer and in which cognizance  
has been taken by the letter, the Court after careful consideration  
are pleased to direct that as and when necessity arises and with a  
view to relieving the congestion on the file of the Subdivisional  
Judicial Magistrate all or any of such cases as referred to above may  
be transferred to the Court of any other Judicial Magistrate by the  
Chief Judicial Magistrate in exercise of the power conferred upon  
him under section 410 Cr. P. C.

Court's circular letter No. 11948, dated 9-11-1983 is hereby  
withdrawn.

I am to request that the above instructions may be strictly followe  
ed and brought to the notice of all the Criminal Courts functioning  
in your Judgeship for information and guidance.

Yours faithfully,

J. M. MOHAPATRA  
Registrar (Administration)

✓  
No. 9519=X-1/85

From

Shri J. M. Mohapatra, M. Com., LL. B.,  
Registrar (Administration)  
Orissa High Court, Cuttack.

To

The District and Sessions Judge

Subject—Review of progress of embezzlement cases in the State  
(Item No. 3 of the agenda of the District Judges' Conference.  
1984);

Dated Cuttack, the 17th September 1985

Sir,

I am directed to say that on a review of the Statement of embe-  
zzlement cases in the State, it was noticed that a large number of old  
cases were pending on the files of the Judicial Magistrate. This  
matter came up for discussion in the District Judges' Conference held  
in December, 1984. It was resolved in the conference that due  
attention should be paid to the disposal of old pending embezzlement  
cases on the files of the Judicial Magistrates.



The Court after careful consideration of the matter, are pleased to concur with the decision taken in the conference and direct that due attention should be paid to the disposal of old pending embezzlement cases on the files of the Judicial Magistrates.

I am, accordingly, to draw your attention to the above instructions and request that the same may be brought to the notice of the Magistrates working under you for their information and guidance.

Yours faithfully,  
 J. M. MOHAPATRA  
 Registrar (Administration)

No. 10859

From

Shri J. M. Mohapatra, M. Com., LL. B.,  
 Registrar (Administration) of the  
 High Court of Orissa.

To

All the District and Sessions Judges  
 of the State.

Dated Ccutack, the 7th November 1985

Subject—Expeditious disposal of Sessions Cases  
 involving under trial prisoners.

Sir,

It has come to the notice of the Court that abnormal delay occurs in the trial and disposal of Sessions Cases of under trial prisoners in spite of issuance of instructions in Court's Letter No. 8490, dated 24-8-1984 regarding expeditious disposal of Sessions Cases involving under trial prisoners.

Rule 58 at page 16 of the G. R. and C. O. (Criminal) Volume-I provides that it should always be the endeavour of every Sessions Judge to see that a Sessions Trial is brought to close with due expedition without any unnecessary adjournments. The Court wish to observe that the Sessions Judges should have a close eye on the pendency and disposal of such cases in their respective jurisdictions. They further direct that the Sessions Judges should give preference to the trial of Sessions Cases involving under trial prisoners and see that their trial is brought to a close with due expedition.

I am to request that the above instructions of the Court should be strictly followed by all the Sessions Courts within their jurisdiction.

Yours faithfully,  
 J. M. MOHAPATRA  
 Registrar (Administration)

No. 24—XLIX-D-34/85

From

Shri J. M. Mohapatra, M. Com., I.L. B.,  
Registrar (Administration),  
Orissa, High Court, Cuttack.

To

The District and Sessions Judges of the State

Dated Cuttack, the 6th January 1986

Subject—Verification of service returns of the prosecution witnesses  
by the Courts of Sessions at least seven days before the date  
fixed for trial.

Sir,

I am, directed to refer to the proceedings under item No. 14 of the agenda of the District Judges' Conference, 1984 wherein it was resolved that at the headquarters stations, the Registrar, Civil and Sessions Courts would examine the sufficiency or otherwise of the service returns of the P. Ws. in all Sessions Cases at least one week before the dates fixed for the trial of the Sessions Cases. Whereas at the outlying stations, the respective Presiding Officers are to examine in the aforesaid manner. It was further resolved that for the matter of checking the service returns the Registrar, Civil and Sessions Courts in the headquarters stations and the Presiding Officers in the outlying stations shall maintain a register for the purpose.

The Court, after careful considerations of the matter, have been pleased to concur with the aforesaid decision taken at the Conference, and direct that in all Sessions Cases at least one week before the date fixed for the trial of the Sessions Cases, the Registrar, Civil and Sessions Courts at the headquarters stations and the Presiding Officers of the outlying stations would examine the sufficiency or otherwise of the service returns of the P. Ws. to take follow-up action in order to ensure the attendance of witnesses on the dates fixed. A register of verification of service returns of the prosecution witnesses in Sessions Cases shall be maintained by the Sessions Clerk in the enclosed *pro forma* and shall be put up before the Sessions Judge one week before the date of the trial of the Sessions Cases.

I am, to request that the above decision of the Court may be strictly followed in your Sessions Division.

Yours faithfully,

J. M. MOHAPATRA

Registrar (Administration)

**PRO FORMA**

**Register of verification of Service Return of the prosecution witnesses in Sessions Cases :—**

Sl. No.	Name of the Court	No. and year of the Sessions Case.	Date fixed for trial	Names of prosecution witnesses with addresses who are summoned as witnesses	Date of issue of summons	Mode of service against each witness	Date of return after service	whether service is sufficient/insufficient	Steps taken to procure the attendance of witnesses, if summons not received after due service	Remarks
1	2	3	4	5	6	7	8	9	10	11

No. 26(26)—XLIX-D-13/83

**From**

Shri J. M. Mohapatra, M. Com., LL. B.,  
Registrar (Administration),  
Orissa High Court, Cuttack.

**To**

The District and Sessions Judge

The Chief Judicial Magistrate

Dated Cuttack, the 6th January 1986

**Subject**—Amendment of rule 119 of the Orissa Police Manual Rules 1940, Volume-I regarding testing of seized valuable materials by the goldsmith on payment of remuneration at the time of receipt in the Court Malkhana.

