

POLICE ORDER No. 214

Police order to be followed in institution, investigation, supervision, & prosecution of embezzlement cases.

In spite of various instructions and orders issued on the above subject, it is observed that neither the cases are reported to the Police in accordance with Government Orders prescribing the manner in which such cases are to be dealt with or the investigation of such cases is pursued properly and vigorously as a result of which a large number of cases remain pending investigation for months together.

2. Government Order No. XXX of 1962-63 and Rules 19 to 22 of section 6 of the Orissa General Financial Rules, Vol. I and Appendix 2 of the Orissa General Financial Rules, Vol. II lay down about fixation of responsibility on the officers concerned due to whose slackness or negligence loss or embezzlement of Government money takes place in any instance. Besides, the rules contained in Appendix 2 as mentioned above prescribe the procedures that are to be adopted in the matter of departmental enquiry and subsequent Police investigation and prosecution of such cases in criminal courts. The relevant rules contained in rule 2 and rule 8 of Appendix 2 are reproduced below for ready reference of the officers:—

APPENDIX 2

2. It is of the greatest importance to avoid delay in the investigation of any loss due to fraud, negligence, financial irregularity, etc., should the administrative authority require the assistance of the Accountant-General in pursuing the investigation, he may call on that officer for all vouchers and other documents that may be relevant to the investigation; and if the investigation is complex and he needs the assistance of an expert audit officer to unravel it, he should apply forthwith for that assistance to Government which will then negotiate with the Accountant-General for the services of an investigating staff. Thereafter the administrative authority and the audit authority will be personally responsible, within their respective spheres, for the expeditious conduct of the enquiry.

8. The following supplementary instructions should be followed by departmental officers wherever prosecutions in the criminal courts are, or are likely to be necessary:—

(i) As soon as a reasonable suspicion arises that a criminal offence has been committed the senior officer of the department concerned present in the station will report to the District Magistrate concerned and ask for a regular Police investigation under the Code of Criminal Procedure, 1898.

(ii) If the District Magistrate or the authority concerned agrees that an investigation may be made, the senior officer of the department concerned present in the station will (1) request the District Magistrate or the authority aforesaid to arrange for the investigation to proceed from day to day, (2) see that all witnesses and documents are made available to the investigating officer, and (3) associate with the investigating officer an officer of the department who is not personally concerned with the irregularity leading up to the loss, but who is fully cognizant of the rules and procedure of the office in which the loss has occurred.

(iii) When the investigation is completed, an officer of the department (Accompanied by the officer who attended the investigation) must be made available for conferences with the authority which will decide whether prosecution should be instituted. If it is decided not to prosecute, the case must be reported through the usual channel to Government for orders.

(iv) If it is decided to prosecute, the departmental representative will ascertain from the prosecuting officer whether, having regard to the engagements of the prosecuting staff, and the state of work in the Court which would ordinarily hear the case, it is necessary to move the District Magistrate to make special arrangements for a speedy trial, and will request the prosecuting officer to make any application that he may think necessary.

(v) When the case is put into Court by the Police, the senior officer of the department concerned present in the station will see that all witnesses serving in the department and all documentary evidence in the control of the department are punctually produced, and will also appoint an officer of the department (Preferably the officer who attended the investigation) to attend the proceedings in Court and assist the prosecuting staff.

(vi) If any prosecution results in the discharge or acquittal of any person, or in the imposition of sentences which appear to be inadequate, the senior officer of the department concerned will at once consult the District Magistrate as to the advisability of instituting further proceedings in revision or appeal, as the case may be, and if the District Magistrate is of opinion that further proceedings are necessary, will request him to proceed as he would in any other case.

Appeals against acquittals may be made only under the orders of Government.

(vii) The senior officer of the department concerned present in the station will see that in addition to the report required under clause (iii) above, prompt reports are submitted to Government through the usual channel regarding—

- (1) the commencement of a Police investigation ;
- (2) the decision to prosecute in any particular case ;
- (3) the result of any prosecution ;
- (4) the decision to proceed further in revision or appeal in any case ; and
- (5) the result of any proceedings in revision or appeal.

(viii) Notwithstanding anything contained in the above instructions, the senior officer of the department concerned present in the station may, if he thinks fit refer any matter through the usual channel for the orders of Government before taking action.

3. It will be clear from the above rules that before the concerned department decides to report a case of embezzlement to the Police for investigation and prosecution, it must prior to such institution, conduct a departmental enquiry in order to find out *prima facie* whether there has been embezzlement of Government money and whether the case is fit to be reported to the Police for investigation and prosecution. Rule 8 (i) further enjoins that prior to referring such cases to the Police the senior officer of the Department concerned will report to the District Magistrate concerned and ask for a regular Police investigation and after this is agreed to the matter should be reported to the Police. Rule 8 (ii) further enjoins that the senior officer of the Department concerned should see that all witnesses and documents are made available to the investigating officer and will also make the service of an officer of the Department who is fully cognizant of the rules and procedures of the office in which the loss has occurred to associate with the investigating officer. These rules have been prescribed to ensure that there is no delay in the investigation of a case after it is reported to the Police. It is, however, noticed that these rules are seldom followed by the department concerned both before and after reporting the case to the Police and the Police officer has to run from post to pillar for procuring such assistance and also to obtain the relevant records.

