

High Court of Jammu and Kashmir at Jammu

Notification

No:- 34

Dated:- 25/4/2018

In exercise of the powers conferred by Section 23 of the J&K Contempt of Courts Act- 1997, (Act No. XXV of 1997) read with Article 215 and 225 of the Constitution of India and Sec. 102 of the Constitution of Jammu & Kashmir, the High Court of Jammu and Kashmir hereby makes the following Rules to regulate the proceedings for the Contempt of itself and of Courts Subordinate to it under the Contempt of Courts Act, 1997.

1. *Short Title and Commencement.*

- i) These Rules may be called "The Rules, to regulate proceedings for Contempt of the Subordinate Courts and the High Court of Jammu & Kashmir, 2018."
- ii) These Rules shall come into force on the date of their publication in the J&K Govt. Gazette.

2. *Definitions:*

In these Rules unless there is anything repugnant to the context:

- (a) "Act" means the Jammu and Kashmir Contempt of Courts Act, 1997;
- (b) "Advocate General" means the Advocate General (for the state) of Jammu and Kashmir.
- (c) "Chief Justice" means the Chief Justice of the High Court of Jammu and Kashmir;
- (d) "Code" means the "Code of Criminal Procedure, Svt.1989" (1933 A.D.), as amended from time to time.
- (e) "Form" shall mean the forms mentioned in the appendix to these Rules;
- (f) "High Court" means the High Court of Jammu and Kashmir;
- (g) "Judge" means the Judge of the High Court of Jammu and Kashmir.
- (h) "Registrar" means 'Registrar Judicial' and shall include Joint Registrar Judicial or any other officer as may from time to time be specified by the Chief Justice;
- (i) "Subordinate Court" means any court subordinate to the High Court of Jammu and Kashmir but does not include "Panchayati Adalat or Village Adalat" etc.
- (j) "Ex-facie contempt" includes a commission of any of the offences mentioned in Section 480 of the Code, in the view, or, presence of, any Judge or Judges of the High Court sitting in Court.
- (k) All other words and expressions used in these Rules, but not defined herein, shall have the meanings respectively assigned to them in the Act.

3. *Form of Motion:*

- (1) Every motion for initiating action for Contempt of Court shall be in the form of petition described as Contempt Petition (Criminal) in respect of Criminal Contempt and Contempt Petition (Civil) in respect of Civil Contempt.
- (2) Every petition under the Act shall be presented in the office of Registrar and registered as Contempt Petition (Civil) or Contempt Petition (Criminal).
- (3) If there are allegations of commission of both Civil Contempt and Criminal Contempt against the same person/persons, two separate applications shall be moved, one dealing with Civil Contempt and the other with Criminal Contempt .
- (4) In case of Civil Contempts, certified copy of judgment, decree, order, writ or undertaking, which is alleged to have been disobeyed, shall be filed along with the petition.
- (5) Every Civil Contempt shall be accompanied by as many extra copies as there are respondents.
- (6) The Registry shall prepare the paper book in triplicate in case of Criminal Contempt and all relevant material brought on the record from time to time shall be included in the paper book.

4. *Cognizance:*

- (1) Proceeding in connection with a Civil Contempt may be initiated:-
 - (a) by a petition presented by a party or parties aggrieved; or
 - (b) by the High Court on its own motion ; or
 - (c) in case of any Civil Contempt of a Subordinate Court on a reference made to it by that Court.
- (2) Proceeding in connection with a Criminal Contempt may be initiated:-
 - (a) on a motion of the High Court in respect of a Contempt committed in its own view under section 14 of the Act; or
 - (b) on its own motion by the High Court under section 15 of the Act; or
 - (c) on a motion founded on a petition presented by the Advocate General; or
 - (d) on a motion founded on a petition by any other person with consent in writing of the Advocate General; or
 - (e) on a reference made to High Court by the Subordinate Court.

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5. *Contempt Proceedings :*

When proceedings are initiated on behalf of an aggrieved person, every petition, motion or reference shall contain:-

