

**REPLY TO LAW COMMISSION OF
KARNATAKA**

**INVESTIGATION, PROSECUTION AND TRIAL OF
“CASE AND COUNTER CASE”**

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Reply to Law Commission of Karnataka

Part- I

Procedure for Trial of “Case and Counter Case”

The answers given are specifically in context of “Case and Counter Case”

1. Do you consider that the procedure prescribed in the Criminal Procedure Code for trial of criminal cases is suitable for dealing with a “case and counter case”?

There is no procedure prescribed in the Criminal procedure code for trial of “case and Counter case”. The Criminal Procedure Code accords no special treatment to “Case and Counter Case”. In my opinion, the Criminal Procedure Code falls far short of prescribing any appropriate procedure for trial in criminal cases dealing with a “case and counter case”. The present procedure based largely on case laws is not clear. The courts have in a series of decisions tried to come up with a fair procedure but the lack of legislative will has thrown up results which are self contradictory in nature. Judges can pinch any procedure with fairness, if found to be lacking apparently but cannot come up with a new procedure with wide acceptability and uniform practice, generally.

The Criminal Procedure Code fails to accept “Case and Counter Case” as a special category calling out for difference in approach as compared to other cases coming up for trial. “Case and Counter Case” differ from ordinary cases in the sense that they originate from the same incident and are often conflicting version of the same incident.

2. If not, in what respect is the existing procedure inadequate, unfair, unjust or unreasonable for trial of a “case and counter case” and what remedial measures do you suggest?

The existing procedure for trial of “Case and Counter Case” fails to

- 1) Accept the difference in nature of a “Case and Counter Case” from other cases coming up for trial.
- 2) Take into consideration the fact that general rules of evidence when employed for trial of “case and counter case” can give results which might fail to justify its purpose.
- 3) Comprehend the special task entrusted upon the Judge who has to show a greater degree of judicious conduct.

The remedial measures flow out from the lacunae in the existing procedural system of dealing with “Case and Counter Case”.

The Criminal Procedure Code needs to specifically define “Case and Counter Case” and needs to put in express words the difference in approach required towards it due to difference in circumstances out of which it originates. Acceptance of the difference in procedural treatment towards “Case and Counter Case” should be supplemented with amendments/additions in the Law of Evidence to deal with the standard notion of deciding a case on the basis of the evidence put on board for that case. Also it is impractical and logically fallacious to assume that a Judge will hear the case and counter case one after the other and will not be influenced by the mass of evidence given in both the cases. When we hear different version of the same incident, human tendency is to merge, even if partially, the information received from both the sources and come to a conclusion. This process, often involuntary and subconscious will be acting upon a Judge too.¹

3. Does not the requirement that the accused should not be convicted before his whole case is before the Court imply that the Judge has necessarily to consider the evidence in both the cases?

Yes, it does. It is principally wrong to expect a Judge to decide a case only on the basis of evidence put for that particular case but to reserve his judgment till the hearing of both the cases which usually will be two versions of the same story. This is judicial rhetoric based on false assumptions and asking for a task which is impossible naturally. This dictum is an escape mechanism trying to let go of the real question of requirement of serious thoughts being given to the trial of “case and counter case”.

4. Does this not conflict with the other suggestion of the Supreme Court that each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence of arguments in the counter-case?

Yes, it does. The requirement that the accused should not be convicted before his whole case is before the court and also that each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence of arguments in the counter-case are self contradictory. The fulfillment of both these essentials is not possible by a Judge. A Judge is a human being and we should not assume him to witness something and not be affected by it. Under such circumstances, the reasoning behind the judgment will not find a place in the express terms used in the judgment leading to an order

¹ Solution to this problem does not lie in reserving judgment till the hearing of both the “case and counter case” is complete.

which will be a speaking order only in name but not in meaning. This will and is violative of natural justice. A convict has the right to know the real evidence on the basis of which he has been convicted. This will give him an opportunity to prepare a proper appeal and so on.

