

Repealed by Act-34 of 1982, S. 2

THE SPECIAL COURTS ACT, 1979

No. 22 of 1979

[16th May, 1979.]

An Act to provide for the speedy trial of a certain class of offences

WHEREAS Commissions of Inquiry appointed under the Commissions of Inquiry Act, 1952 have rendered reports disclosing the existence of prima facie evidence of offences committed by persons who held high public or political offices in the country and others connected with the commission of such offences during the operation of the Proclamation of Emergency, dated the 25th June, 1975, issued under clause (1) of article 352 of the Constitution;

AND WHEREAS investigations conducted by the Government through its agencies have also disclosed similar offences committed during the period aforesaid;

AND WHEREAS the offences referred to in the recitals aforesaid were committed during the operation of the said Proclamation of Emergency, during which a grave emergency was clamped on the whole country, civil liberties were curtailed to a great extent, important fundamental rights of the people were suspended, strict censorship was imposed on the press, judicial powers were severely crippled and the parliamentary democratic system was emasculated;

AND WHEREAS all powers being a trust, and holders of high public or political offices are accountable for the exercise of their powers in all cases where Commissions of Inquiry appointed under the Commissions of Inquiry Act, 1952 or investigations conducted by Government through its agencies disclose offences committed by such holders;

AND WHEREAS it is the constitutional, legal and moral obligation of the State to prosecute persons involved in the said offences;

AND WHEREAS the ordinary criminal courts due to congestion of work and other reasons cannot reasonably be expected to bring those prosecutions to a speedy termination;

AND WHEREAS it is imperative for the efficient functioning of parliamentary democracy and the institutions created by or under the Constitution of India that the commission of offences referred to in the recitals aforesaid should be judicially determined with the utmost dispatch;

AND WHEREAS it is necessary for the said purpose to establish additional courts presided over by sitting Judges of High Courts;

AND WHEREAS it is expedient to make some procedural changes whereby avoidable delay in the final determination of the innocence or guilt of the persons to be tried is eliminated without interfering with the right to a fair trial;

BE it enacted by Parliament in the Thirtieth Year of the Republic of India as follows:—

Short title and extent.

1. (1) This Act may be called the Special Courts Act, 1979.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) "Code" means the Code of Criminal Procedure, 1973;

(b) "declaration", in relation to an offence, means a declaration made under section 5 in respect of such offence;

(c) "Special Court" means a Special Court established under section 3;

(d) words and expressions used but not defined in this Act but defined in the Code shall have the same meanings as in the Code.

Establishment of Special Courts.

3. (1) The Central Government shall, by notification in the Official Gazette, establish an adequate number of courts to be called Special Courts.

(2) A Special Court shall consist of a sitting Judge of a High Court nominated by the Chief Justice of the High Court within the local limits of whose jurisdiction the Special Court is situated, with the concurrence of the Chief Justice of India.

Explanation.—Any reference to a High Court or to the Chief Justice or Judge of a High Court shall, in relation to a Union territory having a Court of the Judicial Commissioner, be construed as a reference to the said Court of the Judicial Commissioner or to the Judicial Commissioner or any Additional Judicial Commissioner, as the case may be.

Cognizance of cases by Special Courts.

4. A Special Court shall take cognizance of or try such cases as are instituted before it or transferred to it as hereinafter provided.

5. (1) If the Central Government is of opinion that there is *prima facie* evidence of the commission of an offence alleged to have been committed by a person who held high public or political office in India and that in accordance with the guidelines contained in the preamble hereto the said offence ought to be dealt with under this Act, the Central Government shall make a declaration to that effect in every case in which it is of the aforesaid opinion.

Declaration by Central Government of cases to be dealt with under this Act.

(2) Such declaration shall not be called in question in any court.

6. On such declaration being made in respect of any offence, notwithstanding anything in the Code, any prosecution in respect of such offence shall be instituted only in a Special Court designated by the Central Government and any prosecution in respect of such offence pending in any court shall stand transferred to a Special Court designated by the Central Government.

Effect of declaration.

7. If at the date of the declaration in respect of any offence an appeal or revision against any judgment or order in a prosecution in respect of such offence, whether pending or disposed of, is itself pending in any court of appeal or revision, the same shall stand transferred for disposal to the Supreme Court.

Pending appeal or revision to be transferred to Supreme Court.

8. A Special Court shall have jurisdiction to try any person concerned in the offence in respect of which a declaration has been made, either as principal, conspirator or abettor and all other offences and accused persons as can be jointly tried therewith at one trial in accordance with the Code.

Jurisdiction of Special Courts as to joint trials.

9. (1) A Special Court shall in the trial of such cases follow the procedure prescribed by the Code, for the trial of warrant cases before a magistrate.

Procedure and powers of Special Courts.

(2) A Special Court may, with a view to obtaining evidence of any person suspected to have been directly or indirectly concerned in or privy to an offence, tender a pardon to such person on condition of his making full and true disclosure of the whole circumstances within his knowledge relating to the offence and to every other person concerned whether as principal, conspirator or abettor in the commission thereof and any pardon so tendered shall for the purposes of section 308 of the Code be deemed to have been tendered under section 307 thereof.

(3) Save as expressly provided in this Act, the provisions of 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 a Special Court shall be deemed to be a Court of Session and shall have all the powers of a Court of Session and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

(4) A Special Court may pass upon any person convicted by it any sentence authorised by law for the punishment of the offence of which such person is convicted.

Power of Supreme Court to transfer cases.

10. (1) Whenever it is made to appear to the Supreme Court that an order under this section is expedient for the ends of justice, it may direct that any particular case be transferred from one Special Court to another Special Court.

(2) The Supreme Court may act under this section only on the application of the Attorney-General of India or of a party interested, and every such application shall be made by motion, which shall, except when the applicant is the Attorney-General of India or the Advocate-General of a State, be supported by affidavit or affirmation.

(3) Where any application for the exercise of the powers conferred by this section is dismissed, the Supreme Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of compensation to any person who has opposed the application such sum not exceeding one thousand rupees as it may consider appropriate in the circumstances of the case.

Appeal.

11. (1) Notwithstanding anything in the Code, an appeal shall lie as of right from any judgment, sentence or order, not being interlocutory order, of a Special Court to the Supreme Court both on facts and on law.

(2) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order of a Special Court.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of any judgment, sentence or order of a Special Court.

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

Power to make rules.

12. The Supreme Court may, by notification in the Official Gazette, make such rules, if any, as it may deem necessary for carrying out the purposes of this Act.

Notifications under section 3 and declarations under section 5 to be laid before Parliament.

13. Every notification made under sub-section (1) of section 3 and every declaration made under sub-section (1) of section 5 shall be laid, as soon as may be after it is made, before each House of Parliament.

(4) A Special Court may, after consulting the Attorney-General of India, make such rules, if any, as it may deem necessary for carrying out the purposes of this Act.