

## APPENDIX XXVII

### (Regulation 438)

#### **Rules for dealing with Military offenders.**

1. The following rules shall be observed in respect of accused people's subject to the jurisdiction of both criminal courts and courts martial-

When a person subject to the Indian Army Act, 191, is accused of an offence in respect of which both a criminal court and a court martial have jurisdiction and is in military custody the prescribed military authority, if he decides that the case ought to be tried by a criminal court, should move the Magistrate to investigate the charge, handing over the accused to him for that purpose. In this event the senior executive officer, not below the rank of Assistant Superintendent, shall address a requisition to the military authorities, accompanied in the case of a non-cognizable offence by a warrant signed by a Magistrate. If, however, he decides that the charge is to be tried by court martial, the accused will be kept in military custody pending such trial, and the Magistrate, should he consider that the charge should be tried by a criminal court, must take action under section 70. When, on the other hand, the accused in such a case is in civil custody, the Magistrate should not proceed to investigate the charge until he has communicated with the prescribed military authority and ascertained that officer's decision under section 69. If dissatisfied with the decision of that officer in favour of a court martial, the Magistrate should take action under section 70, but in the meantime the accused should be delivered into military custody. Thus, if the civil police have information of a theft or other offence alleged to have been committed by A, a person subject to the Indian Army Act, and the case is one in which both a criminal court and a court martial have jurisdiction, and if in consequence A is arrested by such police, A must be at once placed in civil custody, wherever the arrest may have been effected, and will remain in such custody, unless and until the officer Commanding the troops to which he belongs decides that he shall be tried by a court martial and directs that he shall be detained in military custody. To that officer an intimation of the fact of A's arrest should be communicated by the Magistrate who has concurrent jurisdiction; and if the decision under section 69 is in favour of a court martial and is communicated within a reasonable time to the Magistrate, the Magistrate should at once cause A to be handed over to the military authorities under a proper escort, to be provided by the latter, reserving to himself the right of, if necessary, compelling a reference to the Central Government under section 70. In case of doubt as to whether an accused person in civil custody is liable to be tried by court martial, the Magistrate concerned should before beginning any investigation into the charge, communicate with the Officer Commanding the troops to which such accused person belongs, and proceed as directed above. In similar cases of doubt, if the accused is in military custody, the Magistrate would do well to communicate first with the Officer Commanding the troops to which the accused belongs, taking formal action under section 70. Where a criminal court and court martial have concurrent jurisdiction, it is, as a rule, desirable that the accused should be tried by the



later; but in cases of thefts of arms, ammunition of other property belonging to the Crown, if there is reason to suspect that persons, other than the accused, who are not subject to the Indian Army Act, 1911, are directly or indirectly implicated, it may often be expedient for the Officer Commanding the troops to decide in favour of investigation by the criminal court as more likely to ensure the discovery and punishment of all the accessories to the offence.

2. The above rules are only applicable to person's subject to the Indian Army Act, 1911 (VIII of 191), i.e., roughly, all Indians whether commissioned officers or not, who belong to His Majesty's Indian Army and when on active service on the frontier, certain other persons. When dealing with such persons, sections 1, 7, 41, 69-71 of the Indian Army Act, 1911, should be read. British Officers serving in the Indian Army, and all officers and soldiers in His Majesty's British forces serving in India are subject to the Army or Air Force Act and English Military law. The civil authorities deal with such persons under the rules made by the Government of India by a Notification in the Home Department No. 465-28, dated the 27th June 1928. These rules together with section 41 of the Army Act (44 and 45 Vict., Cap. 58) to which they refer are reproduced below.

Note: Section 41 of the Air Force Act referred to in the rules does not differ in any material particular from section 41 of the Army Act.

It will be that such persons can be tried by court martial in India under English Military law, for the offences of treason, murder, manslaughter, treason- felony or rape only if the offender was on active service or the scene of the offence is more than 100 miles from any city or town, in which the offender can be tried by a competent —Civil court. Subject to these exceptions a court martial has absolute jurisdiction to try any —Civil offence with which a person subject to the Army Act is charged.

Note: (i) A military man is —on active service within the meaning of the statute, whenever he is attached to or forms part of a force which is engaged operations against an enemy (including armed mutineers, armed rebels, armed rioters and pirates) or is engaged in military operations in a country or place or wholly or partly occupied by an enemy or is in military occupation of any foreign country.

(ii) —Civil here means —Civil as opposed to —Military and includes offences against the Code of Criminal Procedure.

(Carnduff's Military and Cantonment Law in India, Pages 565-567).

