

## PART B. —CRIMINAL LUNATICS —ENQUIRY.

1. Whenever a Magistrate, either in the course of an enquiry or during a trial, has reason to believe that an accused person is incapable of making his defence by reason of unsoundness of mind, he is bound to hold an enquiry into such unsoundness of mind (section 464 of the Code of Criminal Procedure).

Magistrates bound to make enquiry about unsoundness of mind of the accused.

2. For the purpose of such enquiry, he is further bound to have the person examined by the Civil Surgeon or such other Medical Officer as the State Government may direct.

Examination by Medical officer and his evidence.

The Medical officer must then be examined *as a* witness, and his examination must be reduced to writing. It will be found most convenient to have the form mentioned in Part C, paragraph 2, filled in at this stage.

3. If unsoundness of mind is established to the satisfaction of the Magistrate, a finding to that effect should be recorded, and further proceedings should be stayed.

Stay of proceedings if unsoundness of mind proved.

4. The procedure in a Court of Sessions is slightly different. There, the fact of unsoundness and incapacity are to be tried in the first instance by the jury, or by the Court as the case may be, and there is no specific provision for an examination by a Medical Officer. The trial of the fact of insanity however, forms part of the trial before the Court, and the Court would ordinarily take the necessary evidence before proceeding to a finding.

Trial of the fact of insanity in Sessions trials.

5. Either during the examination of the accused by a Medical Officer, or during the enquiry into the fact of insanity, or after the accused has been found to be of unsound mind, and incapable of making his defence, the Magistrate or Court may release the accused on sufficient security being given that he will be-

Accused may be released on security.

- (1) properly taken care of;
- (2) prevented from doing injury to himself or any other person; and
- (3) produced before the Court or such other officer as the Court appoints, when required.

Such an order may be passed whether the case is bailable or not (section 466 of the Code).

In releasing accused due regard should be paid to public safety.

6. An order for release, however, should not be passed without due regard to the public interest. If the crime of which such a person is accused be an offence against the person, or if there is reason to believe that he has at any time been aggressive, a detailed medical history sheet should in all cases be obtained, and this should be consulted before orders are passed regarding bail. In the event of the lunatic having at any time exhibited a tendency to violence, it is the duty of the Magistrate or Sessions Judge to satisfy himself that a sufficient length of time has elapsed since such manifestations to render a recurrence improbable, and that the sureties are in a position to control the actions of the lunatic should they recur.

Action to be taken when accused cannot be released on bail.

7. If the case is one in which in the opinion of the Magistrate or Court, bail should not be taken, or if sufficient security is not given, the Magistrate or Court must order the accused to be detained in safe custody in such place and manner as he or it may think fit (section 466(2)). The action taken must then be reported to the State Government.

Accused may be sent to Mental hospital in such cases.

8. This provision enable a Court to send an accused person direct to a Mental Hospital, instead of awaiting the orders of the State Government, as was formerly necessary. But if an order is made for the detention of the accused in a Mental Hospital, this order must be in accordance with any rules which the State Government may have made under the Indian Lunacy Act, 1912.

Proceedings under section 464, 466 can be taken only when a prima facie case is made out by prosecution evidence.

9. It should be borne in mind; however, that before action is taken under section 466 of the Code, case for the prosecution should be gone into in order to discover whether any prima facie case is made against the accused. In warrant cases instituted on police report, the magistrate shall take into consideration the documents referred to in sub-sections (1) to (3) of section 251-A and give the prosecution and the counsel for the accused an opportunity of

being heard, In other cases a reference to sections 207-A and 208 (inquiry preliminary to commitment) and section 252 (Warrant cases instituted otherwise than on a police report) of the Code will show that the magistrate has to record the evidence for the prosecution. When this has been done the Magistrate has to form an opinion as to whether any case is established which should go to trial or not. If no case is established the accused must be set at liberty, (Section 207-A (6) 209, 251-A, (2) and 253 of the code). If a *prima facie* case is made out a charge has to be framed. (Sections 207-A (7), 210, 251-A (3) and 254 of the Code), either previous to the case being committed to the court of Sessions or High Court or in view to the accused being called upon to enter upon his defence. It is at this stage that section 464 to 466 come into play.

10. When an enquiry has been postponed under sections 464 or 465, the Magistrate or Court may at an time call for the accused of its motion and resum proceeding under section 467. Such action will ordinarily be taken after a reasonable period in all cases when the accused has been released on security. Resumption of proceedings under section 467.

11. If, however, the accused has been detained in a Mental Hospital, the accused will usually be returned by the authorities under section 473, as soon as he is certified to be capable of making his defence. The practice in the Punjab Mental Hospital at Amritsar is for patients to be brought before the visitors committee at the half-yearly inspection, and if the Medical Superintendent considers that any person is capable of making his defence and of understanding the proceedings against him, he recommends that he should be put up for trial. If this recommendation is accepted by the committee the patient is then sent back for trial. Patients certified by Mental Hospital to be fit to make their defence.

12. It should be noted that the orders of a Magistrate or Court for the detention of a criminal lunatic may be varied by the State Government- Orders of Magistrate for detention may be varied by Government.

- (i) certificate under section 474;
- (ii) an application by a friend or relative under section 475.

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Procedure when accused is of sound mind at the time of trial but was not so at the time of committing the offence.

13. A second class of cases arises when an accused person appears to be of sound mind at the time of enquiry or trial but there is reason to believe that he was of unsound mind at the time of committing the offence with which he is charged. In such cases the Magistrate must proceed to determine the facts with reference to section 84 of the Indian Penal Code.

14. If the Magistrate finds reason to believe that he committed an act, while he was of unsound mind which, but for such unsoundness, would be an offence, the Magistrate should--

- (1) if he is competent to do so try the case against the accused.
- (2) if the case is one which should be tried by the Court of Sessions or High Court commit the case for trial by such Court, leaving to that Court to deal with the matter.

If accused is acquitted on the plea of insanity he should not be released.

15. If the plea is accepted and the accused is acquitted on the ground that although he committed an act which would have constituted an offence if he had been of sound mind; he was insane at the time of committing it, the court cannot order his release but must order him to be detained in safe custody (section 471, Criminal Procedure Code). The procedure is then the same as that given in paragraphs 7 and 8 above. Final orders for the release or detention of such a prisoner will be finally passed by the State Government under section 474, Criminal Procedure Code.

Superintendent Jail to keep the prisoner under observation and to report the results thereof.

16. In all cases in which insanity is pleaded or set up as a defence, the Superintendent of the Jail in which the convict is confined should be directed to keep the prisoner under observation and to report the result thereof to the High Court before the date fixed for hearing in that Court.