5. How can the Judge avoid conflicting Judgments without considering the evidence produced in both the cases?

The requirement that judgments should not conflict with each other is based on the mandate that there should be uniformity and consistency in the nature and application of law. This is one of the major reasons why we put so much emphasis on precedents. While the importance of consistency and other allied reasons working behind avoidance of conflicting decisions stands unquestionable, it cannot be allowed to lead to miscarriage of Justice. There is no appropriate legislative stand on the preferred approach towards “case and counter-case” and judicial approach to it is based on unstable grounds. On the one hand, it is not possible to avoid conflicting Judgments until the Judgment is reserved till the hearing of evidence and arguments of both the cases is over and on the other hand the evidence put on record for a case cannot be considered in its counter-case or vice versa. In the interest of Justice, it is required that the Judge reserve his judgment till the hearing of both the cases but this legal notion of deciding a case only on the basis of evidence put on record for that particular case should be done away with. Citing the High Court of Madras in Krishna Pannadi Vs. Emperor² the desired course of action seems to be “ The only way in which such a procedure can be justified is by setting up a fiction that the case and the counter-case are really one; and this fiction should be made a reality by statute. If a Court were empowered to link cases, as they link files in a Secretariat, there would also be the incidental advantage of a great saving of time. At present in each case the evidence of every witness must be fully recorded and what P.W. No. 1 says for the prosecution in one case must all be written out again when he repeats it as D.W.No.1 in the other case.”

6. As the case and counter- case arise out of the same incident is it not just and fair that the decision is rendered in both the cases after taking into consideration the entire evidence produced in both the cases?

Yes, the desired practice is that the special nature of “case and counter-case” should be distinguished from other cases and also the apparent fact that case and counter-case are two different versions of the same incidence. This acknowledgment will legitimize the taking into consideration of the entire evidence produced in both the cases. Please, refer to the above answer.

7. Would it not be unfair to take into consideration the evidence in the counter case without parties to the first case being given an opportunity to cross-examine the witnesses in the

² AIR 1930 Mad. 190

counter case and vice versa. If you consider this unfair what procedure do you suggest to overcome such unfairness?

This is simply a procedural difficulty which can be arrested by giving the parties in the counter-case an opportunity to cross- examine the witnesses produced in the first case and vice-versa.

8. Do you consider that unfairness referred to above, can be eliminated by giving the parties in the counter case an opportunity to cross- examine the witnesses produced in the first case and vice- versa?

Yes, the procedure should simply allow cross- examination of witnesses in both the cases. Also, emphasis should be put on the role of the Investigating Officer. The Investigating Officer should desist from laying of charge sheets in both the case and counter case as a matter of routine except when strictly required. Quoting Order No. 1179 of the K.P.M. 1965 Volume II, "In a factious rioting, a Police officer should not content himself with laying charge sheets against both the contending parties, making the prosecution witnesses in one case the accused in the other and vice versa, and put forward the inversions to the court without any attempt at finding out the truth. If complaints of the offence of rioting containing two divergent versions are given by the parties, it is the duty of the investigating Officer to find out which case is true and charge it. The easier course of referring both the case and the counter case as unbeatable should not be adopted. An impartial efficient and painstaking investigation should invariably disclose the true facts of any occurrence. The laying of charge sheets in both the case and the counter case should be resorted to only in exceptional cases or where, as stated below, both the parties are guilty of aggression and lawless acts."³

9. What procedure do you suggest if the same person is cited as a witness in both the cases?

I feel that the procedural remedy lies in empowering the Courts with the power to link cases. If such a course of action is followed, there should be no problem with the same person being cited as a witness in both the cases. These processes will also speedup up the process saving valuable time of the court. Citing the High Court of Madras in Krishna Pannadi Vs. Emperor⁴ the desired course of action seems to be "The only way in which such a procedure can be justified is by setting up a fiction that the case and the counter-case are really one; and this fiction should be made a reality by statute. If a Court were empowered to link cases, as they link files in a Secretariat, there would also be the incidental advantage of a great saving of time. **At present in each case the evidence of every witness must be fully recorded and what P.W. No. 1 says for**

³ No. 1179 of the K.P.M. 1965 Volume II

⁴ AIR 1930 Mad. 190

the prosecution in one case must all be written out again when he repeats it as D.W.No.1 in the other case.”

