

## GENERAL PRINCIPLES OF FAIR TRIAL

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### FAIR TRIAL IN CRIMINAL CASES :-

#### **Meaning and definition of trial:-**

So far as the literal meaning of this term is concerned *John Broke in Osbori's Concise Dictionary 6<sup>th</sup> Ed*, describes trial as the examination and decision of a matter of law or fact by a court of law.

*Earl Jowitt in Dictionary of English Law* States as follows:

“Trial, the hearing of a case, civil or criminal before a Judge who has jurisdiction over it according to the laws of the land. A trial is the finding out by due examination of the truth of the point in issue or question between the parties, whereupon judgment may be given.

#### **Object of Criminal trial:-**

Every criminal trial is a voyage of discovery in which the truth is the quest. It is the duty of the presiding judge to explore every avenue open to him in order to discover the truth and to advance the cause of justice. The public interest demands that criminal justice should be swift and sure that the guilty person should be punished while events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial.

The primary object of criminal trial is to ensure fair trial. A fair trial has naturally two objects involved. It must be fair to the accused and must also be fair to the prosecution. The trial must be judged from this dual point of view. The object of criminal trial is to render public justice to punish the criminal and to see that the trial is concluded expeditiously before the memory of the witness fades out. The object of criminal trial is to convict a guilty person when the guilt is established beyond the reasonable doubt, no less than it is Courts duty to acquit the accused when such guilt is not so established.

#### **Concept of fair and speedy trial:**

Fair trial includes fair and proper opportunities allowed by law to prove the innocence. Adducing evidence in support of the defence is a valuable right and denial of that right means denial of fair trial. It cannot be denied that one of the most valuable rights of our citizens is to

get a fair and impartial trial free from an atmosphere of prejudice. This right flows necessarily from Article 21 of the Constitution which makes it obligatory upon the State not to deprive any person of his life nor personal liberty.

In law the expression justice comprehends not merely a just decision but also a fair trial. A denial of fair trial is denial of justice. One of the contents of natural justice which is much valued is the guarantee of a fair trial to an accused person. A denial of fair trial is a denial of justice. In other words the mode and the manner in which the accused is to be tried shall not occasion a failure of justice.

**In SEESA HEMCHANDRA SASHISSAL v. STATE OF MAHARASHTRA AIR 2001 SC 1246.** It was held-

This Court has emphasized, time and again the need for speeding up the trial as undue delay in culminating the criminal proceedings is antithesis to the constitutional protection enshrined in Article 21 of the Constitution. Nonetheless, the Court has to view it from pragmatic perspective and the question of delay cannot be considered entirely from an academic angle. To have speedy justice a fundamental right which flows from Article 21 of the Constitution. Prolonged delay in disposal of the trials and thereafter appeals in criminal cases, for no fault of the accused if the accused confers a right upon him to apply for bail. Right of speedy trial is an integral part of fundamental right guaranteed by Article 21 of the Constitution of India. Free legal aid and speedy trial are two basic requirements preconditions and essential ingredients of a fair, just and reasonable criminal trial. The concept of fair trial has not been static but has been a dynamic one, which has been evolving and has grown over the years. A fair trial in modern parlance must be a trial based on an equally fair investigation on the basis of material which is before hand disclosed to the accused. On a public place exposed to public gaze, by a judge who is bound by oath to do justice “without being favour, ill will or affection”. In an environment which is free from hostility or bias by judicial vision which is not clouded by elements that may ..... judicial stream, such as preconceived notions, religious parochial, ideal, ideological, communal, caste, class or political commitments or affiliations on the basis of evidence of witnesses who are truthful and in the manner which guarantees to the person accused the essential procedural safeguards such as the right to cross-examine, right to counsel of his choice, if necessary at state expense, right to produce witnesses as also other material and generally the right to be fully heard.

