

CHAPTER XVIII
Procedure in Criminal Cases

(A)General

1. The rules in Chapter VI shall apply, as far as possible, to applications made under this Chapter.

2. After the case is admitted, the party at whose instance notice is to be issued shall file within 7 days of the date of admission, typed copies of the application and affidavit to be served on the other parties and the State. Failing compliance, the case shall be placed before the Bench, with office note, for dismissal.

3. No Advocate shall be entitled to make or do any appearance, application or act in any criminal case or proceeding for any person unless he presents an appointment in writing duly signed by such person or his recognised agent or by some other agent duly authorised by power-of-attorney to act in his behalf, or unless he is instructed by an attorney or advocate duly authorised to act on behalf of such person.

Provided that no such appointment in writing shall be necessary in the case of an Advocate appointed by the Government or the Court to act, appear or plead on behalf of an accused or convicted person.

4. No application for admission to bail shall be made without notice in writing given to the Public Prosecutor not later than noon of the day preceding that on which the application is to be made.

5 (1). Every application for bail shall contain full particulars including the case number, the name of the Sessions Judge, if any, and the name of the trying Magistrate or the name of the committing Magistrate, as the case may be.

(2) Every petitions for relief on Criminal matter shall contain a declaration supported by an affidavit of the applicant himself or his authorized agent stating if, any other application either u/s 438 or 439 Cr.P.C. or u/s 482 Cr.P.C. or Criminal Revision or a Writ Petition (Criminal) concerning the same case of the Court below is pending or has been disposed of by the High Court or any other Court upon such petition being filed either by the applicant or by any party to such proceeding including the accused involved in the case with result thereof if such case is disposed of.

(3) For the purpose of making the declaration as provided in Sub-rule(2) above, the applicant or his agent may on furnishing the P.S./ G.R Case No. obtained relevant information from the Computer Section of the High Court by making an application to the Deputy Registrar (Judicial) of the Court on payment of a fee of Rs.5/- in shape of Court Fees and where any such application is made, the requisite information shall be supplied to the applicant.

(4) Bail orders passed by the High Court shall be sent directly to the Courts concerned. The amount of bail, number and nature of sureties etc., may be ordinarily indicated therein. A copy of the order shall also be forwarded to the Chief Judicial Magistrate who shall send the same forthwith to the Magistrate concerned or his successor in office or the Magistrate placed in charge of his duties, for necessary action. When the order of bail relates to a case pending in a Court in an outlying subdivision, a copy should also be sent to the Sub-divisional Judicial Magistrate of such subdivision for necessary action.

6. A copy of every notice issued on admitting an appeal and also copies of notices issued on admitting revision and motion cases where the Magistrate is given an opportunity of showing cause, shall be sent to the Advocate-General of Orissa.

7. On every Saturday, or if a Saturday be a holiday on the last working day of the week, the Registrar shall cause to be prepared a complete list of the cases pending before the Court excepting those in which notices have not been issued. This list shall be called the Weekly Cause List and shall consist of two parts viz. Part I showing cases ready for hearing and Part II showing cases which are not ready for hearing but in respect of which notices have been issued. Cases made ready during the week shall be entered at the bottom of Part I and those in respect of which notices only have been issued during the week at the bottom of Part II under appropriate headings.

8.(1). From Part I of the Weekly Cause List, the Registrar shall each day cause to be prepared and posted on the notice board of the Court a list of cases to be taken up by each Bench on the following day. This list shall be called the Daily Cause List and a copy of it shall be submitted to each Judge.

(2). Cases shall be taken on to the Daily Cause List from the top of Part I of the Weekly Cause List strictly in the order in which they stand therein and there shall be no deviation therefrom except upon special orders either of the Registrar or of the Bench. The Daily Cause list shall, when possible, be kept sufficiently long to provide approximate work for three days :

Provided that cases in which no paper book is to be prepared, bail petitions, all cases in which bail has been refused, applications for transfer of cases and cases admitted only on the question of sentence shall be separately classified and shown both in Part I and in Part II of the Weekly Cause List under the heading “ Expedition Cases ” and shall have preference over other cases and shall ordinarily go on to the Daily Cause List after being on Part I of the Weekly Cause List for three days :

Provided further that Death Reference cases shall be directly placed on the Daily Cause List three days after service of the paper books.