- 10. The accused in one case may become a witness in the other case and as such liable for cross- examination. Do you consider that this would contravene Article 20(3)? Do you consider such procedure is otherwise unfair or unreasonable? Please indicate how such consequences can be avoided.**

Article 20(3) provides for “No person accused of any offence shall be compelled to be a witness against himself.”⁵ One hundred eightieth report of Law Commission of India on “Article 20(3) of the Constitution of India and the right to silence” provides “The right to silence has various facets. One is that the burden is on the State or rather the prosecution to prove that the accused is guilty. Another is that an accused is presumed to be innocent till he is proved to be guilty. A third is the right of the accused against self incrimination, namely, the right to be silent and that he cannot be compelled to incriminate himself. There are also exceptions to the rule. An accused can be compelled to submit to investigation by allowing his photographs taken, voice recorded, his blood sample tested, his hair or other bodily material used for DNA testing etc.”⁶

Further Section 132 of the Evidence Act, 1872 provides:

“Witness not excused from answering on ground that answer will criminate -

A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind”⁷

In cases of accused coming up as a witness, the right of cross examination should be made available in sight of the importance of the right of cross- examination. No person can be convicted on the basis of any piece of evidence which he has not been provided with an opportunity to disprove. However, we see an apparent conflict between exercise of the right available to an accused under article 20(3) and Section 132 of Evidence Act. While the constitution allows an accused right against self incrimination, evidence law provides that a witness cannot refuse to provide answers just by citing the reason of his crimination. A witness is not excused from his liability to answers the questions put to him.

When an accused comes as a witness and gives testimony which can have the effect of criminalizing the other party, the accused gives it out of his free will. It has the same status as that

⁵ Article 20(3)

⁶ 180th report of Law Commission

⁷ Section 132, Evidence Act, 1872.

of the exceptions to Article 20(3) under which an accused can be compelled to allow his photographs to be taken or his voice to be recorded. Under those circumstances, the accused is duty bound to come for cross- examination for those matters upon which he spoke as a witness. This exception should be restricted only to the facts and other relevant facts upon which the accused has given evidence. It cannot extend to facts uncovered by evidence of the accused as a witness.

11. What procedure would you suggest which would avoid all these infirmities and ensure fairness to the accused and prosecution in both the cases and assist the Judge to record his findings on a comprehensive evaluation of the entire evidence placed on record in the case and the counter case?

First at the onset, it should be acknowledged that case and counter case flow out of the same incident. This acknowledgment will lead to the difference in approach required to deal with case and counter case. Secondly, based on this acknowledgement, it must be accepted that evidence put in one case cannot be completely divorced from the other. This implies doing away with the notion that evidence put on record for a case must only be taken into consideration while deciding it. This will also lead to the acceptance of the fact that right of cross examination should be available to the parties across each other. The present system of reserving Judgment till hearing of arguments in both the cases is the preferred practice and is a sound one. Further, the present practice of the same Judge hearing both the cases is also based on sound principles. This implies that Judges should give their decision on the comprehensive evaluation of the entire evidence and should in general try to give a single Judgment. Discretion must be provided to the Judge to give two Judgments if it is felt to be in the interest of justice.

12. What in your opinion is the proper stage for recording the statements of the accused in the “case and counter case” u/s 313 of Code of Criminal Procedure?

Section 313 of Criminal Procedure Code (CRPC) provides the power to examine the accused. It provides:

1. In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court -
 - a. may, at any stage, without previously warning the accused, put such questions to him as the Court considers necessary;
 - b. shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case⁸

⁸ Section 313, Criminal Procedure Code

A plain reading of the provision shows the difference in approach required of the court by the use of the words “shall” and “may”. The court has powers to examine the accused at any stage of inquiry or trial for the purpose of calling for any explanation against circumstances appearing before it. However, it is mandatory for the court to question the accused after examining the evidence of the prosecution. Further this examination is without oath and before the accused enters a defence. The purpose of this examination is to give the accused a reasonable opportunity to explain facts and circumstances arising in the case.

There is no need to bring any change in the provision. The court can proceed with the mandatory power of examination of the accused after the witness for the Prosecution has been examined and employ its discretionary power of examination as and when required. The discretion provided to the court now should be left untouched for dealing with the peculiarities of the case. It should be left to the individual Judges in individual cases to decide the appropriate time of employment of the power to examine the accused.

13. Should the statement under Section 313 Code of Criminal Procedure be recorded in the first case immediately after the conclusion of the evidence of the prosecution or should it wait until the entire evidence in the “case and counter case” is recorded?

I think there is no need to change the present applicable law. The court can proceed with the mandatory power of examination of the accused after the witness for the Prosecution has been examined and employ its discretionary power of examination as and when required. The discretion provided to the court now should be left untouched for dealing with the peculiarities of the case. It should be left to the individual Judges in individual cases to decide the appropriate time of employment of the power to examine the accused. The court can if it feels appropriate examine the accused once after the witness for the Prosecution has been examined and once after the entire evidence in the “case and counter case” has been recorded on any new circumstances and facts which could have arisen since the first examination.

