

MOST IMMEDIATE

No. Home-E(5) 2-336/2004
Government of Himachal Pradesh
Department of Home

From

The Principal Secretary (Home) to the
Government of Himachal Pradesh.

To

All the District Magistrates,
Himachal Pradesh.

Dated: 08th Aug. 2008.

Subject: Delegation of Powers in Criminal Cases.

Sir,

I am to say that as a result of instructions issued vide this department letter of even number dated 31-10-2007, there had been some confusion amongst the field agencies, with regard to delegation of powers in criminal cases. In order to clarify the position, the matter was active consideration of the State Government. Now, the Government has decided to issue following revised instructions, in supersession of all earlier instructions issued in this regard from time to time, with immediate effect.

(A) The provisions of sections 377 and 378 Cr.PC, as amended by the Cr.PC(Amendment Act, 2005(Central Act 25 of 2005) has come into operation from 23.6.2006 as per the Notification No. 626 dated 21.6.2006 issued by the Ministry of Home Affairs, Government of India. Accordingly, the following type of cases for appeal shall be approved at the Government level with immediate effect:-

(i) Under Section 377(1)(b) Cr.P.C.

Where the appeal against the sentence on the ground of its inadequacy is to be filed in the High Court (i.e. the sentence has passed by a Court of Session); and

(ii) Under Section 378(1)(b) Cr.P.C.

Where the appeal is to be presented to the High Court from,-

(a) an order of acquittal passed by a Magistrate other than in respect of a cognizable and non-bailable offence.

(b) an original or appellate order/judgment of acquittal passed by a Court of Session or an order of acquittal passed by the Court of Sessions in revision. The phrase

appellate order of an acquittal passed by Court of Session' means an order of acquittal recorded by the Court of Session in an appeal against an order of conviction and not a judgment wherein it upholds the order of acquittal already recorded by the Magistrate (as per the judgment dated 22.8.2006 passed by the Hon'ble High Court, HP in Cr. M.P. Nos. 443,445, 446,447,508, 509 and 512 of 2006).

(B) Final decision to file appeal/revision or close the case shall be taken by the District Magistrate concerned, without referring the same to the State Government in the following cases, namely:-

(i) Under Section 377(I)(a) Cr.P.C.,-

where the appeal against the sentence on the ground of its inadequacy is to be filed before Court of Session and the sentence has been passed by a Magistrate

(ii) Under Section 378(I)(a)Cr.P.C.,-

where the appeal is to be presented to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence. In other cases, where the appeal against acquittal by a Magistrate has to be filed as usual in the Hon'ble High Court, the matter is covered under section 378(I)(b) Cr.P.C.).

(iii) Procedure for closure of cases,-

where the District Magistrate on the opinion of Public Prosecutor found that the case is not fit for appeal against the orders of acquittal under the offences which are appealable before the Hon'ble High Court, such cases may be closed at the level of the District Magistrate and only those cases may be sent to the Government which are found fit for filing of appeal in the High Court by the District Magistrate.

(iv) where the parties have entered into compromise resulting in acquittal of the accused, under section 320 Cr. P.C., and where the court has permitted the closure of case in which offences were not compoundable, such cases the matter shall be examined at the level of District Magistrates.

(v) where the accused has been declared as proclaimed offender where proceedings under section 299 Cr. P.C. has been initiated and cases where abatement of proceedings against accused upon death during trial has been initiated, can be dealt with at the level of District Magistrates in consultation with Public Prosecutor.

- (vi) Criminal cases of summary nature in which the courts have imposed fine.
- (vii) All cases under the Punjab Excise Act, as applicable to the State of Himachal Pradesh.
- (C) Further where the appeal against the order of the Magistrate is required to be filed in the Court of Session and where the accused is charged in the same case of having committed both cognizable and non-bailable offence (s) as well as offences which may be non-cognizable or bailable or where there are more than one accused and where some of the accused are charged of having committed cognizable and non-bailable offence(s) and some accused may be charged with having committed offences which are either non-cognizable or bailable, (as per the judgment dated 22.8.2006 passed by Hon'ble High Court, HP in Cr.M.P. Nos. 443, 445,446,447,508,509 and 512 of 2006).
- (D) Irrespective of delegation of powers to the District Magistrates for taking final decision in respect of cases covered under sections 377(D)(a) or 378(D)(a).Cr.P.C., the State Government may suo-moto call for any such cases from any District in the public interest and issue directions to the Public Prosecutor to present an appeal.

These instructions may be followed in letter and spirit.

By order,

Principal Secretary (Home) to the
Government of Himachal Pradesh.

