

## CHAPTER 22

# PROSECUTION

### Charge-sheets

**22.1** In a case where a decision has been taken to prosecute the accused, a charge-sheet under Section 173(2) Cr.P.C. shall be filed in the prescribed form in a Court of competent jurisdiction after obtaining the sanction for prosecution, wherever required. Detailed instructions on filing of charge-sheets have been issued vide Policy Division Circular No.13/2003, dated 10-06-2003 which should be strictly complied with. The Branch Public Prosecutor will vet the charge-sheets in all cases and ensure that—

- (a) charge-sheet has been prepared on the final orders passed by the Competent Authority in CBI.
- (b) these are prepared in accordance with the law, and are complete and correct in all respects;
- (c) the lists of witnesses and documents are correctly entered in the charge-sheet or attached thereto;
- (d) no names of witnesses or documents necessary to prove the prosecution case are omitted.

### Work of Pairvi

**22.2** Investigating Officers should realise that their duty does not end when the investigation has been completed. They should render all possible assistance and facilities to the Prosecutors during the conduct of the cases in Courts. The Pairvi of a case is not adequately taken care of if the I.O. reaches the Court on the day the evidence of witnesses is to be recorded. The stakes of the accused facing trial in the Court are high and they leave no stone unturned to win over the witnesses. They do not do this on the final day when the witnesses come to the Court but much before that in their hearths and homes by bringing about various pressures upon them through relatives and friends and even by giving them allurements. In each case, there are a few witnesses who are important and whose statements are essential to unfold the truth. Such witnesses should be identified and thereafter the Pairvi Officer should be required to keep a close liaison with these witnesses as frequently as possible when he goes out on tour to the relevant places for any duty.

### Court Diaries

**22.3** The Prosecuting Officers will prepare their cases thoroughly. On commencement of trial proceedings they will ensure that the summons are procured well in advance and served in time. The progress of the cases in Courts, including Appeals and Revisions should be regularly reported by the Prosecuting Officers incharge of such cases through Court Diaries in the prescribed form in duplicate sending a copy to the Sr. PP/DLA and the office copy to the Branch SP. However, if, in between, there is any important development in the case worthy of being brought to the notice of the Branch SP/Sr. PP, he shall forward the report to the Branch SP/Sr. PP. They will, in turn, send the report with their own comments to DLA/DIG who will further apprise the ALA/Joint Director, if necessary. The Court Diary should be speaking one and if adjournment is sought by the prosecution, it should contain full reasons for the same. The Branch Sr. PP and the SsP should scrutinize the Court Diaries carefully to decide the corrective action to be taken against the defaulting IOs, Pairvi Officers etc. The course of action to be taken should be reflected by the Branch SsP in the Court Diaries while forwarding these to the DLA/DIG.

**22.4** The Court Diaries should contain information on the following points when they are forwarded by the Branch SP/Sr. PP to the Regional DIG/DLA:—

- (i) Names of prosecution or defence witnesses who are summoned or examined.
- (ii) How the witnesses fared and a gist of their evidence. If and when a witness turns hostile, it should be mentioned in the Court Diary and the SP/Sr.PP should comment how the damage caused by the hostile witness will be remedied.
- (iii) How the case proceeded.
- (iv) What proceedings are due on the next date of hearing.
- (v) Reasons for adjournment indicating whether adjournment was granted at the request of prosecution or defence or if the Court otherwise could not take up the case.
- (vi) If adjournment is occasioned by non-production of witnesses, reasons for their non-production.

The Court Diary Form is given in the format at Annexure 22-A of this chapter.

**22.5** In the trial of very important cases, the pairvi work should be supervised by the Branch SP. An Officer who is either the I.O. or has been closely associated with the investigation of the case should be nominated as Pairvi Officer. Relevant entries should be made in prosecution sub module by the Pairvi Officer promptly.

## Summons

**22.6** Timely service of summons on witnesses should be ensured. For this purpose a Legal Cell under the overall supervision of the Branch Sr. PP assisted by an SI/ASI and two Constables should be made responsible for the service of summons. The work of this Cell should be supervised by the Sr. PP in each Branch. The following procedure should be adopted by every Branch Sr. PP to enable him to monitor effectively the progress of service of summons:–

22.6.1 A list of cases under trial should be prepared by the Legal Section and should be put up to the Branch Sr. P.P./Branch SP every Friday showing the cases coming up in the next 7 days in the Courts in the following form:–

Due date	R.C. No.	Name of the Court issuing summons	Name of persons in r/o whom summons was issued, with address	Date of issue	S.I. No. of Summons Register.	Mode of service
1	2	3	4	5	6	7
Date of service	Date of return	Spl. action taken by the Duty Officer	Spl. action taken by DSP (Hqrs.)	Spl. action taken by SP/Sr. PP	Remarks	
8	9	10	11	12	13	

22.6.2 The Sr. PP and the SP of the Branch shall review this statement everyday to take care of the cases coming up in the next 7 days. Everyday, one additional day will be added to the list. This will enable the SP to aid the prosecution by taking effective and immediate steps to ensure service of summons and attendance of witnesses, whether by sending wireless messages, through telephonic contracts or by serving through Special messengers.

