

Rajasthan Dacoity Affected Areas Act, 1986

RAJASTHAN

India

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Act 11 of 1986

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Rajasthan Dacoity Affected Areas Act, 1986(Act No. 11 of 1986)RJ59Received the assent of the President on the 26th day of February, 1986An Act to make provision for specifying certain offences in the dacoity affected areas of Rajasthan in order to curb effectively the commission of scheduled offences and to make provisions for speedy trial and punishment thereof and for the attachment of properties acquired through the commission of such offences and for matters connected therewith or incidental thereto.

Chapter I Preliminary

1. Short title and, commencement

(1)This Act may be called the Rajasthan Dacoity Affected Areas Act, 1986.(2)It shall be deemed to have come into force on the 23rd day of September,1985.

2. Definition

(1)In this Act, unless the context otherwise requires (a)'Code' means the Code of Criminal Procedure, 1973 (Central Act 2 of 1974);(b)'dacoity-affected area' means an area declared by the State Government as a dacoity-affected area under Section 3;(c)'scheduled offence' in relation to a dacoity-affected area, means a offence specified in the schedule appended to this Act, including an offence forming part of, arising out of, or connected with the commission of, dacoity;(d)'scheduled offender' in relation to a dacoity-affected area, means a person who commits or has committed or is a person accused of the commission of any scheduled offence;(e)'special court' means a special court constituted under Section 6; and(f)'Special Judge' means a Judge appointed under sub-section (2) of Section 6 to preside over a special coda(2)Words and expressions used but not defined in the Act and defined in Code shall have the meaning respectively assigned to them in the Code or, as the case

may be, in the Indian Penal Code, 1860 (Central Act XLV of 1860).

Chapter II

Dacoity-Affected area and Constitution of Special Courts

3. Declaration of dacoity-affected area

- If in receiving the report of a police officer or any other information in respect of the incidence of scheduled offence in a district or districts or a part or parts thereof, the State Government considers that a situation has arisen in which the area covered by such district or districts or a part or parts thereof should be declared to be a dacoity-affected area for the purposes of this Act, the State Government may, by Notification, declare such area to be a dacoity-affected area.

4. Person assisting the police to be public servant

(1) Person, who assists the police in giving information or is engaged in assisting the police by giving information relating to the commission of a scheduled offence or is assisting in the investigation of such offence, shall, for the purposes of this Act, be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code, 1860 (Central Act XLV of 1860). (2) A certificate issued by the Superintendent of Police to the effect that the person mentioned therein is a person who is engaged in assisting the police for the purposes specified in sub-section (1) shall be conclusive proof of the facts stated therein.

5. Regulation of grant of bail

- Notwithstanding anything contained in the Code, no person accused or convicted of a scheduled offence shall, if in a custody, be released on bail or on his bond, unless (a) the prosecution has been given opportunity to oppose the application for bail; and (b) where the prosecution opposes the application for bail, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence: Provided that a person accused of a scheduled offence, who has been in custody for a total period of one hundred and thirty days, may be released on bail subject to such conditions as the court may think fit to impose.

6. Constitution of Special Courts

(1) For the purpose of providing speedy trial of the scheduled offences committed in a dacoity-affected area, the State Government may, in consultation with the High Court, constitute, by Notification, as many special courts as may be necessary in, or in relation to, such dacoity-affected area or areas as may be specified in such Notification. (2) A special court shall consist of a single Judge who shall be appointed by the Rajasthan High Court upon a request made by the State Government. Explanation - In this sub-section, the word 'appoint' shall have the same meaning given to it in the Explanation to Section 9 of the Code. (3) A person shall not be qualified for

appointment as a Judge of a special court unless he is serving as a Sessions Judge or an Additional Sessions Judge under the Code.

7. Jurisdiction of Special Cour

(1)Notwithstanding anything contained in the Code or in any other law for the time being in force, a scheduled offence shall be triable only by a special court.(2)While trying any scheduled offence, the special court may also try at the same trial any offence other than the scheduled offence with which a scheduled offender May be charged under any law for the time being in force.

