

# Chhattisgarh Special Courts Act, 2015

CHHATTISGARH

India

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### Act 8 of 2016

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Chhattisgarh Special Courts Act, 2015(Act No. 8 of 2016)Last Updated 20th September, 2019[Received the assent of the Governor on the 8th April, 2015 and assent of the President on the 28th January, 2016; assent first published in the Chhattisgarh Rajpatra (Asadharan), dated the 9th February, 2016.]An Act to provide for the constitution of Special Courts for the Speedy trial of certain class of offences and for confiscation of the properties acquired by public servants using corrupt practices and for the matters connected therewith and incidental thereto.Be it enacted by the Chhattisgarh Legislature in the Sixty-sixth Year of the Republic of India, as follows

## Chapter I Preliminary

### 1. Short title, extent and commencement.

(1)This Act may be called the Chhattisgarh Special Courts Act, 2015.(2)It shall extend to the whole State of Chhattisgarh.(3)It shall come into force from the date of its publication in the Official Gazette.

### 2. Definitions.

(1)In this Act, unless the context otherwise requires,-(a)"Act" means the Prevention of Corruption Act, 1988 (No. 49 of 1988);(b)"Authorised Officer" means for the purpose of Section 16 and 17, Presiding Officer of the Special Court who shall not be below the rank of Session Judge or Additional Session Judge;(c)"Code" means the Code of Criminal Procedure, 1973 (2 of 1974);(d)"Declaration" in relation to an offence means a declaration made by the State Government under Section 5 of this Act;(e)"Illegally Acquired Property" means property found disproportionate to the public servant's known source of income and shall include movable and immovable property held by any other person on his behalf;(f)"Investigation Agency" means person authorised to investigate an offence

under this Act and shall be same as provided under Section 17 of the Prevention of the Corruption Act, 1988 (No. 49 of 1988) or any other agency empowered by the State Government in this behalf;(g)"Offence" means an offence of criminal misconduct which attracts application of clause (e) of sub-section (1) of Section 13 of the Prevention of Corruption Act, 1988 (No. 49 of 1988) either independently or in combination with other provisions of said Act or offence under Indian Penal Code (45 of 1860) or any other Act;(h)"Person affected" means a person in respect of whom application has been filed under Section 16;(i)"Property" means and includes any interest in property movable or immovable;(j)"Special Court" mean a Special Court established under Section 3 of this Act.(2)Words and expression used but not defined in this Act shall have the same meaning as respectively assigned to them in the Prevention of the Corruption Act, 1988 (No. 49 of 1988) and the Code of Criminal Procedure, 1973 (2 of 1974).

## **Chapter II**

### **Establishment of Special Courts**

#### **3. Establishment of Special Courts.**

(1)The State Government by notification, shall establish, for the purpose of speedy trial of offences under this Act, as many courts as may be necessary, to be called as Special Courts.(2)Special Court shall be presided over by a Judge to be nominated by the State Government with the concurrence of the High Court.(3)No person shall be qualified for nomination as a Judge of a Special Court unless he is a member of the Chhattisgarh Higher Judicial Service.

#### **4. Cognizance of cases by Special Court.**

- Special Court shall take cognizance of and try such cases as are instituted before it or transferred to it under Section 10.

#### **5. Declaration of cases to be dealt with under this Act.**

(1)When the State Government, on the basis of prima-facie evidence made available to it by the investigation agency, have reason to believe that an offence has been committed by a person, who held or is holding public office and is or has been a public servant within the meaning of clause (c) of Section 2 of the Prevention of Corruption Act, 1988 (No. 49 of 1988) in the State of Chhattisgarh, the State Government shall make a declaration to that effect in every case in which it is of the aforesaid belief.(2)Such declaration shall not be called in question in any Court of law.

#### **6. Effect of declaration.**

(1)Notwithstanding anything contained in the Code or any other law for the time being in force, on such declaration being made under Section 5, any prosecution in respect of such offence shall be instituted only before a Special Court.(2)Where any declaration made under Section 5 relates to an

offence in respect of which a prosecution has already been instituted and the proceedings in relation thereto are pending in a Court other than Special Court under this Act, such proceedings, notwithstanding anything contained in any other law for the time being in force, shall stand transferred to the Special Court established under this Act for trial of the offence in accordance with the provisions herein contained.(3)On such declaration being made by the State Government, the property specified in such declaration shall be seized or attached, as the case may be, by the investigation agency under Section 13 of this Act.

## **7. Jurisdiction of Special Court as to trial of offences.**

- A Special Court shall have jurisdiction to try offence shall alleged to have been committed by any person in respect of whom a declaration has been made under Section 5, either as principal, conspirator or abettor and all of them can be jointly tried therewith at one trial in accordance with the Code.

