

Rules Regarding Prosecution of Criminal Cases Instituted at the Instance of the Departmental Officers

RAJASTHAN

India

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Rule

RULES-REGARDING-PROSECUTION-OF-CRIMINAL-CASES-INSTITUTED OF 1951

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Rules Regarding Prosecution of Criminal Cases Instituted at the Instance of the Departmental Officers Published vide Rajasthan Gazette Part 4B, dated 8.9.1951 [Dated 7-8-1951] Notification No. D 2861/LR/51

1. Scope of the Rules

- These rules relate to departmental prosecution i.e. Criminal cases instituted at the instance of a Government Officer relating to acts of which he has knowledge in his official capacity. They are intended mainly to help officers who have no experience of the procedure followed in the institution and conduct of cases in Criminal Courts.

2. Expediency of consulting District Magistrate in all cases

- Before launching a prosecution a Government Officer should consult the District Magistrate informally regarding the procedure to be adopted, unless the case is of a kind which is frequently launched by the department to which such officer belongs and the procedure is familiar to him. In all cases of doubt, the District Magistrate should be consulted.

3. Report to police in cognizable cases

- when the offence is cognizable there is no difficulty. A report should be sent, giving a clear, consecutive and chronological statement of the salient facts, to the nearest police station. All further

steps will be taken by the police, but the officer making the report must render all assistance in his power.

4. District Magistrate to be consulted in non-cognizable cases

- when the offence is non-cognizable and is of a kind not familiar to the department of the officer instituting the prosecution, the District Magistrate should always be consulted as certain formalities may be required in the institution of the case to ensure that the prosecution is legal. These formalities are set out in sub-section (1) (a) of section 195 and in section 197 of the Code of Criminal Procedure, 1898.

5. Complaint in cases not requiring sanction of Government

(1)When the case does not fall within the Scope of section 197 of the Code of Criminal Procedure the Officer instituting the prosecution should sent a written complaint to the Magistrate having jurisdiction.(2)The complaint should 'give a clear, consecutive and chronological statement of salient facts.(3)If the case falls within the scope of sub-section (1) (a) of section 195 of the Code, the complaint should contain a statement that, with reference to that section, the complainant is the public servant concerned.(4)Under proviso (aa) to section 200 of the code, it is no longer necessary for a public servant to be examined by the Court when he makes a complaint in his official capacity, but if the complainant is intricate, the officer making it should present it personally in order that the Court may have an opportunity of elucidating any obscure point.

6. Procedure in cases requiring sanction

(1)When the case falls within the scope of section 197or, the Code or Criminal Procedure, 1898, no prosecution can be instituted without the previous sanction or consent, as the case may be, of the Government.(2)The departmental authorities should consult the District Magistrate and submit a complete report to Government through the Head of the Department concerned. Further steps to be taken will be indicated in Government's orders.(3)If there be doubt whether section 197 of the Code of Criminal Procedure applies, the Legal Remembrancer should invariably be consulted.

7. Appointment of prosecutor in simple cases

- In simple cases of departmental prosecutions, for which the police are not responsible, the officer laying the complaint is responsible for the proper prosecution of the case. This should ordinarily be done by appointing a departmental officer subordinate familiar with the facts of the case to be prosecuted. Such prosecutor must ask for the Court's permission to appear under section 495 of the code of Criminal procedure, 1898.

8. Engagement of Public Prosecutor in complicated cases

- When the case is a complicated one, the officer instituting it should approach the District Magistrate with a view to the engagement of the Public Prosecutor.

9. District Magistrate to assist Railway authorities

- When prosecutions are instituted by a Railway Authority, the District Magistrate should give it any advice required regarding preliminary formalities and should put them into communication with the Public Prosecutor, or other suitable legal practitioner, if a prosecuting counsel is required.

10. Intimation to railway or department officers of the filing of appeal

- When the district Magistrate receives notice of an appeal against a conviction in a prosecution by a departmental or Railway officer, he should inform the departmental or Railway officer concerned.

