



# **Procedure Under Section 325 of The Code of Criminal Procedure, 1973**

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Decisions are not to be based on shastras (Codes) only. In trials without imagination miscarriage of justice arises.

Brihaspati: Cited in Vyayahara Nirnaya.



# Introduction to Section

## **325. Procedure when Magistrate cannot pass sentence sufficiently severe.**

- **Whenever a Magistrate is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or, being a Magistrate of the second class, is of opinion that the accused ought to be required to execute a bond under Section 106, he may record the opinion and submit his proceedings, and forward the accused, to the Chief Judicial Magistrate to whom he is subordinate.**
- **When more accused than one are being tried together, and the Magistrate considers it necessary to proceed under sub-section (1), in regard to any of such accused, he shall forward all the accused, who are in his opinion guilty, to the Chief Judicial Magistrate.**
- **The Chief Judicial Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case and may call for and take any further evidence, and shall pass such judgment, sentence or order in the case as he thinks fit, and as is according to law.**

# Legislative History




**This section corresponds to Section 348 of the old Code (The Code of Criminal Procedure, 1898) except that proviso to old sub-section (2) has been omitted.**

**Now the said section is provided in the form of Section 364 in the new Code, The Bharatiya Nagarik Suraksha Sanhita, 2023.**

**There has been no change in the said section in the new Code and the said section is exactly the same as it was in the old Code (The Code of Criminal Procedure, 1973).**




# **Scope and Applicability**




**This section outlines the procedure to be followed when a Magistrate, after hearing both the prosecution and the accused, believes that the accused deserves a punishment-**

- I. Different from that which he can inflict, or**
- II. Should be more severe than he can inflict.**

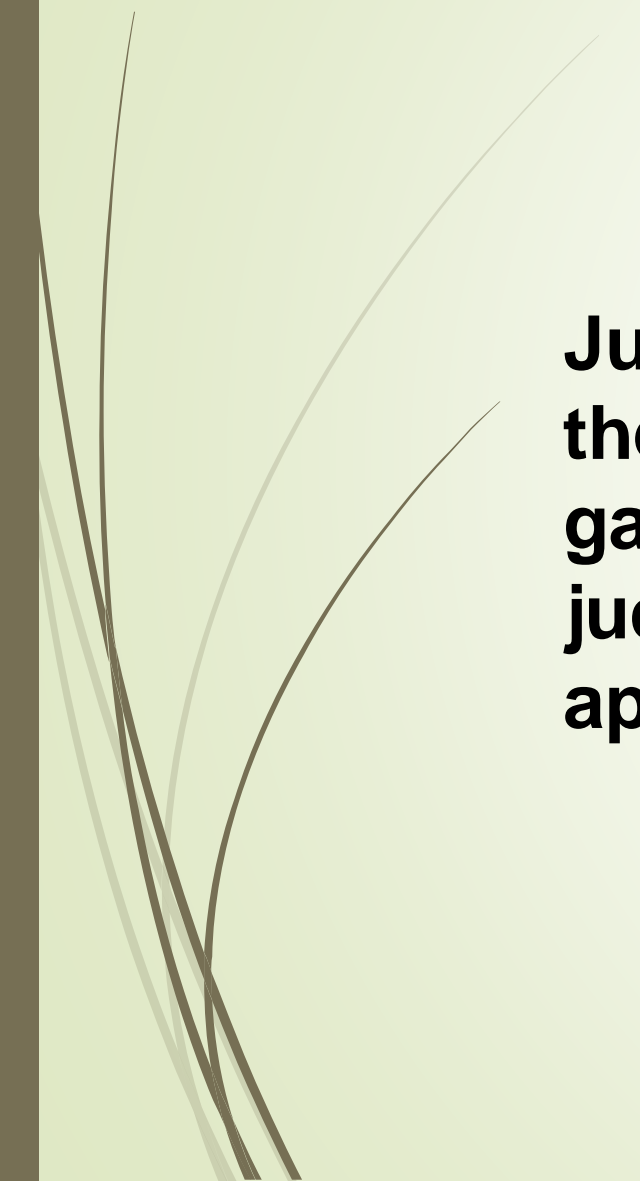




**In such cases, the Magistrate records their opinion, submits the case, and forwards the accused to the Chief Judicial Magistrate to whom they are subordinate. When multiple accused individuals are being tried together, and the Magistrate decides to proceed under this section for any of them, all such guilty accused are forwarded to the Chief Judicial Magistrate.**




**Upon receiving the case, the Chief Judicial Magistrate may choose to examine the parties, recall and re-examine witnesses, gather additional evidence, and then pass a judgment, sentence, or order that they deem appropriate and in accordance with the law.**







# **Powers of the Chief Judicial Magistrate**




**The chief judicial magistrate has been given large powers. He can decide on the evidence already recorded by the referring magistrate (an exception to the ordinary rule), or he may examine the witnesses again.**






He must form his own independent judgment though the referring magistrate thinks that the accused is guilty. He may -


- (i)** Pass such sentence as he thinks just, if found guilty, or
- (ii)** Acquit if found not guilty, or
- (iii)** Commit the accused or, **(iv)** dispose of the case in any other way as is indicated by the word “order”.



