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# ANALYSING DECLARATION OF PROCLAMATION UNDER THE CODE OF CRIMINAL PROCEDURE

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## ABSTRACT

Section 82 of the code of criminal procedure talks about the proclamation for a person absconding. Abscond derives from the Latin term '*abcondere*' which means 'to hide away'. In the legal sense, an absconder is a person who tries to hide away from legal or other designated authorities.

No doubt CrPC provides for an elaborate procedure to declare a person as a proclaimed offender or person, ranging from sections 82-86 but these procedures are seldom followed in their true sense. Declaring a person as a proclaimed person/ offender is just another mechanical task for the police and the judicial set-up in a majority of cases. Several judgements of different High courts and the Supreme court have mentioned the statutory need of following the prescribed procedure as per section 82 CrPC. In *Bishnudayal v. Emperor*,<sup>3</sup> the court has established that the terms of section 82 are mandatory and imperative, and a proclamation cannot be issued without first issuing the warrant of arrest. The Supreme court again upheld this reasoning in *Devendra Singh Negi v. State of U.P.*<sup>4</sup> In *Kailash Chaudhary v. State of U.P.* the court has also stated that the magistrate or session judge shall consider exercising their power for dismissal before they invoke their power under section 82.

Declaring a person as a proclaimed offender or person shall not be considered only as a mechanical task because it affects the basic right of a person i.e., the right to life as per article 21 of Indian constitution.<sup>5</sup> Proclamation not only seizes the valuables (either property etc) but also has negative implications during the due course of the trial. Apart from that

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<sup>3</sup> AIR 1943 Pat 366.

<sup>4</sup> 1994 Cri LJ 1783 (All).

<sup>5</sup> Article 21, The Constitution of India, 1950.

Section, 174A IPC<sup>6</sup> provides for punishment for Non-appearance in response to a proclamation under section 82 CrPC.

**Keywords:** Proclaimed person, accused, Section 82 CrPC, Section 174A IPC, Natural Justice, Fair Trial

## Chapter I: Procedure and Subsequent Impacts

There are five sections under Chapter VI (Processes to Compel Appearance) Part C extends from section 82 to section 86 (both inclusive). Section 82 deals with the procedure for proclaiming a person as an offender.

Subsection (1) talks about that if a court has a reason to believe that the person against whom the warrant has been issued is absconded or knowingly concealed himself so that warrant shall not be executed. The court can issue a proclamation against such a person, declaring him/ her to appear at a particular place and a particular time not less than thirty days from such proclamation.

Sub-section (2)(i) prescribes the conditions for the publication of such proclamation, which are:

- It shall be read in a public place near such person ordinarily resides
- It shall be pasted at some conspicuous place outside the house of the person where he ordinarily resides or to some public place of that area
- Copy of such proclamation is to be pasted at some public place outside the court.

Clause (ii) of the aforementioned section also provides the power to the court to direct a copy of such proclamation to be printed in such a paper circulated in and around the area where that person ordinarily resides.

Sub-section (3) provides for the validity of such proclamation, it ascertains that if a statement in writing issued by the court that all the necessary conditions laid down under sub-section (2)

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<sup>6</sup> Section 174A, Indian Penal Code, 1860.  
Section 82, Code of Criminal Procedure, 1973.

clauses (i) and (ii) are followed is of evidentiary value and it is to be believed that such proclamation was legitimate and followed the due course of law.

Sub-section (4) was added to the CrPC only after 2005 <sup>7</sup> and it specifically talks about the proclamation issued for a proclaimed offender. The procedure for such a proclamation is no different from the normal proclamation.

### **Difference between Proclaimed Person and Proclaimed Offender**

There is no substantial difference between these two terms. Sub-section (4) provides for some offences under IPC which are considered to be more grievous and detrimental to society.

### **Punishment**

Being declared as a proclaimed offender is considered to be a more grievous breach as compared to the declaration as a proclaimed person because of the gravity of the accusation. Section 174A<sup>8</sup> of the IPC also provides different punishments for these two different offences. A proclaimed person shall be punished with imprisonment extending up to 3 years or a fine or both. On the other side, the proclaimed offender shall be punished with imprisonment for a term extending up to seven years and a fine also.

