

Chapter 10

Prosecution by or against Police Officers - Legal Assistance

1. General

The provisions of Article 311 (2), Section 197 Cr.P.C. and also the provisions of limitation, as available in the 3 Police Acts provide certain safe guard to Police Officers, when criminal or departmental proceedings are initiated against them. A proper appreciation of the above provisions would ensure the ends of law and natural justice, while dealing with complaints against police officers.

2. Prosecution against police officers

- 1) No police officer shall be arrested/prosecuted by any one, for any offence committed in the discharge of his official duties, without the prior sanction of the Govt. This provision applies to the police officers in the State irrespective of the rank. An act done in the discharge of official duty or colour of duty is well laid down by Supreme Court and the High Court as discussed here in.
- 2) Sanction for prosecution is not necessary in all cases.
 - A. **When necessary:** Sanction is necessary when the case falls under 2 categories, viz.
 - (i) The act complained is authorised by a statute or law but became questionable as it was done fraudulently or dishonestly.
 - (ii) The act complained of though not authorised by statute or law but was intimately and integrally connected with his official duties and thus had a reasonable nexus.
 - B. **When not necessary:** Sanction is not necessary when there is no necessary connection between the act committed and the duties and

functions of the accused but the nature of duties only gave or furnished an occasion or opportunity for committing the act.

- 3) A police officer cannot file a civil suit or launch prosecution in his individual capacity or against another police officer for the acts done in his official capacity except with the previous sanction of D.G.P.

3. Punishment after conviction

A. The following guidelines should be followed in awarding punishments to the accused police officer after he is convicted for any offence by a court of law.

- 1) A conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank. The penalty imposed upon should not be arbitrary or grossly excessive or out of all proportion to the offence committed or one, not warranted by the facts and circumstances of the case. The disciplinary authority is to take the conviction as sufficient proof of misconduct on the part of the officer and has there after to decide (a) whether the conduct which has led to the conviction on a criminal charge was such as to warrant the imposition of any penalty and (b) if so what should be the penalty or quantum of penalty.
- 2) The disciplinary authority must study the judgement of the criminal court and take into consideration all the facts and circumstances of the case and also factors such as (a) the entire conduct of the officer (b) the gravity of the offence committed by him (c) the impact of his misconduct which is likely to have on the administration (d) whether the offence for which he was convicted was of a technical or trivial nature and (e) the extenuating factors if any present in the case.

- 3) The disciplinary authority should do this exercise ex-parte (Suo Moto) and he need not hear the police officer concerned before deciding upon the punishment to be imposed.
- 4) If an officer appeals to a higher court and gets a stay order and is in the meanwhile dismissed or any other punishment awarded by the department the stay will be in fructuous. Even in case he appeals to higher court and gets a stay for the suspension of sentence the process of dismissal or other punishment can be taken up by the department irrespective of the stay of sentence unless the conviction is also stayed.
- 5) **Conviction and sentenced to pay fine or released on probation under P.O. Act.** Police officers convicted but released on probation of good conduct under section 4 of probation of offenders act can be dismissed or removed from service or other wise punished on the ground of misconduct which led to conviction on criminal charge. In criminal trial the conviction is one thing and sentence is another. The court while invoking the provisions of section 3 or 4 of the probation of offenders act does not deal with the conviction. It only deals with the sentence, which the offender, has to undergo. Instead of sentencing the offender the court releases him on probation of good conduct. However the conviction remains untouched and the stigma of the conviction is not obliterated. Section 12 of the act does not preclude the department from taking action for misconduct, which leads, to the offence and to his conviction thereon as per law.

B. Where there is a grave criminal misconduct on the part of a police officer, action should be taken in terms of the Sikkim Police Force (Discipline & Appeal) Rules. If prosecution is also launched against such police officer in a criminal court and if the departmental inquiry is completed before the judgement in the criminal court is pronounced, the decision in the departmental proceeding shall ordinarily be postponed till the criminal case is disposed of.

4. Procedure on acquittal in a Criminal case

The following rules shall be observed where the Government servant is acquitted in a Criminal Court.

- 1) When a police officer has been tried and acquitted by a Criminal Court or his conviction on appeal is set aside and the same is arrived at by the Court, on the point of his conduct, he should ordinarily be re-instated.
- 2) When a Criminal Court acquits an officer on a purely technical ground or due to hostility of witnesses or on some other fact other than misconduct, it does not prohibit the department from proceeding against him in departmental proceedings.
- 3) Before deciding to launch a departmental enquiry or while disposing a pending enquiry in the case of a police officer, who is acquitted by the Criminal Court, the competent authority is under an obligation to apply his mind to the requirements prescribed to decide whether it is a fit case to defer from the rule of verdict of the Court or not.