(3) The Registrar shall have the paper books of the case in Part II of the Weekly Cause List prepared strictly in order of issue of notice and receipt of record and this order shall not be deviated from in the absence of a special direction with regard to any particular case from the Registrar or the Bench :

Provided that Death Reference cases, bail petitions, cases in which bail has been refused applications for transfer of cases and cases admitted only on the question of sentence shall have precedence over other cases in preparation for hearing and the Registrar shall have the paper book in such cases prepared at once according to the prescribed rules. In all such cases, the word ‘ Expedition ’ shall be marked boldly in red ink on the front page of the order-sheet.

9(1) The rules for the preparation of paper books in Chapter XI(A) shall apply, as far as may be, to the preparation of paper books in criminal cases.

(2). A copy of the paper book shall be supplied to the Advocate-General free of cost and the Advocate for the parties may take copies of paper books on payment of Rs.15 per copy.

10. ^[1] The following forms of Oath and affirmation are prescribed by the Court under Section 6 of the Oaths Act, 1969 (Act No.44 of 1969) :-

Form No.1 (Witnesses)

OATH

I do swear in the name of God that what I shall state shall be the truth, the whole truth and nothing but the truth.

AFFIRMATION

I do solemnly affirm that what I shall state shall be the truth, the whole truth and nothing but the truth.

Form No. 3 (Interpreters)

OATH

I do swear in the name of God that I will well and truly interpret and explain all questions put to and evidence given by witnesses and translate correctly and accurately all documents given to me for translation.

AFFIRMATION

I do solemnly affirm that I will well and truly interpret and explain all questions put to and evidence given by witnesses and translate correctly and accurately all documents given to me for translation.”

(B) Procedure in Original Trials

11. (1) Subject to any order which may be made by a Bench, the Registrar shall, as soon as an order under Section 407(1)(iv) of the Code of Criminal Procedure is passed by the Court for trial of a case before itself fix a date for hearing, and shall cause the necessary notices in the prescribed forms to issue.

(2) In the case of the commitment of an accused charged with an offence punishable with death, the Registrar shall take steps to ascertain whether the accused has funds or not to employ his own Advocate and shall, if necessary, at the earliest possible stage, obtain the orders of the Chief Justice for the appointment of an Advocate for the accused.

12. As soon as the record is received the Registrar shall cause a paper book to be prepared.

[1] Substituted vide C.S.No.54

13. The paper book shall contain the following papers :

- (i) first information report, if any ;
- (ii) record of any statement under section 164 and examination under sections 313 and 281 of the Code of Criminal Procedure ;
- (iii) the proceeding, if any, on which cognizance was first taken under section 190 of the same Code ;
- (iv) the charge ;
- (v) documentary evidence, if any; and
- (vi) police chalan, if any.

14. Eight copies of the paper book shall be prepared. One copy shall be given to the Public Prosecutor, two to the accused's Advocate and four copies shall be retained for the use of the Court.

15. At least two working days before the date fixed for the hearing, the Registrar shall cause to be made over to the Advocate-General a statement showing the number and the names of the witnesses who have been summoned.

(C) Reference in Capital Cases

16. When proceedings are submitted to the High Court under section 366 of the Code of Criminal Procedure, the Registrar shall cause the record to be examined and entered in the prescribed registers.

17. If the record is in order, the Registrar shall fix a date for hearing the reference and shall at once cause a paper book to be prepared.