14. Should the evidence and circumstances in the counter case also be put to the accused in the main case to give him an opportunity to offer his explanation and vice-versa?

Yes, the accused should be given a full and meaningful opportunity to offer his explanation. This is only possible when the accused is given the opportunity to explain the evidence and circumstances in the counter case also. I think we need to be clear about the intent behind this provision. The intent behind this provision demands a complete opportunity in the truest sense possible being made available to the accused. This also flows out from our revered presumption of the innocence of the accused until proved guilty and of Prosecution being burdened with the responsibility to prove the charges against the accused.

15. Where evidence defence is led either in the case or in the counter case, whether the accused in the other case should be given an opportunity to cross- examine?

Yes, in cases where defence evidence is led in either the case or in the counter case, the accused in the other case should be given an opportunity to cross examine. We should be driven by the motto working behind the employment of the right of cross examination.

In Smt Taruni Thakur & Others vs Kamendra Singh & Others⁹ the Hon'ble court held that **“the right of cross examination available to opposite party is valuable and independent right.** Section 138 of the Act, 1872, allows the right of cross examination of a witness to an adverse party. Where the parties arrayed as defendants in a suit have taken contradictory stands on a relevant and material issue, they shall be adversary to each other and are entitled to exercise their right of cross examination against each other. 8. Though there is no specific provision in the Indian Evidence Act providing for such an opportunity for a defendant-respondent to cross examine a codefendant/co- respondent, however, having regard to the object and scope of cross examination, it is settled law that **when allegations are made against the party to the proceedings, before that evidence could be acted upon, that party should have an ample opportunity to cross examine the person who had given the evidence against him. It is only after such an opportunity is given, and witness is cross examined that evidence becomes admissible.”**

In the light of this judgment and many others which echo the same sentiments as evident in this case and the rationale working behind incorporation of this right in our criminal justice administration system, accused should be given an opportunity to cross examine.

16. What happens to the privileges under section 313(2) and (3) of the Code of Criminal Procedure of not being required to take oath and protection from punishment for refusing to answer any question or giving false answers.

The issue of whether the statement under Section 313 Code of Criminal Procedure be recorded in the first case immediately after the conclusion of the evidence of the prosecution or should it wait until the entire evidence in the “case and counter case” is recorded and of the status of the privileges under section 313(2) and (3) of the CR.P.C are different.

⁹ Decided on 21 February, 2011 Writ Petition 227 No 3052 of 2010

Section 313 (2) and (3) provide:

- (2) No oath shall be administered to the accused when he is examined under sub-section (1).
- (3) The accused shall not render him liable to punishment by refusing to answer such questions, or by giving false answers to them.¹⁰

Section 313 is based on the harmonious interplay between the Constitutional mandates under Article 20(3) and various provisions of Code of Criminal Procedure. One hundred eightieth report of Law Commission of India on “Article 20(3) of the Constitution of India and the right to silence” provides:

“The Criminal Procedure Code contains several protections. Sub sec. (2) of sec. 161 of the Code of Criminal Procedure, 1973 grants a right to silence during interrogation by police. It reads as follows:

“Sec. 161(2): Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have tendency to expose him to a criminal charge or to a penalty or forfeiture”.

Sub section (3) of sec. 313 again protects this right to silence at the trial. It reads as follows: “313 (3): the accused shall not render himself liable to punishment by refusing to answer such questions or by giving false answers to them”

Sub section (1) of sec. 315 contains a proviso and clause (b) of the said proviso precludes any comment by any of the parties or the court in regard to the failure of the accused to give evidence. It reads as follows:

“Provided that-

(a).....

(b) His failure to give evidence shall not be made the subject of any comment by any of the parties or the court or give rise to any presumption against himself or any person charged together with him at the same trial.”¹¹

The above provision also creates a presumption against guilt.

In other words, sec. 161, **313** and 315 **raise a presumption against guilt and in favour of innocence, grant a right to silence both at the stage of investigation and at the trial and also preclude any party or the court from commenting upon the silence.”**

Thus the privileges under section 313(2) and (3) are based upon the basic premise of innocence of the accused until proved guilty and his right against self incrimination. These premises require no change by virtue of a case originating from a “case and counter case”.

¹⁰ Refer Section 313, Criminal Procedure Code.

¹¹ Refer 180th report of Law Commission.

17. If the case and the counter case are heard by following the procedure indicated above wherein parties in both the cases are given opportunity to cross- examine the witnesses for the other side, would it be fair to write one common judgment or separate judgments?