The notion of a fair criminal trial has close links with the basic and universally accepted human rights. It may however be noted that the fairness of a criminal trial should not be measured in absolute terms. The question whether a criminal trial is a fair or not will have to be examined in relation to the gravity of the accusation, the time and the resources which the society can

reasonably afford to spend the quality of the available resources the prevailing social values etc.

**PRE-TRIAL STAGE:**

The fair trial need to be adopted at the stages of receipting of FIR, producing the accused i.e. Remand and filing of the charge sheet after completion of the investigation. When the officer in charge of police station receives the information relating to cognizable offence either in orally or in writing, if it is in oral he shall reduce into writing and read over to the informant and get it signed by the person giving it and substance thereof shall be entered into a general diary. A copy of information shall be given forthwith free of cost to the informant.

F.I.R. Is extremely vital and valuable piece of evidence for corroborating the oral evidence adduced. It sets the criminal law in motion. The police officer before starting an investigation must satisfy himself on the basis of the first information and the documents if any enclosed, which is decided in the case of state of Haryana V. CH.BHAJANLAL 1992 CR.L.J 527 (SC)

The police is bound to register the information received of commission of cognizable offence unless the information is vague, incomplete or does not disclose cognizable offence. KULDEEP SINGH v. STATE 1994 CR.L.J. 1502.

After registering the F.I.R. It shall be sent to all concerned officers immediately. Delay in lodging F.I.R. Must be satisfactorily explained. 1991 (1) ALL.CR.L.R. 164 (DB).

Explanation for delay depends on the circumstance of each case. Even a long delay can be condoned if witness has no motive to implicate the accused and have given plausible explanation. 2005 CR.L.J. 2199 (SC). In rape cases or offence relating to women, normally some delay will be taken place therefore in such cases, delay cannot be treated as material. After registering the F.I.R. The investigation will be commenced the police officer where he gets an occasion to arrest the accused the police officer shall observe some statutory and constitutional provisions which are mainly dealt with rights of accused, namely, Section 41 (b), Section 41 (d), Section 46, Section 49, Section 50, Section 50-A, Section 55-A, Section 56, Section 57, Section 60-A

After making arrest of accused person he shall be produced before the nearest judicial officer within 24 hours when the investigation cannot be completed within such period. While ordering the judicial remand the judicial magistrate shall observe the following things.

1. Whether the accused received all material papers with regard to the case
2. There are grounds for believing that the accusation or information is well founded
3. Whether the police produced the accused within 24 hours or not
4. to make enquiry as to whether there is any mal-treatment made by the police. (Sheera BARSE v. STATE OF MAHARASHTRA AIR 1983 SC 378)
5. and also to examine all the material papers or documents to ensure that the police officials complied all formalities in regard to information given to the nominated person of the accused as to his arrest and informed to the accused as to grounds of his arrest.

It is mandatory to send copies of entries in the diary along with the remand report. The Magistrate shall not authorise the detention of the accused person beyond the period of 15 days.

**Order of remand is a judicial order:** The order under Section 167 Cr.P.C. Is a judicial order to be passed on application of mind to the contents of the remand report submitted by the investigating officer. The order should reflect the necessary application of mind on the part of the magistrate and the reasons for the extension of the remand. It is not empty formality or routine course to extend remand again and again as and when sought for by the police. The order therefore, should continue the reasons to extend the remand further. T.JAGADISHWAR v. STATE OF A.P. 2003 CR.L.J. 701 (AP).