The XIX sections mentioned under Section 82 CrPC, any of which constitutes a condition for a person to be declared as a proclaimed offender:

Serial Number	I.P.C Number	Section	Offence
I	302		Punishment for Murder
II	304		Punishment for culpable homicide not amounting to Murder
III	364		Kidnapping or abducting in order to Murder
IV	367		Kidnapping or abducting in order to subject person to grievous hurt, slavery etc.

<sup>7</sup> Inserted by CrPC (Amendment) Act, 2005.

<sup>8</sup> Section 174A, Indian Penal Code, 1860.

V	382	Theft after preparation made for causing death, restraint or hurt in order to committing the theft
VI	392	Punishment for robbery
VII	393	Attempt to commit robbery
VIII	394	Voluntarily causing hurt in committing robbery
IX	395	Punishment for dacoity
X	396	Dacoity with Murder
XI	397	Robbery, or dacoity, with attempt to cause death or grievous hurt
XII	398	Attempt to commit robbery or dacoity when armed with deadly weapon
XIII	399	Making preparation to commit dacoity
XIV	400	Punishment for belonging to gang of dacoits
XV	402	Assembling for purpose of committing dacoity
XVI	436	Mischief by fire or explosive substance with intent to destroy house, etc
XVII	449	House-trespass in order to commit offence punishable with death
XVIII	459	Grievous hurt caused whilst committing lurking house-trespass or house-breaking
XIX	460	All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them

Following Section 83, subsequent sections deal with the issue of attachment of property, claims, objections to attachments, release, sale and appeal etc. Section 83 provides for the attachment of property of a person absconding. In *Devendra Singh Negi v. State of U.P*<sup>9</sup>, the Allahabad High Court has ruled that unless 30 days have elapsed after the proclamation was issued under section 82, no attachment could be ordered under section 83. Section 84 talks about claims and objections related to the attached property. Section 85 deals with the issue of the sale, release and restoration of such attached property and lays down specific conditions under which the property is to be sold. Finally, Section 86 is an appellate section under which an appeal against any order of the previous section can be made to the appellate authority (usually the immediate higher court) of that specific court against whose decision, the appeal is made.

### **Data Analysis**

Although section 82 is a very important and relevant section under the criminal procedural code and it has wider implications on the rate of crime in our society because if proclaimed persons/ offenders are free then it is certain that they will adversely affect society. Data analysis is one of the key points through which we can trace and track such offenders but sadly there is a great dearth of qualitative data present on proclaimed persons and offenders.

No doubt recently NCRB and the Ministry of Law have initiated various schemes such as the Crime and Criminal Tracking Network & Systems (CCTNS)<sup>10</sup>, National cyber crime reporting portal, the annual Crime in India Report and many more but still these initiatives are not capable enough to track record on data related to proclaimed person and offenders and the property attached to such person.

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<sup>9</sup>1994 Cri LJ 1783 (All).

<sup>10</sup> Crime and Criminal Tracking Network & Systems (CCTNS) <<https://ncrb.gov.in/en/crime-and-criminal-tracking-network-systems-cctns>>.

