

**DELHI HIGHER JUDICIAL SERVICE MAINS**  
**EXAMINATION (WRITTEN) 2023**

**LAW-III**

**PART-I**

**Write short notes on any four out of the following six issues:**

1. Absence of corpus delicti.
2. Transit anticipatory bail.
3. Determination of age of the victim under the Protection of Children from Sexual Offences Act, 2012.
4. (i) Mens rea in case of dishonour of cheque.  
(ii) Filing of complaint u/s 138 of the Negotiable Instrument Act, 1881 by the General Power of Attorney or by his delegate.
5. Evidentiary value of the statement of an eyewitness, who supported the prosecution case, has died after completion of his examination-in-chief but before commencement of his cross-examination or after defence partly cross-examined him.
6. (i) Withdrawal of the sanction order for prosecution by the concerned Govt./competent authority under Section 19 of the Prevention of Corruption Act, 1988.  
(ii) Order to review its order of refusing sanction granted under Section 19 of the Prevention of Corruption Act, 1988 by the concerned Govt./ competent authority.

**(10 marks x 4 = 40 marks)**

**PART-II**

**Attempt any two out of the following three questions:**

7. In case of a confessional statement by a person who is accused of an offence while in custody of a police officer, explain when such statement is admissible in evidence. Is formal arrest of such person a pre-requisite?
8. Before grant of sanction under Section 19 of the Prevention of Corruption Act, 1988 to prosecute a public servant alleged to have committed an offence under the Act, explain when an opportunity of hearing is required to be given to the public servant by the concerned government/competent authority?

*From Student to Lawyer to Judge*

9. Discuss the various legal implications in case of an offence relating to bribing a public servant by a commercial organization.

(20 marks x 2 = 40 marks)

### PART-III

**Attempt any four out of the following six questions:**

10. 1. On 12.06.2016 R (PW-1), widow of the deceased J, lodged an FIR no. 250 in the PS Clean Town. She alleged that once prior to the date of incident i.e. 12.06.2016, the accused C, R and S along with two— associates had come to their residence in search of her son V, who they alleged was involved in the murder of the son of C. As V was not there, they went back. They came again on the date of the incident at about 11 AM in a jeep bearing No. UP 015 5330, when she along with her husband and daughters B and M was present in the house. C again enquired about V and as he was not in the house, they took away her husband J with them in the said jeep forcibly. She expressed apprehension that due to the impression of the accused persons that her son V was involved in the murder of the son of C, they would eliminate her husband. She mentioned that at the time of the incident, she and her daughters raised alarm, but the people of the locality did not intervene.

2. During the investigation, on 15.06.2016 at about 1400 hours, one Amar Singh informed the nearby PS Chandpur that a decomposed dead body was found in a jungle near Village Cehla. C was arrested on 03.07.2016, who led the police to the said jungle, from where a rope, as shown by him, was recovered from bamboo bushes. C also showed to the police the place in the jungle where J was killed by hanging him by that rope from a tree. The rope was seized and the site plan was prepared.

3. After submitting of the Charge-sheet the Court of ASJ framed charges u/s 302/364 r/w Section 149 IPC, to which the accused persons pleaded “not guilty” and claimed trial. The prosecution examined ten witnesses. All accused stood by their denial in their statements u/s 313 Cr. PC.

#### **Defence's arguments:**

1. A letter dated 15.04.2016, addressed by one H, a detenu in the District Jail to the SP, hinting at a plot to kill C who is a witness in the case of the murder of his son.

2. Confusion as to type of the vehicle in which the accused visited PW-1's house.

3. Omission to examine the constable who recorded the said FIR.

*From Student to Lawyer to Judge*

4. The discrepancy in description of the rope allegedly recovered, being led thereto by C and the one produced in the court. PW-4, Const. Nardev, recovery memo witness, who identified the rope to be made of plastic whereas the IO PW-10 deposed that the seized rope was made of jute and not a nylon rope.

5. The dead body was decomposed and part of the abdomen and lower half were missing, no visible injury was noticed particularly on the neck and the prosecution version of death by asphyxia, as opined by the doctor, effected by the rope recovered, was wholly untrustworthy.

