

The Prevention Of Corruption Act, 1947

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The **Prevention of Corruption Act 1947**

(II OF 1947)

11th March 1947

An Act for the more effective prevention of bribery and corruption

Preamble: Whereas it is expedient to make effective provision for the prevention of bribery and corruption;

it is hereby enacted as follows: --

1. Short title and extent: (1) This Act may be called the Prevention of Corruption Act, 1947.

(2) It extends to the whole of Pakistan and applies to all citizens of Pakistan and persons in the service of Government wherever they may be.]

(3) Omitted by the Prevention of Corruption (Amendment) Act, 1949 (IX of 1950), S 2.

2. Interpretation: or the purpose of this Act, "Public Servant" means a public servant as defined in Section 21 of the Penal Code and includes an employee of any corporation or other body or organization set up controlled or administered by or under the authority of the Federal Government.

3. Offences under Sections 161 to 165 of the Penal Code to be cognizable offences: An offence punishable under Section's 161, 162, 163, 164, 165 or 165-A, of the Pakistan Penal Code shall be deemed to be cognizable offence for the purpose of the Code of Criminal Procedure, 1898, notwithstanding anything to the contrary contained therein.

Proviso: Omitted by Criminal Law (Amendment) Act XXJ (VII of 1953).

4. Presumption where public servant accepts gratification other than legal remuneration : (1) Where in any trial of an offence punishable under Section 161

or Section 165 of the 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 from any person, it shall be presumed unless the contrary is proved that he accepted or obtained, 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 the said Section 161 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

Proviso: Omitted by Section 5, Act XXXVII of 1953.

(2) Where in any trial of an offence punishable under Section 165-A of the Pakistan Penal Code (Act XLV of 1860), 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, as a motive or reward such as is mentioned in section 161 of the said Code, or, 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.

5. Criminal misconduct: (1) A public servant is said to commit the offence of criminal misconduct.

(a) if he accepts or obtains, or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification (other than legal remuneration) as a motive or reward such as is mentioned in Section 161 of the Pakistan Penal Code, or

(b) if he accepts or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business, transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, or
(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any person to do so, or

(d) if he, by corrupt or illegal means, or by otherwise abusing his position as public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage, or

(e) If he, or any of his dependants, is in possession, for which the public servant cannot reasonably account of pecuniary resources or of property disproportionate to his known sources of income.

Explanation : In this clause, "dependant" in relation to a public servant, means, his wife, children and step-children, parents , sisters and minor brothers residing with and wholly dependent on him.

(2) Any public servant who commits or attempts to commit criminal misconduct shall be punishable with imprisonment for a term which may extend to seven years or with fine or with both.

Evidence, appreciation of - Statements of complainant, Raiding*
Magistrate and Sub-Inspector of Police, consistent on point of

acceptance and recovery of tainted money from possession of accused
- Accused also failed to rebut presumption that tainted money received
by him from complainant as illegal gratification was not in fact as
such- *Conviction and sentence maintained, in circumstances. . 1989 M
L D 825

(3) In any trial of an offence punishable under sub-section (2) the fact that the accused person or any other person on his behalf is in possession, for which the accused person cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income may be proved, and on such proof the Court shall presume, unless the contrary is proved, that the accused person is guilty of criminal misconduct and his conviction there for shall not be invalid by reason only that it is based solely on such presumption.

(4) The provisions of this section shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceedings which might, apart from this section, be instituted against him.

S. 5(2)—Penal code (XLV of 1860), S. 511—Punjab Anti-Corruption Establishment rules, 1985, Rr. 7, 19 & 15(2)(b)—constitution of Pakistan 1973), Art. 199—constitutional petition—F.I.R having been registered against the accused without conducting preliminary inquiry in contravention of the Punjab Anti-Corruption Establishment Rules, 1985, had been quashed by the Director, Anti-Corruption—Validity—Punjab Anti—corruption Establishment Rules, 1985, being not an act of legislation and having been made by the Executive Authority could not override the parent law and the F.I.R. registered without following the said Rules could not provide any right to the accused from the quashment of the same—Purpose of the inquiry as required under R.7 of the said rules was only to ascertain the identity of the complainant or informer and genuineness of the complaint or information—Nature of allegations made in the case required immediate action and any delay therein in the garb of fulfillment of legal requirements could tantamount to loss of incriminating evidence—No prejudice had been caused to the accused due to non-initiation of the preliminary inquiry—Even after the registration of the case accused was to be provided an opportunity to rebut the allegations during the investigation—Allegations leveled by the complainant against the accused were supported by documentary evidence—Case against the accused was still at investigation stage and the Director had no occasion to exercise powers under R. 19 of the Punjab Anti-Corruption Establishment rules, 1985, which were not mandatory in nature and under the garb of the same he could not exercise the judicial powers and assume the role of court--- Provisions of R. 19(3) of the rules did not provide any alternate remedy to the aggrieved person against the orders of the Director passed in the exercise of his suo motu powers and as such the Constitutional petition was maintainable – Impugned order passed by

the Director, Anti-Corruption quashing the F.I.R. registered against the accused was consequently declared to be without any lawful authority and was set aside—Constitutional petition was accepted accordingly.