**Sir,**

I am directed to enclose herewith a copy of letter No. 51090/P., dated 18-10-1985 alongwith the broad sheet of amendment of rule 119 of the Orissa Police Manual Rules, 1940, Volume-I on the subject noted above for your information and guidance and for issue of necessary instructions with a copy of the amendment to the subordinate courts under your jurisdiction for their guidance.

Yours faithfully,

J. M. MOHAPATRA

Registrar (Administration)

## GOVERNMENT OF ORISSA

## HOME DEPARTMENT

No. 51989—PIA-14/84-P.

Dated Bhubaneswar, the 18th October 1985

From

Shrimati A. Agnihotri, I. A. S.,  
Deputy Secretary to Government.

To

The Director-General and I-G. of Police,  
Orissa, Cuttack.Subject—Amendment of Rule 119 of Orissa  
Police Manual Rules, 1940, Vol. I.Reference—Letter No. Law-28/81—31681, dated 7-11-1981 of the  
D. I-G., C. I. D. & Rlys, Orissa, Cuttack.Letter No. 634-S. P. A., dated 3-11-1982 of the Deputy  
Director, State Police Academy, Cuttack.

Sir,

I am directed to say that Government after careful consideration, have been pleased to amend the Rule 119 of the Orissa Police Manual Rules, 1940 Volume-I as per the broad sheet enclosed.

This amendment will come into effect from the date of issue of this order.

Yours faithfully,

A. AGNIHOTRI

Deputy Secretary to Government

Memo. No. 51090/P.

dt. 18-10-85

Copy with a copy of the approved broad sheet forwarded to the Registrar Orissa High Court, Cuttack with reference to their letter No. 9445, dated 26-8-83 for information and necessary action.

Sd. A. AGNIHOTRI

Deputy Secretary to Government

INCORPORATION OF NEW RULE IN PMR 119 CHAPTER VI POLICE MANUAL RULES 1940 (VOL. I)

Existing Rule P. M. R. 119(a)

Register of property in possession of the Police. All identifiable property stolen, whether recovered or not and all articles of which the police take charge, shall be entered in detail with a description of the identifying marks on each article, in a register to be kept in P. M. Form No. 18 in duplicate, and a receipt shall be obtained whenever any article of property of which the Police take charge is made over to the owner, sold, sent to the court or disposed of in any other way. These receipts shall be numbered serially, and filed, and the number of the receipts shall be entered in Column 7.

Unidentifiable property (when the rule requires its entry i. e., when the police take charge of it) shall be entered in bulk, the number of articles, value and general description being merely noted:

Proposed Rule

1. This i. e. 119(a) will be numbered as P. M. R. 119(a) (i) P. M. R. 119(a) (ii) Gold and silver materials and other valuable metals seized by the Police, will be tested by a goldsmith, at the time of seizure by the Police Officer(S) concerned and a certificate obtained from him in that regard. The articles will also be tested by a goldsmith at the time of their acceptance by the officer-in-charge of the court Malkhana and discrepancy if any, should be immediately brought to the notice of the S. P. of the district by the court concerned.

2. In order to ensure efficient working of the above procedure the district S. P. and the C. J. M. of the district, in consultation with each other, shall prepare a panel of goldsmiths to attend to the work of each police-station and court malkhana.

3. The rate of remuneration of the goldsmiths for each police-station would be fixed by the Supdt. of Police of the District taking into consideration the nature and volume of the work.

4. The bills of the goldsmith duly certified by the O. I. C. of the P. S. for attending to the work during investigation of cases shall be paid from the investigation charges sanctioned for the District/Establishments and left at the disposal of the Superintendents of Police.

No. 814—XLVIC-82/84

From

Shri K. C. Mohapatra, LL.B.  
Registrar (Inspection & Enquiry)  
Orissa High. Court, Cuttack

To

All the District and Sessions Judges of the State

Dated Cuttack, the 28th January 1985.

**Subject—**Giving regard to the reports of inspection of the Court while writing out Confidential Character Roll of the officers.

Sir,

I am directed to say that report inspections of the Courts of the Judicial Officers of the State holiday the Chief Judicial Magistrates and the District and Sessions Judges at different times exhibit very sad state of affairs in the condition of the offices. The reason behind such affairs are that the Presiding Officers are not alive to their duties and responsibilities. They do not pay their attention to the proper maintenance of records and registers. Many of the officers go without sufficient work on many occasions on account of improper planning with regard to posting of cases in the diary. Important Registers even are not periodically scrutinised. The rules framed and instructions issued by the Court from time to time are followed more in breach than in compliance.

The defects and irregularities pointed out in the notes of inspection for a particular period are found to have been repeated in the next notes of inspection. The Presiding Officers often do not make personal verification as to whether the defects pointed out in the notes of inspection have been actually removed or not. On the other hand, they furnish reports of compliance mechanically with certificate that the compliance reports have been furnished after personal verification. The notes of inspection which play important role in the administration of justice are often treated with empty formality.

The Court while expressing their grave concern over the matter direct that the District and Sessions Judges and Chief Judicial Magistrates, at the time of writing out the Confidential character Roll of the officers, shall have regard to the reports of inspection of their respective Courts.

Yours faithfully

K. C. MOHAPATRA

Registrar (I. &amp; E.)

No. 1534

From

Shri J. M. Mohapatra, M.Com. LL.B.  
Registrar (Administration) of the  
High Court of Orissa

To

All the District and Sessions Judges of the State

Dated Cuttack, the 17th February 1986

Sir,

I am directed to furnish herewith the accompanying extract of Notification No. 2470/40, dated 15-1-1986 received from the Deputy Secretary to the Government of Orissa in Home Department declaring that any offence punishable under section 506 of the Indian Penal Code, when committed in any part of the State of Orissa shall be cognizable and non-bailable, for your information and guidance and for communication to and guidance of the Courts Subordinate to you.

Yours faithfully,

J. M. MOHAPATRA

Registrar (Admn.)