18. The paper book shall contain the following papers :-

- (a) police chalan ;
- (b) first information; if any ;
- (c) statement under section 164 of the Code of Criminal Procedure; if any ;
- (d) charges framed by the Sessions Judge ;
- (e) examination of the accused under section 313 and 281 of the same Code, if any ;
- (f) record of evidence in the Court of Session with any further examination under section 281 of the same code ;
- (g) judgment of the Sessions Judge ;
- (h) material documentary evidence, if any ;
- (i) petition of appeal, if any ;
- (j) order-sheet ; and
- (k) list of exhibits.

19. Twenty copies of the paper book shall be printed and immediately on receipt of the paper book the Registrar shall cause one copy to be sent to the Public Prosecutor, one copy to the Government Advocate, and two to the prisoner's Advocate; the remaining copies shall be retained for the use of the Court.

***Explanation – Printing for the purpose of this Rule includes cyclostyling and typing and printed record includes cyclostyled or typed record.**

20. When a case has been disposed of the record shall be returned by the Bench Clerk to the Trial Clerk, who shall at once prepare a formal order in the prescribed form without waiting for the judgment, a copy of which shall subsequently be sent to the Court concerned.

21. In a case where a sentenced of death has been confirmed, the decision shall be communicated to the condemned prisoner and a copy of the judgement, free of cost, shall be immediately supplied to the condemned prisoner through his Advocate or through the Superintendent of the Jail in which he is confined.

22. In any case referred to the High Court for confirmation of a sentence of death, the Registrar shall, immediately on arrival of the record, lay the same, when necessary, before the Chief Justice for the appointment of an Advocate to take up the case for the accused.

(D) Criminal Appeals

23. Criminal appeals other than Jail appeals shall be presented in open Court.

(Note – The name of the father and residence of each appellant shall be stated in the petition of appeal.

24. Every Criminal Appeal preferred to the Court under sections 382 and 377 of the Code of Criminal Procedure, 1973 should be in the form of a petition and not in the form of memorandum.

25. An appeal which has been presented to the Court shall, in the first instance, be given to the Stamp Reporter, who shall note on it whether it is properly stamped, within time and is admissible, and shall return it to office.

26. When an appeal has been admitted, the Registrar shall send for the record, fix a date for hearing and cause notices to issue in the prescribed forms.

27. As soon as the notices have been issued, and upon receipt of records the Registrar shall cause a paper book to be prepared.

28. The paper book of Criminal Appeals and Government Appeals shall consist of the following papers :-

- (i) first information report including the first information report in any counter case admitted in evidence on behalf of the defence;
- (ii) charge;
- (iii) statement recorded under section 313 of the Code of Criminal Procedure in the trial Court ;
- (iv) oral evidence excluding the deposition of formal witnesses such as constables entrusted with deadbody challans;
- (v) judgment under appeal;
- (vi) petition of appeal ;
- (vii) ** post mortem report.
- (viii) test identification parade report, if any ;
- (ix) injury certificates of accused persons and witnesses where the doctor concerned is not examined ;
- (x) report of the Serologist;
- (xi) report of the Chemical Examiner;
- (xii) letters forwarding material objects for their examination and report as per serials(x) and (xi); and
- (xiii) spot map ;

Provided that the parties shall not be precluded from referring at the time of hearing to any paper relevant to the case, on the sole ground of its non-inclusion in the paper book.

29. In the case of appeals by Government, paper books need not be printed, but shall be prepared in type except under the orders of the Court or of the Registrar:

Provided that in appeals against acquittal preferred by complainants under section 378 of the Code of Criminal Procedure, the paper book shall be prepared as in the case of regular Criminal Appeals.

30. Jail appeals may be received by post. In such appeals, the Registrar shall cause a translation of the petition of appeal, if in a vernacular other than Oriya to be prepared and shall submit it with the copy of the judgment or order appealed against to a Bench for orders.

31. If the appeals is admitted it shall be dealt with in the manner prescribed for appeals, which are filed in Court.

32. When an appeal has been disposed of, the record shall be returned by the Bench Clerk to the Trial Clerk who, if the conviction has been set aside or a reduction or change made in the sentence, shall at once prepare a formal order in the prescribed forms without waiting for the judgment, a copy of which shall subsequently be sent to the Court concerned.

