

THE AZAD GOVERNMENT OF THE STATE OF JAMMU &

KASHMIR LAW & PARLIAMENTARY AFFAIRS,  
MUZAFFARABAD.

NOTIFICATION.

No. 363/SL/72 dated 19.3.1972.

Criminal Procedure (Military Offenders) Rules, 1971.

In exercise of the powers conferred by sub-section (1) of Section

549 -of the Code of Criminal Procedure, 1898 (Act - " of 1898), the Azad Government of the State of Jammu and Kashmir is pleased to make the following rules as to cases in which persons subject to military law shall be tried by a Court to which the said Code applies, or by court-martial, namely:-

1.

2.

These rules may be called the Azad Jammu and Kashmir Criminal Procedure (Military Offenders) Rules, 1971.

Where a person subject to military law is brought before a Magistrate and charged with an offence for which he is liable, under Pakistan Army Act, i 952 (as in force in Azad Jammu and Kashmir Territory), to be tried by a Court-martial, such Magistrate unless he is moved by the competent military authority, as the case may be, to proceed against the accused under the Code, shall before so proceeding give notice to such authority and, until the expiry of a period of fifteen days from the date of service of such notice, shall not:-

(a) convict the accused under section 243, acquit him under Section 247 or section 248, or hear him in his defence under section 244 of the Code, or

(b) frame a charge against the accused under section 2.54 of the Code, or -

(c) make an order committing the accused for trial by the High Court or the Court of Session under Section 2/3 of the Code, or.

(d) transfer the case for enquiry or trial under section 192 of the Code.

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3- Where, within the period of fifteen days, mentioned in rule 2, or

at any time thereafter before the Magistrate "has done any act or issued any orders referred to in the rule," the competent military authority, as the case may be, gives notice" to the Magistrate that the accused should be tried by court-martial, the Magistrate shall

stay proceedings and if the accused is in .this' power or under his control, shall deliver him, with the statement prescribed by section 549 of the Code, to the authority specified in the said section-

Where a Magistrate has been moved by competent military authority,-as the case may be,, under rule, 3, and such an authority subsequently gives notice to such Magistrate that", in the opinion of such authority the accused should be tried by court-martial, such Magistrate, if he has not, before receiving such notice done any act or issued any order referred to in rule 2 shall stay proceedings and, if the accused is in his power or under his control, shall in the like manner deliver him, with the statement prescribed in section 549 of the code, to the authority specified in the said section.

Where an accused person, having been delivered by the Magistrate

under rule 3 or 4 is not tried by a court-martial for the offence of which he is accused, or other effectual proceedings are not taken, or ordered to be taken, against him, the Magistrate shall report the circumstance to the Government.

6. (1) Notwithstanding anything to the contrary contained in rule 2, 3

7.

or 4, where it comes to the notice of a Magistrate that a person subject to military Law has committed an offence proceedings in respect of which ought to be instituted before him, the Magistrate may by a written notice require the competent military authority, at the option of such authority either to deliver such person, if in this custody, to the nearest Magistrate for being proceeded against according to law, or to stay the proceedings instituted, and to make a reference to the Government for determination as to the court before which proceedings should be instituted.

(2) The competent military authority to whom a notice is issued under sub-rule (1) shall either deliver the offender in accordance with the notice or refer the question of the trial to the Government, whose order upon such a reference shall be final.

In these rules, unless 'there is anything repugnant in the subject or

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context.-

- (a) 'Code' means the Code of Criminal Procedure, 1898 (Act V of 1898); ;, '
- (b) 'Competent military authority' means an officer having ''-|\*>. powers not less than those of an independent Brigade or Line of Communication Sub-Area Commander under whom, or the officer Commanding the Station in which, the accused person is serving, provided that where death has resulted, the competent authority shall be an officer having powers not less than those of an independent Brigade or Line of Communication sub-Area Commander;
- (c) 'court-martial' includes an officer exercising authority under section 23 of the Pakistan Army Act, (XXXIX 3952); or
- (d) 'person subject TO military law' includes a person not otherwise subject to any such law who is brought before a Magistrate and is accused of an offence mentioned in clause (d) of section 2 of the Pakistan Army-Act, 1952 (XXXIX of 1952);
- (e) 'Government' means the Azad Government of the State of Jammu and Kashmir,