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necessary, he may
make such



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However, where any first offender is convicted by a Magistrate of the second class not specifically empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this Section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class, forwarding the accused to, or taking bail for his appearance before such Magistrate, who shall dispose of the case in the manner provided by sub-section (2). (2) Where proceedings are submitted to a Magistrate of the first class as provided by sub-section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken. (3) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code, 1860 punishable with not more than two years, imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition. (4) An order under this Section may be made by any Appellate Court or by the High Court or Court of Session when exercising its powers of revision. (5) When an order has been made under this Section in respect of any offender, the High Court or Court of Session may, on appeal when there is a right of appeal to such Court, or when

exercising its powers of revision, set aside such order, and in lieu, thereof pass sentence on such offender according to law.

However, the High Court or Court of Session shall not under this sub-section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted. (6) The provisions of Sections 121, 124 and 373 shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this Section. (7) The Court, before directing the release of an offender under sub-section (1), shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions. (8) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of this original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(9) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence and such Court may, after hearing the case, pass sentence. (10) Nothing in this Section shall affect the provisions of the Probation of Offenders Act, 1958, or the Children Act, 1960 or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders. Benefit of probation could not be extended as offence punishable with imprisonment of more than 10 years: The concession of releasing a convict on probation under Section 360

of the Code or Sections 3 and 4 of the Act is restricted only to cases where the offence committed by an offender is punishable with imprisonment of not more than 10 years and if the convict is not a previous convict. The plain language of the section makes it evident that concession of probation cannot be extended where the punishment provided for the offence is more than 10 years.