

POWERS OF CRIMINAL COURTS

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Section 28 of Cr.P.C.

- **Offences under Penal Code.** Subject to the other provisions of this Code any offence under the Pakistan Penal Code may be tried:
by the High Court; or
by the Courts of Sessions; or
by any other Court by which such offence is shown in the eighth column of the second schedule to be triable.
- [Provided that the offences falling under Chapters VIII, X, XIII and XIV of the Pakistan Penal Code (Act XLV of 1860), except offences specified in section 153-A and section 281 of the said Code, shall be tried by the Executive Magistrates and the expression “**Magistrate**” used in the said eighth column shall mean Executive Magistrate of the respective class.] Omitted by Ordi. XXXVII of 2001 w.e.f. 14.08.2001.

Illustration

- A is [tried by] the Session Court on a charge of culpable homicide. He may be convicted of voluntarily causing hurt, an offence triable by a Magistrate.

Section 29 of Cr.P.C.

- **Offences under other laws.** (1) Subject to the other provisions of this Code, any offence under any other law shall when any Court is mentioned in this behalf in such law, be tried by such Court.
- (2) When no Court is so mentioned, it may be tried by the High Court or subject as aforesaid by any Court constituted under this Code by which such offences shown in the eight column of the second schedule to be triable.

Section 30 of Cr.P.C.

- **Offences not punishable with death.**
Notwithstanding anything contained in sections 28 and 29, the Provincial Government may invest any Magistrate of the first class with power to try as a Magistrate all offences not punishable with death.

High Court Rules
Volume-III Chapter.30-A

POWERS OF CRIMINAL COURTS.

- 1. Powers defined in the Criminal Procedure Code and other Acts.** – The constitution and powers of the Criminal Courts are regulated by Chapter II and III, and schedules III and IV, of the Code of Criminal Procedure. Column 8 of Schedule II of the Code indicates the class of Court competent to try each offence falling under the Pakistan Penal Code. In regard to offences falling under Local and Special Laws, the classes of Courts by which such offences are triable are usually specified in the Act creating the offences. Where, in any such Act, the term “**Magistrate**” is used without qualification, it includes all persons exercising all or any of the powers of a Magistrate under the Code [(General Clauses Act, Section 2 clause (13)].

- **2. Special powers.** -- The general powers which Magistrates are entitled to exercise in addition to those conferred upon them by sections 32 and 33 of the Code will be found in the third and fourth Schedules of the Code. Besides their ordinary powers detailed in the third Schedule, Magistrates of the first class may (1) require security for good behaviour under section 110, and (2) issue process for a person who within local jurisdiction has committed an offence outside such local jurisdiction. **[(See section 186 Cr.P.C.)] (Punjab Government Notification No.507, dated 5th April, 1904). The same notification empowers all Magistrates of the first and second classes (1) to make orders prohibiting repetitions of nuisances, under section 143; (2) to make orders under section 144 as regards nuisances; and (3) to take cognizance of offences upon information, under section 190. All Magistrates are empowered to take cognizance of offences upon (1) Complaint or (2) Police report. **[(See section 190 Cr.P.C.)].

- **3. Powers conferred by Government.--**
For powers conferred by the Provincial Government upon certain classes of officers, either under the Code of Criminal Procedure or any other Act, see Schedule A and B attached to this Order.

JUDGMENTS

1. Saeed Shah Versus The State

1991 PLD 66

Federal Shariat Court

Criminal Procedure Code (Cr.P.C)----Ch. III---Scope and application, Chapter III, Cr.P.C, deals with powers of courts. It describes offences cognizable by different courts. Section 28 relates to the offences under Penal Code. It provides that subject to the other provisions of the Criminal Procedure Code any offence under Pakistan Penal Code may be tried by the High Court, or by the Court of Session, or by any other Court by which such offence is shown in the eighth column of the 2nd Schedule to be triable. Section 29 relates to the offences under other laws. It provides that subject to the other provisions of the Code of Criminal Procedure any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court. It further provides that when no Court is so mentioned, it may be tried by the High Court or subject as aforesaid by any Court constituted under the Criminal Procedure Code by which such offence is shown in the eighth column of the Second Schedule to be triable.