GOVERNMENT OF ORISSA  
HOME DEPARTMENT

NOTIFICATION

Bhubaneswar, dated 15-1-1986

No. 2470—H.C./Ref: 2/10/84 In exercise of the powers conferred by sub-sections (1) and (2) of section 10 of the Criminal Law Amendment Act, 1932 (23 of 1932) and in supersession of the Government of Orissa in the Home Department notification No. 22186-Ref. 2-21-70-H. C., dated the 26th June 1970 under SRO. 487/70 and No. 22187-H. C. of the even date, the State Government do hereby declare that any offence punishable under section 506 of the Indian Penal Code, when committed in any part of the State of Orissa shall, not withstanding anything contained in the Code of Criminal Procedure 1973 (2 of 1974), be cognizable and non-bailable, and the said Code of Criminal Procedure shall, while this notification remains in force, be deemed to be amended accordingly.

By order of the Governor

R. N. DAS

Secretary to Government



No. 3142(13)—XLIXD-28/85

From

Shri J. M. Mohapatra, M. Com., LL. B.,  
Registrar (Administration),  
Orissa High Court, Cuttack.

To

The District & Sessions Judges of the State.

Dated, Cuttack the 2nd April 1986

Subject—Desirability of allowing normal T. A. and D. A. to the Process-Servers when they perform tour not connected with service of processes and summons.

Item No. 29 of the proceedings of the District Judges' Conference, 1984.

Sir,

I am directed to invite a reference to item No. 29 of the proceedings of the District Judges' Conference, 1984 regarding the desirability of allowing normal T. A. and D. A. to the Process Servers when they perform tour not connected with service of process and summons.

2. Rule 74(3) of Orissa Travelling Allowance Rules provides that a Government servant who proceeds on tour beyond his sphere of duty may draw mileage allowance for the entire journey including such part of it as is performed within his sphere of duty, but shall not in such case be entitled to draw the proportionate amount of permanent travelling allowance for the days on which he draws mileage allowance. This rule does not apply to a Government servant who travels beyond his sphere of duty in the course of a journey from one place to another within that sphere or to a Government servant who makes, by road alone, a journey not exceeding 32 kilometers.

3. All the District Judges were consulted in the matter and majority view is that Rule 74 (3) of Orissa Travelling Allowance Rules does not prohibit payment of usual T. A. and D. A. to the process server performing tour beyond his sphere of duty. The Court after careful consideration of the matter observe that since the aforesaid Rule does not prohibit payment of usual T. A. and D. A. to the process server performing tours beyond his sphere of duty, there is no ambiguity in the Rule referred to above.

Yours faithfully,

J. M. MOHAPATRA

Registrar (Admn.)

No. 4079—IX-35/88

From

Shri J. M. Mohapatra, M. Com., LL. B.,  
Registrar (Judicial),  
Orissa High Court, Cuttack.

To

All the District and Sessions Judges of the State.

Dated, Cuttack the 25th April 1986

Subject—Registration of bail petitions filed before the Sessions Courts during the pendency of a Sessions Case as Miscellaneous Cases.

Sir,

I am directed to invite reference to Court's Circular Letter No. 1260(24), dated the 3rd February 1982 which enjoins that applications filed under Section 438 and 439 (1) of the Code of Criminal Procedure in Sessions Courts should be registered as Miscellaneous Cases and be entered in the Register of Miscellaneous Criminal Cases (R) 25 prescribed at page-81 of the General Rules and Circular Orders (Criminal), Volumen-II. It has been brought to the notice of the Court that in the matter of registration of bail petitions filed before Sessions Courts during the pendency of Sessions Case as Miscellaneous Cases, divergent practice prevails in different Judgeships and sessions divisions. In some Judgeships the application for bail under Section 439 (1) of the Code in the Sessions case is dealt with in the Original Sessions record, whereas in other judgeships it is being registered as Miscellaneous Case separately.

With a view to have uniformity in the matter of registration of bail petitions filed before the Sessions Courts during the pendency of Sessions Case as Miscellaneous case, the Court after careful consideration of the matter have been pleased to observe that registration of a Miscellaneous Case every time bail petition is filed in the Sessions Court during the pendency of a Sessions Case would be cumbersome and inconvenient besides serving no useful purpose and as such it is not necessary to register the bail petitions filed before the Sessions Courts during the pendency of Sessions Case as Miscellaneous case, and such petition can be suitable and conveniently be dealt with in the concerned Sessions Case record.

The above modified instructions may be strictly followed by all the Sessions Courts in future.

Yours faithfully,

J. M. MOHAPATRA

Registrar (Judl.)

No. 5253—XLIX-D-15/86

From

Shri J. M. Mohapatra, M. Com., LL.B.  
Registrar (Judicial)  
Orissa High Court, Cuttack

To

All the District and Sessions Judges of the State

Dated Cuttack, the 8th July 1986

Subject—Maintenance of Register of Cases decided (R) 18 and other registers by the Special Courts.

Sir,

I am directed to refer to item-No. 11 of the agenda of the District Judges' Conference held in December 1985 and to say that the question of maintenance of (R) 18 by the Special Courts was considered and it was resolved that with a view to ensuring the correctness of the periodical returns, all registers which the Judicial Magistrates are ordinarily required to maintain, should be maintained in the Special Courts who are entrusted with the trial of cases involving offences under the Essential Commodities Act.

The Court, after careful consideration of the matter, have been pleased to concur with the aforesaid decision and direct that all the registers which the Judicial Magistrates are ordinarily required to maintain, should be maintained in the Special Courts.

I am, accordingly, to request that the above instructions may be strictly followed by all the Special Courts in future.

Yours faithfully

J. M. MOHAPATRA

Registrar (Judicial)

No. 7562—XLIXD-18/86

From

The Registrar (Judl.)  
Orissa High Court, Cuttack

To

The District and Sessions Judge

Subject—Noting the nature of offence for which the bail is moved in the monthly statement of persons released on anticipatory bail.

Item No. 16 of the proceedings of the District Judges' Conference, 1985.

Dated Cuttack, the 18th July 1986

Sir,

I am directed to refer to Court's Circular letter No. 12549, dated 21st August 1975 regarding submission of monthly statements relating to applications for grant of anticipatory bail by the District and Sessions Judges. In the last District Judges' Conference, 1985 under item

No. 16 of the agenda the proposal for dispensing with the Statements of persons released on anticipatory bail was considered and it was resolved that the existing practice should continue. It was further resolved that in the statement of persons released on anticipatory bail the Section of offence for which bail is moved be noted.