**He must hear the pleaders and write a judgment under section 354 (1) forming his own independent view without merely saying that he accepts the opinion of the referring. The chief judicial magistrate must dispose of the case himself by acquitting or conviction or omitting and he cannot return the case to the referring magistrate for commitment or any other purpose.**




**When a case submitted to the chief judicial magistrate involves an offence of a gross nature and the sentence which he ought to award must exceed seven years, he can commit the case to the court of sessions under section 323.**







# **Relation between section 322, 323 & 325 of the Code**






**Sections 322 to 325 of the Code deals with the powers of the Judicial Magistrate First Class regarding transfer of the case in certain situation to the file of the Chief Judicial Magistrate and Session Judge for trial.**






**From the reading of the provisions of section 322 to 325 of the Code, it is seen that-**

**(i) if it appears to the Magistrate from the facts disclosed in the police report and other evidence that he will not be able to inflict adequate punishment in the case and thus, the case ought to be tried by the Chief Judicial Magistrate, he is empowered to submit the case to the Chief Judicial Magistrate under Section 322 of the Code.**




**(ii) if the Magistrate, after closure of the evidence of both the parties, finds the accused guilty and thinks that the accused ought to receive a punishment different in kind or severe than that which he is empowered to inflict, he is empowered to submit the case to the Chief Judicial Magistrate, under Section 325 of the Code.**




**(iii) if on the other hand, it appears to the Magistrate at any stage of the 5 trial before signing the judgment that the case is one which ought to be tried by the Court of Session, he shall commit the case to the Court of Session under Section 323 of the Code.**



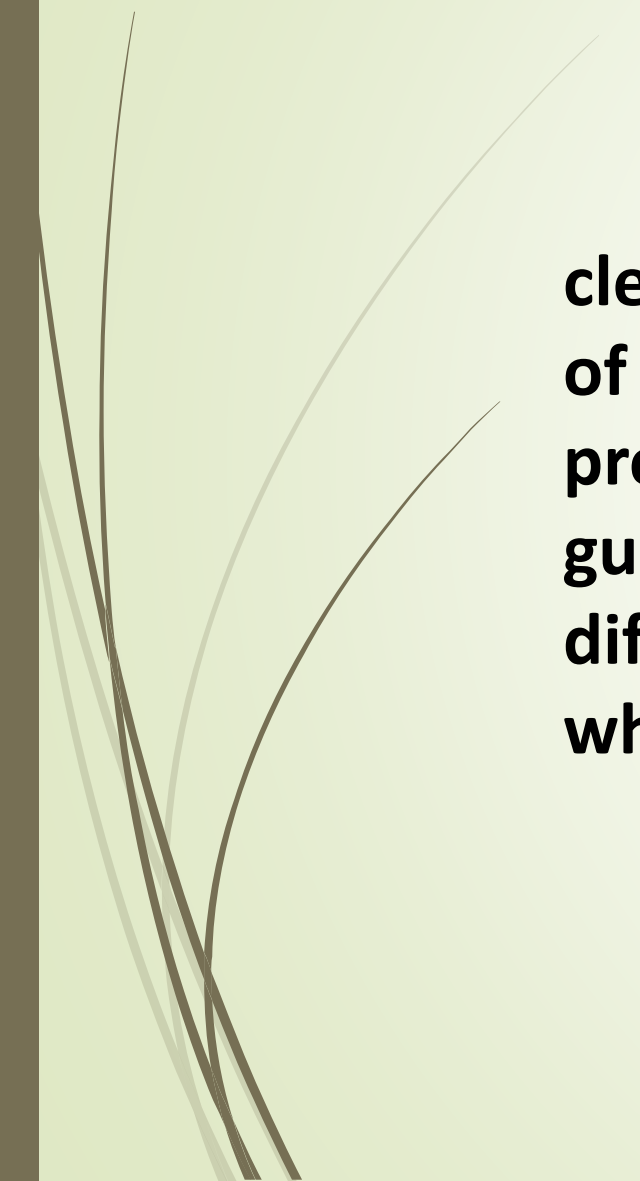
# Stage of Applicability




**When, from the records, it appears to a Magistrate that the accused may have to be given a heavier sentence than what he/she could impose, it would not be proper for the Magistrate to straightway act under Section 325 of the Code and forward the case to the Chief Judicial Magistrate without forming an opinion that the accused is guilty.**



