

Bihar Special Courts Rules, 2010

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Rule BIHAR-SPECIAL-COURTS-RULES-2010 of 2010

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Bihar Special Courts Rules, 2010Published vide Notification No. N. V.-Vividh-527/2008-682, dated 10.2.2010Last Updated 11th February, 2020No-N. V.-Vividh-527/2008-682. - In exercise of the powers conferred by Section 24 of the Bihar Special Courts Act 2009 (Act no. 5 of 2010.), the Governor of Bihar do hereby make the following Rules, namely :-

1. Short title and commencement.

(1)These Rules may be called the Bihar Special Courts Rules, 2010.(2)They shall come into force on the date of their publication in the Bihar Gazette.

2. Definitions.

(1)In these Rules, unless the context otherwise requires :-(a)"Act" means the Bihar Special Courts Act, 2009;(b)"Court" means a Special Court established under Sec.-3(1) of Chapter II of the Bihar Special Courts Act, 2009;(c)Code means Criminal Procedure Code, 1973;(d)"Form" means a Form appended to these Rules;(e)"High Court" means the High Court of Patna;(f)Public servant means a public servant as defined within the meaning of clause (c) of Section 2 of the Prevention of Corruption Act, 1988 or under Section 21 of the Indian Penal Code, 1860 and including Group-A service of the Central or State Government or officers of equivalent rank in any organization specified in the explanation below clause (b) of Section 2 of the said Act who was serving under or in connection with the affairs of the State Government;(g)" Section " means a Section of the Act; and(h)" State Government" means the Government of Bihar.(i)Penal Code means Indian Penal Code, 1860.(2)Words and expressions used herein but not defined shall have the same meaning as respectively assigned to them in the code or the Act.

3. Procedure for nomination.

(1)The State Government shall nominate a serving officer belonging to the Bihar Superior Judicial Service (Senior Branch) in consultation with the High Court of Patna to be the Presiding Judge of the Court. The Presiding Judge shall be or shall have functioned as a Sessions Judge/Additional Sessions Judge in the State.(2)Jurisdiction of a Court under the Act shall be such as may be decided by State Government from time to time.(3)The Court shall have its sittings at such place or places as may be decided by the State Government from time to time.

4. Privileges of the Presiding Judge of the Court.

- The Presiding Judge shall be assisted by such officers and staff as may be decided by the State Government in consultation with him.

5. The tenure of office of the Presiding Judge.

- The Presiding Judge shall ordinarily continue in office for three years or till the appointment and joining of another Presiding Judge.

6. Cognizance of and trial by the Court.

- The Court shall take cognizance of and try such cases as are instituted before it under sub section (1) of Section 6 or transferred to it under sub section (2) thereof or Section 10.

7. Declaration.

(1)The declaration to be made by the State Government under sub-section (1) of Section 5 shall be, in Form I.(2)The declaration shall be published in the official Gazette and communicated to -(i)the Court;(ii)the concerned Court of the Special Judge under the Prevention of Corruption Act, 1988 from which the pending proceedings stand transferred;(iii)the investigating agency or agencies;(iv)the person concerned;(v)the Government in Vigilance Department; and(vi)any other authority as may be considered expedient by the State Government.

8. Appointment of Public Prosecutors and their fees.

(1)One or more Special Public Prosecutors may be appointed by the State Government on the recommendation of Advocate General, Bihar to institute and conduct cases in the Special Court. Tenure of special public prosecutors shall ordinarily be of three years.(2)Government may appoint one or more Additional or Associate Public Prosecutors on the recommendation of Special Public prosecutors to assist the Special Public Prosecutor. The Special Public Prosecutors and Additional or Associate Public Prosecutors shall be paid such fees and allowances at such rates as may be decided by the State Government from time to time.