5. Police Accountability Commission

(i) The State Government have constituted a Police Accountability Commission, in accordance with provision of Section 132 of the Sikkim Police Act, 2008 to inquire into public complaints against any police officer for serious misconduct either suo moto or on a complaint received from a victim or any person on his behalf, or from the National or State Human Rights Commissions, or from the Police or any other source. Serious misconduct for the purpose of Chapter 12 of the Sikkim Police Act has been defined as death in police custody, grievous hurt, rape or attempt to commit rape or arrest or detention without due process of law. In all cases directly inquired by it the Commission has all powers of a civil court trying a suit under the Code of Civil Procedure. The

Commission on completion of the inquiry communicates its findings to the DGP and the State Government and may also recommend to the State Government payment of monetary compensation.

(ii) The Commission shall be headed by a person who has been a judge of the High Court and such other members as provided u/s 133 of the said Act. The functions, powers and other matters relating to the Commission are defined under the Act. As per section 139 the Commission shall devise its own rules for the conduct of its business.

6. Rule for the defence of Police Officers in Criminal Prosecutions and Civil Suits for acts done by them in their official capacity

- 1) Police Officers will always be protected when it appears to the Government that they have acted in good faith.
- 2) If the Government decides not to undertake defence or to act on behalf of the Police Officer the officer may take such measures, as he considers necessary at his own expense to conduct prosecution on his behalf or to defend himself. If the verdict is in his favour the Government will ordinarily re-imburse his reasonable expenses.
- 3) When criminal proceedings are instituted against a Police Officer, either by Government or with their sanction, the Government as a general rule, declines to undertake his defence. However in exceptional cases where the Police Officer concerned is unable to arrange his defence at his own expense on account of financial or other valid reasons, the Government may sanction the defence, provided that, (a) the police officer undertakes to refund the entire sum incurred by the Government in connection with the conduct of his defence, if the case does not end in his favour and (b) the Government are satisfied about the possibility of recovering such sum from the police officer.

- 4) When in pursuance of these rules a police officer engages, and is permitted to engage, a counsel for his defence, the Government will reimburse the expenditure to the extent it is allowed to the Government counsel in the concerned court as per rules prevailing.
- 5) When a Civil suit is threatened to be launched against a police officer for acts done in the discharge of his official duties and if a notice is given prior to the filing of suit and/or if a written statement is to be filed by the police officer in connection with the suit pending, a copy of his reply to such notice or his written statement shall be submitted to the head of the unit through proper channel. If the unit head decides to defend the police officer, he should examine the reply submitted and issue suitable guidelines after taking legal advice.
- 6) When any criminal complaint is to be filed against a police officer in respect of any act committed by him in the discharge of his official duties, prior sanction is to be obtained from the Government. The Director General of Police (DGP) has to scrutinise the complaint and see whether it is within the limitations of the provisions of law. If it is so barred, he shall at once move the Court to dismiss the complaint on said grounds. The Government have to scrutinise, on the other hand, whether the complaint is within the scope of 197 Cr.P.C. The prosecution is to be launched only after obtaining the sanction from the Director General of Police (DGP) and the Government.

7. Criminal Prosecution & Civil Suits by Police Officer

- 1) Defamation: Sometimes a police officer faces defamatory remarks, statements or imputations in respect of his conduct in discharge of his official functions, made by individuals or published in newspapers. In such cases they may decide to launch a criminal case of defamation u/s 500 I.P.C. and they may apply to the Government for sanction to prosecute. Every

complaint referred to, the Government shall set forth the facts which constitute the offence alleged, the nature of such offence, and such other particulars as are reasonably sufficient to serve notice to the accused of the offence alleged to have been committed. If the Government accord sanction, the Public Prosecutor shall file a complaint in the Sessions Court directly without being committed to it through the lower court and the Public Prosecutor will conduct the prosecution at state cost. Whenever the Head of the Department or Unit comes across such derogatory remarks published in press or otherwise they should take initiative in the matter in this manner.

- 2) If the sanction of the Government could not be obtained, the Police Officer may file a complaint on his own in the court of a Magistrate as per the ordinary procedure.
- 3) The institution of a civil suit on behalf of the State requires the sanction of the Government. In all such suits and in suits by or against police officers which go to the Government for sanction the plaints and written statements should except in cases of emergency require approval of the Government, before they are filed. After the approval, the DGP can act further on behalf of the Government and if a civil suit is instituted against the State in connection with a matter concerning the police department, the district Chief of Police shall refer the matter to the Addl. D.G.P./IGP, CID. As the defence of such suits ordinarily falls upon the Government Pleader of the area, the Addl. D.G.P./ IGP, CID will secure his services through the Government. Same procedure may be followed in respect of writs also.