The Court, after careful consideration, have been pleased to concur to the said resolution and accordingly direct that the nature of offence for which the bail is moved should noted in column 4 in place of "date of disposal" and the result with date of disposal be appropriately noted in column 5 of the monthly statement of persons released on anticipatory bail prescribed in Court's Circular letter referred to above.

A revised *pro forma* showing statement relating to applications for grant of anticipatory bail is enclosed herewith for your ready reference.

I am, therefore to request that the above instructions may be strictly followed in future.

Yours faithfully

S. MISRA

Registrar (Judl.)

*PRO FORMA*

Statement relating to applications for grant of anticipatory bail

Serial No.	No. of the case	Date of application	Nature of offence for which bail is moved	Result with date	Whether the case ended in submission of chargesheet or not	Remarks
1	2	3	4	5	6	7

No. 7853—XLIXD-20/86

From

The Registrar (Judicial)  
Orissa High Court, Cuttack

To

All the District Magistrates of the State

Subject—Submission of Certificate that the provisions of Section 116(6) of the Code of Criminal Procedure have been followed by the Executive Magistrates.

Dated Cuttack, the 26th July 1986

Sir,

I am directed to enclose a copy of General letter No. 1/80 Criminal which enjoins up on the magistracy to furnish a certificate in the returns to the effect that the provisions of Section 116(6) Cr. P. C. have been followed. Consequent on the amendment of the Code of Criminal Procedure by the (amendment) Act 63 of 1980 the Executive Magistrates have been empowered to deal with the cases under sections 108, 109 and 110 of the Code of Criminal Procedure. In the last District Judges conference, 1985 the proposal for furnishing such certificates by the Executive Magistrates was considered and it was decided that as the hearing of cases under the Preventive Sections has been entrusted to the Executive Magistrates, it would be more appropriate to insist on those Magistrates to furnish certificates showing compliance of Section 116(6) Cr. P. C.

The Court, after careful consideration, have been pleased to concur with the aforesaid decision and observe that the Executive Magistrates shall furnish a certificate in their returns to the effect that the provisions of Section 116(6) of the Code of Criminal Procedure have been followed and the concerned Additional District Magistrates should scrutinise the records and see that compliance has been properly made.

I am to request that the aforesaid instructions may be brought to the notice of all the Executive Magistrates working under your jurisdiction for strict compliance.

Yours faithfully

S. MISHRA

Registrar (Judicial)

## G. L. No. 1 of 1980 (Criminal)

From

Shri B. K. Behera, LL. B.,  
Registrar of the High Court of Orissa.

To

All the District and Sessions Judges  
of the State.

Dated Cuttack, the 22nd May 1980

Subject—Expeditious disposal of cases against under-trial  
prisoners.

Sir,

The question of the expeditious disposal of cases against the under-trial prisoners requires utmost attention. Instructions had been issued by the Court for giving preference to such cases in Court's letter No. 9402—XXIX-83/72, dated the 24th October 1973. The desirability of expeditious trials of such cases has been emphasised by the Supreme Court in the decisions reported in A. I. R. 1979 Supreme Court 1369 and 1377.

The question of expeditious disposal of such cases figured in the District Judges' Conference held in the year 1978 and it had been decided that apart from the instructions of the Court issued in the aforesaid letter, the Sessions Judge would allot and depute a Magistrate exclusively incharge of cases of under-trial prisoners at stations where there are more than one Magistrates. It was further decided that a circular would be issued directing all the Magistrates to give certificate in the monthly statement that they have given preference to such cases. It was also decided that the Chief Judicial Magistrates should scrutinise the records to see as to whether the provisions of Section 116(6) of the Code of Criminal Procedure were being followed. It was further decided that the Sessions Judges and the Chief Judicial Magistrates would instruct all the Magistrates to follow the provisions of the probation of Officers Act.

It would appear that some steps have been taken by the Courts at different stations for the expeditious disposal of cases against the under-trial prisoners. However in order that appropriate steps are taken in this regard by the Subordinate Courts, the Court direct that the following instructions be scrupulously observed by the subordinate courts.

(a) At stations where there are more than one Magistrates the Sessions Judge would allot such cases to one Magistrate, as far as possible.

(b) The Magistrates shall give a certificate in the monthly statements that they have given preference to cases of under trial prisoners. The Magistrates shall also give a certificate that the provision of section 116(6) of the Code of Criminal Procedure have been followed and the Chief Judicial Magistrates should scrutinise the records see that this has been done.

(c) The Sessions Judges and the Chief Judicial Magistrates shall instruct all the Magistrates to properly follow the provisions of the Probation of Offenders Act.

(d) The Magistrates should apply the provisions of Section 167(5) of the Code of Criminal Procedure when investigation has not been completed within the requisite period and the fact that this has been done shall find place in the monthly statement.

(e) The Magistrates must satisfy themselves before authorising the detention of the accused persons beyond the period of 15 days that there are adequate grounds for so doing. Their attention is drawn to the provisions of Section 167(2) of the Code of Criminal Procedure.

(f) All applications for withdrawals of cases against the under-trial prisoners, whenever made by the public prosecutors, should be heard and disposed of immediately after such applications are made irrespective of the dates fixed by advancing the cases and giving due notices to the parties.

I am to request that these instructions should strictly be followed by all courts within your jurisdiction.

Yours faithfully,

B. K. BEHERA

Registrar

No. 8161—XLIX-D-14/86

From

The Registrar (Judicial) of the  
High Court of Orissa.

To

All the District and Sessions Judges of the State.

Dated, Cuttack the 2nd August 1986

Subject—Noting the pre-conviction period of detention of convicts in the Register of Warrant of Imprisonment (R) 5.

Sir,

I am directed to refer to item No. 17 of the proceedings of the District Judges' Conference held in 1985 and to say that the proposal for noting the pre-conviction period of detention of the convicts in the Register of Warrant of Imprisonment Form No. (R) 5 was accepted and it was resolved that in order to facilitate easy verification of the date of termination of sentence in respect of convicts, the pre-conviction period of detention be noted in the remarks column of the Register of Warrant of Imprisonment Form No. (R) 5.