**The mandate of Section 325 of the Code is clear and specific. It is only when a Magistrate is of the opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty and that he ought to receive a punishment different in kind from, or more severe than, that which the Magistrate is empowered to inflict.**






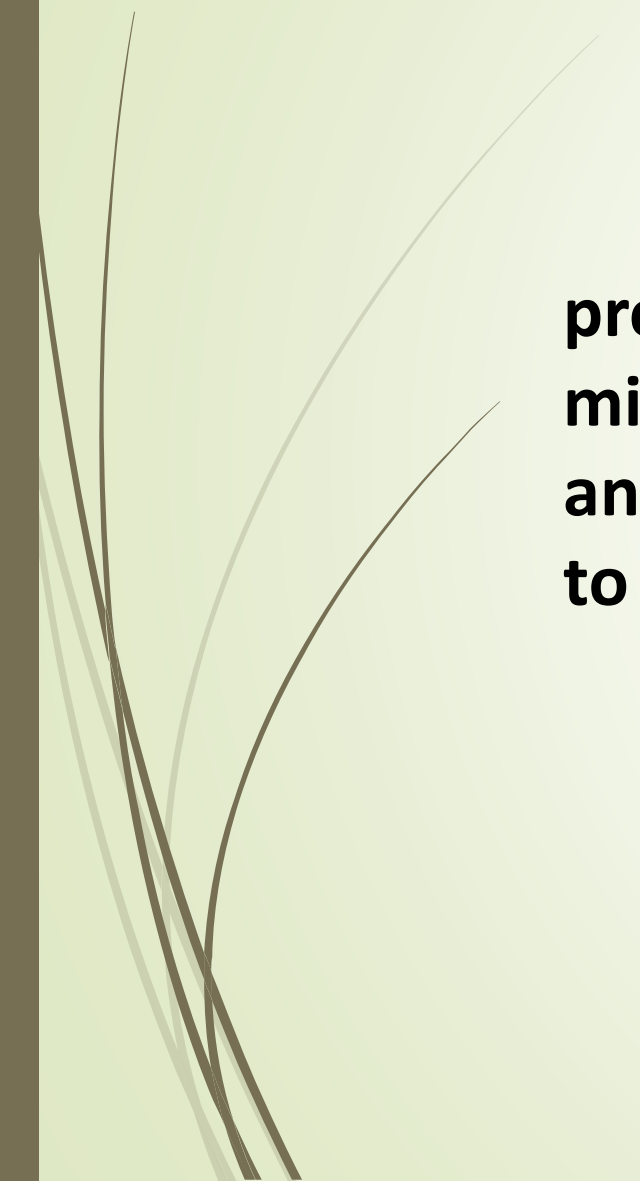



**There should be a case where the sentence ought to be even for more than a Chief Judicial Magistrate can award, there will be no difficulty to the Magistrate forwarding the case to the Chief Judicial Magistrate in so far as Section 325(3) of the Code provides that Chief Judicial Magistrate can pass any order which he thinks fit but it is just possible only after hearing of the evidence for the prosecution and the defence and only then Magistrate can opine that the accused is guilty.**






**After hearing the evidence for the prosecution and the defence, Magistrate might opine that the accused is not guilty and in that case it would be perfectly open to him to acquit the accused.**






**Forwarding cases to the Chief Judicial Magistrate without reaching the stage where Magistrate could form an opinion of guilt, but which are likely to end in an acquittal after hearing the evidence for the prosecution and the defence under Section 325 of the Code merely because it appears to him from the nature of the allegations that, in the remote prospect of the accused being convicted he/she might not be able to award adequate sentence, would be wasting the precious time of the Court, as after all the Magistrate is quite competent to try the case and acquit the accused, if he/she so find the accused not guilty.**




**Section 325 of the Code should be resorted to only when the Magistrate opines that accused is guilty of offence and he may have to be given a heavier sentence than what he/she could impose.**



# **Relevancy of Section 248 of the Code**



**A perusal of Section 248 of the Code shows that the Magistrate in a case under the Chapter in which charge has been framed, acquit the accused but in case he finds him guilty, he may either proceed under Section 325 of the Code or under Section 360 of the Code and in case he does not chose either of the said two options, he shall proceed to hear the accused on quantum of sentence and impose sentence according to law.**




