

**Himachal Pradesh
Jal Shakti Vibhag**



Subject: - Regarding modified / devised formats for Prosecution
Sanction order u/s 19 PC Act and Permission / Approval
Order, under section 17A of PC (Amendment) Act, 2018.

Enclosed please find herewith a copy of Government
letter No.Home(Vig.)A003-03/2023-PC Act dated 26.03.2024 alongwith its
enclosures as received from the Secretary (Vigilance) to the Government of
HP, Shimla-2 on the subject cited above for information and taking necessary
action.

In this connection, it is requested to upload the above letter
alongwith its enclosures on Departmental website please.

DA:-As Above

Incharge,
Computer Cell,
Jal Shakti Vibhag,
Head Office, Shimla-5


Vigilance Officer,
Jal Shakti Vibhag,
Head Office, Shimla-5


U.O.No.JSV-Vig.CWP No.4916/2010-325

Dated:- 18.07.24

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File No. Home(Vig)A0003-03/2023-PC Act.
Government of Himachal Pradesh
Home (Vigilance) Department

From

The Secretary (Vigilance) to the
Government of Himachal Pradesh
Shimla-171002

To

- i. All the Administrative Secretaries to the Government of Himachal Pradesh.
- ii. All the Heads of the Departments in Himachal Pradesh
- iii. All the Divisional Commissioners in Himachal Pradesh
- iv. All the Deputy Commissioners in Himachal Pradesh
- v. All the Chairman, Managing Directors/Secretaries and Registrars of all the PSUs Corporations/Boards/Universities in HP
- vi. The Secretary, HP Vidhan Sabha, Shimla-4
- vii. The Registrar, HP High Court Shimla-1
- viii. The Secretary, HP Public Service Commission, Shimla-02

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6/4/24

Dated Shimla-2, the 26-3-2024

Subject:- Regarding modified/devised formats for Prosecution Sanction order u/s 19 PC Act and Permission/Approval Order, under section 17A of PC (Amendment) Act, 2018

Sir/Madam,

I am to refer to the subject cited above and to say that section 19 of the Prevention of Corruption Act and section 197 of CrPC places a legal imbarge on the trial court for taking cognizance of an offences under the PC Act and IPC respectively unless there is a previous sanction of the competent authority to prosecute the accused public servant retired or in service. Therefore, Prosecution sanction by the competent authority is a condition precedent for taking cognizance by the Trail Court.

PR
U-I

Signature
04/04/2024

However, few instances have come to notice of this Department in the recent past that in some cases Prosecution Sanction/report in writing and permission/ approval order u/s 17 A of PC Act etc are not being issued by the competent authority in consonance with spirit of law and sometime the Bureau received incomplete prosecution sanction orders, which are lacking essential ingredients, resultantly the matters are being referred back by the Bureau to this Department for obtaining orders

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3/4/24

Copy No. 01 Dated 25-04-24
Vigilance Section,
Jai Shakti Vibhag,
Tutikendi, Shimla-5

as per the spirit of law. Due to this unnecessary correspondence inordinate delay being caused in presenting the Chargesheet u/s 173 CrPC in the court of Law.

In order to avoid delay and expenses and also for the Sake of convenience and uniformity of practice standard Formats for the Prosecution Sanction u/s 19 of PC Act, related to public servant, removable from office with the sanction of the Board/ Corporation/Competent Authority, government retired or in service as well as format for permission/approval-order under section 17-A of PC (Amendment Act,2018) have been modified/devised which are enclosed herewith as Porforma-A to G.

It has further been noticed that generally the prosecution sanction cases are not dealt with on priority basis. In most of the cases there are undue delay. The direction/judgment passed by the Hon'ble High Court of Himachal Pradesh and guidelines of Apex Court of India and the provision of PC (Amendment) Act, 2018, the concerned authority shall convey its decision under the aforesaid section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month where legal consultation is required."