22.6.3 The Special Public Prosecutor conducting a case should apply to the Court for the summoning of the witnesses for the next hearing well in advance so that sufficient time is available for effecting the service of summons. When the Special Public Prosecutor and the Investigating Officer are together on the date of hearing they must decide on the next set of witnesses on that date of hearing itself and make an application for the issue of summons. The summons should either be procured the same day or the next day. If the summons are obtained well in advance, more than one attempt can be made to effect proper service. Late service of summons and the consequent failure of the witnesses to attend Court prevent the

Public Prosecutor from praying for the use of coercive powers of the Court to ensure presence of witnesses on the next date of hearing.

### **Supply of Copies of Statements and Documents along with Charge-sheet**

**22.7** Timely supply of copies of statements and documents along with the charge-sheet should be made to the Court. Often, the defence lawyer asks for copies of statements in Hindi or the regional language, along with the copies of relied upon documents. These should be made available to the Court on the day the charge-sheet is filed.

**22.8** In order to facilitate timely service of summons, addresses of witnesses should be checked periodically. A Witness Register should be maintained wherein addresses should be updated periodically. Along with the postal address, the telephone, telex and fax numbers should be collected wherever the witnesses have these facilities. This should be done by the SI or the ASI of the Legal Cell under the supervision of Sr. PP/SP. Maintenance of this register should also be checked by the SP every six months. The Pairvi Officers detailed for each case should supply the changed address. Addresses of the witnesses should also invariably be recorded in the Case Diaries.

### **Close monitoring of Trials**

**22.9** To ensure close monitoring of all cases, the Legal Cell shall furnish to the Sr. PP and SP a report each month in the following proforma:-

Sl. No.	Case No.	Name of the PP/ Pairvi Officer	Date of present hearing/ previous hearing	Name of the Court conducting trial	Date of issue of summons by the Court (this date/previous date)	The number of witnesses on whom proper service has been made with date (this date/ previous date) together with number of witnesses who attended and were examined and discharged
1	2	3	4	5	6	7

**22.10** The information in the above proforma will enable the Sr.PP to monitor the trial effectively and help the SP to ensure timely service of summons.

### **RDA Cases**

**22.11** About the RDA cases in which a P.O. has been appointed by CBI coming up for hearing during a month, the Branch SP should obtain a report in the same proforma as mentioned for trials in the last para, at the beginning of each month. The SP should closely monitor the progress of an RDA on the basis of this report.

### **Custody of Case Property**

**22.12** All property seized during the investigation should invariably be forwarded to the Court in accordance with the provisions of the Cr.P.C. and directions of the Court should be obtained u/s 451 or 457 of the Cr.P.C. for its custody or disposal during the pendency of the case. On conclusion of the enquiry or trial, the property should be disposed of in accordance with the orders of the Court u/s 452 Cr.P.C.

### **Registers to be Maintained by the Sr. PP**

**22.13** The Sr. Public Prosecutor of a Branch will maintain the following registers:-

- (i) Register of Cases Under Trial.

- (ii) Register of Acquittals or Discharge.
- (iii) Register of Appeals and Revisions.
- (iv) Register of Summons & Warrants.
- (v) Register of Witnesses

## **Sanction for Prosecution**

**22.14** Prosecution should be the general rule in cases of bribery and corruption or other criminal misconduct and in all cases involving substantial loss to the public funds. Under Section 19 of the Prevention of Corruption Act, 1988, and in cases covered by Section 197 of the Criminal Procedure Code, previous sanction of the Competent Authority/Government is required for launching prosecution in a Court of Law against a Public Servant. The competence of the sanctioning authority in cases other than those in which the Central /State Government is the sanctioning authority, should be investigated like a fact. Previous sanction of the Competent Authority/Government is also required for launching prosecution against accused persons involved in the commission of offences under the Explosive Substances Act, Arms Act etc. Thus, in all such cases, previous sanction of the Competent Authority/Government should be procured prior to the launching of prosecution against the accused persons by placing the relevant facts constituting the offence before the sanctioning authority. The Departments from which such sanction for prosecution has been sought are not required to initiate any fact-finding enquiry in order to grant such sanction. However, if any clarification or further information is sought by the Competent Authority/Government the same should be provided by the CBI.