**In other words, provisions under Section 325 of the Code would come into play after a finding regarding guilt has been recorded. It further becomes evident that the proceedings before passing any order for resorting to Section 325 of the Code or for releasing him on probation under Section 360 of the Code or imposing sentence upon the accused are of the same nature and kind and different kinds of proceedings are not visualised.**




# **Cases Where The Maximum Prescribed Punishment Exceeds 7 Years ?**






**The law is settled that where after commencement of enquiry or trial the Magistrate finds that the case should be committed to the court of session the Magistrate will commit the case to the court of sessions after recording his opinion base on the material on record of the case under Section 323Cr.P.C.**





**But on the other hand in cases where a Magistrate is of opinion after hearing the evidence for the prosecution and the accused, that the accused is guilty and the accused ought to receive a punishment more severe than that which such Magistrate is empowered to inflict, he will submit his proceedings and accused be forwarded to the CJM to whom he is subordinate. He has got to follow the procedure under section 325 of the code and there is no other alternative left for him in such a case. Which follows as a necessary consequence that after following the procedure under section 325, if he comes to the opinion contemplated by sub section (1) thereof, he has to submit the proceedings to the CJM or the CMM as the case may be.**



**Section 323 and section 325 operates in different fields. Whereas section 323 of the code uses the expression after commencement of enquiry to trial, where as section 325 of the Code comes into picture when a Magistrate after hearing the evidence for the prosecution and the accused is of the opinion that the case deserves a more severe sentence than what the Magistrate is empowered to inflict.**




# Conclusion




**As we all know that Section 325 of Code is not a much used provision in the Courts.**

**I am of the opinion that the Judicial Magistrates should invoke the provisions of Section 325 of Code for referring, to the concerned Chief Judicial Magistrate, in cases involving serious offences in which, in their respective opinion, the accused ought to receive punishment different in kind or more severe than they are empowered to inflict.**



**For encouraging this practice, Judicial Magistrate who records the judgment of conviction, is allowed to claim the units for disposal of such cases.**

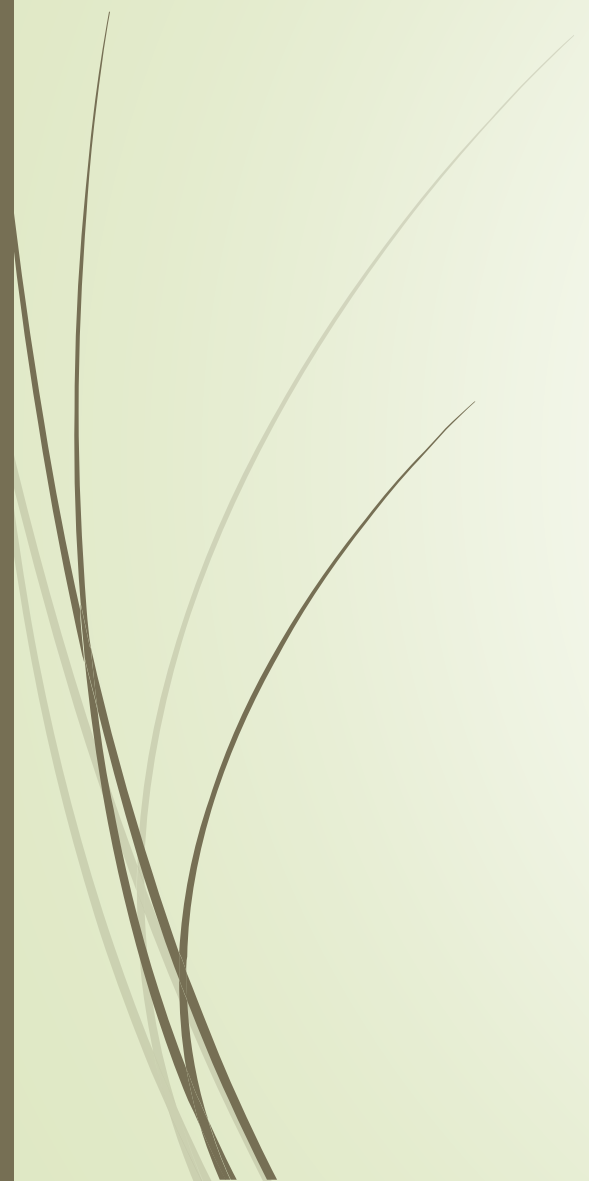




**"Fiat Justitia Ruat Caelum"**

**Let the justice be done though the  
heavens fall.**





**Thank You**