6. No endeavour by the family members to resist the alleged abduction of J and the non-intervention by the neighbours.

7. The factum of the identification of the dead body to be of J, as made by his son PW-5 V, had not been put to the accused persons, in the course of their statements u/s 313 CrPC.

**State's arguments:**

1. PW-1 R and PW-2 M were steadfast in identifying the three accused, at the time of abduction and also in the court and supported the prosecution case, however, instead of 'Jeep', they said 'Car' in their deposition. PW-1 R also stated that she along with B & M identified the dead body of her husband J. Y

2. PW-5 V, son of the deceased deposed that he recognised the dead body of his father at District Hospital Mortuary before the post-mortem examination.

3. J had met a homicidal death immediately after his abduction on 12.06.2016 when his dead body was found on 15.06.2016. The accused persons failed to offer any explanation, as to how they had dealt with J while he was in their custody.

4. The FIR was lodged with due promptness.

5. The motive is discernible in the facts of the case.

6. PW-4 Const. Nardev deposed that C led the police to recover the rope from the bush in the jungle whereby I was hung from the tree and identified the tree. He identified the rope in the court to be one of plastic. In cross-examination, he clarified that the jungle was not on a thoroughfare.

7. IO PW-10 narrated the investigation conducted by him and providing of information of the rope by C while in police custody and led them to recover the jute rope.

8. PW-6 Dr. Kau1, who performed the autopsy, testified that the dead body was in an advanced stage of decomposition, maggots were present on it, some body parts like middle stomach and left thigh were missing, appeared

to be nibbled by animals, no apparent injuries on the dead body, the cause of death might be asphyxia, and no mark of rope on the body but added that the bronchial tube was broken and death had occurred between 12.06.2016 to 15.06.2016.

**Discuss the criminality of the accused persons.**

**11.** 1. CBI after registering an FIR and completing investigation, filed a charge-sheet on 01.11.2011 before the Court of Special Judge, New Delhi. The Special Judge, on 25.03.2013, after hearing the prosecution as well as the defence counsel, framed charges against the accused persons under Section 120-B read with Sections 467, 471 and 420 IPC and also under Sections 13(1)(d) and 13(2) of the PC Act and substantive offences against the accused persons under Sections 420, 467 and 471 IPC and also substantive offences under Sections 13(1)(d) and 13(2) of the PC Act against A-1. All the accused persons pleaded not guilty and claimed trial.

**2.** The facts of the case as per the charge sheet are that the accused PKS (A-1), Chief Manager, SBI during 2006-07, was a party to a criminal conspiracy with JKS (A-2) Director, MIS Ltd, Delhi, Ms. R Singh (A-3), Director MIS Ltd and DKS (A-4) Proprietor, M/s R Refractory, Delhi with the object of cheating IDBI, Mumbai and in pursuance thereof, A-1 abused his official position to cause undue pecuniary advantage to the accused persons A-2 and A-3 and corresponding loss to IDBI, to the tune of Rs. 4 crores by negotiating forged/fictitious invoices purportedly of M/s Refractories, Calcutta, against LCs opened by SBI, Jaipur Road and committed offences as mentioned above.

**3.** The Special Judge recorded 8 prosecution witnesses. Meanwhile, on 20.06.2013, the sole public servant A-1 died. A-2 to A-4 then filed an application for their discharge.

**4.** As noticed above, charges were framed against the public servant as well as non-public servants by the Special Judge in respect of the PC offences as well as non-PC offences on 25.03.2013 and the sole public servant A-1 died on 20.06.2013.

**Give answer to the following Questions with reasons:**

**(i) On the death of the sole public servant, whether the charges against all the accused abate or only against the public servant who had died and can the Special Judge stand divested of its jurisdiction against all the accused no. 2 to 4 due to the death of the sole public servant?**

**(ii) What would have been the position if the sole public servant had died before framing of the charges?**

*From Student to Lawyer to Judge*

**12.** 1. The marriage of the accused S and deceased W was solemnized on 17-06-2015. They were residing adjacent to parental house of W in a rented house, since one month prior to the incident. Both of them were earning their livelihood by doing daily-wage work.