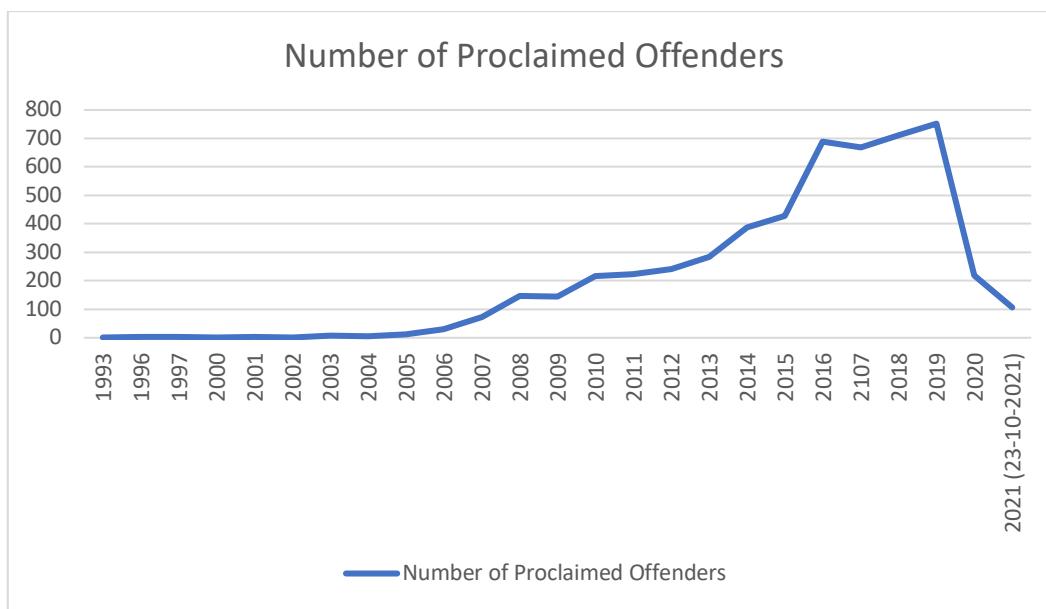


Figure 1.1: Number of Proclaimed Offenders Declared (since 1993)<sup>11</sup>

To have a better and more accurate look at the statistics, the researcher has also studied the data on proclaimed offenders only in cases of anti-forgery sections by the EOW only under the jurisdiction of N.C.T of Delhi.

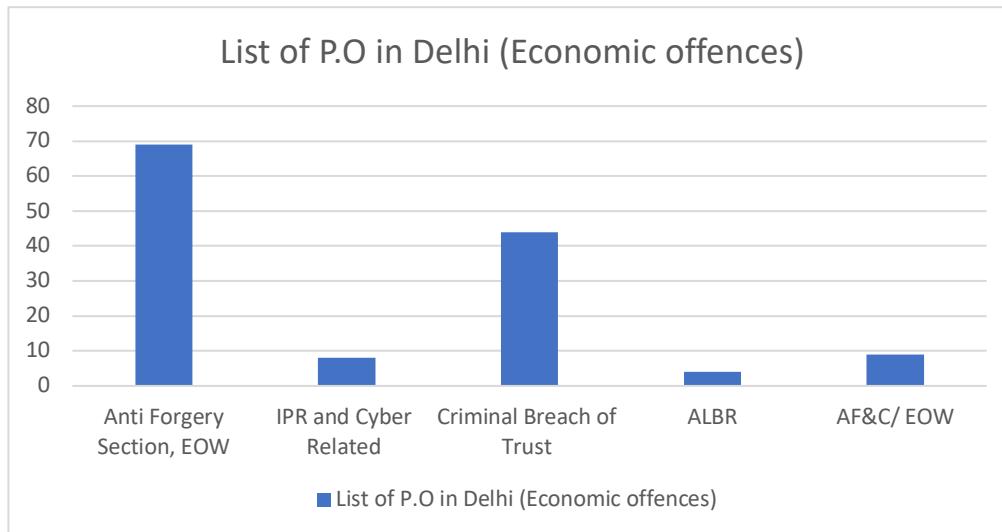


Figure 1.2 – List of proclaimed offenders under economic offences in Delhi<sup>12</sup>

No doubt, there is a mandate of posting information about proclaimed persons and offenders but there is still some lag in the data collection. No uniform database is there to provide the list

<sup>11</sup> Digital Police Citizen Services, CCTNS, <<http://www.digitalpolicecitizenservices.gov.in/centercitizen/login.htm?loggedout=true>> Last accessed (29-10-2021).

<sup>12</sup> Delhi Police, <<https://www.delhipolice.nic.in/proclaimed-eco-off.html>> Last accessed 26-10-2021.

of assets (property) confiscated or attached under section 83 and the sale of subsequent property under section 84.

This data scarcity is somewhere defeating the purpose of the whole exercise of declaring a person as a proclaimed person/ offender and safeguards provided for a fair implementation under CrPC.

## **Chapter II: Need to Streamlining the Procedure**

No doubt that Section 82 and 84 of CrPC subsequently talks about the procedure for issuing a proclamation against the person and consequential declaration as a proclaimed person/ offender. The provisions given in CrPC regarding the declaration and the procedure related to it are self-explanatory and sufficient if applied in their true sense.