In future whenever any case is reported by any department without adhering to the rules prescribed by the Government as mentioned above or do not render proper assistance to the investigating officer in course of the investigation, the investigating officer should bring it to the notice of the Superintendent of Police who in turn should report the matter to the C. I. D., Crime Branch, separately, so that such infringements can be brought to the notice of the Government.

4. All cases of embezzlement of Government money as well as public funds like Grama Panchayat money, Co-operative money, etc. shall be specially reported and treated as Special Report Cases for all purposes.

5. It is noticed that almost in each case of embezzlement the District Superintendent of Police requisition the services of the Crime Branch Officers to take up the investigation. The Central Embezzlement Squad attached to the C. I. D. Crime Branch, is a limited one consisting of about a dozen of officers and, therefore, it is not possible for this squad to take up the investigation of a large number of cases. Officers of this squad will only be deputed to take up the investigation of cases involving huge amounts, or cases which are otherwise considered to be important and complicated in nature particularly those in which any substantial investigation has to be made in several districts within the State or Police-Stations within the district or beyond the State. In cases where some witnesses may have to be examined here and there beyond the Police-Station limits where the case has been instituted, those should not be deemed to be cases within the above category.

6. The instructions issued in letter No. 12507 (15)/C. B., dated the 10th September 1960 should be followed. A copy of the instructions is also appended herewith for ready reference.

7. After the investigation of the case is complete the I. O. should discuss the evidence with the Public Prosecutor and take his opinion as to whether there is a *prima facie* case for prosecution in a court of law. The evidence should thereafter be discussed with the Superintendent of Police with reference to the opinion of the P. P. and a tentative decision taken. Thereafter a date should be fixed and the seniormost officer of the department concerned be requested to depute a responsible officer of the department for a conference about the final decision regarding the institution of a prosecution as enjoined in rule 8 (iii) of Appendix 2 of the O. G. F. R. mentioned above. It is, however, made clear that the final decision as to whether the evidence available against any officer concerned is sufficient or not for a prosecution in a court of law should rest with the S. P. If there is no response from the department concerned to attend the conference on the date fixed, the S. P. should take a decision himself. The decision so taken should be intimated to the C. I. D., Crime Branch at once.

8. In case where a sanction for prosecution is necessary either under section 197 of the Cr. P. C. or under section 6 of the Prevention of Corruption Act, 1947, as the case may be a full report about the facts of the case together with the nature and particular of evidence available on each point should be reported to the C. I. D., Crime Branch, for taking up the

matter with the authorities concerned. A copy of the Case Diary should invariably be sent with such report so that the concerned authority will be in a position to go through the entire details and take a proper decision regarding grant or withholding of such sanction.

9. The Superintendent of Police should ensure that all cases of embezzlement are prosecuted properly and efficiently in the Courts. Should any special arrangement be required to be made for engagement of a competent lawyer, he should take action accordingly. The department concerned are also enjoined under rule 8 (iv), (v) of Appendix 2 to take adequate interest in this respect and where such interest is not taken or such co-operation is not rendered the matter should be reported to the C. I. D., Crime Branch for further action.

10. Similarly when any prosecution result in the discharge or acquittal of any person or in the imposition of sentences which appear to be inadequate, prompt steps should be taken to file appeal or revision, as the case may be. The concerned department is also enjoined under rule 8 (vi) to take adequate interest in this respect and where any default is noticed, it should be reported as stated above.

11. The investigating officer has got power under section 94 Cr. P. C. to issue requisition for production of documents and also to issue notice under section 160 of the Cr. P. C. to ask for the personal attendance of the witnesses. As far as possible the I.O. should approach personally to procure a document or examine witnesses in the residence or office of the persons concerned. Whenever any attitude of non-co-operation or avoidance on the part of the officer or the witnesses concerned is noticed resort to the above provision of law should be taken and in cases of disobedience, the persons concerned should be prosecuted. All such instances of non-co-operation should also be promptly reported to the C. I. D., Crime Branch for necessary action.

12. Police Order No. 3/60 (New No. 159) and 2/61 (New No. 165) and Police Circular Order No. 5/64 (New No. 176) issued in this respect are cancelled.

CRIMINAL INVESTIGATION DEPARTMENT, ORISSA, CUTTACK

No. 12507- (15)-C. B

The 10th September 1960

To

All District S. Ps./Addl. S. P., Rourkela/D. S. R. P., Orissa, Cuttack

SUBJECT—Embezzlement of Public Funds—Investigation and trial of cases arising out of

1. It has been noticed that embezzlement cases involving Government money, are not being attended to seriously at any stage consequent to which delay in investigation and supervision as well as failure of such cases in the court of law are occurring frequently. The Government have been giving special importance to these cases and desire that the police should handle these cases very speedily, carefully and sincerely at all stages.

