

THE ¹[KHYBER PAKHTUNKHWA], SPECIAL TRIBUNAL ACT, 1948.

(ACT NO. XXII OF 1948)

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¹ Substituted vide Khyber Pakhtunkhwa Act. No. IV of 2011.

THE ¹[KHYBER PAKHTUNKHWA], SPECIAL TRIBUNAL ACT, 1948.

(ACT NO. XXII OF 1948)

[Received the assent of the Governor-General on the 3rd January, 1949].

AN
ACT

*to provide for the more speedy trial and more effective
punishment of certain offences.*

WHEREAS it is expedient to provide for the more speedy trial and more effective punishment of certain offences. Preamble.

It is hereby enacted as follows:—

1. (1) This Act may be called the ²[Khyber Pakhtunkhwa] Special Tribunal Act, 1948:— Short title, extent and commencement.

(2) It extends to the whole of the ³[Province of the Khyber Pakhtunkhwa].

(3) It shall come into force at once.

2. The Provincial Government may, by notification in the official gazette constitute for the purposes of this Act, Special Tribunals to sit at any place in the ⁴[Khyber Pakhtunkhwa] specified in the notification: Constitution of Special Tribunals.

Provided that any such tribunal may, if it is satisfied that it will tend to the general conveniences of parties or witnesses in any particular case, sit for the trial of that case in a place other than the place herein before specified for it.

3. (1) A Special Tribunal constituted under this Act shall consist of three members, of whom each shall be a person who:— Composition of Special Tribunals.

(a) is qualified under ⁵[Article 92 of the Constitution] for appointment as Judge of a High Court; or

(b) has for a period of not less than three years, exercised, whether continuously or not, the powers under the Code of Criminal Procedure, 1898, of a Sessions Judge or an Additional Sessions

¹ Substituted vide Khyber Pakhtunkhwa Act. No. IV of 2011.

² Substituted vide Khyber Pakhtunkhwa Act. No. IV of 2011.

³ Substituted vide Khyber Pakhtunkhwa Act. No. IV of 2011.

⁴ Substituted vide Khyber Pakhtunkhwa Act. No. IV of 2011.

⁵ Substituted vide W.P.A.O, 1964.

Judge;

and at least two shall have the qualification specified in clause (a).

(2) The Provincial Government shall appoint one of the members qualified under sub-section (1) (a) to be the President of the Special Tribunal.

4. (1) The Special Tribunals shall have jurisdiction to try any case where the accused is charged with an offence specified in the Schedule hereto and any such case which, at the commencement of this Act, is pending before any Court shall be deemed to be transferred to the Special Tribunal.

Cases triable by Special Tribunals.

(2) When trying any such case as aforesaid, Special Tribunal may also try any offence, whether or not specified in the Schedule hereto, which is an offence with which the accused may, under the Code of Criminal Procedure, 1898, be charged at the same trial.

5. (1) A Special Tribunal may take cognizance of any offence as aforesaid without the accused being committed to it for trial and in trying the accused it shall follow the procedure prescribed by the Code of Criminal Procedure, 1898, for the trial of warrant cases by Magistrates:

Procedure and power of Special Tribunals.

Provided that a Special Tribunal may refuse to summon any witness if it is satisfied, after examining the accused in that behalf, that the evidence of such witness is not material, and it shall not be bound to adjourn any trial for any purpose unless such adjournment is, in its opinion, necessary in the interest of Justice:

Provided further that for the purposes of sub-section (1) of Section 356, of said Code, English shall be deemed to be the language of the said Court and the Tribunal may decide by which one, if any of its members, the evidence of any or all witnesses shall be taken in writing, and where, under the provisions of that subsection, the evidence is taken down under the direction and superintendence of the Tribunal, but not by a member thereof the provisions of sub-section (3) of Section 356, shall not apply.