- (a) The name, description, age and registered postal address of the petitioner/petitioners and the person/persons charged;
- (b) Nature of the Contempt alleged and the material facts including the date/ dates of the Commission of alleged Contempt, as may be necessary for the proper determination of the case;
- (c) If a petition has previously been made by him on the same facts, the petition previously made and shall also indicate the result thereof;
- (d) The petition shall be supported by an affidavit;
- (e) Where the petitioner relies upon a document in his possession or power, he shall file such document or documents or true copies thereof with the petition or make a reference in the petition that the document or documents relied upon cannot be immediately had due to reasons beyond his control and that the same shall be filed in due course of time;
- (f) No court fee shall be payable on the petition or any documents filed in the proceedings;
- (g) The petition shall be signed by the petitioner or his duly authorize agent;
- (h) Every petition shall be verified by the solemn affirmation made by the petitioner or by a person/persons having cognizance of facts stated and shall state clearly by reference to the paragraphs of the petition, whether the statements are based on knowledge, information and belief or on record, where a statement is based on record sufficient particulars shall be given to identify the records.
- (i) Where the petitioner is a company there should be appended an affidavit of Competency and if the petitioner or the respondent is a Corporation provisions of Order XXIX of the CPC, in so far as they are applicable, shall apply.
- (j) Where the respondent is the State Govt. or the Central Govt. the cause title shall mention the person upon whom the notice or the rule is to be served.

6. *Initiation of proceedings:*

- (1) Every petition, motion or reference to Civil Contempt shall, unless directed otherwise by the Chief Justice, be laid before a Single Bench.
- (2) Every petition, motion or reference in relation of Criminal Contempt shall, unless directed otherwise by Chief Justice be laid for motion hearing before Division Bench constituted by the Chief Justice.

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- (3) Where a Bench constituted by the Chief Justice for hearing any petition declines to hear the case on personal grounds or otherwise or if one of the Judges constituting the Bench, in case it consists of more than one Judge, declines to hear the case on such grounds, the matter shall be placed before the Chief Justice for reassigning the case to some other Bench.
- (4) When an application for initiating a proceeding in Criminal Contempt is received by a Judge other than the Chief Justice, he shall direct the Registrar that it be laid before the Chief Justice for orders.
- (5) The Chief Justice may decide either by himself or in consultation with other Judges of the Court whether to take cognizance of the information/application for initiating a proceeding in criminal contempt either received by him or by any other Judge and without the orders of the Chief Justice, such application/information shall not be registered as Criminal Contempt Petition.
- (6) Every petition shall be posted before the Court for preliminary hearing and orders as to issue of notice. Upon such hearing, that Court, if satisfied that no prima facie case has been made out for issue of notice, may dismiss the petition, and, if not so satisfied direct that notice of the petition be issued to the respondent.
- (7) Where Contempt is committed in the presence of Court, or during the hearing of a case by the Court, the proceedings initiated for such Contempt shall be conducted in accordance with the procedure laid down in Section 14 of the Act.
- (8) Every reference relating to Contempt of Court received from Subordinate Courts shall alongwith the report of Registry be laid before the Chief Justice who shall have the discretion to file the same or to order that the same be laid before the Bench constituted by him for orders.
- (9) All references made by the Subordinate Courts other than the Courts of District and Sessions Judge shall be forwarded through the respective District & Sessions Judge to High Court expeditiously with their report.
- (10) In all cases cognizance of which has been taken Suo Moto, or on a reference made by the Subordinate Court, the State of Jammu and Kashmir shall be described as the petitioner and the Advocate General or any other State Counsel shall conduct prosecution for Contempt in such cases.

7. ***Criminal Contempt of Subordinate Court U/s 15 of the Act:***

- (a) Reference u/s 15(2) of the Act may be made by subordinate Court either Suo Moto or in an application received by it.
- (b) Before making a reference the subordinate Court shall hold a preliminary enquiry by issuing a show cause notice to the alleged contemnor, alongwith copies of relevant documents, if any, and after offering an opportunity of being heard the subordinate Court shall write a concise reasoned order of reference indicating why Contempt of Court appears to have been committed; and

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- (c) Every motion made by the Advocate General u/s 15(2), of the Act shall state the allegations of facts and the view of the informant that in relation to these facts Contempt appears to have been committed of which the court should take Cognizance and take further action. The motion should contain sufficient material to indicate why the Advocate General is inclined to move the Court.

8. Admission and Notice :

- (a) Where the Chief Justice or such Judge or Judges of the High Court to whom the matter is referred under Rule 6 decides/decide that action should be taken under the Act against the alleged Contemnor, the Registrar shall cause the notice to be issued to the alleged Contemnor;
- (b) Every notice issued by the High Court shall be in the form appended to these rules and shall be accompanied by a copy of the motion, or petition of reference, as the case may be, together with the copies of the affidavit, if any;
- (c) The notice shall bear the date, the seal of the High Court and shall be issued under the signature of the Registrar Judicial;
- (d) Notice of every proceeding under the Act shall be served personally on the person charged, unless the Court, for reasons to be recorded, directs otherwise. In that case the service may be effected by alternative forms of service as may be directed by the Court;
- (e) Where it is proved to the satisfaction of the High Court that the person charged is, absconding or is likely to abscond or is keeping or likely to keep out of the way to avoid service of the notice, the High Court may order the issue of warrant of his arrest in addition to attachment of his property under Sub Sections (3) and (4) of S.11 of the Act. Such warrant may be endorsed in the manner laid down in S.76 of the Code of Criminal Procedure 1989, in terms of the order of the High Court;
- (f) In every case of Criminal Contempt the accused shall appear in person before the High Court, on the first date of hearing and on every subsequent date to which the case is posted, unless exempted by an order of the Court;
- (g) In every case of Civil Contempt, the accused shall appear either in person or through Counsel before the High Court on the first date of hearing and on every subsequent dates to which the case is posted; but shall appear in person whenever directed by the Court.