## **Procedure for obtaining Sanction for Prosecution**

**22.15** In cases investigated by the CBI which are found fit for prosecution, the CBI will take further action as follows:–

22.15.1 *Cases in which sanction for prosecution is required to be issued in the name of the President of India*– In all cases under Prevention of Corruption Act, 1988 where sanction for prosecution is required to be issued in the name of the President, the CBI will forward its report, after completion of the investigation, to the Central Vigilance Commission and endorse a copy thereof to the Administrative Ministry/Department concerned for such comments as they may wish to make. Their comments shall be forwarded by the Ministry/Department concerned to the CVC within one month from the date of receipt of the CBI report or such period as may be fixed by the CVC. After due consideration of the CBI report, other relevant records and comments received from the Administrative Ministry/Department, the CVC will tender advice to the concerned Ministry/Department whether prosecution should be sanctioned or not. Appropriate orders will, thereafter, be issued by that Ministry/Department.

22.15.2 *Cases in which sanction for prosecution is to be issued by an authority other than the President of India*– If an authority other than the President is competent to sanction the prosecution, the CBI will forward its investigation report, containing the oral and documentary evidence collected during the investigation, to such authority with a request to accord sanction to prosecute the public servant concerned of sanction for the prosecution is not received within three months from the date of such request, then the CBI should pursue the matter with the concerned authority for expeditious disposal. If such authority declines to accord sanction, then its views, along with other records, should be sent to the CVC for advice through the Administrative Ministry/Department. Further action will be taken by the authority concerned on the basis of the advice of the CVC.

**22.16** On completion of investigation in cases covered in items 22.15.1 & 22.15.2 above, the CBI shall send its report to the Administrative Authority along with the relevant statement of witnesses recorded during investigation and the documents. The Supreme Court judgement in the *State of Tamil Nadu v. M.M. Rajendran* reported in 1999 SCC (Criminal) 1000 and the Circular No. 21/33/98-PD, dated 6-5-1999 issued by the policy division are also referred to in this regard.

**22.17** In a case falling under 22.15.1 above, if the Central Vigilance Commission advises grant of sanction for prosecution but the Ministry/Department concerned proposes not to accept such advice, the case should be referred to the Department of Personnel & Training for a final decision.

**22.18** In a case falling under 22.15.2 above, if the CBI has sought sanction for prosecution and CVC has also recommended grant of sanction and yet the Competent Authority proposes not to grant sanction, the case should be referred to the Department of Personnel & Training for a final decision.

**22.19** Where two or more Government servants belonging to different Ministries/Departments or under the control of different cadre controlling authorities are involved, the CBI will seek sanction from the respective Ministries/Departments or the respective competent authorities in accordance with the procedure laid down in the above paragraphs. Where sanction is granted in the case of one of the Government servants but refused in the case of a co-accused, the CBI will refer the case to the Department of Personnel & Training for resolution of the conflict, if any, and for a final decision.

**22.20** In case a doubt arises as to whether the sanction for the prosecution of a public servant should be given by the Central Government or the State Government or any other authority, such sanction should be given by the Government or authority which would have been competent to remove the public servant from office at the time when the offence was alleged to have been committed.

### **Proof of Orders sanctioning Prosecution of Public Servants**

**22.21** In cases investigated by the CBI, where there are several co-accused and sanction for prosecution in respect of some of them is required under any law to be issued in the name of the President of India and in respect of other/ others by other authorities, the CBI has to send its final investigation report (SP's Report), in respect of all the accused Officers, to the Central Vigilance Commission and should also simultaneously endorse copies of reports to the Administrative Ministries/ Department/Public Undertakings/Nationalized Banks concerned. In respect of Officers for whose prosecution sanction of the President is required, the Central Vigilance Commission would communicate its advice to the Ministry/ Department concerned who will issue the necessary sanction. In respect of other concerned Officers, the CVC would advise the Competent Authority concerned to accord the necessary sanction for their prosecution. In such cases, CBI Branches should not file charge-sheets piecemeal in the Court. The charge-sheets could be filed together by the CBI Branches in the Court of competent jurisdiction against all the Officers involved after sanctions for prosecution have been received from the concerned competent authorities. This procedure should also be followed in respect of orders sanctioning prosecution are issued either by the Central Government or by a competent Officer. Where the order is issued by the Central Government it is made in the name of the President and is authenticated by an Officer who is authorized under Article 77(2) of the Constitution of India to do so. The Officers who are authorized to authenticate orders and other instruments made and executed in the name of the President are specified in the Authentication (Orders and other Instruments) Rules, 1958, issued vide Ministry of Home Affairs Notification No. 3/13/58-Pub.I, dated 25-10-1958. A copy of this Notification was published as S.O. No. 2297 in the Gazette of India Extraordinary Part-II, Section III, sub-section (ii), dated 3-11-1958. Such orders or sanctions issued by the Central Government should be proved by the production of:

- (i) the original order;

- (ii) a copy of the Gazette Notification under Article 77(2) of the Constitution;
- (iii) a copy of the Gazette Notification relating to the appointment of the Officer signing the order to the Office held by him at the time of the issue of the order;
- (iv) a similar procedure should be adopted, mutatis mutandis, in cases in which the sanctioning authority is a State Govt.

**22.22** Where the Order sanctioning prosecution are issued by a competent Officer and not by the Central/State Governments, they will be signed by the Officer himself. Such orders can be proved by production of the original orders either by examining the Sanctioning Authority or by any Officer acquainted with the signatures of the Officer according sanction provided the Sanction Order is a speaking order and clearly indicates application of mind by the Sanctioning Authority.

#### **Summoning of official of the AVD of Department of Personnel to prove Sanction**

**22.23** The sanction order issued by the Central Government is in the name of the President as required under Article 77 of the Constitution of India and the same is authenticated by an Officer competent to do so according to Authentication Orders, 1958. The sanction order is a public document and the Court may be requested to take a judicial notice of the same. In order to invite the Court to take a judicial notice of such public documents, the Gazette Notification under Article 77(2) of the Constitution and that of appointment of the Officer signing the order are required to be placed before the Court. The sanction order should be a speaking order to establish that the facts constituting the offence were placed before the Sanctioning Authority and that he had applied his mind before issuing the order. If the Court declines to take judicial notice or for any other reason, it is felt necessary or expedient that the application of the mind to the facts constituting the effect is required to be established independently, then the Officer of the AVD issuing the said sanction order on behalf of the Central Government should be summoned and examined in the Court of Law.

#### **Withdrawal of Prosecution**

**22.24** Once a case has been chargesheeted in the Court, it should be allowed to take its normal course. A proposal for withdrawal of prosecution may, however, be initiated by the investigating/prosecuting agency on appropriate legal grounds. In such cases, the Ministry of Law should be consulted and its advice accepted. Requests for withdrawal of prosecution may also come from the accused. Such requests should be entertained in very exceptional cases. In such cases, the Ministry of Law should be consulted in the first instance. The principles laid down in Section 321 Cr.P.C for withdrawal from prosecution should be followed.

**22.25** In all cases in which prosecution was sanctioned on the advice of the CVC, the CVC should be consulted before the matter is referred to the Ministry of Law.

**22.26** Rule 7 of the Government of India (Transaction of Business) Rules and item (g) of the Second Schedule of those rules provide that any proposal to withdraw, otherwise than in accordance with the advice of the Ministry of Law, any prosecution instituted by or at the instance of the Government of India, should be brought before the Cabinet.

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**COURT DIARY**

Name of Court ..... CBI ..... Branch .....

Court Case No. .... Branch Case No. ....

Date of Institution ..... Court Diary No. ....

Section of Law ..... Present date of hearing .....

Name(s) & Designation(s) of accused ..... Next date of hearing.....

1. Trial Stage Precharge/Charge/Prosecution/Defence/Final Arguments.
2. Details of witnesses :

Type of witness	Total No.	Cited	Total examined	Total number of remaining
Technical witnesses				
Factual witnesses				

3. Details of witnesses summoned for date :

Name of witnesses summoned	Process served	Appeared	Fully supported	Partly supported	Did not support pros.	Not examined and reasons thereof
(i)						
(ii)						
(iii)						
(iv)						
(v)						

4. Brief description of proceedings, including hostility of witness(s), if any.
5. Remedies suggested by PP if damage caused to the case.
6. Pairvi Officer's name & rank.
7. Prosecutor's name & rank.
8. Sr. PP's comments.
9. SP's comments.
10. DIG's/DLA's comments (where necessary)

*Signature of the Prosecutor*

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