Yes it would indeed be fair to write one common judgment. Writing a common judgment will be a clear indication of the difference in situations leading to origin of a case and counter case. The court should proceed upon the basic premise that case and counter case arise from the same incident. This will also be a clear indication to the Investigating officer to refrain from laying two separate charge sheets even when it is unnecessary. However, this should not be made compulsory and adequate discretion should be provided to the Judges to deal with it. But the Judges must have the authority to write a single judgment if they feel it will satisfy the ends of justice while satisfying the relevant provisions of chapter XXVII of Cr.P.C Code of Criminal Procedure.

18. Do you favour a separate chapter in the Code of Criminal Procedure to regulate the procedure for trial of case and counter case?

No, there is no need for a separate chapter in the Code of Criminal Procedure to regulate the procedure for trial of case and counter case. The necessary changes should be introduced as and where required. Case and counter case require a special treatment at various stages- Investigation, Trial, Judgment etc. so it will be better if the changes are made under the present provisions at the different stages it is required. Similar should be the case with Law of Evidence, 1972. Having a separate chapter is not necessary as these changes will be internal to the process rather than external ones and hence should be embedded in the present process.

19. Please feel free to offer any other suggestions for evolving a satisfactory procedure for trial of case and counter case.

Case and counter case should be separately defined in the code to highlight its difference in nature and approach from other offences. For proper execution, trial etc. of case and counter case, it is necessary to have legislative reform replacing the present sketchy judicial structure. The necessary changes should be brought as and where required in the Procedural Law, Law of evidence and so on.

PART-II

INVESTIGATION AND PROSECUTION

i) Please furnish a comprehensive definition of “case and counter case”.

A case and counter case are criminal offences originating from a single incident, happening at one particular area at a time which can in the opinion of a reasonable man be said to have occurred together or at the same time, irrespective of the offence being prosecuted as a summons case or a warrant case.

ii) What in your opinion are different kinds of cases and counter cases? Please furnish illustrations of each kind of case and counter case.

The different kind of cases and counter cases may be as follows:

- a) Cases originating out of political rivalry, shooting etc. especially in times of election or other politically charged periods;
- b) Disputes arising out of property matters especially where arrests have been made under section 107 and 116 of CR.P.C;
- c) Cases originating out of communal clashes;
- d) Cases originating out of clashes between two or more factions;
- e) Cases originating out of matrimonial disputes falling within the domain of criminal law , for examples, cases under Section 498A, I.P.C.;

This list is illustrative and not conclusive.

iii) Do you agree with the views expressed in the latest decision of the Karnataka High Court reported in ILR 2010 Karnataka 1719 that the same Investigation Officer should investigate both the case and counter case and to file the final report. Please furnish the reasons in support of your opinion.

Yes, I do agree with this view expressed in the latest decision of the Karnataka High Court reported in ILR 2010 Karnataka 1719 that the same Investigation Officer should investigate both the case and counter case and to file the final report. The chief reasons being:

- 1) Both case and counter case originate out of the same incident.
- 2) The Investigating Officer should be instructed to file a single charge sheet in general based on a true investigation of the case. The Investigating Officer should take the pain to find out the true facts of the occurrence. A distinction must be made between aggressor and victim and the laying of charge sheet should be reflective of application of mind on the part of the Investigating Officer. In pursuit of this objective, services of Police Prosecutor and the Public Prosecutor might be taken.¹² Only in exceptional circumstances should laying of separate charge sheets be allowed and in these situations the Investigating Officer should be made to have in writing the reasons for it i.e., why it was not possible to have a single charge sheet.
- 3) Also there should be a Superior police officer who should supervise the investigation of case and counter case in exercise of the powers conferred by section 36 of The Code of Criminal Procedure.¹³ Courts should be allowed to read evidence of one case into the other and have the option of writing a single judgment.

iv) What in your opinion are the relevant factors that should decide whether the cases should be investigated by the same Investigating Officer or different Investigating Officers?

The general rule should be investigation by a single Investigating Officer. Adequate checks can be put to test the veracity of the charge sheet in the form of supervision by superior officer. Different Investigating Officer will add to chaos. However, if required separate reports of different Investigating Officers can be sought for in extremely sensitive cases and entrusted to a Senior Officer who can look into the areas of divergence and come up with a report of his own which can, if necessary be made subject of further review of another Superior Officer. This procedure should be employed only in extreme situations calling for such checks. Also, a remedy lies with the person aggrieved by the charge sheet in the form of a private complaint which can be tried as a counter case to the charge sheet filed by the police.