The Court, after careful consideration, are pleased to concur with the aforesaid decision and direct that in order to facilitate easy verification of entries relating to termination of Sentence by the inspecting authorities, the pre-conviction period of detention should be noted in the remarks column of the Register of Warrant of Imprisonment Form No. (R) 5.

I am, accordingly, to request that the aforesaid instructions may be brought to the notice of all the Subordinate Criminal Courts functioning in your Sessions Division for their information and future guidance.

Yours faithfully,  
S. MISRA  
Registrar (Judicial)

No. 8169—XLV-A-5/86

From

The Registrar (Judicial),  
Orissa High Court, Cuttack.

To

All the District and Sessions Judges of the State.

Dated, Cuttack the 2nd August 1986

Subject—Fixation of yardstick for the disposal of criminal cases.  
(Item No. 15 of the proceedings of the District Judges' Conference, 1985).

Sir,

I am directed to refer to Court's Circular letter No. 4551, dated the 22nd April 1982 wherein the revision of yardstick for civil Criminal and un-contested cases has been made and to say that as per the existing yardstick, Magistrates empowered to take cognizance are required to dispose of 150 cases per year while the other Judicial Magistrates are required to dispose of 300 cases per year. This matter came up for discussion in the District Judges' Conference held on 18th and 19th December, 1985 under Agenda No 15. Since the word "year" in relation to the prevailing yardstick for criminal cases has not been defined in Court's letter referred to above, it was resolved in conference that a clarification be issued to the effect that in relation to the prevailing yardstick for criminal cases and for the purpose of disposal one "year" shall mean 210 working days.

The Court after careful consideration of the matter concur with the decision taken in the conference and direct that in relation the prevailing yardstick of criminal cases and for the purpose of disposal one "year" shall mean 240 working days.

I am, accordingly, to request that the above clarification may be brought to the notice of all the courts subordinate to you for this information and guidance.

Yours faithfully,  
S. MISHRA  
Registrar (Judicial)

No. 8622—XI.5/85

From

Shri S. K. Behera, LL. B.,  
Registrar (Administration),  
Orissa High Court, Cuttack.

To

All the District & Sessions Judges of the State.

Dated Cuttack, the 14th August 1986

Subject—Grant of free copies of the documents/orders/judgments in legal aid cases, to Supreme Court Legal Aid Committee and High Court Legal Aid Committee.

Sir,

I am directed to say that it has been brought to the notice of the Court that people belonging to the poor and vulnerably community are deprived of justice because of their economic inability in obtain certified copies of Judgments/Orders/Documents etc. for preferring appeals in the Supreme Court.

The Court, after careful consideration of the matter, have been pleased to direct that hence forth copies of documents/orders/judgments etc. should be granted free of cost when required on their behalf by the Supreme Court Legal Aid Committee or the High Court Legal Aid Committee.

I am, therefore, to request that the above instructions may be brought to the notice of all the Subordinate Courts working under you for their information and guidance.

Yours faithfully,  
S. K. BEHERA  
Registrar (Administration)

From

Shri S. K. Behera, LL. B.,  
Registrar (Administration),  
Orissa High Court, Cuttack.

To

All the District and Sessions Judges of the State

Dated, Cuttack, the 16th September 1986

Subject—Item No. 1 of the Proceedings of the District Judges' Conference held in December, 1985—regarding review of Statistics relating to the Sessions cases.

Sir,

I am directed to refer to item No. 1 of the Proceedings of the District Judges' Conference held in December, 1985 and to say that the review of statistics relating to the Sessions cases revealed a somewhat sordid picture. Instances of Sessions trial being liberally adjourned 10 to 15 times had become almost a common feature. The adjournments were mostly due to avoidable causes such as non-attendance of witnesses and non-production of accused persons. In certain cases, the adjournments were being granted for adducing defence evidence, though ultimately no such evidence was adduced. The Sessions Judges had not tried to go through the records on the files of the Assistant Sessions Judges in which liberal adjournments were a routine feature. All this revealed lack of effective control over the proceedings as also non-application of mind on the part of the Presiding Judges and their controlling officers. In order to root out the causes for the malady, it was accordingly resolved that the Sessions Judges be impressed upon to ensure prompt and effective disposal of Sessions cases in their respective Sessions Divisions paying heed to the instructions communicated in Court's letter Nos. 611, dated 29-1-1962, 8407, dated 19-12-1967 and 7723, dated 22-8-1974 regarding expeditious disposal of Sessions cases and to pull up the defaulting Assistant Sessions Judges.

The Court on careful consideration of the matter have been pleased to reiterate the earlier instructions on the subject and direct that the Sessions Judges be impressed upon to ensure prompt and effective disposal of Sessions cases in their respective Sessions division and to pull up the defaulting Assistant Sessions Judges.

I am, therefore, to request that the above directions of the Court may please be brought to the notice of all the Officers exercising Sessions powers within your jurisdiction for their information and guidance.

Yours faithfully,  
S. K. BEHERA  
Registrar (Administration)

No. 10121--XLIX-D-1/86

From

Shri S. K. Behera,  
Registrar (Administration),  
High Court of Orissa.

To

All the District &amp; Sessions Judges of the State

Subject—Expeditious disposal of cases of U. T. Ps. detained in jails

Dated Cuttack, the 18th September, 1986

Sir,

I am directed to say that the Government of Orissa in Home Department letter No. 60583-JLS., dated 3-12-1985 have decided that for the purpose of expeditious disposal of the cases of under-trial prisoners each Superintendent of the jail or sub-jail, as the case may be, should prepare and furnish to the concerned trial court, Chief Judicial Magistrate, Public Prosecutor, Assistant Public Prosecutor and the Director of Public Prosecutions, a statement disclosing the list of each of the under-trial prisoners interned in his jail. The date of entry into the prison and the provision of the law under which he is being detained, every month. It has further been decided that the concerned Superintendent should also bring specific cases of unnecessary detention of under-trial prisoners to the notice of the concerned C. J. M., besides, bringing the fact to the notice of the Director of Public Prosecution. Effective implementation of this decision of the Government was under consideration of the Court and they, after careful consideration of the matter, have been pleased to direct that the following procedure shall be followed by each of the Subordinate Criminal Courts while being supplied with such monthly list of under-trial prisoners from the concerned jail authorities:—