Note – In cases in which the sentence of imprisonment is confirmed or modified, the warrant of commitment to the Jail and bail bond, if any, shall invariably accompany the copy of the order.

33. In the case of an appeal under sections 377 and 378 of the Code of Criminal Procedure the Registrar shall ascertain whether the accused desires assistance, and if so, he shall assist him in the appointment of an Advocate on his behalf.

(E) Criminal Revisions, References and Miscellaneous Cases

34. Records called for by the High Court under section 397 or 401 of the Code of Criminal Procedure or received on transfer in pursuance of an order passed by the High Court under section 402(1) of the same Code shall be examined to see if they are in order. If there is any defect, the records shall be immediately sent back to the concerned lower Court for compliance of defects.

35. If the records are in order or when they are received after compliance of defects, the Registrar shall cause a paper book of the lower Court record to be prepared.

36. The provisions of Part (D) of this Chapter shall apply, as far as possible to applications for revision:

Provided that in every criminal revision preferred to the High Court under sub-section (1) of section 397 of the Code of Criminal Procedure the following certificate shall be appended at the foot of the revisions petition:-

Certified that no application under sub-section (1) of section 397 of the Code of Criminal Procedure has or had been made to the Sessions Judge against the impugned order.

[2] 36-A- When a Criminal Revision is filed by a private party against the Judgement and order of acquittal recorded in a case started by the State, the State shall be made a party in such Revision.

37. The paper book in cases of revision shall contain the petition for revision and the judgment or order of which revision is applied for except that in cases falling under sec.401 of the Code of Criminal Procedure, the paper book shall be prepared as in the case of an appeal.

38. (1) The petitioner in every Criminal Revision in which the State is a party except cases falling under section 401 of the Code of Criminal Procedure shall, within ten days of the admission, file second copies of the petition in Revision and of the judgments or orders of the lower Court or Courts. The copies shall be identical with the original revision petition and the copies of the judgments or orders filed with the petition. As soon as the second copies are filed the office shall supply the same to the Advocate-General.

(2) The copies filed by the petitioner shall be legibly typed in double space on good paper failing which they shall be liable to be rejected by the office.

39. The following matters may be registered as Criminal Miscellaneous Case.

- (i) Petition for transfer under section 407 of the Code of Criminal Procedure;
- (ii) Petition for bail ;
- (iii) Petitioner for leave to appeal against an order of acquittal.

40. Except as provided by the rules of this Chapter no paper book shall be prepared in any Criminal Revision, Reference received under section 395 of the Code of Criminal Procedure or Miscellaneous case except under the orders of the Registrar.

41. No paper book in a criminal Revision, reference received under section 395 of the Code Criminal Procedure or miscellaneous case shall be printed except under the orders of the Registrar.

42. In every Criminal Revision, Reference or Miscellaneous Case in which the record is received or called for, the Trial Clerk shall, immediately on receipt of such record, place the case before the Registrar for an order as to whether or not documents in any vernacular other than Oriya shall be translated before the case is submitted to the Court.

43. (1) The petitioner in every Criminal Revision in which the State is a party except cases falling under section 401 (6) of the Code of Criminal Procedure shall, within ten days of the admission, file second copies of the petition in revision and of the judgments or orders of the lower Court or Courts. The copies shall be identical with the original revision petition and the copies of the judgments or orders filed with the petition. As soon as the second copies are filed the office shall supply the same to the Advocate-General.

(2) The copies filed by the petitioner shall be legibly typed in double space on good paper; failing which they shall be liable to be rejected by the office.

44. If a judge upon a perusal of a Sessions statement or upon examination of periodical returns orders :-

- (i) the record to be sent for, the Registrar shall send for the record and on receipt thereof shall submit it to the Judge who passed the order ;
- (ii) a rule to issue, the Registrar shall fix a day for hearing and shall cause notices to issue in the prescribed form ;
- (iii) the record to be sent for and rule to issue, the Registrar shall fix a day for hearing and shall issue notices in the prescribed form and send for the record.