#### ORDERING OF POLICE CUSTODY:

After expiry of first fifteen days police custody cannot be permitted even in case of accused surrendering before the magistrate. P.P. v. NARAYANA REDDY 1995 (2) A.L.T. (CrI.). 697. Ordering police custody the magistrate shall record reasons for so doing. (Section 167 (3) Cr.P.C.). Position of law regarding on bail under Section 167 Cr.P.C. Can be summarised as follows:

1. Proviso (a) to Section 167 (2) which can be invoked only at the stage of investigation.
2. Jurisdiction to grant bail in case investigation is not completed within the prescribed time limit as provided in proviso (a) to Section 167 (1) vests in the magistrate if the accused applies and he is prepared to furnish bail.
3. The expression magistrate in the afore said proviso (a) would mean magistrate having jurisdiction to try the case.
4. The investigation would come to an end the moment charge sheet is submitted as required by Section 170 Cr.P.C.
5. An order for release on bail made under the proviso (a) to section 167 (2) is not defeated by lapse of time, the filing of charge sheet or by remand to custody under Section 309 (2) Cr.P.C. The order for release on bail may however be cancelled under Section 437

(5) or 439 (2) Cr.P.C.

6. The accused need not say anything more except he is entitled for bail only on the ground that the prosecution has failed to file charge sheet within the prescribed period.

Magistrate should stop investigation in a summons case offences if it is not completed within six months. (Section 167(5) Cr.P.C.)

**Right of victim to engage an advocate:**

This right is provided to the victim by incorporating a proviso to sub-section 8 of Section 24 which is as follows:

“Provided that the Court may permit the victim to engage an advocate of his choice to assist the prosecution under this sub-section”

When the officer in charge of the police station found that there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a magistrate after completion of the investigation such officer shall if such a person is in custody release him on his executing a bond with or without sureties as such officer may direct to appear if and when so required before a magistrate empowered to take cognizance of the offence on the police report and to try the accused or commit him for trial which is dealt under Section 167 (9) Cr.P.C. At this stage the investigating officer file the final report before the judicial magistrate. The magistrate shall issue notice to the defacto complainant i.e victim in order to aware of the fact that after concluding the investigation, the police laid a final report and referring the case as a mistake of fact. Upon that the victim has an opportunity to protest the final report. On receipt of such report the magistrate can adopt one of the three courses i.e. 1) he may accept the reprot and drop the proceedings, or 2) he may disagree with the report and taking the view that there is a sufficient ground for proceeding further, take cognizable of the offence and issue process or, 3) he may direct further investigation to be made by the police under subsection 3 of Section 156 Cr.P.C. In this regard The Apex Court has discussed in the case of UNION PUBLIC SERVICE COMMISSION v. S.PAPAI AH AND OTHERS 1997 CR.L.J. 4636.

**BAIL**

Section 436 to 450 Cr.P.C.

IN BAILABLE OFFENCES Sec.436, 436-A

The police officer can grant bail to any arrested person involved in a bailable offence.

The Magistrate can grant bail to any person arrested for his involvement in bailable as well as non-bailable offences irrespective of whether the offence is triable by the Magistrate himself or by the Sessions Judge.

The application for bail may be submitted after the arrest or at any time during the investigation, inquiry and trial. There must be an arrest and the applicant must be in the

custody when he applies for bail. Where the arrested person is willing to furnish security the police officer and the Court are bound to enlarge the person on bail. After the accused is convicted, there is no question of releasing him on bail. If the accused is on bail, conviction puts an end to the bail. It is only the appellate Court which has jurisdiction to grant bail pending appeal. While releasing the person on bail, the Court has no power to impose any conditions in respect of the movements of the person. The only condition that the person should be available to and should appear before the police officer or court without causing unnecessary hardship to accused. The court or police officer cannot direct the person on bail to appear before any court or any authority or any officer.

The amount that may be fixed for the bail should not be disproportionate and it should not be fixed at high level, the inability to furnish may result in his continued detention instead of release. When the Court grants bail it shall be communicated to the police and the jail authorities for implementation without any delay. -Bail is the right of the accused.

### **Non-Bailable offences**

Sections 437, 439 of Cr.P.C.