**2.** On 04.09.2015 at about 6.00 a.m., the deceased W went to answer nature's call and on her return, the deceased was questioned by the accused as to why she returned late and the accused suspected her fidelity. In spite of the deceased trying to convince the accused, the accused started assaulting her with fists and kicks and poured kerosene from the Can and lighted matchstick on the deceased to set her ablaze. The saree of the deceased caught fire and the deceased ran towards the accused in an attempt to catch him, thereby burning the hands of the accused. When the deceased started screaming for help, the accused, in order to save her, poured water on the deceased. In the meanwhile, the neighbours and the parents of the deceased gathered and the deceased was taken to the hospital. On the way to the hospital, the deceased narrated the incident to her mother Ganga PW-2 and sister-in-law Sunny PW-3 and neighbour Raju PW-1.

**3.** On receipt of information about the occurrence, Police officer PW-9 went to the Govt Hospital, verified the condition of the deceased through the CMO. PW-9, then recorded the statement of the deceased Ext. 24, on the basis of which an FIR was registered for the offence u/s 307 IPC. On requisition, PW-7, the Exe Magistrate came to the hospital, who, after satisfying about the fit mental condition of the deceased through Dr. V, PW-6, recorded the dying declaration of deceased Ex. 1. The deceased w succumbed to bum injuries on 12.09.2015. On the death of w the FIR was altered to Section 302 IPC. Dr. Satish PW-8 conducted autopsy on the body of deceased and issued the post-mortem report. After filing of the charge-sheet the Court of the Sessions Judge framed charges against the accused u/s 302 IPC.

**4.** The prosecution examined all ten witnesses. The accused denied all the questions u/s 313 Cr. PC and pleaded that the fire was accidental and filed written defence Ext. 34, wherein he explained that on the date of incident, he went out to answer nature's call and when he returned, he saw his wife coming out of the house ablaze and he immediately rushed and tried to extinguish the fire due to which his hands also got burnt.

**5.** PW-6, Dr. V stated that the deceased was in a fit mental condition to make the statement and PW-7, the Exe Magistrate proved the dying declaration Ext. 1. In the said dying declaration, the deceased had categorically stated that on the date of incident, the accused poured kerosene over her person and set her on fire. PW-2 and PW-3 stated that the deceased narrated to them on the way to hospital that the accused poured kerosene on her and set her on fire. PW 1 Raju had only stated that the

deceased told him that the accused beat her and also kicked her. PW-1 had not supported the statement of the deceased that the accused poured kerosene on her and set her on fire. PW-7 proved the Dying declaration wherein the deceased blamed the accused. PW-8 proved the PM report and stated that the deceased died due to shock and septicaemia caused by 60% bum injuries.

**6.** The accused pleaded that there was no premeditation and there was no intention on his part to kill his wife and the facts and circumstances show that he could not have intended to cause the death of the deceased. He also pleaded that he tried to extinguish the fire by pouring water on her in order to save her and in that process, he also suffered bum injuries.

**7.** The facts proved the guilt of the accused.

**Give answer with reasons whether accused is required to be convicted u/s 302 or 304 IPC.**

**13.** 1. An encounter took place on the night of 01.01.2016, at a particular place in which firearms and other weapons were used and persons were injured. The details of the incident are not relevant and hence skipped. Two rival versions reached the police station regarding the above incident and two FIRs were registered upon those rival versions by the officer in charge of the police station. FIR No. 1 of 2016 was registered against 24 persons arrayed in it as accused ("the first case") and FIR No. 2 of 2016 was registered against six persons ("the second case"). Both cases were investigated together by the IO and ultimately challans were filed in both cases alleging offences under Section 307 read with Section 149 besides some other offences of the IPC. The Magistrate committed both cases to the Sessions Court for trial.

**2.** The Court of Sessions Judge after hearing the arguments u/s 227 Cr.PC in the first case framed the charges against the accused for offences u/s 307 read with Sections 149, 147 and 427 IPC. When the preliminary arguments in the second case were heard u/s 227 of the Cr.PC, the Sessions Judge found that no offence triable exclusively by a Court of Session need be included in the charge and hence, framed a charge as envisaged in Section 228(l) {a) of the Cr.PC for the offence u/s 324 read with Section 149 of the IPC.

**3.** As a court of Sessions, would you retain both the cases in your court or transfer the second case to the court of CJM?