(a) The Magistrates shall scrutinise the list of under-trial prisoners supplied by the jail authorities in order to ensure that no under-trial prisoner has been unduly detained beyond the maximum period of sentence provided for the offence for commission of which he is being detained and take prompt and suitable remedial measures for release in case of any deviation noticed;

(b) The Magistrates shall submit a quarterly statement of under-trial prisoners indicating the case number, nature of offence with sections of law, date of arrest and the reason for the delay in disposal of the cases in respect of each of the under-trial prisoners to the concerned C. J. M. certifying that no under-trial prisoner has been in jail for a period which is more than the maximum period of sentence provided for the commission of the offence for which he is implicated; and

(c) The C. J. M. after satisfying himself about correctness of the statement submitted by the Magistrate shall submit a verified quarterly report to the concerned Sessions Judge in regard to any under detention suffered by any of the under-trial prisoners, interned within his jurisdiction.

(d) The C. J. M. shall also scrutinise the list of under-trial prisoners submitted by the jail authorities and the Magistrates while holding periodical inspection of the Court of the Magistrate with reference to the case records and take prompt remedial measures on noticing any undue detention.

(e) The C. J. M. shall take the problem causing delay in disposal of the cases of under-trial prisoners to the Police-Magistracy co-operation meeting with a view to securing expeditious disposal of the cases of such under-trial prisoners.

The Sessions Judge shall submit a quarterly report to the Court in respect of under-trial prisoners along with the report of the C. J. M. which shall also be sent to the Court along with his comments, separately, indicating therein the cases where the trial have not been concluded even after one year of detention of the concerned prisoner in the prison.

I am, therefore to request that the above instructions may be brought to the notice of the subordinate criminal courts under your control for information and guidance and for strict compliance.

Yours faithfully,  
S. K. BEHERA

Registrar (Administration)

No. 10896—XI-6/86

From

Shri S. K. Behera,  
Registrar (Administration),  
Orissa High Court, Cuttack.

To

All the District and Sessions Judges of the State.

Dated Cuttack, the 8th October 1986

Subject—Visit to Jails by the District and Sessions Judges and submission of report to the Court.

Sir,

In enclosing herewith a copy of Supreme Court's Order, dated the 5th August, 1986 passed in Writ Petition (Criminal) No. 1451 of 1985 (Sheela Barse—Vrs—Union of India and others), I am directed to say that in pursuance of the observation made therein, the Court have been pleased to direct that the District and Sessions Judges should visit the District Jails located within their respective jurisdictions wherein there is likelihood of incarnation of Juvenile offenders once

in two months for taking particular care about child prisoners, both convicts and under-trial prisoners, and on noticing any infraction in regard to children incarcerated in such jails, draw the attention of the Administration in addition to submitting reports to the Court of any such infraction in regard to children.

The Court further direct that besides the above visits the District and Sessions Judges should pay routine visits to the District Jails within their respective jurisdiction twice in a year and submit their report in respect of their said visits to the Court.

I am to request that the above observation of the Court be strictly followed in future.

Yours faithfully,

S. K. BEHERA

Registrar (Administration)

IN THE SUPREME COURT OF INDIA

ORIGINAL JURISDICTION

WRIT PETITION No. 1451 OF 1985

Sheela Barse

...

Petitioner

-Versus-

Union of India & Ors.

...

Respondents

ORDER

This application under Article 32 of the Constitution has asked for release of children below the age of 16 years detained in jails within different States of the country, production of complete information of children in jails, information as to the existence of juvenile courts, homes and schools and for a direction that the District Judges should visit jails or sub-jails within their jurisdiction to ensure that children are properly looked after when in custody as also for a direction to the State Legal Aid Boards to appoint duty counsel to ensure availability of legal protection for children as and when they are involved in criminal cases and are proceeded against. The Union of India and all the States and Union Territories have been impleaded as respondents.

On September 24, 1985, notice was directed to all the respondents. A few of the respondent States filed counter affidavits in response to the notice. The matter was adjourned on March 31, 1986, to April 15, 1986, to enable the respondents who had not yet filed their affidavits to file such affidavits. On April 15, 1986, after hearing counsel who appeared for the parties this Court pointed out:

"...It is an elementary requirement of any civilised society and it has been so provided in various statutes concerning children that children should not be confined to jail because incarceration in jail has a dehumanising effect and it is harmful to the growth and development of children. But even so

the facts placed before us, which include the survey made by the Home Ministry and the Social Welfare Department show that a large number of children below the age of 16 years are confined in jails in various parts of the country".

This Court directed the District Judges in the country to nominate the Chief Judicial Magistrate or any other judicial Magistrate to visit the District Jail and Sub-Jail in their districts for the purpose of ascertaining how many children below the age of 16 years are confined in jail, what are the offences in respect of which they are charged, how many of them have been in detention whether in the same jail or previously in any other jail before being brought to the jail in question, whether they have been produced before the children's court and, if so, when and how many times and whether any legal assistance is provided to them. The Court also directed that each District Judge will give utmost priority to this direction and the Superintendent of each jail in the district will provide full assistance to the District Judge or the Chief Judicial Magistrate or the Judicial Magistrate in this behalf who will be entitled to inspect the registers of the jail visited by him as also any other document/documents which he may want to inspect and will also interview the children if he finds it necessary to do so for the purpose of gathering the correct information in case of any doubt. The District Judge, Chief Judicial Magistrate or the Judicial Magistrate, as the case may be, will submit report to this court within 10 weeks from today. It will also be stated in the report as to whether there are any children's home, Remand Home or Observation Homes for children within his district and if there are, he will inspect such children homes, remand homes and observation homes for the purpose of ascertaining as to what are the conditions in which children are kept there and whether facilities for education or vocational training exist. Such reports will be submitted by each District Judge through the Registrars of the respective High Courts to the Registrar of this Court. Each State Government will also file affidavit stating as to how many children homes, remand homes and observation homes for children are in existence in the respective State and how many inmates are kept in such children homes, remand home or observation homes. We would also direct the State Legal Aid & Advice Board in each State or any other Legal Aid Organisation existing in the State concerned, to send two lawyers to each jail within the State once in a week for the purpose of providing legal assistance to children below the age of 16 years who are confined in the jails". The writ petition was adjourned to July 17, 1986.

