

PART B.—REMANDS TO POLICE CUSTODY.

1. The following instructions on the subject of remands to Police custody have been issued by the High Court.

Introductory.

2. Magistrates should observe the great distinction between a remand to Police custody and an ordinary remand to the Magistrate's lock-up under section 344 of the adjournment of an inquiry or trial owing to the absence of a witness or from any other reasonable cause.

Distinction between remand to Police custody and remand to judicial lock-up.

3. The non-completion of the enquiry or trial justifies the latter, but the former requires some thing more, as it is expressly provided by section 167 that the non-completion of the investigation shall not, in the absence of a special order of a Magistrate be deemed to be a sufficient case for the detention of an accused person by the Police.

Non-completion of Police investi-gation does not justify detention by Police.

Magistrates should ensure that, whenever a person arrested and detained in custody is produced before them by the police for a remand, the police places before them copies of the first information report and the Zimnis and other necessary papers as required by sub-section (1) of Section 167.

¹[The Magistrate shall sign and date every page of the case diaries or copies thereof in token of his having seen them.]

4. Ordinarily when an Investigation is incomplete the proper course is for the accused person to be sent up promptly with such evidence as has been obtained and for the trial to be commenced at once by the Magistrate and proceeded with, as far as possible and then adjourned for further evidence. In the opinion of the High Court a remand to Police custody ought only to be granted in cases of real necessity and when it is shown in the application that there is good reason to believe that the accused can point out property or otherwise assist the Police in elucidating the case.

Remand to be granted in cases of real necessity.

5. The Police are too often desirous of retaining the accused in their custody for the longer period than twenty-four hours merely in the hope of extracting some admission of guilt from him. This is contrary to section 163 and the following section of the

Magistrate should discourage tendency of Police to take remand to Extort confession.

1. Added vide Correction Slip No. 10 Rules/XXIII-A-7, dated 21.01.1966.

Code of Criminal Procedure, and to the spirit of the Code generally; and Magistrates must be careful not to facilitate this object by too great a readiness in granting remands.

Remand cannot be granted for more than 15 days. Procedure when accused is brought before a Magistrate to obtain remand.

6. It should be further remembered that remands to Police custody cannot be granted under the Code of Criminal Procedure, for a longer period than 15 days altogether, and cannot be granted at all by a Magistrate of the third class, or by a Magistrate of the second class not specially empowered by the State Government. When an accused is brought before a Magistrate in accordance with section 167, sub-section (1), Code of Criminal Procedure, the Magistrate must adopt one of the following courses :

- (1) If he has jurisdiction to try the case or commit it for trial, either
 - (a) discharge the accused at once, on the ground that there is no cause shown for further detention, or
 - (b) remand him to Police custody (if empowered to do so) or to magisterial custody as he may think fit, for a term not exceeding 15 days, which term, if less than 15 days may subsequently be extended up to the limit of 15 days in all, or
 - (c) proceed atonce to try the accused himself, or hold an inquiry with a view to committing him for trial, or
 - (a) if for any reason it seems necessary, forward the accused atonce to the District or Sub-Divisional Magistrate to whom he is subordinate, or
 - (b) if himself a District or Sub-Divisional Magistrate, send the accused to a competent subordinate Magistrate for trial or commitment.
- (2) If he has not jurisdiction to try the accused or commit him for trial, he must either-
 - (a) if he thinks there is no ground for further detention, atonce send the accused to a

Magistrate having jurisdiction, with a view to his trial or discharge, or

- (b) if he thinks there is ground for further detention, remand him to Police custody (if empowered to do so) or to magisterial custody as he may think fit for a term not exceeding 15 days, which term; if less than 15 days, may subsequently be extended, up to the limit of 15 days in all.

Note.—By Punjab Government Notification No. 11984, dated 16th April, 1924, all stipendiary Magistrates of the 2nd class have been invested with power to authorise the detention of accused persons in the custody of the Police under section 167 (2) of the Code of Criminal Procedure as amended by Act XVIII of 1923.

7. Before making an order of remand to Police custody under section 167 of the code of Criminal Procedure the Magistrate should satisfy himself that -

Accused must be produced before the Magistrate who should satisfy himself for remand.

- (1) there are grounds for believing that the accusation against the person sent up by the Police is well founded:
- (2) there are good and sufficient reasons for remanding the accused to Police custody instead of detaining him in magisterial custody.