In one of the case CWP No. 4916/2010, titled as Sher Singh Vs State of H.P. and others, the Hon'ble High Court of H.P. has taken very serious view of the matter and following direction were given to the State/Chief Secretary to the Govt which is reproduced hereunder:-

"There will also be a direction to the Chief Secretary to take final decision in all the cases of request for sanction of prosecution within three months of the request for sanction from the Vigilance Bureau/Prosecution Agency. In order to avoid any ambiguity in this regard, it is made clear that in all the cases of request for prosecution sanction, the Government shall take decision within three months of the request from the quarter concerned for sanction whether of gazetted or non-gazetted officer. In case, any instruction is to be issued in this regard, the Chief Secretary shall issue the same directing all competent authorities to take action, as above."

In this regard, worthy Chief Secretary, Himachal Pradesh Government vide letter No. per(Vig)F(6)-1/98 dated 26-05-2011 has already issued directions which may be downloaded from the official website of Vigilance Department.

It is, therefore, requested that while according prosecution sanctions by the Administrative Departments/Competent Authorities it may please be ensured that these are in order as per the modified/ devised formats and conveyed to the Vigilance Department within a period of 3 months. The sanctioning authorities should discharge their obligation with complete due diligence and would be held responsible for any deviation or non-adherence in the matter, if the validity of sanction/permission were to be questioned at a later stage.

Encls. As Above


Director-cum-Special Secretary (Vigilance) to the
Government of Himachal Pradesh

Encls. As above,

Dated

2024

Copy to the Addl. Director General, State Vigilance & Anti-Corruption Bureau, Himachal Pradesh, Shimla-2 for information please.

Director-cum-Special Secretary (Vigilance) to the
Government of Himachal Pradesh

PROFORMA-A

PRO-FORMA FOR PROSECUTION SANCTION ORDER

(In respect of Public Servants in service)

Whereas, FIR No. _____ dated _____ under section _____ has been lodged at PS SV&ACB _____ on the complaint of Sh. _____ against _____ on the allegation that _____ And whereas, the investigation of the case was conducted by the SV&ACB and during the course of investigation it has been established that _____ (highlight role of the accused) _____

And whereas, the said act(s) of aforesaid accused namely, _____ constitute the commission of the offences punishable under section(s) _____ of the PC Act, 1988. And whereas, I _____ (Name and Designation), being the competent authority to remove the said accused _____ (Name) from his office after fully and carefully examining the records furnished by SV&ACB including FIR, statements of witnesses, documents seized during investigation. charge sheet and other relevant material/ facts arising out of the aforesaid FIR, am prima facie satisfied that the aforesaid accused namely _____ has committed offence(s) of _____ which are punishable under the Prevention of the Corruption Act, 1988 and after applying my mind independently consider that aforesaid accused namely _____ should be prosecuted before the Court of law **keeping in mind the public interest and the protection available to the accused against whom the prosecution sanction is sought.**

Now, therefore, I _____ (Name and designation), hereby accord the prosecution sanction under section 19 Prevention of Corruption Act, 1988 in FIR No. _____ dated _____ for offence(s) _____ of the Prevention of Corruption Act, 1988, for the prosecution of the aforesaid accused namely _____ and any other offence(s) punishable under any other provisions of law in respect of the acts aforesaid and for taking cognizance of the said offence(s) by a Court of competent jurisdiction.

Name and designation of the authority
(With the Seal of the Authority)

PRO-FORMA FOR PROSECUTION SANCTION ORDER

For Public Servants who may be removed from office by the Board/ Corporation/ competent removal authority after getting approval from Managing Committee of registered co-operative society