2. Ghulam Hussain and others Versus The State. 1985 P Cr. L J 2334 [Lahore] Before Qurban Sadiq Ikram, J

- Sections 28 & 30-- Criminal Procedure Code cannot be read in conjunction with each other— Words “subject to other provisions in this Code” appearing in S.28, Cr.P.C., held, not referable/relatable to S.30, Cr.P.C. but they refer to Ss. 190(3), 193, 346 & 347, Criminal Procedure Code which deal with manner of taking cognizance of an offence by a Court of Session, which is not a Court of original jurisdiction--Section 30 of Criminal Procedure Code is only an enabling section and it only confers enhanced powers on a Magistrate First Class.

**3. Zia Zakaria
Versus
1st Additional Sessions Judge Thatta
2011 MLD 406
Karachi-High-Court-Sindh**

- Acquittal---Quashing of proceedings---Sections 249-A & 265-K/Cr.P.C. empowered the Courts to **acquit accused at any stage of the case**---Section 561-A, Cr.P.C. was to be invoked after or without recourse to provisions of Ss.249-A & 265-K, Cr.P.C. as the case could permit---Authority to acquit accused at any stage of the case for permitting the abuse of the proves of court; and to secure the ends of justice, fell within the ambit of inherent powers vested in High Court to quash the **criminal** proceedings for the promotion of justice.

4. Mian Abdur Razzaq Aamir

Versus

Federal Government of Islamic Republic of Pakistan

2011 PLD 1

Federal-Shariat-Court

Sched. Item 2---Constitution of Pakistan, Art. 203-Dd---**Powers and jurisdiction of Federal Shariat Court**---Vires of statute---According to the amendment effected in item 2 of Sched. of Anti-Terrorism Act, 1997 dated 21-8-1997, the Federal Government in exercise of power vesting in it under section 3 of the Anti-terrorism Act, 1997 **authorized the Anti-terrorism Courts to try some categories of offences relating to Hudood without providing a rider in section 25(i) of the said Act that appeals in cases involving Hudood offence would lie to the Federal Shariat Court**---Said amendment in the Schedule without corresponding change in S.25(i) offends the constitutional provision contained in Art.203-Dd which **confers exclusive jurisdiction upon Federal Shariat Court in cases relating to the enforcement of Hudood**---“Any case decided by any criminal court under any law relating to the enforcement of Hudood” is to be heard and decided by the Federal Shariat Court alone---Such position is therefore travesty of legal constraint imposed by the Constitution.

5. Haji Nazeer Ahmed Versus Raja Muhammad Saeed Khan

2010 PLD 47

Supreme-Court-Azad-Kashmir

Scope of review, in civil cases, was wider than the criminal cases; in a civil case, if a mistake or error apparent on the face of record or any other sufficient reason was discovered which called for review, then review jurisdiction could be exercised for avoiding injustice, but that would depend upon the facts and circumstances of each case---In the present case, appreciation of important, cogent documentary evidence was not discussed in the judgment under review; rather the judgment was totally silent in that regard, which had clearly proved that said cogent evidence remained unattended by the court--- such would depict that the material evidence was not considered and appreciated while delivering the judgment under review which was a sufficient reason for acceptance of review petition---review petition was allowed.