### **The Ground Reality**

In day-to-day life, the situation is far away from normal. The investigating authorities and the adjudicatory bodies do not pay much attention to the following of the procedure they just recklessly implement section 82 and thereafter declare a such person as a proclaimed person/ offender. Investigating officer or any other designated officer is expected to address the summon or warrant (as per the case) to the accused as prescribed under the relevant provisions of CrPC. In case of summon, the next step in the ladder is to obtain a warrant from the concerned magistrate having the jurisdiction. After the issuance of a warrant, the police have to make every possible effort (as judicially laid down) to address such an order to the accused and if there are not able to apprehend such an accused then the investigating authority should go for a proclamation under section 82. But in majority of cases, it has been seen that the police authorities do not take much pain in following the procedure and recklessly move to the court under section 82 which is gorse injustice. In *N.M.V Vellayappa Chettiar v. Alagappa Chettiar*<sup>13</sup> and *M.S.R Gundappa v. State of Karnataka*,<sup>14</sup> the court has observed that a person cannot qualify to be an absconder for the no compliance of warrant if before the issuance of the such warrant he had gone to a distant place. Therefore, this section must be strictly construed as the failure to obey the orders under this section has penal consequences.<sup>15</sup> The requirement as to

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<sup>13</sup> AIR 1942 Mad 289.

<sup>14</sup> 1977 MLJ (Cri) 159 (Kant).

<sup>15</sup> Supra note 7.

time and place is mandatory<sup>16</sup> and if the period is less than thirty days then the subsequent proceedings will be invalid.

Despite several judgements by various high courts and the apex court itself, still, the procedure is not streamlined and even the judges sometimes just issue such orders mechanically at the request of the investigating officers without checking the due compliance of issuing and addressing a warrant.

### **Guidelines Issued under Sunil Tyagi v. Govt of NCT of Delhi & Anr**

In a recent Delhi High Court bench judgement presided over by *Justice (retd.) J.R Midha*, the Delhi HC has acknowledged the practical loopholes in the reckless implementation of Section 82 and given some guidelines which need to be followed both by the investing authority and the adjudicatory body.

In 2013, Delhi metropolitan magistrate declared the appellant as a proclaimed offender without checking the authenticity of a warrant issued against the appellant. It was found that the address to which the warrant was executed was the wrong address and the appellant did not live there. In another petition, the petitioner has declared a proclaimed offender but the respondent authority never issued any warrant or summon against him.

*“Vide judgment dated 07th January 2021, the Delhi High Court allowed both petitions and quashed the impugned orders declaring the petitioners as ‘Proclaimed Offenders’.”*

### **Court’s Observation**

*“As per the court orders, Delhi Police has filed a status report which mentions that 18,000 persons are declared as proclaimed persons out of which 6,000 were proclaimed offenders.”*

*“With regards to C.B.I 820, people have been declared as proclaimed persons, as of 31-12-2014, out of which 173 absconders and 184 proclaimed offenders were arrested.”*

The bench headed by Sir J.R Midha considered it imperative to issue specific guidelines under Section 482, 483 of the Code of Criminal Procedure<sup>17</sup> and Article 227 of the Indian Constitution.<sup>18</sup>

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<sup>16</sup>Pal Singh Santa v. State, AIR 1955 Punj 18.

<sup>17</sup> Section 482 and 483, Code of Criminal Procedure, 1973.

<sup>18</sup> Article 227, The Constitution of India, 1950.

Some of the relevant guidelines mentioned by the court are:

### For Warrant of Arrest During the Investigation

1. **NBW against accused evading arrest** – The Investigating Officer may apply to a Magistrate for issuance of warrant of arrest where the offence is cognizable, non-bailable and the accused/suspect is evading his arrest.
2. **Investigating Officer to disclose efforts made to arrest** – Before applying for warrant, the Investigating Officer shall show the efforts made to arrest the accused.
3. **Address on the NBW** – The Investigating Officer shall show that the accused is ordinarily residing at or was very recently residing at some address verified by the Investigating Officer and that the accused is not available at that address due to his deliberate intention to avoid the arrest.
4. **No NBW on mere absence from house** – No warrant shall be issued against an accused merely on the ground that he is not available to the Investigating Officer/Police for joining the investigation.
5. **Investigating Officer to share material connecting the accused** – The Investigating Officer shall share the material collected by him during investigation before the Court on the basis of which the accused is connected to the crime.
6. **Affidavit of the police officer** – The police shall file an affidavit disclosing the date, time and mode of service as well as the attempts made to search and identify the accused.