On April 24, 1986, the Court again made the following order :

"...We have adjourned the writ petition to 17-7-1986 for hearing and final disposal but we feel that it would be desirable to take it up when the Bench sits in vacation. We would direct that the matter may be placed for final disposal before a Bench of this Court on 24-6-1986. We have granted two months' time to the District Judges to make their reports vide our order dated 15-4-1986. Fresh intimation to this effect may be sent to the District Judges through the Registrars of the High Courts. We may reiterate that as soon as the reports are received copies thereof may be supplied to the Advocates during the vacation itself. ..."

The writ petition was thereafter listed on July 12, 1986, during the long vacation for hearing. The Court found that though reports from several District Judges had come in response to the earlier direction, yet several District Judges had not sent their reports. The Court observed :

"It is a little surprising that though we gave directions long back directing the District Judges/Chief Judicial Magistrates to send their reports of inspection of not only the District Jails but also Sub-Jails in the districts on or before 10-6-1986 (24-6-1986), the reports have not yet come in respect of several Districts and particularly in respect of sub-jails in the Districts. We propose to give directions for expediting submission of these reports at the next hearing of the writ petition. We are very keen that the High Courts should be requested to monitor the submission of these reports and we have therefore requested the counsel appearing in the case to make constructive suggestions in that behalf. "

Six further weeks have passed beyond the time indicated in the order dated April 15, 1986, and even till this day analysis shows that several District Judges have not complied with the direction. This Court had intended that the reports of the District Judges would be sent to the registry of this Court through the Registrars of the respective High Courts. This obviously meant that the Registrars of the High Courts were to ensure compliance. We are both concerned and surprised that a direction given by the apex Court has not been properly carried out by the District Judges who are an effective instrumentality in the hierarchy of the judicial system. Failure to submit the reports within the time set by the Court has required adjournment of the hearing of the writ petition on more than one occasion. We are equally surprised that the High Courts have remained aloof and indifferent and have never endeavoured to ensure submission of the reports by the District Judges within the time indicated in the order of this Court. We direct that every defaulting District Judge who has not yet submitted his report shall unfailingly comply with the direction and furnish the report by August 31, 1986, through his High Court and the Registrar of every High Court shall ensure that compliance with the present direction is made.

Article 39 (f) of the Constitution provides that the State shall direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. Every State excepting Nagaland has a Children's Act. It is a fact that some of the Acts have been in existence prior to inclusion of the aforesaid clause in Article 39 by the amendment of 1976. Though the Acts are on the statute book, in some States the Act has not yet been brought into force. This piece of legislation is for the fulfilment of a constitutional obligation and is a beneficial statute. Obviously the State Legislatures have enacted the law on being satisfied that the same is necessary in the interest of the society, particularly of children. There is hardly any justification for not enforcing the statute. For instance, in the case of Orissa though the Act is of 1982, for four years it has not been brought into force. Ordinarily it is a matter for the State Government to decide as to when a particular statute should be brought into force but in the present setting



we think that it is appropriate that without delay every state should ensure that the Act is brought into force and administered in accordance with the provisions contained therein. Such of the States where the Act exists but has not been brought into force should indicate by filing a proper affidavit by August 31, 1986, as to why the Act is not being brought into force in case by then the Act is still not in force.

Under the Jail Manuals prevalent in different States every jail has a nominated committee of visitors and invariably the District and Sessions Judge happens to be one of the visitors. The purpose of having visitors is to ensure that the provisions in the Manual are strictly complied with so far as the convicts and the under-trials prisoners detained in jail are concerned. Being in jail results in curtailment of freedom. It is, therefore, necessary that the safeguards which are provided in the Manual should be strictly complied with and the prisoners should have the full benefit of the provisions contained in the Manual. We direct that every District and Sessions Judge should visit the District Jail atleast once in two months and in course of his visit he should take particular care about child prisoners, both convicts and under-trials and as and when he sees any infraction in regard to the children in the prison he should draw the attention of the Administration as also of his High Court. We hope and trust that as and when such reports are received in the High Court the same would be looked into and effective action would be taken thereupon. It is hardly necessary to point out that it is the obligation of the High Court to ensure that all persons in judicial custody within its jurisdiction are assured of acceptable living conditions.

This Court had made a direction the State Legal Aid Boards to provide the facility of lawyer's service in regard to under-trial children. No report has yet been received from any Board as regards action taken in this direction. The State Boards will now furnish the information also by August 31, 1986.

Certain other directions have been given earlier by this Court. All such directions shall be complied with and returns shall be furnished to this Court also by August, 31, 1986. We hope and trust that there would be strict compliance with these directions now made and there would be no occasion for any further direction to be made for the self-same purpose. The writ application shall be placed for directions on September 8, 1986.

The petitioner, we must record, has undertaken real social service in bringing this matter before the Court. She has stated to us that she intends visiting different parts of the country with a view to gathering further information relevant to the matter and verifying the correctness of statements of facts made in the counter affidavits filed by the respondent States. We are of the view that the petitioner should have access to information and should be permitted to visit jails, children's homes, remand homes, observation homes, borstal schools and all institutions connected with housing of delinquent or destitute children. We would like to point out that this is not an adversary litigation and the petitioner need not be looked upon as an adversary. She has in fact volunteered to do what the State should have done. We expect that each State would extend to her every

assistance she needs during her visit as aforesaid. We direct that the Union Government-respondent no. 1 shall deposit a sum of rupees ten thousand for the time being within two weeks in the Registry of this Court which the petitioner can withdraw to meet her expenses.

We would like to make it clear that the information which the petitioner collects by visiting the children's institutions in different States as indicated above is intended to be placed before this Court and utilised in this case and not-intended for publication otherwise.

P. N. BHAGWATI, C.J.

RANGANATH MISRA, J.