9. ENQUIRY:

- (a) Any person charged with Contempt of Court other than contempt referred to in Sec.14, may file an affidavit in support of his defense on the date fixed for his appearance or on such other date as may be fixed by the Court in that behalf;
- (b) If such person pleads guilty to the charge, his plea shall be recorded and the Court may, in its discretion, convict him thereon;
- (c) If such person refuses to plead or does not plead, or claims to be tried or the Court does not convict him on the plea of guilt, it may determine the matter of the charge either on the affidavits filed or after taking such further evidence as it deems fit;

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- (d) The Court may pass such orders for the purpose of securing the attendance of any person to be examined as a witness and for the discovery or production of any document as it deems expedient in the ends of justice.

Provided that the High Court may also direct any Subordinate Court to record evidence and submit the same to the High Court. The Subordinate Court will have all the powers of recording evidence under the Civil Procedure Code and Criminal Procedure Code.

10. BAIL:

- (1) Where any person charged with contempt, appears or is brought before the High Court and is prepared, while in custody or at any stage of the proceedings to give bail, such person shall be released on bail, if a bond for such sum of money as the High Court thinks sufficient is executed with or without sureties on condition that the person charged shall attend at the time and place mentioned in the bond and shall continue to so attend until otherwise directed by the High Court.

Provided that the High Court may, if it thinks fit, instead of taking bail from such person, discharge him on his executing a bond without sureties for his attendance as aforesaid or without executing such bond.

- (2) Notwithstanding anything contained in Sub Rule (1):-
- (a) Where a person fails to comply with the time and place of attendance, the High Court may refuse to release him on bail, when on a subsequent occasion in the same case he appears before the High Court or is brought in custody and any such refusal shall be without prejudice to the powers of the High Court to call upon any person bound by such bond to pay the penalty thereof.
- (b) The relevant provisions of Code of Criminal Procedure Svt.1989 (1933 A.D.) shall so far as may be, apply to all bonds executed under the Rules.

11. Appeals:

- (1) Every appeal filed under S.19 of the Contempt of Courts Act 1997 shall be registered as "Contempt Appeal" and duly numbered as such.
- (2) (a) Every such appeal, shall be posted before a Bench of not less than two Judges, if the order appealed against is passed by a Single Judge of the Court;
- b) If the order appealed against is passed by a Bench of not less than two Judges, the appeal shall lie to the Supreme Court;
- (3) The procedure for regulation of such appeals shall be the same as for appeals under clause 15 of the Letters Patent.

12. Miscellaneous :

- (1) *Right to defend:* Every person against whom proceedings are initiated under the Act may as a matter of right be defended by an advocate of his choice competent to appear before the High Court.
- (2) *Evidence:* In all matters under the Act the charge may be determined either on the affidavits filed (and documents, if any) or after taking such further evidence as may be necessary. Where the Court summons any person to appear as a witness in any proceedings, the expenses of such witness or witnesses, as determined according to the rules for the time being in force, shall be paid by the Registrar out of the contingency funds, provided that the Court may direct any party to the proceedings to pay such expenses.
- (3) *Provisions of the Code of Criminal Procedure/Civil Procedure Code to be followed:* The provisions of the Code of Criminal Procedure and the Civil Procedure Code which are not inconsistent with the provisions of the Act and these Rules, shall be applicable to enforce and execute the orders passed by the High Court in proceedings for Contempt.
- (4) *Proceedings under other Laws:* Proceedings initiated under the Act, shall not be a bar to any Court for proceeding under the provisions of other laws relating to Contempt of Courts. The Proceedings in the High Court may be in addition to any impending proceedings before the Courts or proceedings that may be initiated during the pendency of a contempt proceeding before the High Court.

13. Costs:

The High Court may direct any party to a proceeding under the Act to pay the Costs thereof as determined by it to any other party thereto.

14. Execution :

It shall be the duty of the Registrar to carry out, enforce and execute the orders passed by the High Court in any proceeding under the Act, and in particular, orders imposing fines or awarding costs.