Govern of India, Home Department, Notification No. F. 465/28, dated the 27th June 1928:

In exercise of the power, conferred by sub-section (1) of section 549 of the Code of Criminal Procedure 1898 (Act V of 1898), and in supersession of the notification of the Government of India in the Home Department No. 817, dated the 23rd May 1902, the Governor-General in Council is pleased



to make the following rules as to cases in which person subject to military or air force law shall be tried by a court to which the said code applies, or by a court-martial, namely: —1. where a person subject to military or air force law is brought before a Magistrate and charged with an offence for which he is liable under section 41 of the Army Act or under section 41 of the Air Force Act, as the case may be, to be tried by a court-martial, such Magistrate shall not proceed to try such person, or to issue orders for his case to be referred to a Bench, or to inquire with a view to his commitment for trial by the court of Sessions or the High Court for any offence triable by such unless-

(a) he is of opinion, for reasons to be recorded that he should so proceed without being moved there to by competent military or air force authority, or (b) he is moved there to by such authority.

2. Before under clause (a) of rule 1 the Magistrate shall give notice to the Commanding Officer of the accused and, until the expiry of a period of five days from the date of the service of such notice, he shall not –

a) acquit or convict the accused under sections 243, 247 or 248 of the Code of criminal Procedure, 1898 (Act V of

1898) or hear him in his defence under section 244 of the said Code; or

b) frame in writing a charge against the accused under section 254 of the said Code; or

c) make an order committing the accused for trial by High Court or the Court of Sessions under Section 213 or sub-section (1) of section 446 of the said Code; or

d) issue orders under sub-section (1) of section 445 of the said Code, for the case to be referred to a bench.

3. Where within the period of five days mentioned in rule 2, or at any time thereafter before the Magistrate has done any act or issued any order referred to in that rule, the Commanding Officer of the accused gives notice to the Magistrate, that in the opinion of competent military or air force authority, as the case may be, the accused should be tried by a court – martial, the Magistrate shall stay proceedings and, if the accused is in his power or under his control, shall deliver him, with the statement prescribed by section 549 of the said Code, to the authority specified in the said section.

4. Where a Magistrate has been moved by competent military or air force authority, as the case may be, under clause (b) of rule 1, and the Commanding officer of the accused subsequently gives notice to such Magistrate that, in the opinion of such authority, the accused should be tried by a court-martial, such Magistrate, if he has not before receiving such notice done any act or issued any order referred to in rule 2, shall stay proceedings and, if the accused is in his power or under his control, shall in the like manner deliver him, with the statement prescribed in section 549 of the said Code to the authority specified in the said section.

5. Where an accused person, having been delivered by the Magistrate under rule 3 or 4, is not tried by a court-martial for the offence of which he is accused, or other effectual proceedings are not taken, or ordered to be taken



against him, the Magistrate shall report the circumstance to the Provincial Government.

Note: In these rules — competent military authority means the Brigade Commander, and — competent air force authority means the —Air Officer Commanding, Royal Air Force in India. (Government of India, Home Department Notification No. F.

680-33, dated the 3rd August 1933).

Section 41 of the Army act (44 and 45 Vict., Cap 58).

—Subject to such regulations for the purpose of preventing interference with the jurisdiction of the civil court as are in this

Act after mentioned, every person who, whilst he is subject to military law, shall commit any of the offences in this section mentioned shall be deemed to be guilty of an offence against Military law, and if charged under this section with any such offence (in this Act referred to as a civil offence) shall be liable to be tried by Court martial, and on conviction to be punished as follows that is to say-

1) if he is convicted of treason, be liable to suffer death, or such less punishment as in this Act mentioned; and 2) if he is convicted of murder, be liable to suffer death; and

3) if he is convicted of manslaughter or treason-felony, be liable to suffer penal servitude, such less punishment as is in this Act mentioned; and

4) if he is convicted of page, be liable to suffer penal servitude, or such less punishment as is in this Act mentioned; and

5) if he is convicted of any offence not before in this section particularly specified which when committed in England is punishable, by the law of England, be liable whether the offence is committed in England or elsewhere, either to suffer such punishment as might be awarded to him in pursuance of this Act in respect of an Act to the prejudice of good order and military discipline, or to suffer any punishment assigned for such offence by the law of England:

Provided that a person subject to military law shall not be tried by Court-martial for treason, murder, manslaughter, treason- felony or rape committed in any place within his Majesty's dominions, other than the United Kingdom and

Gibraltar, unless such person at the time he committed the offence was on active service, or such place is more than one hundred miles as measure in a straight line from any city or town in which the offender can be tried for such offence by a competent civil court.