8. Legal advice to be obtained in regard to litigation affecting the State

The State Government considers it desirable that, in regard to litigation by or against the State, legal advice should always be obtained before a suit is instituted or the defence of a suit undertaken on behalf of the State. It is not necessary that such advice should be obtained merely because the notice of a suit against the State is given under

section 80 of the Code of Civil Procedure but in important cases it may be desirable for the Officer dealing with the notice to obtain legal advice regarding it. The Officers though are competent to sanction the filing or defence of suits on behalf of the State they are not bound to follow the legal advice, and if they decide to reject it, they must place the reasons for their decision clearly on record.

9. Appearance and preparation of affidavits and counter-affidavits in writs filed against the Government

In cases where the Government has been impleaded as party, the Government will approve counter-affidavit and swear to it before filing it in the High Court. In other cases involving small matters of local importance, of which the Government has no special knowledge or where no general issues are involved, no useful purpose will be served by the counter affidavit being approved by the Government. In such cases, the draft counter-affidavit need not be submitted to the Government for approval, provided that the Head of the Department ensures that the public interest is safeguarded, that the counter affidavit brings out the views of the Government clearly, and that where there is doubt regarding the correct interpretation of the laws, rules or notifications, the matter is invariably referred to the Government.

10. Writs against Police Officers

Whenever any writ is filed against a police officer, more so such as habeas corpus, the respondents concerned who are directly involved, should promptly prepare a well drafted reports for preparing a counter affidavit in consultation with the public prosecutor before submitting to the Ld. AG/AAG.

11. Claims for loss of services against members of the public for injury caused by them to Police Officers

Police Officers should report promptly to DGP through their superior officers the full facts regarding any injury sustained incapacitating them from service either temporarily or permanently, whether on or off duty owing to the negligence of a member or members of the public. The question of instituting a claim for loss of services against the party alleged to be responsible for the injury will be decided by the Government in each case in consultation with their legal advisers.

12. Assistance to be given to Police Officers - when they sue or be sued, prosecute or be prosecuted for acts done in discharge of their Official duties

The Police Department and Government are committed to protect and support officers who are harassed by vindictive litigation by unscrupulous and disgruntled elements for discharging their legitimate duties. False and malicious allegations are often made against police officers with a view to hamper and embarrass them in the proper discharge of their duties. Such Officers unless supported may become disheartened and resigned to their fate and in the process even a good officer may not contribute productively to the department. Once it is reasonably established that an officer is drawn into vexatious litigation, he shall be given all protection by extending legal aid and such other departmental/administrative assistance as may be deemed proper in each case.

13. Nodal Authority

The ADGP/IGP, CID shall be the nodal authority in the PHQ to deal with all cases of prosecution by or against police officers at the department level.

Note: - The provisions as incorporated in the different orders in the chapter are in accordance with the established law and procedure and also the established judgements of the Supreme Court. Some of the relevant judgements are mentioned below:-

<u>Citation</u>	<u>Points decided</u>
1) Union of India Vs Tulsi Ram Patel & others	1985(2) SLR S.C. 576
	1) Departmental Action & 2) Inquiry in case of conviction.

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| 2) | Satyavir Singh & others
Vs Union of India | 1986(1)
SLR, S.C.255 | 3) Inquiry - when not practicable.
4) Inquiry - not expedient. |
| 3) | Nelson Motors Vs
Union of India | 1992(5)
SLR , S.C. 394 | 5) Departmental Inquiry -
Acquittal. |
| 4) | Nand Kishore Prasad Vs
State of Bihar | 1978(2)
SLR, S.C. 46 | 6) Departmental Action – Acquittal. |
| 5) | Corporation of Nagpur Vs
Ramachandra | 1981(2)
SLR. S.C. 274 | 7) -do- |
| 6) | State of Tamilnadu Vs
P.M.Balliappa. | 1984(3)
SLR, Mad 534 | 1) On Moral Turpitude.
2) Misconduct in private life. |
| 7) | Daya Sankar Vs
High Court of Allahabad. | 1987 (2)
SLR, S.C.717 | 1) On Moral Turpitude
2) Misconduct in private life. |
| 8) | Union of India Vs
Bakshi Ram | 1990(2)
SLR, S.C.65 | 1) Departmental action - Conviction.
2) Probation of offenders Act. |
| 9) | Dy. Director of College
Education Vs
S.Nagoor Meera | 1995 (2)
SLR, S.C.379 | Departmental action - Conviction. |
| 10) | I.G. of Police Vs
Thavasia Home | 1996(1)
SLR, S.C.565 | 1) Who can initiate proceeding.
2) Disciplinary authority. |