

Or from being
apprehended, shall
be punished in



or whenever a public servant, in the exercise of the lawful powers of such public servant, knowing of such escape or order for apprehension, harbours or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following that is to say.

If capital offence:- if the offence for which the person was in custody or is ordered to be apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; If punishable with imprisonment for life, or with imprisonment:- if the offence is punishable with imprisonment for life, or imprisonment for ten years he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine; And if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both. “ Offence” in this Section includes also any act or omission of which a person is alleged to have been guilty out of India, which, if he had been guilty of it in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India, and every such act or omission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in India. Exception:- This provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.” To establish an offence under

Section 216, it must be shown that: (i) Some person was charged with or convicted of an offence; (ii) He was in custody for the same; (iii) His custody was legal; (iv) He escaped from it; (v) The accused knew of such escape; (vi) With such knowledge of escape, he harboured or concealed such offender. (vii) He harboured or concealed him with the intention of preventing him from being apprehended.

Or instead prove that: (i) A Person had been ordered to be apprehended; (ii) Such order was by a public servant; (iii) It was in the exercise of the lawful power of such public servant; (iv) The accused knew of such order for apprehension; (v) With such knowledge he harboured or concealed such offender; (vi) He did so with the intention to prevent him from being apprehended; (vii) In either case, as aggravating circumstances, it has to be proved that (a) the offence for which the person was in custody, or was ordered to be apprehended was punishable with death or (b) with imprisonment for life, or imprisonment for ten years. Section 216 takes into consideration cases where the man who is harboured is wanted for an offence for which a maximum sentence of at least one year's imprisonment is provided. No provision is made for cases where he is wanted for offences for which the maximum sentence is less than one year. In *Ajab & others v. State of Maharashtra* [AIR 1989 SC 827], certain persons were apprehended for gaming and they escaped from police custody, it was held that Section 216 was not applicable because they were neither charged nor convicted of any offence and that the conviction should have been under Section 224.

Section 216 can be compared with Section 212. Section 212 deals with the offence of harbouring an offender who having committed an offence

absconds. But, Section 216 deals with harbouring an offender who has escaped from custody after being actually convicted or charged with the offence, or whose apprehension has been ordered.

The offence under Section 212 is, in the eye of the law, more aggravated, and a heavier punishment is, therefore, awarded for it. The offence falling under Section 216 is cognizable, and warrant should ordinarily issue. It is bailable, but not compoundable. It is triable by a Magistrate of the first class.