

THE SPECIAL COURTS EMERGENCY POWERS ORDER, 1959

(Passed under Government Order No. 379/59 Dated 14-7-1959)

In pursuance of the provisions of Section 5 of the Azad Kashmir

Emergency Powers Act, 1958, the Government is pleased to make the following Order :-

1.

(i) This order may be called the Special Courts Emergency Powers Order, 1959.

ii) It shall extend to the whole of Azad Kashmir and shall come into force at once.

(i) The Government may set up as many Special Courts consisting of one Special Judge or of three members as maybe necessary for the trial of cases under the Azad Kashmir Emergency Powers Act, 1958, and may define the cases or Classes of cases to be tried by such Court.

(ii) A Special Court shall consist of one Special Judge or of three members who shall be appointed by the Government ex-officio or otherwise and one of whom shall be nominated to be the president of the Special Court.

If through death, illness or any other cause a member of a Special Court is unable to continue to sit thereon, the Government, may declare that he has vacated his office and may appoint thereto another person :

Provided that a Special Court shall not merely by reason of a change of its membership or by reason of the change of a Special Judge, recall and rehear any witness whose evidence has already been recorded and it may act on the evidence already produced before it.

(i) In the event of any difference of opinion among the members of Special Court, the view of the majority shall prevail and the order or judgment shall be expressed in the view of the majority.

(ii) Where the members are so divided that the order or judgment cannot be expressed in terms of the view of the majority, the decision of the President of the Special Court shall be final.

The Government shall have the power to transfer a case from one Special Court to another Special Court or from an ordinary Court to a Special Court.

(i) All the cases shall be tried by the Special Court without commitment and without the aid of assessors or jury and the procedure prescribed for the trial of summons cases by Chapter XX of the Criminal Procedure Code shall be followed.

(ii) A Special Court shall not be bound to adjourn any trial for any purpose unless such adjournment is in its opinion necessary in the interests of justice.

(iii) Where the Special Court consists of three members, all orders and proceedings and evidence of each witness shall be signed by at least one member of the court and the final Judgment shall be signed by each of the member thereof.

(iv) After an accused person has appeared before it, a Special Court may try him in his absence, if in its opinion, his absence has been brought about by the accused himself or if his behaviour in court has been such as to impede the course of justice.

(v)

~

No Special Court shall recall or rehear any witness whose evidence has already been recorded by a court of competent jurisdiction or reopen proceedings already taken and it shall act on the evidence already produced and continue the trial from the stage which the case has reached.

Notwithstanding anything contained to the contrary in the Criminal Procedure Code or any other law for the time being in force, if at any stage in the course of a trial an application is made by the prosecution that all or any section of the public be excluded from the court-room or building during any part of the hearing on the ground that publication of any evidence to be given or of any statement to be made would be prejudicial to the security of the State, the Special Court shall make an order to that effect.

Every person, who being in possession of any document or information concerning such proceedings in camera by virtue of

participation therein, whether as a witness, or as an officer of the court or otherwise, discloses such a document or information to any person other than a person who is officially connected with the preparation or conduct of the said case or cases shall be liable to be punished with rigorous imprisonment which may extend to 14 year :

Provided that this provision will not apply to any communication between any accused person and his counsel which is made bonafide for the purpose of the defence of such an accused person in the case.