8. Procedure and powers of Special Courts

(1)A special court may take cognizance of any scheduled offence (a)upon receiving a complaint of facts which constitute such offence; or(b)upon a police report of such facts; or(c)upon information received from any person or a police officer, or upon its own knowledge that such offence has been committed.(2)A special court shall, while trying a scheduled offence, follow the procedure as prescribed by the Code for the trial of a sessions case :Provided that a special court may, wherever necessary, perform the functions of a Magistrate under Section 207 of the Code and proceed to try the case as if the case had been committed to the court of session for trial under the provisions of the Code.(3)Save as otherwise expressly provided in this Act, the provisions of the Indian Evidence Act, 1872 (Central Act 1 of 1872) and the Code 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 purposes of the said provisions of the Code, the special court shall be deemed to be a court of session and the person conducting the prosecution before the special court shall be deemed to be a Public Prosecutor.(4)A special court may, with a view to obtaining the evidence of any person suspected to have been directly or indirectly concerned with, or privy to, any scheduled offence, tender pardon to such person on the condition of his making a full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned, whether as principal or abettor, with the commission thereof, Any pardon so tendered shall, for the purpose of Section 308 of the Code, be deemed to have been tendered under Section 307 thereof(5)A special court may pass upon any accused person convicted by it any sentence prescribed by law for the offence of which such person is convicted.

Chapter III

Offences and Penalty

9. Punishment for offence against public servant

- A scheduled offender, who commits the offence of murder of more than one person or a scheduled offence against a public servant or against a member of the family of a public servant, shall (a)if such offence is punishable with death or with imprisonment for life under the Indian Penal Code, 1860 (Central Act XLV of 1860) be awarded such punishment as is provided for that offence in that offence in that Code; and(b)in other cases, be punished with imprisonment which may extend to ten

years and with fine. Explanation - For the purposes of this section and Section 10, a member of the family of a public servant shall mean his parents, spouse, sons and daughters, grand-sons and grand-daughters and great-grand-sons and great-grand-daughters and their Spouses and shall include a person dependent on and residing with such public servant.

10. Reasons to be recorded for not awarding punishment of death

- Notwithstanding anything contained in sub-section (3) of Section 354 of the Code, when the conviction under this Act is made in respect of the murder of more than one person or the murder of a public servant or a member of his family and the sentence of death is not awarded, the judgment shall state the special reasons for not awarding the death sentence.

11. Punishment for scheduled offences generally

- A person who commits a scheduled offence shall, if no specific punishment is provided for that in the Indian Penal Code, 1860 (Central Act XLV of 1860) and that offence is also not punishable under Section 9, be punished with imprisonment which may extend to ten years and with fine.

12. Punishment for possessing property not satisfactorily accounted for

- Where a person having in dacoity, affected area is found to be in possession of properties in that area or elsewhere in Rajasthan for which he cannot satisfactorily account for and which has been acquired by or as a result of, the commission of a scheduled offence, he shall be punished with imprisonment which may extend to seven years and with fine : Provided that if and when an order of release is made by the special court under 'Section 17, the accused shall, whatever be the stage of trial, be discharged and shall be released forthwith if he is under custody and his conviction, if any, shall be deemed not to have ever existed.

13. Minimum period of imprisonment

- Notwithstanding anything contained in section 11 and 12 or any other law for the time being in force, the minimum punishment for a scheduled offence shall be an imprisonment for three years.

Chapter IV

Attachment and Release of Property

14. Attachment of property

(1) If the District Magistrate has reason to believe that a person living in a dacoity-affected area has committed an offence punishable under Section 12, he may make a declaration to that effect and may order the attachment of the property in respect of which offence is believed to have been committed. (2) The provisions of the Code shall, mutatis mutandis, apply to every attachment made

under sub-section (1).(3)Notwithstanding anything contained in the Code, the District Magistrate may appoint an Administrator for any property attached under sub-section (1) and such administrator shall have all the powers to administer the property in the best interest of the property.(4)The District Magistrate may provide police assistance to the administrator for proper and effective administration thereof.(5)The expenses incurred on the administration of the property including the expenses relating to the police assistance provided under sub-section (4) shall be a charge on such property.

15. Release of property

(1)Where a property is attached under Section 14, its owner may, within three months of the date of knowledge of attachment, make a representation to the District Magistrate showing the circumstances in, and the means by, which the property was acquired by him.(2)If the District Magistrate is satisfied with the representation made under sub-section (1), he may forthwith release the property from attachment and, thereupon, the property alongwith the profits, if any, after deducting all the expenses charged on the property shall vest in the owner thereof.