## **8. Procedure and powers of Special Court.**

(1)A Special Court shall, in the trial of such cases, follow the procedure prescribed by the Code for the trial of warrant cases before a Magistrate.(2)Save as expressly provided in this Act, the provisions of the Code and of the Act shall, in so far as they are not inconsistent with the provisions of this Act, apply to the proceedings before a Special Court and for the purpose of the said provisions, the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.(3)A Special Court may pass, upon conviction of any person by it, any sentence authorised by law for the punishment of the offence of which such person is convicted.

## **9. Appeal against orders of Special Court.**

(1)Notwithstanding anything contained in the Code, an appeal shall lie from any judgment and sentence of a Special Court to the High Court.(2)Except as aforesaid, no appeal or revision shall lie in any court from any judgment, sentence or order of a Special Court.(3)Every appeal under this section shall be preferred within a period of thirty days from the date of judgment and sentence of a Special Court:Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied for reasons to be recorded in writing that the appellant had sufficient cause for not preferring the appeal within the said period.

## **10. Transfer of cases.**

- Notwithstanding any other provisions of this Act, the High Court may transfer cases from one Special Court to another.

## **11. Special Court not bound to adjourn trial.**

(1) A Special Court shall not adjourn any trial for any purpose unless such adjournment is, in its opinion, necessary in the interest of justice and for reasons to be recorded in writing. (2) The Special Court shall endeavour to dispose of the trial of the case within a period of one year from the date of its institution or transfer.

## **12. Presiding judge may act on evidence recorded by his predecessor.**

- A Judge of a Special Court may act on the evidence recorded by his predecessor or predecessors or partly recorded by his predecessor or predecessors and partly recorded by himself.

## **Chapter III**

## **Seizure and attachment of property**

### **13. Seizure and attachment.**

(1) Where any investigation agency is conducting an inquiry or investigation under clause (e) of sub-section (1) of Section 13 of the Prevention of Corruption Act, 1988 (No. 49 of 1988) and has a reason to believe that any property in relation to which such inquiry or investigation is being conducted is likely to be concealed, transferred or dealt with in any manner which will result in disposal of such property, an officer not below the rank of Deputy Superintendent of Police of such agency may make an order for seizing such property and where it is not practical to seize such property, such officer may make an order of attachment directing that such property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned. (2) Any order made under sub-section (1) shall have no effect unless the said order is confirmed by an order of the Special Court, within a period of thirty days of its being made.

### **14. Certain transfers to be null and void.**

- Where after the making of an order under Section 13 or the issue of a notice under Section 17 of this Act, any property referred to in the said order or notice, is transferred by any mode whatsoever, such transfer shall, for the purpose of the proceedings under this Chapter, be ignored and if such property is subsequently confiscated to the State Government under Section 18 then the transfer of such property shall be deemed to be void ab initio.

### **15. Management of properties seized or confiscated.**

(1) The Special Court may appoint the District Magistrate of the area where the property is situated, or any other officer who may be nominated by the District Magistrate, to perform the functions of an administrator of such property. (2) The Administrator appointed under sub-section (1) shall receive

and manage the property in relation to which the order has been made in such manner and subject to such conditions as may be specified by General or special order issued by the State Government.(3)The Administrator shall also take such measures, as the State Government may direct, to dispose of the property, which is confiscated to the State Government under Section 18 of this Act:Provided that any person other than the accused if in possession of the property may be permitted to occupy it for the limited period as provided under proviso to sub-section (1) of Section 20 of this Act.

## **Chapter IV**

### **Confiscation of property**

#### **16. Confiscation of property.**

(1)Where the State Government, on the basis of prima facie evidence, have reasons to believe that any person, who held or is holding public office and is or has been a public servant, has committed an offence, the State Government may, whether or not the Special Court has taken cognizance of the offence, authorize the Public prosecutor for making an application to the Authorised Officer for confiscation under this Act of the money and other property, which the State Government believe the said person to have procured by means of the offence.(2)An application under sub-section (1)-(a)shall be accompanied by one or more affidavits, stating the grounds on which the belief, that the said person has committed the offence, is founded and the amount of money and estimated value of other property believed to have been procured by means of the offence; and(b)shall also contain any information available as to the location for the time being of any such money and other property, and shall, if necessary, give other particulars considered relevant to the context.

#### **17. Notice for confiscation.**

(1)Upon receipt of an application made under Section 16, the Authorised Officer shall serve a notice upon the person in respect of whom the application is made calling upon him within such time as may be specified in the notice, which shall not be ordinarily less than thirty days to indicate the source of his income, earning or assets, out of which or by means of which he has acquired such money or property, the evidence on which he relies and other relevant information and particulars, and to show cause as to why all or any of such money or property or both, should not be declared to have been acquired by means of the offence and be confiscated to the State Government.(2)Where a notice, under sub-section (1) to any person, specified any money or property or both as being held on behalf of such person by any other person, a copy of the notice shall also be served upon such other person.(3)Notwithstanding anything contained in sub-section (1), the evidence, information and particulars brought on record before the Authorised Officer, by the person affected or the State Government shall be open to rebuttal in the trial before the Special Court:Provided that such rebuttal shall be confined to the trial for determination and) adjudication of guilt of the offender by the Special Court under this Act.