6. Saddaquat Ali Khan Versus Collector Land Acquisition 2010 PLD 878 Supreme-Court

- Ultimate goal sought to be achieved by the **Courts** was thus to do complete justice between the parties and to ensure that the rights were delivered to those to whom they belonged and no hurdles were ever considered strong enough to detract the **courts** from reaching the said end---Incorporation of provision such as section 151, C.P.C.; S.561-A in the Cr.P.C.; revisional **powers** of wide amplitude exercisable even suo motu under section 115 of the C.P.C.; and S.439 of the Cr.P.C. various provisions of the like contained in O. XLI, Rule 4 and O. XLI, Rule 33 of the C.P.C.; **the provisions of O.XXXIII, Rule 5 of the Supreme court Rules of 1980; suo motu powers exercisable under Art. 184(3) of the Constitution and provisions of Art.187 of the constitution** were some of the examples which could be quoted as having been made available to the courts at all levels to surmount any impediments which a court might confront in the path of doing complete justice.

- Once a judicial determination, be it of a point of fact or of a point of law, has been made and if such a determination covers not only the ones litigating before the **courts but some others also**, then the dictates of justice would command that the **benefits accruing from such a determination should not be restricted only to the litigating parties but should be extended even to those who had not indulged in litigation unless there were some extraordinary unexceptionable reasons to the contrary and that all powers, including the powers inherent in the courts be invoked for the purpose---**Such would not only ensure justice for all but would also have the effect of eliminating unnecessary litigation.

7. Muhammad Ramzan Versus Rahib 2010 PLD 585 Supreme-Court

- Early disposal of cases---Supreme Court while identifying the causes of delay, ordered few steps to be taken for the exercise **of powers of** Magistrate and Sessions Court in the light of various provisions of the **criminal** procedure Code, 1898, to adopt a uniform procedure in the **courts** to have expeditious disposal of the cases---Supreme Court directed that a copy of the present order be sent to Registrars of all **High Courts** for circulating amongst all the Judges and Magistrates for implementation and strict compliance---Sessions Judges of the Districts were directed to supply a copy of the order to the District Bar Associations of their Districts for information and strict compliance---Copy of the order was directed to be sent to PPO/IGPs of all the Provinces and Federal Capital for strict compliance---PPO/IGPs should issue special instructions to all SHOs and concerned officers to produce all the witnesses before the Court of Session for trial, failing which strict action as permissible under the law should be taken with information to the concerned Sessions Judge and High Court.

8. Walayat Versus State 2008 PLD 470 Lahore-High-Court-Lahore

- Ss.395 & 412---Qanun-e-Shahadat (10 of 1984), Art, 22---**Punjab Criminal Prosecution Service (Constitution, Functions and powers) Act (III of 2006)**, Ss. 10 & 12---Dacoity and dishonestly receiving property stolen in the commission of dacoity---**Identification Parade---Procedure of arrangements---Guidelines by High Court---**procedure for making arrangements for identification parade easier was prescribed by High Court for circulation to Prosecutor General, Advocate-General, Additional Inspector general of Police (Investigation) and all the Sessions Judges of the Province, who shall pursue the same and circulate it to all concerned and subordinate **courts and offices** for appropriate legal action and observance.

**9. Muhammad Bashir Versus Station House Officer, Okara Cantt.
2007 PLD 539
Supreme-Court**

Ss.22-A & 25 [as amended by **Code Of Criminal Procedure** (Third Amendment) Ordinance (CXXXI of 2002)]---**Ex-Officio Justice Of The Peace, Powers of**---Amendments introduced in Ss.22-A & 25, Cr.P.C. had been so made to lessen the excessive burden of the **High Courts** which was got created through tiling of writ petitions seeking registration **of criminal** cases and transfer of investigation---supreme court observed that if this be so, then Supreme court would not be sure about the questionable wisdom leading to these amendments which sought to relieve an elder brother of his burden by adding the same on to the back of an already over-loaded younger brother---Copies of the present judgments were directed to be sent to Registrars of all the four **High Courts** in the country who shall, in turn, send the same to al the Sessions Judges in their respective provinces for their guidance and compliance---Law Secretaries of the Federation and the provinces will also be sent the copy of the judgment for re-examining the matter of the amendments in question in the light of observations made in the judgment.