45. If upon any petition a Judge orders :-

- (i) the record to be sent for, the Registrar shall send for the record and submit it to the Judge who passed the order ;
- (ii) a rule to issue, the Registrar shall fix a day for hearing and shall cause notices to issue in the prescribed form ;
- (iii) the record to be sent for and a rule to issue, the Registrar shall fix a day for hearing, cause notices to issue in the prescribed form and send for the record.

46. In the case of a revision under section 397 or 401 or 402 of the Code of Criminal Procedure, 1973 when notice has been given to the accused to show cause why the order passed should not be set aside and a sentence of death should not be passed, the Registrar shall take steps to ascertain whether the accused has funds or not to employ his own

Advocate and shall, if necessary, at the earliest possible stage, obtain the orders of the Chief Justice for the appointment of an Advocate for the accused.

47. Deleted vide C.S. No.58.

48. Warrants of arrest whether bailable or non-bailable, warrants of commitment on a sentence of imprisonment or fine, warrants for levy of fine by attachment and sale, warrants of attachment of immovable property and all other warrants and processes in criminal matter shall be signed and issued under the signature of the Deputy Registrar unless otherwise directed by the Court.

(F) Custody of Records in Criminal Cases.

49. Immediately on receipt in the office of the Court of the record in a criminal case, the Dealing Assistant shall examine the condition of the cover and shall note on the record the date of its receipt, examine the same and make a note stating that the record is perfect or defective, as the case may be, and, if defective, the particular or particulars in which it is defective.

50. If on such examination it is ascertained that any paper is missing from the record or is mutilated or that the record is in any other respect defective, the Dealing Assistant shall forthwith report the fact in writing to the Registrar.

51. At the conclusion of any case brought before the Court in the exercise of its ordinary original criminal jurisdiction, the entire record of the committing Court, inclusive of such police papers as have been used at the trial and form part of the record, shall be consigned to the Criminal Record Room of the Court.

52. At the conclusion of the case the dealing Assistant shall satisfy himself that the entire record has been made over to him by the Bench Clerk and will be held responsible for its subsequent deposit in the Criminal Record Room.

53. Articles received from lower Courts, such as sticks, stones, knives, bill-books, axes, guns, rags of clothing, earth, etc. and all articles of trifling value are ordinarily to be retained in the High Court and destroyed there. Any application for return of these articles (for return to parties or for reference in any other case) or of any article that the High Court has omitted to return shall be made within one month from the date on which the records of the case are received back in the lower Court.

(G) Allowances to Witnesses in Original Trials

54. Payment of travelling and diet allowance to prosecutors and witnesses for the State attending the High Court in trials coming before it in its original criminal jurisdiction will be made by the Registrar(Clerk of the State) to whom such prosecutors and witnesses shall report themselves on arrival at Cuttack.

55. The prosecutors and the witnesses for the State shall be divided into two classes. The committing Magistrate shall carefully classify such persons according to their station in life, and shall inform the Registrar.

The rates of payment of each class shall be as follows :-

Traveling expenses

1st Class	2 nd Class
By road-Thirty-one paise per kilometer	Bona fied expenses
By rail -1 st class fare	Ditto
Conveyance hire-Rs. 3 per diem	Rs. 1.50 per diem.

Conveyance hire shall be paid only for the day of actual attendance at the Court.

56. Boarding allowance at Cuttack shall cease as soon as the means of quitting the station become available.

57. The committing Magistrate shall report to the Registrar the date of departure of every such prosecutor and witness and shall instruct each to report himself as directed in Rule 53.

58. In trials before the High Court in the exercise of its original criminal jurisdiction the expenses of only those witnesses for the defence whom the presiding judge may consider material will be paid out of public funds.