(2) Notwithstanding anything contained in Section 3, of this Act, the Special Tribunal may require anyone of its members to proceed with the trial of a case in the absence of the other two members:

Provided that all the three members shall be present when, on the evidence being concluded, the prosecutor or his pleader is addressing the Special Tribunal and also when the judgement in the case is delivered.

(3) Save as provided in sub-section (1), the provisions of the Code of Criminal Procedure, 1898, except those of Section 196-A and of Chapter XXXIII, shall, so far as they are not inconsistent with this Act, apply to be proceedings before a Special Tribunal, and for the purposes of the said provisions, the Special Tribunal shall be deemed to be a Court of Session,

trying cases without a jury and a person conducting the prosecution before a Special Tribunal shall be deemed to be Public Prosecutor.

(4) A Special Tribunal shall not, merely by reason of a change in its members, be bound to recall and rehear any witness who has given evidence, and it may act on the evidence already recorded by or produced before it.

(5) In the event of any difference of opinion among the members of Special Tribunal, the opinion of the majority shall prevail.

(6) A Special Tribunal may pass any sentence authorized by law.

6. There shall be no appeal from any order or sentence of a Special Tribunal, and no Court shall have authority to transfer any case from a Special Tribunal or to issue directions under Section 491, of the Code of Criminal Procedure, 1898, or, save as provided in Section 7, below have any jurisdiction of any kind in respect of any proceedings before a Special Tribunal. Bar of appeals and certain other jurisdiction.

7. (1) ¹[The High Court] may call for record of any case which has been decided by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of any finding; sentence or order recorded or passed and may, in its discretion exercise any of the powers conferred on a court of appeal by Section 423, 426, 427 and 428 or on a court by Section 338 and may enhance the sentence and, when the Judges of the ²[High Court] are equally divided in opinion, the case shall be disposed of as provided by Section 429, of the Criminal Procedure Code. Revision.

(2) No order under this Section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by a pleader in his own defence.

(3) ³[The High Court] may convert the finding of acquittal into one of conviction.

8. No prosecution under this Act of any person either generally or in respect of any one or more of the offences for which he is being tried shall be withdrawn except under the order of the Provincial Government. Power of the Provincial Government to withdraw prosecutions.

9. (1) When any person is charged before a Special Judge with an offence triable under this Act and it is proved that such person, or any other person through him or on his behalf is in possession, for which he cannot satisfactorily account, of pecuniary resources, or property disproportionate to his known sources of income, of that such person has on or about the time of Special rules of Evidence.

¹ Subs: vide W. P. Laws (Adaptation) Order, 1964.

² Subs. ibid for the words "Judicial Commissioner".

³ Subs: vide W. P. Laws (Adaptation) Order, 1964.

offence with which he is charged, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, it shall be presumed, unless the contrary is proved by the person charged, that such person has committed an offence under section 161 to 165 of the ¹[Pakistan Penal Code] as the case may be.

(2) Where in any trial before a Special Judge of an offence punishable under section 161 to 165 of the ²[Pakistan Penal Code,] 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 or any, pecuniary advantage from a person or the agent of a person, for any favour shown or promised to be shown by the accused person, it shall be presumed, unless the contrary is proved, that he accepted or obtain, or agreed to accept or attempted to obtain, that gratification or that valuable thing, or pecuniary advantage to himself or some other person, as the case may be as a motive or reward such as is mentioned in Section 151—163, ³[Pakistan Penal Code] or, as the case may be without consideration, or for a consideration which he knows to be inadequate:

Provided that the court may decline to draw such presumption if the gratification or thing or pecuniary advantage aforesaid is in its opinion so trivial that no inference of corruption may fairly be drawn from the same.