16. Enquiry into the character of acquisition of property by Special Court

(1)If the District Magistrate is not satisfied with the representation made under Section 15, he shall refer the matter, alongwith his report to the special court having jurisdiction for deciding whether the property or any part thereof was or was not acquired by, or as a result of, the commission of scheduled offence.(2)On receipt of the reference made under sub-section (1), the special court shall fix a date for enquiry and give notice to the person making the representation and to the State. On the date so fixed, or on any subsequent date to which the enquiry may be adjourned, the special court shall hear the parties receive evidence produced by them, take such further evidence as it may consider necessary and decide the reference.(3)For the purpose of making enquiry under sub-section (2), the special court shall have the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908) in respect of the following matters, namely (a)Summoning and enforcing the attendance of any person and examining him on oath;(b)requiring the discovery and production of documents;(c)receiving evidence on affidavits;(d)requisitioning any public record or copy thereof from any court or Office;(e)issuing commission for examination of witnesses or documents;(f)dismissing the reference for default or deciding it ex parte;(g)setting aside an order of dismissal for default or an order passed by it ex parte; or(h)any other matter which may be prescribed.(4)In any proceeding under this section, the burden to prove that the property or any part thereof mentioned in the representation under Section 15 was not acquired by, or as a result of, the commission of a scheduled offence shall be on the person claiming the property notwithstanding anything contained in the Indian Evidence Act, 1872 (Central Act 1 of 1872).

17. Confiscation of property

- If the special court, finds that the property was acquired by, or as a result of, the Commission of scheduled offence, it shall order confiscation of the said property and shall transmit the record to

the District Magistrate for execution of its order and in any other case the property shall be ordered to be released forthwith.

Chapter V

Appeals

18. No appeal to lie unless otherwise provided

- No order of decision made under this Act shall be appealable except as hereinafter provided.

19. Appeal from conviction

- Any person convicted on a trial held by a special court under this Act may appeal to the High Court.

20. Appeal from acquittal

- The State Government may in any case direct the public prosecutor present an appeal to the High Court from an order of acquittal made by a special court under this Act.

21. Provisions of Code to apply to appeals

- The provisions of Chapter XXIX of the Code shall mutatis mutandis appeal preferred under Section 19 or Section 20.

22. Appeal against order under Section 17

- An appeal shall lie to the High Court against every order of the special court made under Section 17.

Chapter VI

Miscellaneous

23. Bar of jurisdiction of civil court

- No civil court shall have jurisdiction in receipt of any matter which the special court is empowered by or under this Act to determine and no injunction or interlocutory order interfering with the attachment or confiscation of property shall be granted or made by any court or other authority in respect of any power conferred by or under this Act.

24. Presumption in respect of kidnapping and abduction

- In any trial of a scheduled offence under this Act, where it is proved that (a)the accused has kidnapped or abducted any person from dacoity-affected area, it shall be presumed, unless the contrary is proved, that the accused has kidnapped or abducted such person for ransom; or(b)the accused has wrongfully concealed or confined any person kidnapped or abducted from a dacoity-affected area, it shall be presumed, unless the contrary is proved, that the accused has concealed or confined such person knowing that such person has been so kidnapped or abducted.

25. Protection of action taken in good faith

(1)No suit, prosecution or other legal proceeding shall lie against the State Government or any officer of the State Government for anything done or intended to be done in good faith in pursuance of the provisions of this Act or the rules made thereunder.(2)No prosecution against an Administrator appointed under sub-section (3) of Section 14 shall be instituted unless previous sanction of the District Magistrate has been obtained therefor.

26. Act to have over-riding effect

- The provisions of this Act shall have effect, notwithstanding anything inconsistent therewith contained in any law for the time being in force.

27. Power to make rules

(1)The State Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect all or any of the provisions of this Act.(2)All rules made under this Act, shall be laid, as soon as may be after they are so made, before the House of the State Legislature, while it is in session for a period of not less than thirty days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which they are so laid or of the session immediately followings, the House of the State Legislature makes any modification in any such rules, or resolves that any such rules should not be made, such rules shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder.

28. Repeal and Saving

(1)The Rajasthan Dacoity-Affected Areas ordinance, 1985 (Ordinance No. 7 of 1985) is hereby repealed.(2)Notwithstanding such repeal , all things done or actions taken under the said Ordinance shall be deemed to have been done or taken under this Act.

Schedule

(1) Offences punishable under Sections 216A, 302, 303, 304, 307, 308, 311, 325, 326, 327, 329, 331, 333, 363, 365, 369, 386, 387, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, and 511 of the Indian Penal Code, 1860 (Central Act XLV of 1860). (2) Kidnapping or abducting any person for ransom. (3) Assembling or making preparation or attempt for kidnapping or abducting any person for ransom. (4) Making or mending or performing any part of the process of making or mending, buying, selling, processing, disposing of, supplying or carrying arms or ammunition or explosives for the commission of dacoity. (5) Mediating in the settlement, or standing surety for the payment of ransom to an abductor or a kidnapper. (6) Spying of the persons assembled before or after the commission of dacoity or preparing to commit dacoity. (7) Receiving benefits from the person committing all or any of the above mentioned offences.