### For Warrant of Arrest at Trial Stage

1. **Abscondance during Trial more serious** – At the stage of trial, the accused is normally on bail. The abscondance during trial is more serious than abscondance during investigation as the accused has already crossed the stage of investigation and has been summoned by the Court to face trial and if the Charge(s) has/have been framed, the finding of existence of *prima facie* case against the accused is on record.
2. **Mere non-appearance sufficient** – Mere non-appearance of accused without any justified reasons is sufficient justification for issuance of warrants of arrest including NBW by the Court.
3. **Court to decide exemption plea** – If any authorized person is present before the Court on behalf of any accused and moves an application to show the reasons for non-appearance of the accused, the Court shall decide the application in accordance with the law.

**For Verification of address(es) of the accused by the police at the stage of Summons/Warrants/Arrest/Surrender**

1. **Physical verification of address of accused** – The Investigating Officer shall ensure the verification of the address of the accused before or after his arrest or while seeking his arrest warrants from the Court.
2. **Ratification of address of accused by neighbours during verification** – The Investigating Officer shall record in the case diary the name of at least two respectable persons of the locality of the accused with their contact details like addresses and telephone who ratify that the address of the accused mentioned in the arrest memo or the applications for seeking warrants of arrest of the accused is correct and complete and it belongs to the accused.
3. **Ascertain permanent address or additional address of accused with verification** – The Investigating Officer shall ascertain the additional addresses of the accused viz. the permanent or the native place address and if addresses are located in other States, the same shall be verified through a subordinate or by the local police of such address disclosed.
4. **Append photograph of the dwelling unit of the accused** – The Investigating Officer shall take photographs of the dwelling unit of the accused which is shown/claimed to be the address of the accused. In case the Investigating Officer has an internet facility at the Police Station, he shall take the help of printouts of internet maps like Google Maps so as to show the specific location of the house.
5. **Documentary proof of address of accused** – The Investigating Officer shall collect documentary proof of the address disclosed by the accused and append the same with the Chargesheet.
6. **Documentary proof of tenanted premises of the accused** – In case an accused is a tenant in the property, a copy of the rent deed/rent receipt or a plain paper declaration by the landlord would be a sufficient compliance of this requirement.
7. **Mandatory registration of all property owners/landlords who let their residential/commercial or industrial property on rent** – Delhi being the national capital attracts thousands and lakhs of inbound settlers. The number of crimes committed by this floating population is alarmingly high. Also, the heightened national security scenario demands repeated notification of compulsory Tenant verification drives by Delhi Police. This can be done in a simple online format and also through offline procedure. This would, upon its

linkage to Aadhaar data bank, rule out frequent incidents of abscondance during criminal trials.

8. **Disclosure of name and address of three blood relatives of the accused** – At the time of arrest, the accused shall share names of at least three blood relatives with their details like address and contact numbers and the nature of the relation.
9. **Ascertain mobile and landline connection/email address of the accused** – The Investigating Officer shall ascertain all mobile and landline connections issued in the name of the accused/suspect, and/or any identity cards issued in the name of the accused/suspect so as to enable them to establish contact with the accused/suspect. Details such as email address of the accused/suspect wherever available shall also be included in the arrest memo.
10. **Ascertain workplace details and address of the accused** – The Investigating Officer shall ascertain the work profile/job profile of the accused and shall obtain the complete address and details of his place of work/employer with other contact details.
11. **Ascertain details of the head office of the employer of the accused** – In case the accused is found to be working in a Government/Private employment, the address of the Head Office of his employer shall be obtained apart from requiring such Employer to share with the Police and Court in case there is a change of place of employment or termination or removal of accused from employment.
12. **Documentary proof of workplace details along with photograph** – The Investigating Officer shall obtain a documentary proof of the place of work of the accused and shall record it in the charge sheet as an address where due service can be affected. Photograph of such work place shall also be obtained.
13. **Investigating Officer to collect the relevant details of the accused in terms of the format attached hereto as Annexure A** – The Investigating Officer shall collect the relevant particulars relating to the complete residential/permanent address of the accused, contact details including telephone/mobile numbers and *email* addresses, social media accounts etc. The Investigating Officer shall fill up the performa attached hereto as *Annexure A* during the investigation.
14. **Modification of arrest memos in terms of UID/Aadhaar particulars** – Vide Notification No.F.13/13/98/HP-I/ESTT.55-74, dated 05<sup>th</sup> January, 2001, Lt. Governor, Delhi while exercising powers under Section 147 of Delhi Police Act, 1978, notified an *Arrest Memo Proforma* proposed by NCRB, Ministry of Home, Government of India.