**10. Hakam Deen Versus State
2006 PLD 43**

Supreme-Court-Azad-Kashmir

Administration of justice---argument that all procedures were meant to advance cause of justice and non-observance of any provision would not vitiate the trial, **was not untrue in totality, but difference was between the inadvertent failure to follow procedure and deliberate non-observance of provisions**-If practice as adopted by the Trial Court was allowed on the pretext that trial was completed by the court without any prejudiced to accused, though not in accordance with mandatory provisions of the Code, it would create a tendency of fleeing from law and then to a stated lawlessness---Law had to be observed as it was, not as it should be or in a manner not authorized by law---Procedural irregularities in civil matters were different than in criminal matters; in civil matters if substantial justice was done, procedure could yield to justice, but in criminal cases, substantial justice could not be said to have been done if due process of law was not observed---Due process of law was the golden rule, not the selected process-

- Internal administrative arrangement of an institution as to how business had to be regulated or done or who was to conduct business, related to administrative skill but the right and liabilities creating powers had to be exercised in accordance with law, not over and above the law as nobody was above the law including the law makers themselves---Trend to deviating from legal procedure in the name of speedy disposal of cases was dangerous tendency---Marked difference existed between the Speedy Trial Court, Special Courts, Summary Trial Court and the courts of normal criminal and civil jurisdiction---Courts of every category had to act strictly in accordance with procedure which was prescribed for it---Court was duty bound make best use of even a bad law---Harshness of a law could be softened by its wise application and interpretation---Courts could not amend law---Competent Courts declare a law ultra vires the constitution, but as long as it was on a Statue Book, no reform or policy could override it---Courts, however, could change earlier interpretation or view in view of changed circumstances, but not the law.

11. State Versus Malik Amir
2005 YLR 1411
Lahore-High-Court-Lahore

- No specific manner/procedure for filing of petition for cancellation of bail had been prescribed either in Control of Narcotic Substances Act, 1997 or in Criminal Procedure Code, 1898---Section 487 (5), Cr.P.C., had conferred unrestricted powers on High Court and on the Court of Session in case of a person released by itself or by any other Court for his arrest for committing to custody--- Powers of cancellation of bail under S.497(5), Cr.P.C could in no manner, be restricted to any specific class of persons because such intention of Legislature did not flow from those provisions---Petition for cancellation of bail being continuation of proceedings of grant of bail, could be followed by the Prosecutor who appeared in bail matters, on the basis of authority conferred on him---Section 47 of Control of Narcotic Substances Act, 1997 had made Code of Criminal Procedure, 1898 applicable.

12. Abdul Rasheed Versus The State
2003 PLD 682

Karachi-High-Court-Sindh

- S.498---offences in Respect of Banks (Special Courts) Ordinance (IX of 1984), Ss.5(6), 10 & 12--- Ad interim pre-arrest bail, confirmation of--- Jurisdiction of High Court.
- **Claim in respect of ouster of power of High Court concerning any matter or subject available to it under Codes of Civil or Criminal Procedure, could not be lightly accepted, unless there was a clear, definite and positive provisions ousting the jurisdiction---Express words or clear intendment or necessary implication were required to take away the jurisdiction of a High court or any other superior court.**

13. Waqar Hussain Versus State
2000 SCMR 735
Supreme-Court

Prevention of Corruption Act 1947 S.5(2)---Penal Code (XLV of 1860), S, 161/ 223/219/109/120/-B---Criminal Procedure Code (V of 1898), S. 439---Constitution of Pakistan (1973), Art. 185(3)---Suo Motu notice issued to accused by High Court for cancellation of bail---Law had conferred suo motu powers of revision on High Court to ensure that the courts subordinate to it had acted strictly within the legal bounds without transgressing their jurisdiction and the findings, sentence or orders recorded or passed by them were just and legal, but nevertheless in order to avoid any impression of arbitrariness in the exercise of such power, **the order of initiating suo motu proceedings by the High Court should have mentioned the ostensible error or irregularity in the orders or proceedings of the subordinate courts in order to enable the parties to know the reasons for such an action---High court, no doubt, had the jurisdiction to initiate suo motu proceedings by issuing notice to the accused** for cancellation of his bail, but in view of the well reasoned order of the Special Judge granting bail to the accused, no circumstances justifying the suo motu action against him by the High Court were available---Petition for leave to appeal was consequently converted into appeal and the suo motu proceedings initiated by the High Court against the accused were quashed.