Whereas, FIR No. _____ dated _____ under section _____ has been lodged at PS SV&ACB _____ on the complaint of Sh. _____ against on the allegation that _____ And whereas, the investigation of the case was conducted by the SV&ACB and during the course of investigation it has been established that _____ (highlight role of the accused) _____ And whereas, the said act(s) of aforesaid accused namely, _____ constitute the commission of the offences punishable under section(s) _____ of the PC Act, 1988. And whereas, the _____ (Name of the Board/ Corporation), is the competent authority to remove the said accused _____ (Name) from his office. The records furnished by SV&ACB including FIR, statements of witnesses, documents seized during investigation, charge sheet and other relevant material/ facts arising out of the aforesaid FIR, for seeking prosecution sanction in respect of _____ (Name of the accused) were placed before the Board in its meeting held on _____ (Date). The Board/ Corporation after carefully considering the material placed before it was prima facie satisfied that the aforesaid accused namely _____ has committed offence(s) of _____ which are punishable under the prevention of the Corruption Act, 1988 and should be prosecuted before a court of law keeping in mind the public interest and the protection available to the accused against whom the prosecution sanction is sought. The Board/ Corporation/ Managing Committee of registered co-operative society, has therefore resolved to accord prosecution sanction under section 19 Prevention of Corruption Act, 1988 in FIR No. _____ dated _____ for offence(s) punishable under section(s) _____ of the Prevention of Corruption Act, 1988, for the prosecution of the aforesaid accused namely _____ and any other offence(s) punishable under any other provisions of law in respect of the acts aforesaid and for taking cognizance of the said offence(s) by a Court of competent jurisdiction. Now, therefore, I _____ ex-officio BOD of organization/ corporation or competent removal authority after getting the recommendation of Managing Committee of Registered Co-operative Society (name and designation), hereby convey the prosecution sanction under section 19 Prevention of Corruption Act, 1988 in FIR No. _____ dated _____ against the aforesaid accused _____

Name and designation of the authority
(With the Seal of the Authority)

PRO-FORMA-C

PRO-FORMA FOR PROSECUTION SANCTION ORDER

(In respect of retired Public Servants)

Whereas, FIR No. _____ dated _____ under section _____ has been lodged at PS SV&ACB _____ on the complaint of Sh. _____ against _____ on the allegation that _____. And whereas, the investigation of the case was conducted by the SV&ACB and during the course of investigation it has been established that (highlight role of the accused) _____

_____ And whereas, the said act(s) of aforesaid accused namely _____ constitute the commission of the offences punishable under section(s) _____ of the PC Act, 1988. And whereas, the aforesaid accused _____ has retired from service (or has demitted office as the case may be) and I _____ (Name and Designation), would have been the competent authority to remove him from office at the time of alleged commission of offence. I have fully and carefully examined the records furnished by SV&ACB including FIR, statements of witnesses, documents seized during investigation, charge sheet and other material arising out of the aforesaid FIR and I am satisfied that the aforesaid accused namely _____ has committed offence(s) of _____ which are punishable under the prevention of the Corruption Act, 1988 and after applying my mind independently consider that aforesaid accused namely _____ should be prosecuted before the Court of law **keeping in mind the public interest and the protection available to the accused against whom the prosecution sanction is sought.** Now, therefore, I _____ (Name and designation), hereby accord the prosecution sanction under section 19 Prevention of Corruption Act, 1988 in FIR No. _____ dated _____ for offence(s) punishable under section(s) _____ of the Prevention of Corruption Act, 1988, for the prosecution of the aforesaid accused namely _____ and any other offence(s) punishable under any other provisions of law in respect of the acts aforesaid and for taking cognizance of the said offence(s) by a Court of competent jurisdiction.

Name and designation of the authority
(With the Seal of the Authority)

PRO-FORMA FOR PROSECUTION SANCTION ORDER

(For Retired Public Servants who could have been removed from office by the Board/ Corporation/ **competent removal authority after getting approval from Managing Committee of registered co-operative society**, at the time of alleged commission of offence).

Whereas, FIR No. _____ dated _____ under section _____ has been lodged at PS SV&ACB _____ on the complaint of Sh. _____ against _____ on the allegation that _____ And whereas, the investigation of the case was conducted by the SV&ACB and during the course of investigation it has been established that _____ (highlight role of the accused)