15. Procedure on Apology:

- (a) If at any time during the pendency of the proceeding or thereafter before the execution of the sentence, the accused tenders an apology, the same shall be placed for orders of the Court at once with the entire records of the case.
- (b) If the Court accepts the apology, further proceeding shall be dropped and the warrant, if any issued, shall be recalled by an order.

16. Rules not to apply to ex-facie Contempt :

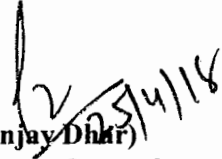
Nothing in these rules shall apply to ex-facie Contempt governed by section 480 of the Code.

17. Repeal and savings:

On the coming into force of these Rules, all existing Rules governing the subject that is dealt with or covered by these Rules shall stand repealed.

Provided that this repeal shall not affect or invalidate anything done, any action or decision taken, any disposal made, any order or proceeding made before the enforcement of these Rules.

By order of the Hon'ble High Court.


(Sanjay Dhar)
Registrar General

Copy to the:-

No:- 2543-83/S.G.S

Dated:- 25/4/2018

1. Principal Secretary to Hon'ble the Chief Justice, High Court of Jammu and Kashmir;
2. Secretary to Hon'ble Mr. Justice _____
..... for information of His Lordship.
3. Registrar Vigilance, High Court of J&K, Jammu.
4. Registrar Judicial High Court of J&K, Jammu/Srinagar.
..... for information.
5. Principal District & Sessions Judge _____
..... for information and with the request to circulate the same amongst the Judicial Officers working under his Jurisdiction.
6. Central Project Coordinator E-Courts, High Court of J&K, Jammu for uploading on the High Court website.
7. Manager, Government Press, Jammu, for publication in the Government Gazette.


Registrar General

FORM I

(Notice to a person charged with contempt of Court)

[See Rule 8(b)]

IN THE HIGH COURT OF JAMMU AND KASHMIR

Contempt Case No. _____ Criminal/Civil of _____

ABC

Versus

XYZ

(Petitioner)

(Respondent)

To

Sh. _____

S/o _____

R/o _____

(Here inscribe the address of the alleged contemner)

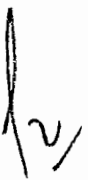
WHEREAS your attendance is necessary to answer a charge of Contempt of Court viz: (briefly state the nature of the contempt) and file affidavit in support of your defence, if any.

You are hereby directed to appear in person or through an advocate (if the Court has so ordered) before this Court at Jammu/Srinagar on the _____ day of _____ at _____ A.M. and shall continue to attend the Court on all days thereafter to which the case against you stands adjourned and until final orders are passed on the charge against you.

HEREIN FAIL NOT

Given under my hand and seal for the Court this the _____ day of _____

Registrar Judicial



FORM II
WARRANT OF ARREST

[See Rule 8(e)]

IN THE HIGH COURT OF JAMMU AND KASHMIR AT JAMMU/SRINAGAR

Contempt Case No. _____ Criminal/Civil of _____

ABC

Versus

XYZ

(Petitioner)

(Respondent)

To

(Here inscribe the Name/Designation of the person who is to execute the Warrant)

WHEREAS _____ of _____ is charged with committing contempt of this Court, you are hereby directed to arrest the said _____ and to produce him before this Court.

HEREIN FAIL NOT

(If the Court has issued aailable warrant, the following endorsement shall be made on the warrant).

If the said _____ shall give bail in the sum of Rs. _____ with one surety in the sum of Rs. _____ (or two sureties each in the sum of Rs. _____) to attend before this Court on the _____ day of _____ 20____ and to continue so to attend until otherwise directed by this Court, he may be released.

Dated this _____ day of _____

Registrar Judicial

FORM III

BOND AND BAIL-BOND AFTER ARREST UNDER A WARRANT
IN THE HIGH COURT OF JAMMU AND KASHMIR AT JAMMU/SRINAGAR

(See Rule 10)

I, (name) of _____ being brought before the District Magistrate of _____ (or as the case may be) under a warrant issued to compel my appearance to answer to the charge of contempt of the High Court do hereby bind myself to attend the High Court on the _____ day of _____ next, to answer to the said charge, and to continue so to attend, until otherwise directed by the High Court; and in case of my making default herein, I bind myself to forfeit to the Government of Jammu and Kashmir, the sum of rupees _____.

Dated this _____ day of _____

(SIGNATURE)

I do hereby declare myself surety for the above-named _____ of _____ that he shall attend before _____ in the High Court on the _____ day of _____ next, to answer to the charge on which he has been arrested, and shall continue so to attend until otherwise directed by the High Court; and, in case of his making default therein, I bind myself to forfeit to the Government of Jammu and Kashmir, the sum of rupees _____.

Dated this _____ day of _____