In order to form an opinion as to the necessity or otherwise of the remand applied for by the Police, the Magistrate should examine the copies of the diaries submitted under section 167 and ascertain what previous orders (if any), have been made in the case, and the longer the accused person has been in custody the stronger should be the grounds required for a further remand to police custody.

The person must always be produced before the Magistrate when a remand is asked for.

8. The following principles are laid down for the guidance of Magistrates in the matter of granting remands and District Magistrates (or in the districts

Principle applying remand cases.

in which the experiment of separation of the Executive from the Judiciary is being tried the Additional District Magistrates) are required to see that they are carefully applied :—

(i) Under no circumstances should an accused person be remanded to Police custody unless it is made clear that his presence is actually needed in order to serve some important and specific purpose connected with the completion of the inquiry. A general statement by the officer applying for the remand that the accused may be able to give further information should not be accepted.

(ii) When an accused person is remanded to Police custody the period of the remand should be as short as possible.

(iii) In all ordinary cases in which time is required by the Police to complete the inquiry, the accused person should be detained in magisterial custody.

(iv) Where the object of the remand is merely the verification of the 'prisoner's statement he should be remanded to magisterial custody.

(v) An accused person who has made a confession before a Magistrate should be sent to the Judicial lock-up and not made over to the Police after the confession has been recorded. If the Police subsequently require the accused person for the investigation, a written application should be made giving reasons in detail why he is required and an order obtained from the Magistrate for his delivery to them for the specific purposes named in the application. If an accused person, who has been produced for the purpose of making a confession has declined to make a confession or has made a statement which is unsatisfactory from the point of the prosecution, he should not be remanded to Police custody.

9. In any case when an accused person is remanded to Police custody, the reasons must be recorded in the order of remand, and when the Magistrate ordering a remand is not himself a Sub-Divisional or District Magistrate he must at once send a copy of his order, with his reasons for making it to the Sub-Divisional or District Magistrate to whom he is immediately subordinate. [Section 167(4)].

Reasons for grant of remand to be recorded and copy sent to District Magistrate.

10. If the limit of 15 days has elapsed, and there is still need for further investigation by the Police, the Procedure to be adopted is that laid down in section 344; Criminal Procedure Code. The case is brought on to the Magistrate's file and the accused, *if* detention is necessary, will remain in magisterial custody. The case may be postponed or adjourned from time to time for periods of not more than 15 days each and as each adjournment expires the accused must be produced before the Magistrate, and the order of adjournment must show good reasons for making the order.

Procedure when a remand for more than 15 days is required for completion of the case.

11. District and Sub-Divisional Magistrates should take measures to exercise strict supervision over the action of all Magistrates subordinate to them, in regard to the granting of remands under section 167 of the Code of Criminal Procedure, and, as these officers receive the reports made under the last clause of that section; they possess the means for exercising the supervision here required of them without and difficulty. The District and Sub-Divisional Magistrates should further arrange that the Duty Magistrate should attend office, at specified hours on public holidays, for disposal of such applications for remand as may be placed before him.

Note.—In district in which the experiments of separation of the Executive from the Judiciary is being tried, this supervision and control over the Judicial Magistrates will be exercised by the Additional District Magistrates.

12. (i) The following instructions have been issued by the Punjab Government for the guidance of Magistrates in regard to remands (*Punjab Government circular letter N. 6091-J-36/39829 (H.—Judl.)*, dated the

Before the grant of remand accused should be heard and allowed to engage a counsel.

19th, December, 1936, to all District Magistrates in the Punjab) :-

- (a) Before a remand is granted in any case, the Magistrate should inform the accused that he is a Magistrate and that a remand has been applied for, and he should ask the accused whether he has any objection to offer to the remand. The order granting the remand should be written at the time it is announced, in the presence of the accused.
- (b) If the accused wishes to be represented by counsel, the Magistrate should allow time for counsel to appear and argue the matter before him. He may grant a temporary remand in such circumstances until arguments have been heard

Right of accused to access to counsel and friends.

(ii) The Punjab Government have issued the following instructions in regard to the right of accused to access to counsel and friends:—An accused person should not be removed to a place which is either inaccessible or unknown to his friends or counsel. Information regarding his place of confinement should at all times be given to his friends on their application, and the prisoner himself should be informed that he is entitled to have the assistance of counsel and to communicate with his relations and friends.