10. When any person charged before a Special Tribunal with an offence punishable under this Act is found guilty of that offence, the Special Tribunal shall, notwithstanding anything contained in any other law, whether or not it passes a sentence of imprisonment, also pass a sentence of fine which shall not be less in amount than the amount of value of any gratification or valuable thing found to have been accepted or obtained by him in contravention of the provisions of this Act. Special provision regarding punishment of offences under this Act.
11. Whoever being a public servant shows favour or extends patronage to any person by reason of any relationship, friendship or otherwise and thereby does or forbears to do any official act or in the exercise of his official function renders or attempts to render any disservice to any person shall be deemed to have committed an offence punishable under Section 161 of the ⁴[Pakistan Penal Code]. Special provision extending the scope of Section 161 Indian Penal Code.
12. When the Special Tribunal ceased to function the sentences or orders passed by it in any case shall, for the purpose of the provisions of the Code of Criminal Procedure, 1898, applicable in respect of those sentences or orders, be deemed to have been passed by the Court of Sessions within the local limits of whose jurisdiction the offence charged Provision regarding sentences and orders of the special Tribunal which cease to

¹ Subs, vide W. P. Act XVI of 1957.

² Subs, vide W. P. Act XVI of 1957

³ Subs, vide W. P. Act XVI of 1957.

⁴ Subs, vide W. P. Act XVI of 1957.

in the case, or alleged to have taken place, or if there be more than one Court of Sessions by such one of them as ¹[The High Court] in revision on a reference made to it, specially in this behalf, may determine. function.

13. An offence punishable under Section 161 or Section 165 of the ²[Pakistan Penal Code] shall be deemed to be cognizable offence for the purposes of the Code of Criminal Procedure, 1898 notwithstanding anything to the contrary contained therein: Offences under sections 161 and 165 of the Penal Code to be Cognizable offences.

Provided that a police officer below the rank of the Deputy Superintendent of Police shall not investigate any such offence without the order of the Magistrate 1st class or make any arrest therefor without a warrant.

14. (1) The Provincial Government may frame rules to carry out the purposes of this Act. Powers to make rules.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for any of the following matters:—

(a) Authorisation of person to exercise the power to sanction prosecution on behalf of the Provincial Government in respect of various grades of Government servants;

(b) The emoluments of the members of the Tribunal;

(c) The summoning of witnesses and compelling the production of documents and the penalty for disobeying, or evading the same in addition to or substitution of the provisions of the Criminal Procedure Code;

(d) Other matter incidental to the above.

SCHEDULE. **(See Section 4)**

15. Offences punishable under Sections 465 to 468, 471, 474 and 477 (a) and under Chapter IX of the ³[Pakistan Penal Code.]

(2) An offence punishable under Sections 379, 380, 381, 382 and 403 to 409 of the ⁴[Pakistan Penal Code.] where the property in respect of which the offence is committed is property belonging to non-Muslims who have

¹ Subs: vide W. P. Laws (Adaptation) Order, 1964.

² Subs, vide W. P. Act XVI of 1957.

³ Subs, vide W. P. Act XVI of 1957.

⁴ Subs, vide W. P. Act XVI of 1957.

gone to ¹[India] and have left Pakistan or is the property entrusted by the Provincial Government or any department of such Government, any local authority or a person acting on behalf of any such Government department or authority.

An offence punishable under Section 411 or Section 414 of the ²[Pakistan Penal Code], where the stolen property in respect of which the offence is committed is such property as is described in the preceding item and in respect of which an offence punishable under Section 406 or Section 409 of the said Code has been committed.

(4) Any offence punishable under Section 416 to Section 420 of the ³[Pakistan Penal Code], where the person deceived is the Provincial Government or any department of such Government or any local authority or a person acting on behalf of any such Government, department or authority.

(5) Any other offence which the Provincial Government may from time to time by notification in the official Gazette, include in the Schedule.

(6) Any conspiracy to commit or any attempt to commit or any abetment of any of the aforesaid offences.

¹ Subs. vide W. P. A. O., 1964.

² Subs, vide W. P. Act XVI of 1957.

³ Subs, vide W. P. Act XVI of 1957.