2. Your attention is also drawn to this office letter No. 9732 (15)-C. B., dated the 5th August 1959 and Police Order No. 3/60. Though it was specifically mentioned in these orders that the investigating and supervising officers will probe into the causes leading to embezzlement, lapses affording opportunity to the accused, infringement of departmental rules and procedure, etc. The instruction in hardly being kept in view and followed in any case noticed so far.

3. The small embezzlement squad in the C. I. D., not completely formed as yet cannot take up investigation of all cases of embezzlement and so far, only available officers have been deputed in important and deserving cases according to the requisitions. Even when the squad starts functioning with its full strength it will not be possible to depute officers to take up the investigation of all such cases on account of its size. The embezzlement squad will take up only cases involving huge amounts or cases which are otherwise important and complicated. I need hardly say that investigation in these cases cannot be thorough and successful without the full co-operation of the District Police. The District Police will also have to take steps for their prosecution in the Court of Law. In all cases the preliminary investigation has to be taken up by the District Police until arrival of the Crime Branch Officer to take over investigation.

4. The following procedure should be adopted to expedite investigation and trial of embezzlement cases :—

- (a) As soon as the case is registered, the investigation of the case should be taken up promptly by a suitable officer i. e., S.-I. or Inspector according to the gravity of the case.
- (b) As soon as a case is instituted the investigation shall be supervised immediately by a gazetted Police Officer. If case is supervised with delay reasons must be furnished in Report II.
- (c) Besides, the matter of collection of evidence, the points mentioned in Para. 2 above should also be kept in view during investigation and supervision and these points should also be discussed in the case diaries and the supervision notes.
- (d) If it is not absolutely necessary in the interest of investigation of any particular case audit should not be insisted upon almost as a matter of course to detect more similar offences, keeping the investigation pending. Audit for such purposes may be done after submission of final form.
- (e) In all cases requiring audit, the S. P. should either personally contact or correspond with proper authorities to expedite it. In case of any delay, the matter should be brought to the notice of the Range D. I. G. and the C. B. for taking up the matter with the officer concerned, or with the Government.
- (f) While initially steps may be taken to get records or to examine witnesses from elsewhere by means of enquiry slips, the I. O. should proceed personally for those purposes where delay is apprehended after obtaining necessary permission from the S. P. and such essential journeys should always be sanctioned promptly.
- (g) If it is noticed that prompt and due co-operation are lacking from any particular department, the S. P. should personally move the concerned officer in the matter and send a report to his Range D. I.-G. and the C. B.
- (h) In cases where direct or circumstantial evidence (under section 47, Evidence Act) available to prove the handwriting of the persons concerned, it is not necessary to get the handwriting examined by the Handwriting Expert. It will not only be superfluous, but will also entail an unnecessary delay and expenditure. Examination by Handwriting expert should only be resorted to where the disputed writing cannot be proved by other means. Efforts should always be made to collect such evidence keeping in a mind that the opinion of the Handwriting Expert is not conclusive proof and Courts will be reluctant to accept and act upon such opinion without other strong circumstances.
- (i) In all cases where handwritings or finger prints are sent for examination the required specimens, admitted writings, etc., about which suitable instructions have been should be collected and sent to avoid unnecessary correspondence and delay issued.
- (j) Fortnightly progress reports should invariably be sent both during investigation and trial of the case in Court.
- (k) In all reports after Report II and before the submission of final form, the progress made in the investigation and further facts obtained and the reasons for which investigation is pending should be indicated and superficial reports, viz., "Investigation is proceeding, etc.", should not be sent.
- (l) All remarks and comments from the Range D. I.-Gs. and C. B. should be attended to and replied promptly.
- (m) After the closure of the investigation the I. Os and the supervising officers should discuss the evidence with the P. P. before submission of the final form.

- (n) The prosecution of the cases should be entrusted to suitable and responsible officers and in complicated and important cases the D. M. or the Government may be moved in consultation with the Range D. I.-Gs. for appointing the P. P. or Special Prosecutor to conduct the cases. The I. Os and supervising officers should take personal interest at all stages of the trial and render due assistance to the conducting Officers/P. P./Special Prosecutor.
- (o) In no circumstances there should be any delay in issuing copies of documents to the accused. If necessary, a special staff should be provided to copy out documents which should be made over to the accused no sooner the charge-sheet is submitted.
- (p) All steps should be taken for prompt disposal of the trial and particular attention should be paid to all avoidable cases of delay.

The receipt of this letter may be acknowledged and subordinate officers may also be suitably instructed.

S. K. GHOSH

*D. I.-G. of Police, C. I. D. & Rlys., Orissa
Cuttack*