The relevant factors upon which a decision to have different Investigating Officer can be made should be dependent upon the case, its nature, gravity, political or other implications, gross or other severe violation of human rights, cases coming from marginalized sections of society raising the presumption of biased treatment and so on.

¹² Order No. 1170 and 1541 of the K.P.M. 1965 Volume II are extremely relevant in this regard.

¹³ .See ILR 2007 (3) 3142 (Babu @ Thirupathi Babu v/s State of Karnataka)

The Superior Officer can be made to put into writing all decisions regarding the choice of the Investigating Officer or Officers and the reasons for it creating a liability upon him.

v) What in your opinion are the factors that should determine whether the case and the counter case should be conducted by the same or separate prosecutors?

Prosecution should be conducted by separate prosecutors. Section 129 of the Indian Evidence Act, 1872 provides:

“Confidential communication with Legal Advisers –

No one shall be compelled to disclose to the Court any confidential communication which has taken place between him and his legal professional adviser, unless he offers himself as a witness in which case he may be compelled to disclose any such communication as may appear to the Court necessary to be known in order to explain any evidence which he has give, but not others.”¹⁴

In this regard we can refer to Gooty Sannaiah and others Vs. State of Karnataka¹⁵ wherein the court held that:

“... The Prosecution in both the cases was conducted by the same prosecutor. What is said above would aptly attract the age –old saying that a person cannot ride on two horses running in opposite directions and if he attempts to do so, the earth would be his destination..... In the end I must observe that the prosecuting agency do not seem to have evinced the same interest while investigating this case right from the beginning till the end, as they have done in the cross case though the same incident has given rise to both the cases”.

The position of the Investigating Officer is different from the Prosecution. The Investigating Officer should be entrusted with laying a single charge sheet as a general rule and should be made to cite reasons in writing if he lays two separate charge sheets. Further, he should be put under the supervision of a Superior Officer. The Prosecuting Officer on the other hand cannot be the same. If the Prosecuting Officer is the same there is real danger of a biased approach, ineffective prosecution. The very nature of the job entails a private confidence between the Prosecuting Officer and the party he is representing. While, it is true that the Prosecuting Officer is expected to present a true state of facts, his position vis a vis the party cannot be ignored. The Prosecuting Officer can under no circumstance be the same.

¹⁴ Section 129, Indian Evidence Act, 1872.

¹⁵ 1976 (1) Kar. L.J.10

vi) Whether the prescription in regard to who should investigate and who should conduct prosecution should in your opinion be regulated by suitable amendments to the Criminal Procedure Code or Karnataka Police Act or Karnataka Police Manual.

There should be suitable amendments in the Criminal Procedure Code. It is high time that the different approach required towards “case and counter case” is recognized and is given due recognition under the Code. Amendments on the same line should be brought in the Law of Evidence, 1872 also.

vii) If you have any other suggestions, please indicate the same.

The entire process of investigation, prosecution and trial of case and counter case needs to be put in order. At the investigation stage, the general practice should be a single charge sheet. However, as a check, the reasons for single or separate charge sheet must be put into writing by the Investigating Officer under the supervision of the Superior Officer. As a rule, a single Investigating Officer must be there. In sensitive cases, there can be more than one Investigating Officer. What constitutes sensitive matters should be left to the discretion of the Superior Officer who must be entrusted with the responsibility of assigning a case to a single Investigating Officer or to separate Investigating Officers. In either case, the reasons for the same should be put into writing. If there are more than one charge sheet/ or in case of sensitive matters, a second opinion can be had from another Investigating Officer and the reports of both the Investigating Officers should be compared. In case of significant divergence, it should be referred to a third authority who should give a speaking decision. In all cases, the Prosecuting Officer should be two. If any individual is aggrieved by lying of single charge sheet, he should have the right to prefer a private complaint which should be heard as a counter case. The present method of the same Judge hearing both the cases is a sound one. Further, reserving the judgment of both the cases till the arguments are done is also sound. Also, the method of linking the cases should be resorted to and evidence put in one case should be employed in another and Judge should have the option of giving a single or separate Judgment after evaluation of all the evidence put on record. To render this legally proper and correct, the right of cross examination across cases should be allowed. Further, Judges should employ their discretionary power under section 303 of Cr. P.C to examine accused as and when required. The part over which the accused stands as witness and gives testimony should constitute as exception to Article 20(3) and right of cross examination should be allowed over it.