- Nature of offences and gravity
- the person is likely to repeat the offence if released on bail
- quantum of punishment which he may be punished
- possibility of absconding
- character, behaviour, social and economic status of the person accused
- chance of tampering of prosecution evidence

At the time of the end of the trial the Court comes to a conclusion that the person under detention is not likely to be convicted. The bail can be granted without sureties and directing him to appear before the Court on the date of the judgment to receive the judgment. Bail can be granted in non-bailable offences by imposing conditions. The Sessions Court and High Court have independent power to grant bail in non-bailable cases. Pre-trial release can be granted in appropriate cases even without sureties. The above observations are made in a decision of the Hon'ble Supreme Court in *HUSSAINARA KHATOON v. STATE OF BIHAR* AIR 1979 SC 1360 and further it was observed in *MOTI RAM v. STATE OF MADHYA PRADESH* Whether bail includes release on ones own bond with or without sureties. The Magistrate refused the bail on the ground he was not furnishing huge amount of surety who is lowly paid mason. Apex Court observed that when it is power to release convict on their own bonds without sureties surely suspects could be released in same manner, held in interest of social justice and to ensure equal treatment to all citizens petitioner should be released on his own bond for affordable sum of surety. The Hon'ble Supreme Court also made a mention about a phrase of the then President, Lyndon B. Johnson, which is to the effect that: **“He**

**does not stay in jail because he is guilty. He does not stay in jail because any sentence has been passed. He does not stay in jail because he is any more likely to flee before trial. He stays in jail for one reason only because he is poor.”**

According to Section 436-A of Cr.P.C. In case of bailable offence the accused failed to produce sureties within week days the Court shall release the accused on his personal bond. Accused is entitled to right for bail on the ground that the charge sheet was not filed within the stipulated period and accordingly released on bail, held in IQBAL v. STATE OF MAHARASHTRA 1996 (1) SCC 722.

Dismissal of Bail petition is illegal.

UDAY MOHAN LAL ACHARYA v. STATE OF MAHARASHTRA AIR 2001 SC 1910.

Dismissal of bail petition by a cryptic order is not permissible.

RAMON SERVICES PVT. LTD. v. SUBASH KAPOOR - AIR 2001 SC 207

When conditions of bail are altered the bail bonds are not discharged or sureties absolved.

MOHAMMED KUNJU v. STATE OF KARNATAKA -AIR 2006 SC 6 = 2000 CR.L.J. 165

Grant of bail otherwise non-permissible, it cannot be granted on medical grounds because treatment can be sought within the jail. AIR 2001 SC 3895

Accused entitled to a hearing before the bail is cancelled. The Court should be satisfied that the notice is served. Section 439 Cr.P.C. GURDEV SINGH v. STATE OF BIHAR - AIR 2001 SC 3556

Imposition of onerous conditions in bail is bad in law. SANDDEP JAIN v. N.C.T. DELHI  
AIR 2000 SC 714

## **DURING TRIAL**

### **Adversary System**

We have adopted adversary system of criminal trial based on acquisitorial method. According to the system, any dispute as to the criminal responsibility of a person is to be resolved by the criminal court after giving fair and adequate opportunity to the disputants to place before the Court their respective cases. The court is more or less like an umpire and is not to take sides or to show any favour or disfavour to any party. It has only to decide as to which party has succeeded in proving its case according to law. The adversary system of trial enables an impartial and competent to have a proper perspective of the case and it is believed that on the whole this system is a better device to discover the truth in fair manner.

In our system of criminal trials, generally speaking, the prosecutor representing the State, accuses the accused person of the commission of the alleged crime, and the law requires him to prove his case beyond reasonable doubt. The adversary system as such recognises equal rights and opportunities to both the parties i.e. The the State and the accused person to

represent their case before the Court. But under the prevailing conditions in India the equal legal rights and opportunities would in practice operative unequally and harshly, affecting adversely the poor indigent accused persons who are unable to engage competent lawyers for their defence. The system therefore departs from its strict theoretical passive stance and attempts to provide legal aid at state costs to indigent accused person to defend themselves in criminal trials. Further the Code requires the criminal court to play a more active and positive role than that of a mere referee in the combat between the prosecutor of State and the accused person. For instance, the charge against the accused is to be framed not by the prosecution but by the Court after considering the circumstance of the case under Section 228 and 240 of Cr.P.C and the prosecutor cannot withdraw from the case without the consent of the Court by virtue of Sec.321 of Cr.P.C.