PLD 2004 Lah. 284

S. 5(2) - Constitution of Pakistan, 1973, Art. 203 - Criminal Procedure Code, 1898, Ss. 435 , 439, 423, 426, 427 , 428, 338, 497 (5) and 561-A - Heroin, attempt to smuggle - Getting bribe by Magistrate Suo motu notice - Ad-interim bail, cancellation of - FIR - Evidence - Further inquiry - jurisdiction - proceedings, quashment of - Intention of law to confer suo motu powers fo revision on the High court is to ensure that the courts subordinate to it act strictly within the legal bounds and do not transgress their jurisdiction and the findings, sentence or orders, recorded or passed by them are just and legal, but nevertheless, in order to avoid any impression of arbitrariness in the exercise of this power the order of initiating suo motu proceedings by the High Court should mention the ostensible error or irregularity in the orders or proceedings of the subordinate court There can be no cavil with the jurisdiction of the High court to initiate suo motu proceedings by issuing notice to the petitioner, but so far as the reasons, justifying the issuance of suo motu notice are concerned this court is of the opinion that, in view of the well-reasoned order of the learned special judge (Central) granting bail to the petitioner, there existed no circumstances justifying the suo motu action against the petitioner by the High Court - Petition converted into appeal and proceedings quashed. 2000 PSC (Crl.) SC (Pak) 450

5-A Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), no officer below the rank of Inspector shall investigate any offence punishable under any of the sections of the Pakistan Penal Code (Act XLV of 1860), mentioned in Section 3 or any offence punishable under Section 5 without an order of a Magistrate of the first class or make an arrest there for without a warrant.

5-B. Declaration of assets : (1) When the Provincial Government on receipt of information and after making such enquiries as it may deem necessary, is satisfied that there is reason to believe that any public servant or any other person on his behalf is in possession of pecuniary resources or property disproportionate to the known sources of income of such public servant it may, by order, require such public servant or other person to furnish in the prescribed manner and within the prescribed time a statement of his property and liabilities and such information relating thereto as may be required by the order.

(2) If such public servant or person--

- (a) upon being so required by an order under sub-section (1) fails to furnish the statement or information or furnishes a statement or information which he knows or has reasonable cause to believe to be false or not true in any material particular, or
- (b) makes in any book, account, record, declaration, return or other document,

which he is required by an order under sub-section (1) to furnish; any statement which he knows or has reasonable cause to believe to be false or not true in any material particular, he shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.]

5-C. Possession of Property disproportionate to known sources of income:

(1) Any public servant who has in his possession any property, movable or immovable either in his own name or in the name of any other person, which there is reason to believe to have been acquired by improper means and which is proved to be disproportionate to the known sources of income of such public servant shall, if he fails to account for such possession to the satisfaction of the Court trying him, be punishable with imprisonment for a term which may extend to seven years and with fine, and on such conviction the property found to be disproportionate to the known sources of income of the accused by the Court shall be forfeited to the Provincial Government.

(2) The reference in sub-section (1) to property acquired by improper means shall be construed as reference to property acquired by means which are contrary to law or to any rule or instrument having the force of law or by coercion, undue influence, fraud or misrepresentation within the meaning of the Contract Act, 1872.

6. Previous sanction necessary for the prosecution : [Omitted by Criminal Law Amendment Act, X)O;VII of 1953,

7. Accused person to be competent witness : Any person charged with any offence punishable under Section 161 or Section 165 of the Pakistan Penal Code or under sub-section (2) of Section 5 of this Act shall be 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 on 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 questions 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 of any witness for the prosecution, or

(iii) He has given evidence against any other person, charged with the same offence.

Prevention of Corruption Act (11 of 1947), S. 7--Cross*examination of accused--Accused has an option under S. 7 of Act II of 1947 to offer himself as U defence witness but when he is examined as a witness, other party will have a right to cross-examine him--Article 44, Qanun-e-Shahadat Order, 1'984 not dependent upon S. 7 of Act 11 of

1947--Former will come into play only, after accused has availed provisions of latter--Article 44, Qanun-e-Shahadat Order, 1984, held, was invokable regardless of accused's wishing to avail right given to him by S. 7 of Act II of 1947. 1986 P Cr. L J 67