9. Authorised Officer.

(1)The State Government, in consultation with the High Court, shall nominate an officer belonging to the cadre of the the Bihar Superior Judicial Service (Senior Branch) who is or has been a sessions Judge or Additional Sessions Judge to act as the authorised officer for the purposes of the Act.(2)The office of the authorised officer shall function at such place as the State Government may notify and shall be assisted by such staff as may be decided by the State Government.(3)The State Government may appoint one or more Special Public Prosecutors on the recommendation of Advocate General on such terms and conditions to make applications to the authorised officer and conduct cases before the said officer for confiscation of the money and other property under the Act. Tenure of Special Public Prosecutor shall ordinarily be of three years.

10. Authorised Officer to be public servant.

- The authorised officer shall be a public servant within the meaning of Section 21 of the Indian Penal Code and any proceeding before him shall be deemed to be a judicial proceeding for the purpose of Section 228 of the Code.

11. Authorised officer to follow summary procedure.

(a)On receipt of application under Section 13 read with Rule 14 the authorised officer shall immediately issue notice to the delinquent public servant.(b)If the delinquent public servant responds to the notice and appears before the authorised officer either in person or through his legal representative, he shall be furnished with the copy of the application filed under Section 13 along with all its enclosure. The authorised officer shall allow 30 days time for appearance of delinquent public servant to file his statement in defence. If for good and valid reasons, to the satisfaction of the authorised officer, delinquent public servant does not file his statement of defence, he may allow maximum of 15 days time within which he shall have to file his statement of defence.(c)If the delinquent public servant does not file his statement of defence within the prescribed period of 30 days or within extended period of 15 days, it shall be presumed that he has no defence to put forward. The authorised officer shall be free to adjudicate the proceeding instituted before him.(d)If the delinquent public servant submits his statement in defence, a copy of the same shall be made available to the special Public Prosecutor conducting the proceeding before the authorised officer who shall have the opportunity to reply to the same.(e)The special Public Prosecutor shall have to reply within maximum period of 15 days from service of statement of defence upon him.(f)If the special Public Prosecutor fails to submit his reply within 15 days, the authorised officer may for good or valid reason allow further period of 15 days for filing the reply, failing which the authorised officer shall proceed to adjudicate the proceeding as if the prosecution has no reply to submit.(g)If the delinquent public servant proposes to contest the valuation of the property, the authorised officer may take assistance of such State Government agency or Central Government agency or any other officer or person technically qualified as he may deem fit and proper.(h)The authorised officer, on consideration of statement of defence, reply of public prosecutor and report of experts, if any, shall adjudicate the proceeding and will pronounce final verdict within a maximum period of 6 months from the day of service of notice.(i)The authorised officer, after final adjudication, may proceed to

confiscate the property in accordance with Section 15 of the Act.

12. Special courts to follow summary procedure.

(a) On institution of a case or transfer of pending proceeding to the Special Courts, trial shall be held in summary manner. (b) After institution of a case or transfer of a pending proceeding the special court shall cause issuance of summons to the delinquent public servant immediately. (c) On service of summons, if the accused appears, he may be committed to judicial custody or may be released on bail, in exercise of power conferred under Sections 439 and 440 of the Code, provided the delinquent public servant has not already been released on anticipatory bail. (d) The special court shall pass reasoned order for refusing to release the delinquent public servant on bail. (e) If the delinquent public servant does not appear before the special court on issuance of summon, it shall be open to the court to secure his attendance by issuance of bailable or non-bailable warrant of arrest as he may deem fit. On production of delinquent public servant, in pursuance of execution of non-bailable warrant, the special court may in its discretion release him on bail or send him to judicial custody and in all such cases he shall pass reasoned order. (f) The delinquent public servant shall be put on trial and shall be afforded opportunity to lead evidence in support of his defence. If the special court, on the evidence of delinquent public servant is, prima facie, satisfied that he has been able to discharge his onus, the prosecution shall be called upon to lead its evidence to prove the charges against the delinquent public servant. (g) The special court may allow the prosecution to lead the oral and documentary evidence in support of charges. (h) On conclusion of evidence by the delinquent public servant and prosecution, the special court shall proceed to adjudicate the proceeding before him and may declare the delinquent public servant offender or may acquit him, as he may consider fit in the interest of justice.