14. Muhammad Afzal Versus State
1999 YLR 1279

Lahore-High-Court-Lahore

Were two or more Special courts had jurisdiction, wholly or partly in same territorial limits. High Court was empowered under S. 4-A, Suppression of Terrorist Activities (Special Courts) Act, 1975 to transfer any case from one Special Court to another in interest of justice or for convenience of parties or of witnesses--- Enabling provision of S. 4-A of the Act would not have effect of curtailing powers of High Court to transfer case as provided under S.526, Cr.P.C--- Powers of High Court under Criminal Procedure Code transfer a case from one Court to another having not been specifically excluded under S.4-A of Suppression of Terrorist Activities (Special Courts) Act, 1975, same would remain intact.

15. Aslam Versus State

1999 P CR L J 1033

Karachi-High-Court-Sindh

Control of Narcotic Substances Act 1997---Preamble--Establishment of Special Court---Ouster of jurisdiction of Civil Courts---Principles---Failure or omission of designated Authority to frame necessary rules in exercise of powers conferred by Legislature, could not be construed as having effect of rendering statute nugatory and unworkable---While interpreting statutes conferring exclusive jurisdiction on designated Tribunals, **Jurisdiction of ordinary Civil Courts would stand ousted only when such statutory fora were actually established**---Question of conflict between requirements of Criminal Procedure Code and Special Law could arise only when Special Courts exercising exclusive jurisdiction were actually established and a Sessions Court would not stand divested of jurisdiction to try offence till such time.

**16. Muhammad Ramzan alias Jana
Versus
State
1998 P CR L J 210
Lahore -High-Court-Lahore**

Criminal Procedure Code (Cr.P.C)----S. 6---
Classes of Criminal Courts---Classification of
Magistrates as laid down by S.6 of Criminal
Procedure Code, 1898 does not make a
Magistrate invested with powers under S.30,
Cr.P.C. a different class of Court.

17. Muhammad Riaz Versus District Collector
1997 P L D 680
Lahore -High-Court-Lahore

- West Pakistan Family Court Act 1964 Ss. 13 to 20---
West Pakistan Land Revenue Act (XVII of 1967), S.82--
Criminal Procedure Code (V of 1898), S.488---Decretal
amount of maintenance---Power of Family Court to
realize such amount---Powers of Family Courts under
Ss.13 & 20, West Pakistan Family Courts Act, 1964,
were not restricted to recover decretal amount of
maintenance only as arrears of land revenue but were
exercisable as Civil Court executing money decree and
also under S.488, Criminal Procedure Code, 1898.

18. Mushtaq Hussain Bokhari Versus The State
1991 S C M R 2136
Supreme Court

- Statement that **“wrong orders should be corrected at the time they are passed because it would take less time for the case to conclude”** is a wrong or at least misstatement in present state of law, practice, procedure and proceedings in the courts of law---Such a statement might have been true half a century to quarter century ago, as thereafter the challenge to the interlocutory orders had brought about a deluge in the administration of criminal justice for cases started piling up with the result that the concept of speedy justice came to a grinding halt and powers that many be, started thinking of curtailing remedies even reducing the right of appeals---Little change of practice in the technical field, for example amendment vis-à-vis the subject in S.197, Cr.P.C., would not bring in the need to curtail the remedies as that too in the stage where Pakistan is passing, might be counter productive.