New Delhi,

August 5, 1986

No. 11632

From

Shri S. K. Behera,  
Registrar (Administration)  
Orissa High Court, Cuttack.

To

The District and Sessions Judge (All.)

Dated Cuttack, the 31st October 1986

Subject—Desirability of fixing a uniform yardstick for Sessions cases throughout the State (Item No. 8 of the proceedings of the District Judge's conference, 1985).

Sir,

I am directed to say that different yardsticks for different Judgeship in respect of disposal of Sessions Cases have been prescribed by the Court. The desirability of fixing an uniform yardstick for Sessions Cases throughout the State came up for discussion under Item No. 8 in the District Judges Conference held on 18th and 19th December 1985. It was resolved in the Conference that the yardstick in respect of Sessions Cases be revised as under.

(i) For the Judgeships of Cuttack,  
Puri, Ganjam, Balasore

One case in  
5 days

(ii) For the remaining  
Judgeships.

One case in  
4 days

The Court after careful consideration of the matter concur with the decision taken in the Conference and direct that the Yardstick for disposal of a Sessions Case for the Judgeships of Cuttack, Puri Ganjam and Balasore shall be 5 days and for remaining Judgeships 4 days hereafter.

I am accordingly to request that the revision of the yardstick for disposal of Sessions Cases as above may please be noted and brought to the notice of the courts working under you.

Yours faithfully,

S. K. BEHERA

Registrar (Administration)

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Letter No. 2628

Dated Cuttack, the 25th February 1987

To

The District Judge (All)

Subject—Morning sitting of the Subordinate Courts

Sir,

I am directed to say that the Court are pleased to decide that the morning sittings of the Subordinate Judicial Courts shall be held at all places in the State except at Bhubaneswar, Puri Sadar, Berhampur and Chhatrapur from 1st Monday of April every year till the last date of the following Summer Vacation and on and from the reopening day there would be day sittings. The working hours during the morning sitting shall be 6-30 A.M. to 12-30 P.M. as prescribed in Rule 1 of the G.R. & C.O. Civil, Volume I and Rule 1 of the G.R. & C.O. Criminal, Volume-I. This practice will continue every year until further orders.

I am, therefore, to request you to kindly intimate all the Subordinate Courts in your Judgeship for their information and necessary action.

Yours faithfully,

D. K. SAHU

Ind Deputy Registrar

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No. 7566

From

Shri S. K. Behera,  
Registrar (Administration), Orissa High Court, Cuttack

To

All the District and Sessions Judges of the State  
Dated Cuttack, the 30th June 1987.

Subject—Taking of cases of Under-trial Prisoners and  
delivery of Judgements of those cases at the  
early hours of the Court days.

Sir,

It has come to the notice of the Court that on account of return of Under-trial Prisoners to jail from Courts in late hours considerable difficulties are being faced by Jail Officials.

I am directed to say that in order to obviate the difficulty, the Criminal Courts should attend to cases involving under-trial prisoners in the early hours, as far as possible and practicable without affecting other work of the Court so that the prisoners can be taken back to the concerned jail before the lock-up hours.

I am to request that the aforesaid instructions may be followed by all the Criminal Courts in your Judgeship.

Yours faithfully,

S. K. BEHERA

Registrar (Administration)

No. 8213

From

Shri S. K. Behera,  
Registrar (Administration), High Court of Orissa

To

All the District and Sessions Judges of the State  
Dated Cuttack, the 15th July 1987

Subject—Discontinuance of practice of observance of the Administrative Days by the Presiding Officers in the Subordinate Courts.

Sir,

I am directed to say that the question of continuing the practice of observing as Administrative Clearance day by the Subordinate Judicial Officers was under consideration of the Court for some time past and was discussed in the District Judges' Conference held in the year 1986.

The Court after careful consideration of the matter are pleased to direct that henceforth no Judicial Officer except the District Judges shall observe Administrative Clearance days.

I am to request that the aforesaid decision of the Court may be brought to the notice of all the Subordinate Courts working under you for their information and guidance.

Yours faithfully

S. K. BEHERA

Registrar (Admn.)

ORISSA HIGH COURT, CUTTACK

No. 13022—IX-5/36

From

Shri P. K. Panigrahi, LL.B.  
Registrar

To

The District & Sessions Judge,

Dated, Cuttack, the 14th December 1987

Subject—Supply of copies of judgments of acquittal in Criminal Cases.

Sir,

Consolidating all the previous instructions issued in the Circulars referred to hereunder the Court are pleased to direct that carbon copies of judgements of acquittal in Sessions/Police/Railway Police/Vigilance/Excise/Departmental Cases should be supplied to the concerned Superintendent of Police, Superintendent of Excise and District/Division Level Officers as the case may be, free of cost within three days of delivery of judgment and that the above instructions shall apply irrespective of whether the order of acquittal is in respect of all or some of the accused persons or in respect of some or all the offences.

I am, to request that the above instructions may be brought to the notice of all the criminal courts within your jurisdiction for their information and guidance.

Yours faithfully,

P. K. PANIGRAHI

Registrar

Circular Nos.

No. 3784, dated 15-4-1981, No. 8080, dated 10-7-1981, No. 10050, dated 27-9-1984, No. 3899, dated 4-5-1979, No. 6555, dated 22-9-1966, No. 3596, dated 12-4-1985, and No. 8952, dated 22-8-1986.

## ORISSA HIGH COURT CUTTACK

No. 13025—IX-24/37

From

Shri P. K. Panigrahi, LL. B.  
Registrar

To

The District and Sessions Judge

Dated Cuttack, the 14th December 1987.

Subject—Furnishing the reasons for non-disposal of cases involving minor U. T. Ps. within 9 months in the quarterly statements.

Sir,

I am directed to say that the Court are pleased to concur with the resolution adopted under Item No. 30 of the proceedings of the District Judges' Conference held in 1986 and direct that the Trying Magistrates should furnish the reasons for non-disposal of the cases involving minor under trial prisoners within 9 months of institution in the quarterly statements.

I am, therefore, to request that the above instructions may be brought to the notice of the Subordinate Criminal Courts under your control for information and guidance.

Yours faithfully,

P. K. PANIGRAHI

Registrar

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