13. Application of Code of Criminal Procedure.

- The provisions of the Code of Criminal Procedure, 1973 shall, in so far as they are not inconsistent with the provisions of the Act, apply to the proceedings before the authorised officer.

14. Particulars of application made before the authorised officer and Form of notice.

(1) The application to be filed under Section 13 before the authorised officer shall, inter alia, contain the following particulars, namely :-(a) name of the delinquent public servant; (b) official designation and detailed addresses of the delinquent public servant; (c) the particulars of the known source of income of the delinquent public servant; (d) particulars of assets that are maintained by the delinquent public servant and their estimated value; (e) how much of these assets are disproportionate to the known sources of income; (f) manner of confiscation prayed for; (g) name and detailed address of the persons whose affidavits are furnished in support of the case; and (h) location of the money or property with appropriate value. (2) The notice to be issued under Section 14 shall be in Form II. (3) The applications filed before the authorised officer shall be in Form III.

15. Application of Indian Evidence Act.

- The Indian Evidence Act shall mutatis mutandis be applicable to proceedings before the Court and the authorised officer in recording the evidence.

16. Services of Police required by the Court.

- The State Government shall make available the services of the Police Officers as may be required by the Court and the authorised officer in implementing and executing the orders passed by them.

17. Maintenance of Registers by the Authorised Officer.

(1) The following Registers may be maintained in the office of the authorised officer, namely:-

- (1) C.C. Register As prescribed in form III.
- (2) Receipt Register
- (3) Issue Register As prescribed by the Government
- (4) Dispatch Register
- (5) Accounts Register

(2) The authorised officer may also maintain such other Registers as may be considered necessary in the conduct of business of his office. Form No. I (See Rule 7) Declaration Whereas, It was alleged that Shri.....(name and address) while

Holding.....Office (indicate name of /Public Office) in the State of Bihar committed an offence under clause (e) of sub-section (1) of Section 13 of the Prevention of Corruption Act, 1988 and that the matter was investigated in Vigilance Case No.....of, And

Whereas, on scrutiny of relevant materials available on record, the State Government is of the opinion that there is prima facie case of Commission of the (name of the accused) who has accumulated properties disproportionate to his known sources of income by resorting to corrupt means; And Whereas, it is felt necessary and expedient by the Government that the said offender should be tried by the Special Court established under sub-section (1) of Section 3 of Special Courts Act, 2009; Now, Therefore, in exercise of the powers conferred by sub-section (1) of Section 5 of Special Courts Act, 2009, the State Government do hereby declare that the said offence shall be dealt with under the Special Courts Act, 2009. Form No. II [See Rule 14 (2)] Notice of Confiscation To Name.....Designation.....

of residence.....Address.....Whereas, an application has been filled against you by the Public Prosecutor being authorized by the State (copy of application to be attached) that your assets are disproportionate to your known source of income; you are hereby called upon to report by.....as to your sources of income, earning of assets, out of which or by means of which you have acquired such money/property the evidence on which you intended to rely upon and submit relevant information's and particulars and show cause as to why all or any of such money/property should not be declared to have been acquired by means of offence and confiscated to State Government. (Authorised Officer with

Seal)Form No. III[See Rule 14(3)]Registration of Confiscation Cases

- 1. Date of filing application**
- 2. Sl. No. of application**
- 3. Name of delinquent**
- 4. Address of the delinquent**
- 5. Particular of known sources of income**
- 6. Particular of accumulation of assets estimated value**
- 7. Particulars of properties disproportionate to the known source of income**
- 8. Names of witnesses examined on behalf of State**
- 9. Name of the witnesses examined on behalf of delinquent**
- 10. Particulars of documents proved in the case on behalf of the State**
- 11. Particular of documents proved on behalf of delinquent**
- 12. Date of final order passed by the authorised officer**
- 13. Gist of the order**
- 14. Remarks**