19. Waris Iqbal Versus The State
1991 P CR L J 1978
Lahore -High-Court-Lahore

- Criminal Procedure Code (Cr.P.C)----Ss. 87, 88 & 90--- Administration of justice---Duty of Court stated. The subordinate courts must bear in mind that administration of justice is essentially the obligation of the courts of law. The agencies such as the Police, the Prosecutors and the Process-Servers are merely instruments provided to the courts of law for their assistance in the discharge of this obligation. The courts of law cannot, therefore, abdicate their powers and duties in favour of these agencies and become passive spectators in the administration of justice or sit only as dummies placed in the citadel of justice who are incapable of doing anything on their own and are at the complete mercy of others for the performance of their functions.

20. Muhammad Hussain Versus State
1990 P CR L J 827
Karachi-High-Court-Sindh

- Criminal Procedure Code (Cr.P.C)----S. 145---Powers of Criminal Courts in proceedings under S.145, Cr.P.C., regarding immovable property, which is subject-matter of such proceedings, are subordinate to powers of Civil Courts, which have dealt with same property.

**21. Ashfaq Ahmad Alias Shakoo Versus
State**

1989 PLD 4777

Lahore -High-Court-Lahore

Criminal Procedure Code (Cr.P.C)---Ss. 61, 167 & 344--
Criminal Trial--Guidelines for Trial Courts--Courts enjoy a
pivotal position in administration of criminal justice--Criminal
Procedure at every step places a Court as a guard not only
to prevent encroachments upon rights of individuals but
also to check misfeasance and mal-feasance of police
authorities and investigating officers, but courts relegate
themselves to the position of mere silent spectators and
have left themselves to the mercy of police, investigating,
prosecuting and process-serving agencies--Courts normally
exercise restraint in interfering with police investigations,
but this does not mean that Investigating Officers have
unbridled powers to do just what they want during
investigation and toy take as long as they desire in
completing the same--Strict adherence to provisions of
Sections 61, 167 and 344 Cr.P.C. and demanding strict
compliance thereof by courts was desired by High Court

- Courts must insist on submission of challans within fifteen days of arrest of accused person and in absence thereof must refuse to authorize further detention as also postponement of trials unless a really valid and satisfactory cause is shown to deviate from this principle---Courts have ample powers to meet the increasing menace of non-appearance of witnesses or non-production of accused persons from jail which are bestowed upon courts for being exercised effectively---Such luxuries on the part of police, prosecution, jail authorities or witnesses must be met by resort to coercive and penal measures against delinquents and posture of helpless passive onlookers adopted by Trial Courts should be met with exemplary measures---Ultimate responsibility of administration of justice rests with courts---Police and Investigating agencies are only instruments to assist them in discharge of this responsibility---Courts are operators and not slaves of these tools---Courts if at any stage feel that these instruments have got blunted or rusted, then courts must sharpen and chisel them through lawful means.

22. Fazal Hussain Versus The State
1976 P CR L J 747
Lahore -High-Court-Lahore

- Criminal Trial---Review powers of ---No power to review its own orders to lower courts under Criminal Procedure Code – All orders regarding disposal of property, excepting ex parte orders, final.

23. Ghulam Raza Versus State
1974 P CR L J 95

Lahore-High-Court-Lahore

Criminal Procedure Code (Cr.P.C)—S. 369—Judgment—Review—Magistrate reviewing his earlier judgment thereby reversing conviction of accused into acquittal on ground that he meant to acquittal on ground that he meant to acquit accused but mentioned his name as one of convicts due to oversight—Nothing on record or in earlier judgment showing intention on part of Magistrate to acquit accused but on contrary trend of judgment showing accused equally guilty along with co-accused - Magistrate, held, exceeded his powers in writing an unreasoned judgment of acquittal in favour of accused – Judgments once signed and announced cannot be reviewed except for correction of clerical errors – Questions of judicial determination arising after delivery of judgments – Must be left for higher courts.