The most indispensable condition for a fair trial is to have an independent, impartial and competent judge to conduct the trial. In this respect the Code has made the following provisions.

#### D) Separation of Judiciary from the executive.

In order to ensure independent functioning of judiciary in criminal matters, the Code has brought about the separation of the judiciary from the executive by requiring the appointment of Judicial Magistrates and bringing them for all practical purposes, under the direct supervision and control of High Court in each State, which is specifically laid down under the provisions of Section 6 to 19 of Cr.P.C. Because of the separation, no judge or Judicial Magistrate would be in any way connected with the prosecution nor would be in direct administrative subordinate to anyone connected with the prosecution. In a criminal trial, as the State is prosecuting party it is of special significance and importance that the judiciary is freed of all suspicion of executive influence or control.

## II. COURTS TO BE OPEN

Public trial in open Court acts as a check against judicial caprice or vagaries and serves as a powerful instrument for creating confidence of public in fairness, objectivity and impartiality of the administration of criminal justice. The Code therefore provides that subject to such reasonable restrictions as the Court may consider necessary, to place in which the Court is held shall be an open Court to which the public generally may have access (Sec.327 of Cr.P.C)

## III. JUDGE OR MAGISTRATE NOT TO BE PERSONALLY INTERESTED IN CASE

“*nemo debet esse judex in propria causa*”. No man ought to be a judge in his own cause. The essence of the maxim has been incorporated in Section 479 of the Code. According to this Section 479.

(i) No Judge or Magistrate shall, except with the permission of the appellate Court, try or commit for trial any case to or in which he is a party, or personally interested, and

(ii) no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself.

### **GUIDELINES FOR SPEEDY TRIAL**

In A.R. ANTULAY v. AVDESH KUMAR- AIR 1992 SC 1701

The Supreme Court issued the following guidelines for the speedy trial of cases.

1. Fair just and reasonable procedure in Art.21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the societal interest also does not make it any the less the right of the accused. It is in the interest of all concerned that the guilt of innocent of the accused is determined as quickly as possible in the circumstances.
2. Right to speedy trial flowing from Art.21 encompasses all the stages, namely, the stage of investigation, inquiry and trial, appeal, revision and retrial. That is how, the Supreme Court has understood this right and there is no reason to take restricted view.
3. The concerns underlying the right to speedy trial from the point of view of the accused are:-
  - (a) the period of remand and pre-conviction detention should be as short as possible, in other words the accused should not be subjected to unnecessary and unduly long incarceration prior to his conviction.
  - (b) The worry, anxiety, expense and disturbance to his vocation and peace resulting from an unduly prolonged investigation, inquiry or trial should be minimal, and
  - (c) undue delay may well result in impairment of the ability of the accused to defend himself whether on account of death, disappearance or non-availability of witnesses or otherwise. In every case where the right to speedy trial is alleged to have been infringed the first question to be put and answered is who is responsible for the delay. Proceedings taken by either party in good faith to vindicate their rights and interests as perceived by them cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. It goes without saying that frivolous proceedings or proceedings are taken merely for delaying the day of reckoning cannot be treated as proceedings taken in good faith. The mere fact that

an application/petition is admitted and in order of stay granted by a superior court is by itself no proof that the proceedings is not a frivolous. Very often this stays obtained of ex parte representation.

(4) While determining whether undue delay has occurred (resulting in violation of right to speedy trial) one must have regard to all the attendance circumstances including nature of offence, number of accused and witnesses, the workload of the Court concerned prevailing local conditions and so as what is called the systematic delays. It is true that is the obligation of the State to ensure speedy trial and state includes judiciary as well but a realistic and practical approach should be adopted in such matters instead of a pedantic one.