15. **Accused to share photograph, mobile & documentary IDs** – At the time of arrest or soon thereafter, the police shall collect the photograph, mobile and landline number, email ID, all Social Networking accounts like *Facebook, Instagram, LinkedIn, Twitter* and IT Communication tools and copies of at least two documents namely Aadhar Card, Passport, PAN Card, Bank Account, Credit card, Ration card, Electricity bill, Landline telephone bill, Voter I.D. Card, Driving Licence from the accused.
16. **Accused and surety to inform police and Court of changed address/mobile number** – In case of grant of bail, it shall be mandatory for every accused and surety as a condition for grant of bail that, both the accused and the surety shall inform the police as well as the Court granting the bail about the change of their residential address and/or mobile number/ contact details while the accused is on bail.
17. **Mandating disclosure and filing of documents in case of anticipatory bails as well as regular bails before the hearing** – The concerned area Magistrate/Court hearing the Bail application shall ensure that the accused shares all the particulars mentioned in *Annexure B.*
18. **Area Magistrate to ensure compliance of all guidelines relating to arrest** – The concerned area Magistrate/Court hearing the application shall ensure that the above guidelines have been duly complied with by the police.

There are total 86 guidelines issued by the court for different stages ranging from pre trial to the completion of trial and various other circumstances. These elaborate guidelines are a simple hierarchy structure which if followed by the police and the judiciary could simplify this process and helps to impart justice in a speedy and fair manner.

## Conclusion

The legal safeguards provided under sections 82-84 are well enough if they are followed in their true sense. Although the issue with the whole process of proclamation is its practical disregard and reckless implementation. There is a lack of qualitative data present on this issue. Whatever data has been examined through this study has pointed towards the reckless implementation of Section 82. Numerous numbers of cases have been discussed through which the court has reiterated the same concern again and again and pointed out that Section 82 needs to be strictly construed as it has implications of the immediate trial and in addition, it has now become a separate penal offence under section 174A of IPC.

In *Sunil Tyagi v. State of N.C.T of Delhi & others.*, Justice (retd.) J.R. Midha has addressed this concern with great priority and astute simplicity. He has mentioned 86 guidelines overall which are to be followed while (before) a declaration under section 82 is made. He has mandated that it is compulsory for the investigating authorities and the presiding judge to look up their respective roles enshrined under Section 82 and other subsequent sections. Delhi police have already started to incorporate those guidelines before initiating the such procedure. No doubt these guidelines are very elaborative and objective which can be followed easily step by step by the main point is the strict implementation of this judgement at ground level. In past also the court has given many landmark and historic judgements but the complexity and sluggishness of the system have engulfed those measures within themselves as we can see that even the *Arnesh Kumar v. State of U.P*<sup>19</sup> judgement was a landmark judgement regarding the arrest of a person in offences punishable with less than 7 years imprisonment under section 41.<sup>20</sup> But still, the provisions of that judgement are not followed uniformly which is directly a contempt of court.

Section 82 is not a legally complex section which needs much interpretation but what it so needs is the proper implementation of its provisions at the ground level without any laxity or bias behaviour.

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<sup>19</sup>(2014) 8 SCC 273.

<sup>20</sup> Section 41, Code of Criminal Procedure, 1973.

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