

CHAPTER V  
SANCTION FOR PROSECUTION AND OTHER  
MISCELLANEOUS PROVISIONS

19. Previous sanction necessary for prosecution: -

(1). No court shall take cognizance of an offence punishable under sections 7,10,11,13 and 15 alleged to have been committed by a public servant, except with the previous sanction:-

- (a) no finding, sentence or order passed by a Special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby ;
- (b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error that such error omission or irregularity has resulted in a failure of justice;
- (c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4). In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation :- For the purposes of this section :-

- (a) error includes competency of the authority to grant sanction;
- (b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature.

20. Presumption where public servant accepts gratification other than legal remuneration :-

- (1) Where in any trial of an offence punishable under section 7 or section 11 or clause 9a0 or clause (b) of sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration ) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be without consideration or for a consideration which he knows to be inadequate.
- (2) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal

remuneration ) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no inference of corruption may fairly be drawn.

21. Accused person to be a competent witness :-

Any person charged with an offence punishable under this Act , shall be a competent witness for the defence and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial :

Provided that :-

- (a) he shall not be called as a witness except at his own request;
- (b) his failure to give evidence shall not be made the subject of any comment by the prosecution or give rise to any presumption against himself or any person charged together with him at the same trial;
- (c) he shall not be asked, and if asked shall not be required to answer, any question tending to show that he has committed or been convicted of any offence other than the offence with which he is charged, or is of bad character, unless :-
  - (i) the proof that he has committed or been convicted of such offence is admissible evidence to show that he is guilty of the offence with which he is charged, or
  - (ii) he has personally or by his pleader asked any question of any witness for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or any witness for the prosecution; or
  - (iii) he has given evidence against any other person charged with the same offence.

22. The code of Criminal Procedure, 1973 to apply subject to certain modifications :-

The provisions of the Code of Criminal Procedure, 1973,(2 of 1974) shall in their application to any proceeding in relation to an offence punishable under this Act have effect as if:-

- (a) in sub-section (1) of section 243, for the words “The accused shall then be called upon”, the words “ The accused shall then be required to give in writing at once or within such time as the Court may allow, a list of the persons (if any) whom he proposes to examine as his witnesses and of the documents (if any) on which he proposes to rely and he shall then be called upon “ had been substituted :
- (b) in sub-section (2) of section 309, after the third proviso, the following proviso had been inserted, namely :-

‘ Provided also that the proceeding shall not be adjourned or postponed merely on the ground that an application under section 397 as been made by a party to the proceeding “.

- (c) after sub-section (2) of 317, the following sub-section had been inserted, namely :-  
“(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the Judge may, if he thinks fit and for reasons to be recorded by him , proceed with inquiry or trial in the absence of the accused or his pleader and record the evidence of any witness subject ot the right of the accused to recall the witness for cross-examination”.
- (d) in sub-section (1) of section 397, before the explanation, the following proviso had been inserted, namely :-  
“ Provided that where the powers under this section are exercised by a Court on an application made by a party to such proceedings , the Court shall not ordinarily call for the record of the proceedings :-  
(a) without giving the other party an opportunity of showing cause why the record should not be called for; or  
(b) if it is satisfied that an examination of the record of the proceedings may be made from the certified copied ,”

23. Particulars in a charge in relation to an offence under section 13 (1) (c) :-

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2of 1974) when an accused is charged with an offence under clause (c) of sub-section (1) of section 13, it shall be sufficient to describe in the charge the property in respect of which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 219 of the said Code :

Provided that the time included between the first and last of such dates shall not exceed one year.

24. Statement by bribe giver not to subject him to prosecution :-

Notwithstanding anything contained in any law for the time being in force, a statment made by a person in any proceeding against a public servant for an offence under sectons 7 to 11 or under section 13 or section 15, that he offered or agreed to offer any gratification (other than legal remuneration ) or any valuable thing to the public servant, shall not subject such person to a prosecution under section 122.

25. Military, Naval and Airforce or other law no to be affected :-

- (1) Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any court of other authority under the Army Act, 1952 (45 of 1950), the Air Force Act, 1950 (46 of 1950), the Navy Act, 1957 (62 of 1957), the Border Security Force Act, 1968 (47 of 1968), the Coast Guard Act, 1978 (30 of 1978) and the National Security Guard Act, 1986 (47 of 1986)

(2) For the removal of doubts, it is hereby declared that for the purposes of any such law as is referred to in sub-section (1) the court of the special judge shall be deemed to be a court of ordinary criminal justice.

26. Special Judges appointed under Act 46 of 1952 to be special judges appointed under this Act :-  
Every special judge appointed under the Criminal Law Amendment Act, 1952 , for any area or areas and is holding office on the commencement of this Act shall be deemed to be a special Judge appointed under section 3 of this Act for that area or areas and, accordingly , on and from such commencement, every such Judge shall continue to deal with all the proceedings pending before him on such commencement in accordance with the provisions of this Act.
27. Appeal and revision :-  
Subject to the provisions of this Act, the High Court may exercise, so far as they may be applicable, all the powers of appeal and revision conferred by the Code of Criminal Procedure, 1973 (2 of 1974) as if the court of the special judge were a court of Session trying cases within the local limits of the High Court.
28. 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 of the time being in force, and nothing contained herein shall exempt any public servant from any proceeding which might, a part from this Act, be instituted against him.
29. Amendment of the Ordinance 38 of 1944:-
- (a) in sub-section (1) of section 3, sub-section (1) of Section 9 , clause (a) of section 10, sub-section (1) of Section 11 and sub-section (1) of Section 13, for the words “ State Government”, wherever they occur, the words “State Government or, as the case may be, the Central Government “ shall be substituted;
  - (b) in section 10, in clause (a), for the words “three months”, the words “ one year “ shall be substituted;
  - (c) in the Schedule :-
    - (i) Paragraph I shall be omitted ;
    - (ii) in paragraphs 2 and 4:-
      - (a) after the words “ a local authority”, the words and figures “ or a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by Government or a Government company as defined in section 617 of the Companies Act 1956 (1 of 1956 ) or a society aided by such corporation, authority, body or Governmental company” shall be inserted;
      - (b) after the words “ or authority”, the words “ or corporation or body or Government company or society” shall be inserted;

- (iv) for paragraph 4A, the following paragraph shall be substituted, namely :-  
“ 4A, An offence punishable under the Prevention of Corruption Act, 1988”,
- (v) in paragraph 5, for the words and figures “items 2,3, and 4”, the words figures and letter “ items 2,3,4 and 4 A “ shall be substituted.

30. Repeal and saving :-

- (1) The Prevention of Corruption Act, 1947 (2 of 1947) and the Criminal Law Amendment Act, 1952 (46 of 1952) are hereby repealed.
- (2) Notwithstanding such repeal, but without prejudice to the application of section 6 of the General Clauses Act, 1897 (10 of 1897) anything done or any action taken or purported to have been done or taken under or in pursuance of the Acts so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under or in pursuance of the corresponding provision of this Act.

31. Omission of certain sections of Act 45 of 1860:-

Sections 161 to 165A (both inclusive) of the Indian Penal Code shall be omitted, and section 6 of the General Clauses Act, 1897 (10 of 1897) shall apply to such omission as if the said sections had been repealed by a Central Act.