(5) Each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. However, inordinately long delay may be taken as presumptive proof of prejudice. In this context the fact of incarceration of accused will also be a relevant fact. The prosecution should not be allowed to become a prosecution. But when does the prosecution become prosecution again depends upon the facts of a given case.

(6) We cannot recognise or give effect to what is called the “demand” rule. An accused cannot try himself, he is tried by the Court at the behest of the prosecution. Hence, an accused plea of denial of speedy trial cannot be defeated by saying that the accused did at no time demand a speedy trial. If in a given case, he did make such a demand and yet was not tried speedily it would be plus point in his favour but the mere non-asking for a speedy trial cannot be put against the accused.

(7) Ultimately the Court has to balance and weigh the several relevant factors “balancing test” or “balancing process” and determine in each case whether the right to speedy trial has been denied in a given case.

(8) Ordinarily speaking where the Court comes to the conclusion the right to speedy trial of an accused has been infringed. The charges or the conviction as the case may be shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case it is open to the Court to make such other appropriate order including an order to conclude the trial within a fixed trial where the trial is not concluded or reducing the sentence where the trial has concluded as may be deemed just and equitable in the circumstance of the case.

(9) It is neither advisable nor practicable to fix any time limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution to justify and explain the delay. At the same time, it is duty of the Court to weigh all

the circumstance of the given case before pronouncing upon the complaint.

(10) An objection based on denial of right to speedy trial and for relief on that account should first be addressed to the High Court. Even if the High Court entertains such a plea ordinarily it should not stay the proceedings except in case of grave and exceptional nature. Such proceedings in High Court must however be disposed of on a priority basis.

#### Doctrine of Double jeopardy:

Section 300 of Cr.P.C. Deal with this concept. "Person once convicted on acquittal not to be tried for same offence". It is based on the maxim 'nemo debet bis vexari' which means that a person cannot be tried a second time for an offence which is involved in the offence with which he was previously charged. This principle has now been incorporated in Art.20 of the Constitution. Article 20 (2) of the Constitution of India lays down 'no person shall be prosecuted and punished for the same offence more than once. Section 300 of Cr.P.C. And Art.20 (2) based on British Jurisprudence Double Jeopardy. In order to bar the trial of any person already tried, it must be shown-

That he has been tried by a competent court for the same offence and one of which he might have been charged or convicted at that trial on the same facts.

1. That he has been convicted or acquitted at the trial
2. that such conviction or acquittal is in force

The sole aim of the law is approximation of justice and assurance of fair trial is the first imperative of the dispensation of justice. It cannot be denied that one of the most valuable rights of our citizens is to get fair and impartial trial free from an atmosphere of prejudice. The right flows necessarily from Article 21 of the Indian Constitution which makes it obligatory upon the state not to deprive any person of his life or personal liberty except according to procedure established by law. In law the expression justice comprehends not merely a just decision but also a fair trial. A denial of fair trial is denial of justice. Procedure established by law explained by the Hon'ble Supreme Court in the landmark case *Mrs. Maneka Gandhi v. Union of India* procedure should be reasonable fair and just one of the components of the fair procedure in the administration of criminal justice is that the accused has the opportunity of making his defence by legal practitioner of his choice. This the constitutional right under Article 22 of Constitution and in order to give effect to his constitutional right it has also embodied in the directive principles of state policy as provided under Art.39-A of Constitution that state shall secure equal justice and free legal aid by a suitable legislation to ensure that the opportunity for securing justice are not denied to any citizen by reason of economic or other disabilities. Their right has also been statutorily accepted and incorporated

in Section 303 of Cr.P.C. 1973 that right therefore should not be interfered with. Free legal aid and speedy trial has been dealt in the landmark cases *Sukdas v. Union of India* AIR 1986 SC 991 and *Hussainara Khatoon v. State of Bihar* AIR 1979 SC 1369. These two basic requirements preconditions and essential ingredients of fair just and reasonable criminal trial. A comprehensive report for the revision of the Criminal procedure code was presented by the Law Commission in 1969, consequently the Government came with a new Criminal Procedure Code 1973 which came into force in 1974. This report was mainly concerned with the following issues:

1. The accused should get a fair trial in accordance with the accepted principles of natural justice.
2. Every effect should be made to avoid delay in investigation and a trial which is harmful not only to the individuals involved but also to society. and
3. The procedure should not be complicated and should be the maximum prescribed extent ensure fair deal to the poorer sections of the community.

Section 167, 309 and 468 in Cr.P.C 1973 satisfies the aspiration of the speedy trial and speak of eliminating delay in investigation and trial proceedings.

Non-examination of investigating officer is not fatal to the prosecution case nor can be statement of witnesses examined by the investigating officer be discarded on that ground.

Recording of evidence is the important part of the trial. The evidence is recorded during the trial in the presence of the accused. This rule is mandatory. The Court can dispense with the presence of accused by recording reasons. In such cases the evidence shall be recorded in the presence of advocate for accused. The evidence of the witnesses shall be recorded separately. The evidence shall be recorded in the language of the Court.

### **POST TRIAL**

The judgment in every trial in any criminal court of original jurisdiction shall be pronounced in open court by the presiding court immediately after termination of the trial or at subsequent time of which notice shall be given to the parties or their pleaders- a) by delivering the whole of the judgment of b) by reading out the whole of the judgment or c) by reading out the operative part of the judgment and explaining the substance of the judgment in language which is understood by the accused or his pleader. (Section 353 (1) Cr.P.C.)

Before passing the sentence, hearing the accused on the sentence is mandatory. (*Md.GASUDDIN v. STATE OF A.P* AIR 1977 SC 1926).

Judge must make a genuine effort to elicit from accused all information which will eventually bear on the question of sentence. (*MUNIAPPA v. STATE OF TAMILNADU* AIR 1981 SC 1220).

At the time of passing the sentence the magistrate has to be observe whether the accused is entitled for any provisions laid under the Probation of Offenders Act or Section 360 of Cr.P.C and also inform to the accused where the appeal lies against the judgment and also enquire that he has means to engage an advocate for preferring appeal. Every copy of the judgment shall be supplied to the accused forthwith after the pronouncement of the judgment and also the magistrate has to submit the judgment copy under Section 204(3), 252 and 256 to 258 Cr.P.C. Within a week from passing of the judgment or order from the termination of enquiry sent to the sessions judge. (Rule 262 of Crl.Rules of Practice).

Non-compliance of the requirement of hearing of the accused contemplated under these provisions of law is not mere irregularity, curable under Section 465 Cr.P.C. But it is an illegality which vitiates the sentence. Supreme Court of India in SANTA SINGH's case AIR 1976 SC 2394 dealing with the non-compliance of the Section 235 (2) Cr.P.C. The nature of hearing contemplated under the provisions of the Cr.P.C. Is not confined to oral submissions by the prosecution or the accused. The same entitles both the parties to produce evidence oral or documentary. IF they choose to do so and if the circumstances warrant abduction of such an evidence. The Supreme Court in DAGDU v. STATE OF MAHARASHTRA 1977 CR.L.J. 1206 held as follows: "the opportunity has to be real and effective which means that the accused must be permitted to adduce before the Court all the data whcih desires to adduce on the question of the sentence." The role of the judge at the stage of hearing on sentence is not passive and he has to actively participate in the enquiry and make every endeavour to get all the facts and evidence which have bearing in determining the sentence.

### **CONCLUSION:**

The role of a trial judge in conducting a fair trial is an important judicial function which starts right from the registering of the First Information Report till the passing of judgement and so the judge shall follow all the procedural aspects in conducting fair trial to do complete justice to the parties.

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