

PART C.—CRIMINAL CASES AFFECTING PERSONS BELONGING TO THE ARMED FORCES

I. Criminal cases against persons belonging to the Armed Forces should only be taken up by District Magistrates or Magistrates of the first class and his direction should be strictly observed.

Cases to be tried only by District and Ist class Magistrate.

II. When a person belonging to the Armed Forces is convicted of any offence by any magistrate, information in the form given below shall be furnished by such magistrate to the superior officer of the person so convicted:—

Copy of judgment to be sent to superior officer of accused.

Name (and rank) of person convicted	Military person	Officer of which convicted	Sentence	Date

III. Whenever a soldier is committed to jail whether for trial or under sentence, his military rank shall always be stated in the warrant of commitment, in order that due notice may be given to the military authorities of the day on which, and hour at which, the imprisonment of such person will expire.

Military rank of accused to be sent to superior officer of accused.

IV. Whenever a military pensioner is convicted and sentenced to imprisonment for a criminal offence, a copy of the judgment or the heads of charge to the jury and final orders, as the case may be, shall be sent to the Controller of Military Accounts and Pensions. The place where the pensioner last drew his pension shall be stated in the covering letter. The copies shall be prepared free of charge in the office of the Court and not by the copying department.

Information of conviction of pensioned officers.

Information of conviction of Indian Army reservists.

V. Whenever a reservist of the Army is sentenced by a Criminal Court to imprisonment for any term exceeding three months, the facts are to be reported without delay to the Commandant of the appropriate regimental Centre, in the manner prescribed in Para II above.

Dual Jusisdiction of Court-Martial and Civil Court.

VI. ¹[In exercise of the powers conferred by subsection (1) of section 475 of the Code of Criminal Procedure, 1973 (2 of 1974), and in supersession of the Criminal Courts and Court martial (Adjustment of Jurisdiction) Rules, 1952, the Central Government hereby makes the following rules for the trial of the persons subject to military, naval or air force law, or any other law relating to the Armed Forces of the Union by a Court to which the said Code applies, or by a Court-martial, namely:-

1. These rules may be called the Criminal Courts and Court-martial (Adjustment of Jurisdiction) Rules, 1978.

2. In These Rules, unless the context otherwise requires:—

(a) "Commanding Officer",

- (i) in relation to a person subject to military law, means the Officer Commanding the unit to which such person belongs or is attached;
- (ii) in relation to a person subject to naval law, means the Commanding Officer of the ship or naval establishment to which such person for the time being belongs; and
- (iii) in relation to a person subject to air force law, means the officer for the time being in command of the unit to which such person belongs or is attached;

(b) "competent air force authority" means the Chief of the Air Staff, the air or other officer commanding any Command, Group,

Wing or Station in which the accused person is serving, or where such person is serving in a field area, the Officer Commanding the forces or the air forces in the field;

(c) "competent military authority" means the Chief of Army Staff or Officer Commanding the army, army corps, division, area, sub-area or independent brigade in which the accused person is serving, and except in cases falling under section 69 of the Army Act, 1950 (46 of 1950) in which death has resulted, the officer commanding the brigade or sub-area or station in which the accused person is serving;

(d) "competent naval authority" means the Chief of the Naval Staff or the Flag Officer Commanding-in-Chief, Western Naval Command, Bombay or the Flag Officer Commanding-in-Chief, Eastern Naval Command Vishakhapatnam or the Flag officer Commanding, Southern Naval Area. Cochin or the Flag Officer Commanding, Western Fleet or the Flag Officer Commanding, Eastern Fleet or Senior Naval Officer where the accused person is serving.

3. Where a person subject to military, naval or air force law, or any other law relating to the Armed Forces of the Union for the time being in force is brought before a Magistrate and charged with an offence for which he is also liable to be tried by a Court-martial, such Magistrate shall not proceed to try such person or to commit the case to the Court of Session, unless—

- (a) he is moved thereto by a competent military, naval or air force authority; or
- (b) he is of opinion, for reasons to be recorded, that he should so proceed or to commit without being moved thereto by such authority.