_____ And whereas, the said act(s) of aforesaid accused namely, _____ constitute the commission of the offences punishable under section(s) _____ of the PC Act, 1988. And whereas, the aforesaid accused namely _____ has retired from service and at the time of the alleged commission of offence the _____ (Name of the Board/ Corporation), was competent to remove the said accused _____ (Name) from office. The records furnished by SV&ACB including FIR, statements of witnesses, documents seized during investigation, charge sheet and other material arising out of the aforesaid FIR for seeking prosecution sanction in respect of _____ (Name of the accused) were placed before the Board/ Corporation/ **competent removal authority after getting approval from Managing Committee of registered co-operative society** in its meeting held on _____ (Date). After carefully considering the material placed before above stated authorities, it was prima facie satisfied that the aforesaid accused namely _____ has committed offence(s) of _____ which are punishable under the prevention of the Corruption Act, 1988 and should be prosecuted before a court of law. The Board/ Corporation/ **competent removal authority after getting approval from Managing Committee of registered co-operative society**, has therefore resolved to accord prosecution sanction under section 19 Prevention of Corruption Act, 1988 in FIR No. _____ dated _____ for offence(s) punishable under section(s) _____ of the Prevention of Corruption Act, 1988, for the prosecution of the aforesaid accused namely _____ and any other offence(s) punishable under any other provisions of law in respect of the acts aforesaid and for taking cognizance of the said offence(s) by a Court of competent jurisdiction. Now, therefore, I _____ (name and designation), hereby convey the prosecution sanction under section 19 Prevention of Corruption Act, 1988 in FIR No. _____ dated _____ against the aforesaid accused _____ (Name).

Name and designation of the authority
(With the Seal of the Authority)

PRO-FORMA FOR PROSECUTION SANCTION ORDER

(In respect of Retired Gazetted Officer/ Public Servants)

Whereas, FIR No. _____ dated _____ under section _____ has been lodged at PS SV&ACB _____ on the complaint of Sh. _____ against _____ on the allegation that _____. And whereas, the investigation of the case was conducted by the SV&ACB and during the course of investigation it has been established that _____ (highlight role of the accused) _____

_____ And whereas, the said act(s) of aforesaid accused namely, _____ constitute the commission of the offences punishable under section(s) _____ of the Indian Penal Code. And whereas, I _____ (Name and Designation), being the competent authority, to remove the said accused _____ (Name) from his office after fully and carefully examining the records furnished by SV&ACB including FIR, statement of witnesses, documents seized during investigation, charge sheet and other relevant material/ facts arising out of the aforesaid FIR, am prima facie satisfied that the aforesaid accused namely _____ has committed offence(s) of _____ which are punishable under the Indian Penal Code and after applying my mind independently consider that aforesaid accused namely _____ should be prosecuted before the Court of law keeping in mind the public interest and the protection available to the accused against whom the prosecution sanction is sought.

Now, therefore, I _____ (Name and designation), hereby accord the prosecution sanction under section 197 Code of Criminal Procedure, in FIR No. _____ dated _____ for offence(s) punishable under section(s) _____ of the Indian Penal Code, for the prosecution of the aforesaid accused namely _____ and any other offence(s) punishable under any other provisions of law in respect of the acts aforesaid and for taking cognizance of the said offence(s) by a Court of competent jurisdiction.

Name and designation of the authority
(With the Seal of the Authority)

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**PERMISSION/APPROVAL ORDER UNDER SECTION 17A OF PC
(AMENDMENT ACT, 2018)**

Whereas, the Vigilance Department, HP, Shimla, vide letter No. _____ dated _____ has sought permission/approval under section 17A of the PC(Amendment Act, 2018) to conduct any enquiry/inquiry/investigation/ for registration of criminal case against Public Servant namely _____ of _____ office under _____ in complaint No. _____.

2. Whereas, from the perusal of the proposal submitted by the Vigilance Department, it is revealed that the involvement of _____ in committing of crime/offence/criminal mis-conduct, cannot be ruled out as per the facts that have come to the light, during fact finding information. Further, the alleged offence/criminal misconduct alleged to have been committed by the said public servant is relatable to any recommendation made or decision taken by him in discharge of his official function or duties. (As the case may be please describe the recommendation made or decision taken).

Therefore, so as to verify the facts about the undue advantage derived by the public servant for himself or for any other person detailed enquiry/inquiry/ investigation is required to be conducted.

3. And whereas, after going through the recommendation of the Vigilance Department and material available on record the competent authority has observed that permission/approval under section 17A for conducting _____ is required to be given against _____ public servant.

4. NOW THEREFORE, I removal/ competent authority _____ hereby accord approval under section 17-A of the Prevention of Corruption(Amendment Act, 2018), for taking further action i.e. _____ against the public servant namely _____.

Competent Authority