## **18. Confiscation of property in certain cases.**

(1)The Authorised Officer may, after considering the explanation, if any, to the show cause notice issued under Section 17 and the materials available before him, and after giving to the person affected (and in case where the person affected holds any money or property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any other money or properties in question have been acquired illegally.(2)Where the Authorised Officer specifies that some of the money or property or both referred to in the show cause notice are acquired by means of the offence, but is not able to identify specifically such money or property, then it shall be lawful for the Authorised Officer to specify the money or property or both which to the best of his judgment, have been acquired by means of the offence and record a finding accordingly under sub-section (1).(3)Where the Authorised Officer records a finding under this section to the effect that any money or property or both have been acquired by means of the offence, he shall declare that such money or property or both shall, subject to the provisions of this Act, stand confiscated to the State Government free from all encumbrances :Provided that if the market price of the property confiscated is deposited with the Authorised Officer, the property shall not be confiscated.(4)Where any share in a Company or any other entity stands confiscated to the State Government under this Act, then, the Company shall, notwithstanding anything contained in the Companies Act, 2013 (No. 18 of 2013), or the Articles of Association of the Company or such entity, forthwith register the State Government as the transferee of such share.(5)Every proceeding for confiscation of money or property or both under this Chapter shall be disposed of within a period of six months from the date of service of the notice under sub-section (1) of Section 17.(6)The order for confiscation passed under this section shall, subject to the order passed in appeal, if any, under Section 19 be final and shall not be called in question in any Court of law.

## **19. Appeal against the order of the Authorised Officer.**

(1)Any person aggrieved by any order of the Authorised Officer under this Chapter may appeal to the High Court within thirty days from the date on which the order appealed against was passed.(2)High Court, on receiving an appeal under this Section and after giving opportunity of being heard to such parties as it thinks proper, may pass such order as it thinks fit.(3)An appeal preferred under sub-section (1) shall be disposed of preferably within a period of six months from the date it is preferred and stay order, if any passed in an appeal shall not remain in force beyond the said prescribed period of disposal of appeal.

## **20. Power to take possession.**

(1)Where any money or property or both have been confiscated to the State Government under this Act, the Authorised Officer concerned shall order the person affected, as well as any other person, who may be in possession of the money or property or both to surrender or deliver possession thereof to the Authorised Officer concerned or to any person duly authorised by him in this behalf, within a period of thirty days of the service of the order :Provided that the Authorized Officer, on an application made in that behalf and being satisfied that the person affected is residing in the

property in question, may instead of dispossessing him immediately from the same, permit such person to occupy it for a limited period not exceeding four months on payment of market rent to the State Government and thereafter, such person shall deliver the vacant possession of the property.(2)If any person refused or fails to comply with an order made under sub-section (1), the Authorised Officer may take possession of the property and may, for that purpose, use such force as may be necessary.(3)Notwithstanding anything contained in sub-section (2), the Authorised Officer may, for the purpose of taking possession of any money or property or both referred to in sub-section (1), requisition the service of any Police Officer to assist and it shall be the mandatory duty of such officer to comply with such requisition.

## **21. Refund of confiscated money or property.**

- Where an order of confiscation made under Section 18 is modified or annulled by the High Court in appeal or where the person affected is acquitted by the Special Court, the money or property or both shall be returned to the person affected and in case it is not possible for any reason to return the property, such person shall be paid the price thereof including the money so confiscated with the interest at the Reporate of Reserve Bank of India per annum thereon calculated from the date of confiscation.

## **Chapter V**

### **Miscellaneous**

## **22. Notice or order not be invalid for error in description.**

- No notice issued or served, no declaration made and no order passed, under this Act shall be deemed to be invalid by reason of any error in the description of the property or person mentioned therein, if such property or person is identifiable from such description so mentioned.

## **23. Act to be in addition to any other law.**

- The provisions of this Act shall be in addition to, and not in derogation of any, other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this Act, be instituted against him.

## **24. Bar to other proceedings.**

- Save as provided in Section 9 and 19 and notwithstanding anything contained in any other law, no suit or other legal proceedings shall be maintainable in any Court in respect of any money or property or both ordered to be seized or attached under Section 13 and confiscated under Section 18.

## **25. Protection of action taken in good faith.**

- No suit, prosecution or other legal proceedings shall lie against any person for anything done in good faith or intended to be done in pursuance of this Act.

## **26. Power to make rules.**

(1)The State Government may, by notification, make such rules, if any, as it may deem necessary for carrying out the purpose of this Act.(2)Every rule made under sub-section (1) shall be laid before the State Legislative Assembly.

## **27. Overriding effect.**

- Notwithstanding anything contained in the Prevention of Corruption Act, 1988 (No. 49 of 1988) or any other law for the time being in force, the provisions of this Act shall prevail in case of any inconsistency.

## **28. Power to remove difficulties.**

- If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty :Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.