11. Procedure in cases involving loss mentioned in rule 12

(1)(a)When a prosecution against a Government servant is or is likely to be necessary in connection with the losses mentioned in rule 12, the procedure laid down therein shall be followed by the officer of the department concerned in making reports of losses to the competent authority.(b)As soon as a reasonable suspicion exists that a criminal offence has been committed, the senior officer of the department concerned present in the station shall report to the District Magistrate and ask for a regular Police investigation under the Code of Criminal Procedure, 1898.(c)If the District Magistrate agrees that an investigation may be made, the senior officer of the department concerned present in the station should (i) request the District Magistrate to arrange for the investigation to proceed from day to day, (ii) see that all witnesses and documents are made available to the investigating officer and (iii) associate with the investigating officer of the department who is not personally concerned with the irregularity leading up to the loss, but who is fully cognizant of the rules and procedure of the office in which the loss has occurred.(d)when the investigation is completed an officer of the Department (accompanied by the officer who attended the investigation) shall be made available for conferences with the authority who will decide whether a prosecution should be instituted. If it is decided not to prosecute, the case shall be reported through the usual channel to Government for orders.(e)If it is decided to prosecute, the departmental representative should ascertain from the prosecuting officer whether having regard to the engagements of the prosecuting staff and the state of work in the court which ordinarily hear the case, it is necessary to move the District Magistrate to make special arrangements for a speedy trial, and should request prosecuting officer to make any application that he may think necessary.(f)When the case is put into court by the Police, the senior officer of the department concerned present in the station should see that all witnesses serving in the department and all documentary evidence in the control of the department, are punctually produced, and should also appoint an officer of the department (preferably the officer who attended the investigation) to attend the proceedings in court and assist the prosecuting staff.(g)If any prosecution results in the discharge or acquittal of any person, or in the imposition of sentences

which appear to be inadequate, the senior officer of the . department concerned should at once consult the District Magistrate as to the advisability of instituting further proceedings. In revision or appeal, as the case may be, and if the District Magistrate is of opinion that further proceedings are necessary, should request him to proceed as he would in any other case.(h)The Senior Officer of the department concerned present in the station should see that, in addition to the reports required under clauses (a), (b) and (d) above, prompt reports are submitted to Government through the usual channel regarding : (i)the commencement of a police investigation; (ii)the decision to prosecute in any particular case; (iii)the result of any prosecution; (iv)the decision to proceed further in revision or appeal in any case; (v)the result of any proceedings in revision or appeal. (vi)Notwithstanding anything contained in clause (b) to (h) the Senior Officer of the department concerned present in the station, may, if he thinks fit, refer any matter through the usual channel for the orders of Government before taking action.

12. Submission of report on defalcation and losses of public funds

- With the exceptions noted below, any defalcation or loss of public money, departmental revenue or receipts, stamps, opium, stores or other property, discovered in a Government treasury or other office or department reported to the Accountant General, even such loss has been made good by the person responsible for it. It will usually be sufficient if the officer reporting the defalcation or loss to higher authority sends to the Accountant General, either a copy of his report or such relevant extracts from it as are sufficient to explain the exact nature of the defalcation or loss and circumstances which made it possible. When the matter has been fully enquired into, a further complete report should be submitted of the nature and extent of the loss showing the errors or neglect of rules, by which such loss was rendered possible; and the prospects of effecting recovery. The submission of such reports does not debar the local authorities from taking any further action which may be deemed necessary. Note:- 1. Defalcation or loss of public money, stamps, or opium in a sub-treasury should immediately be reported to the treasury officer.

2. Losses or deficiencies concerning buildings, lands, stores and equipment should be written off any value or commercial account that may be maintained.

Exception:- Petty cases, that is, cases involving losses not exceeding Rs. 200 each, need not be reported to the Accountant General unless there are, in any case, important features which merit detailed investigation and consideration or unless the irrecoverable value of, stores, public money, etc. has to be written off.