4. Before proceeding under clause (b) of rule 3, the Magistrate shall give a written notice to the Commanding Officer or the competent military, naval or air force authority, as the case may be, of the accused and until the expiry of a period of fifteen days from the date of service of the notice he shall not-

- (a) convict or acquit the accused under section 252, sub-sections (1) and (2) of section 255 sub-section (1) of section 256 or section 257 of the Code of Criminal Procedure, 1973 (2 of 1974), or hear him in his defence under section 254 of the said Code; or

- (b) frame in writing a charge against the accused under section 240 or sub-section (1) of section 246 of the said Code; or
- (c) make an order committing the accused for trial to the Court of Session under section 209 of the said Code; or
- (d) make over the case for inquiry or trial under section 192 of the said Code.

5. Where a Magistrate has been moved by the competent military, naval or air force authority, as the case may be, under clause (a) of rule 3, and the commanding officer of the accused or the competent military, naval or air force authority, as the case may be, subsequently gives notice to such Magistrate that, in the opinion of such officer or authority, the accused should be tried by a Court-martial, such Magistrate if he has not taken any action or made any order referred to in clauses (a), (b), (c) or (d) of rule 4, before receiving the notice shall stay the proceedings and, if the accused is in his power or under his control, shall deliver him together with the statement referred to in sub-section (1) of section 475 of the said Code to the officer specified in the said sub-section.

6. Where within the period of fifteen days mentioned in rule 4, or at any time thereafter but before the Magistrate takes any action or makes any order referred to in that rule, the commanding officer of the accused or the competent military, naval or air force authority, as the case may be, gives notice to the Magistrate that in the opinion of such officer or authority, the accused should be tried by a Court-martial, the Magistrate shall stay the proceedings, and if the accused is in his power or under his control, shall deliver him together with the statement referred to in sub-section (1) of section 475 of the said Code to the officer specified in the said sub-section.

7. (1) When an accused has been delivered by the Magistrate under rule 5 or 6, the commanding officer of the accused or the competent military, naval or air force authority, as the case may be, shall, as soon as may be, inform the Magistrate whether the accused has been tried by a Court-martial or other effectual proceedings have been taken or ordered to be taken against him.

(2) When the magistrate has been informed under sub-rule (1) that the accused has not been tried or other effectual proceedings have not been taken or ordered to be taken against him, the Magistrate shall report the circumstances to the State Government which may, in consultation with the Central Government, take appropriate steps to ensure that the accused person is dealt with in accordance with law.

8. Notwithstanding anything in the foregoing rules, where it comes to the notice of a Magistrate that a person subject to military, naval or air force law, or any other law relating to the Armed Forces of the Union for the time being in force has committed an offence, proceedings in respect of which ought to be instituted before him and that the presence of such person cannot be procured except through military, naval or air force authorities, the Magistrate may by a written notice require the commanding officer of such person either to deliver such person to a Magistrate to be named in the said notice for being proceeded against according to law, or to stay the proceedings against such person before the Court-martial if since instituted, and to make a reference to the Central Government for determination as to the Court before which proceedings should be instituted.

9. Where a person subject to military, naval or air force law, or any other law relating to the Armed Forces of the Union for the time being in force has committed an offence which in the opinion of competent military naval or air force authority, as the case may be, ought to be tried by a Magistrate in accordance with the civil law in force or where the Central Government has, on a reference mentioned in rule 8, decided that proceedings against such person should be instituted before a Magistrate, the commanding officer of such person shall after giving a written notice to the Magistrate, concerned, deliver such person under proper escort to the Magistrate.

(Government of India Notification No. S.O. 488, dated the 09th February, 1978).

VII Dual Jurisdiction In this connection also please see Sections 124, 125, and 126 of the Air Force Act, 1950 (No. XLV of 1950), and Sections 125, 126 and 127 of the Army Act, 1950 (No. XLVI of 1950).