**Give your answer with reasons.**

**14.** 1. By an Agreement in December 2005, the Petitioner no. 1, a Ltd company ('A') appointed the Respondent, a private Ltd company ('B') as its dealer to sell its products in Delhi. B lodged a complaint on 18.01.2015 u/s 420/465/467/468/471/120B IPC, with the PS, Delhi against A and its

directors (Petitioners) and alleged that at the time of its appointment as dealer, A assured them to disburse incentives, cash discounts, price supports, commission etc. for the purchase of products, achievement of targets yearly, quarterly as well as monthly. Based on above representations and assurances they had agreed for the dealership of A's products in Delhi. In the year 2012-13 there were various outstanding in the account in respect of cash discounts, defective products, obsolete models, price dropping, quantity schemes, monthly, quarterly and annual schemes for which the petitioners assured them to issue credit notes. B alleged that as per its accounts, they are yet to receive Rs. 44 lacs from the petitioners as in August 2014 but they are lingering and not paying their dues. B alleged that in the business transactions, they had issued a number of blank cheques to the petitioner no. 1 which were all filled up by the petitioners and encashed except cheque no. 608977 which was reported to be lost by them. For the cheque alleged to be lost, B alleged to have issued cheque no. 610291 in lieu thereof which was encashed. B alleged that they intimated its banker on 02.5.2012, regarding misplacement of 7 cheques including the cheque no. 608977 for stop payment. It is further stated that the petitioners had not paid the entire benefits to the respondent as assured on account of various schemes to which they were entitled to. B alleged that when they demanded the aforesaid amount from the petitioners they instead of paying the same, filled up the cheque no. 608977 which was reportedly lost and got it encashed on 25.04.2012. This cheque was lying with the petitioners and they filled it with some fictitious amount and presented for payment with a view to cheat B and pressurize B to forgo its claim of Rs. 44 lacs. On 11.10.2014 they got issued a legal notice, but with no results. B alleged that the petitioners have dishonestly committed fraud, cheating manipulation, fabrication, falsification and criminal conspiracy to harm the reputation, business and financial losses.

**2.** When the police did not take any action, on 22.01.2015 B through its Director filed a criminal complaint before the Ld. ACMM Shahdara. On the same day, the court of Ld. MM, Shahdara, Delhi after taking the cognizance asked B to lead evidence to conduct an inquiry u/s 200 and 202 of Cr.PC. B instead of leading evidence, withdrew the complaint on the next date and lodged another complaint on the same ground with another PS. Finding no action being taken by the police, B filed similar criminal complaint against the petitioners before the Ld. ACMM East Distt. B in the second complaint dated 28.02.2015 to the other PS and in the second criminal complaint did not mention the factum of the earlier complaint filed before the Ld. ACMM, Shahdara, Delhi and the orders passed by the Ld. MM to produce the evidence. On the basis of the second criminal complaint the Court of Ld. MM East Distt, on 28.02.2015 directed the SHO to register an FIR and investigate the allegations made in the complaint. As a consequence, the police registered an FIR No.214/2015 u/s 420/465/467/468/471/120B IPC against the directors of A.

**3.** A and its Directors filed a petition before the High Court u/s 482 for quashing of the FIR and brought on the record the copy of the previous complaint and order u/s 200 and 202 passed by the court of Ld. MM, copy of the Civil Suit of recovery which A had filed against B which is pending before the Court of Ld. ADJ and copy of the complaint u/s 138 of NI Act filed by A against B and its Director which is pending in the Court of MM, East.

**Are the petitioners entitled to relief of quashing of the FIR? Give your answer with reasons.**

**15.** A private person observed that a public servant, who has been residing in his neighborhood and whose salary was about Rs.1 Lac per month, dishonestly enriched himself and amassed wealth disproportionate to his known sources of income during the last one year for which the public servant cannot explain. He obtained copies of the documents regarding the assets of the said public servant acquired dishonestly. He lodged complaints with the Distt. Collector, the SP and Anti-Corruption Cell of the police but no action was taken. He filed a complaint u/s 13 the Prevention of Corruption Act, 1988 against such public servant for his prosecution for criminal misconduct before the court of Special Judge.

**Explain the power of the court of Special Judge to deal with the complaint.** (30 marks x 4 = 120 marks)

*From Student to Lawyer to Judge*