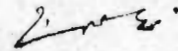
NOTES:

1. The cases which are to be sent to the Home Department/State Government, the procedure prescribed in Appendix-I accompanying this letter shall be strictly followed by District Magistrates/Public Prosecutors.
2. The cases which are to be decided at District Magistrates level, the procedure prescribed in Appendix-II shall be strictly followed by the District Magistrates/Public Prosecutors.

Encls. As above.

Endst. No. No. Home-E (5) 2-336/2004 Dated Shimla-171002, the 5th August, 2008
Copy forwarded to:

2. The Director General of Police, Himachal Pradesh, Shimla.
3. The Additional Director General of Police, (Vigilance) Himachal Pradesh, Shimla.
4. The Additional Director General of Police, (Enforcement) Himachal Pradesh, Shimla.
5. The Director (Prosecution), Himachal Pradesh, Shimla.
6. All the Superintendents of Police in Himachal Pradesh, for information and necessary action.
7. The Controller, Printing and Stationery, Department of Printing and Stationery for publication in the official Rajpatra.
8. All the District Attorneys/APPs in Himachal Pradesh, for information and necessary action.



Deputy Secretary (Home) to the
Government of Himachal Pradesh.

APPENDIX-I.

PROCEDURE TO BE FOLLOWED IN CASES TO BE DECIDED AT
GOVERNMENT LEVEL

- (i) Office of the concerned District Attorney /A.D.A shall intimate (through Niab Court) the concerned S.P./ D.S.P. regarding the acquittal/conviction in a particular decided case immediately so that the said S.P./ D.S.P. is in a position to depute an official for procuring copy of the judgement for examination and analysis.
- (ii) Every proposal for appeal will be prepared in the attached proforma (Annexure-I) by the APP/PP and forwarded to Government by the District Magistrate.
- (iii) The proforma will be filled up in 5 copies; one copy will be retained by the PP; one copy will be forwarded to the SP for analysis/ action at his end and three copies will be forwarded to Home Department through District Magistrate.
- (iv) Remedial action in such cases shall mainly be the responsibility of the concerned SP/PP, as the case may be. These cases and remedial action in order to prevent a repeat of a similar investigative/ prosecution failure will be specifically discussed in monthly/ quarterly crime meetings by the SPs and DIGs. Copy of minutes of the aforesaid meetings will be forwarded to Home Department and DGP. These cases will also be discussed in Police-Prosecution meeting taken by DMs, minutes of which also will be sent to the Home Department as per instructions.
- (v) The Home Department while conveying the approval to appeal or otherwise to the District Magistrate shall fill up and return Part-II of the proforma and shall simultaneously endorse the second copy of the proforma to the DGP/ Director of Prosecution, as the case may be,

based upon the types of lapses noticed. Third copy of the proforma will be filed in District wise folders of Home Department.

- (vi) The DM must hold monthly Police-Prosecution meetings. In addition the Director Prosecution/ Secretary (Home) will hold quarterly District level meetings with DM, SP and PP of the District which will inter-alia discuss these cases in greater depth with special reference to Part II of Annexure-I.
- (vii) Based on the feedback from Director General of Police and Director Prosecution, policy and systemic issues will be raised in the State Security Advisory Board or State Forensic Science Development Board as the case may be.

"ANNEXURE - I OF APPENDIX - I"
PROPOSAL FOR CRIMINAL APPEAL IN HIGH COURT

PART-I: PROPOSAL

1. Name of Parties.....
2. FIR NO.....DATE.....
3. P.S.....DISTT.....:
4. CASE NO.....COURT.....
5. Sections & Acts.....
6. Facts of Crime (in brief).....
7. Name of IO(s) with period.....
8. (a) Challan put up on (date).....
(b) Case decided on (date).....
9. Evidence used in Trial.....
 - i) Direct.....
 - ii) Circumstantial.....
 - iii) Medical/Forensic.....
10. Final Verdict.....
11. Reasons given in judgement (in brief).....
12. Whether recommended for appeal.....
13. Grounds of appeal (attach sheet).....
14. Whether any investigative/prosecution deficiency mentioned in judgement/order (mention in brief).....
15. Remedial action being taken (on point 14).....

PP/APP Distt

Countersigned/recommended

District Magistrate.

PART-II DECISION

1. Case No. Court.....
2. Decision of Govt. to file/not file
appeal.....
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3. Prosecution shortcoming requiring to be
addressed.....
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4. Investigation shortcoming requiring to be
addressed.....
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**Under/Deputy/Joint Secretary (Home) to the
Government of Himachal Pradesh, Shimla-2.**

APPENDIX -II

PROCEDURE TO BE FOLLOWED IN CASES TO BE DECIDED AT
D.M. LEVEL

(i) Office of the concerned District Attorney /A.D.A shall intimate (through Niab Court) the concerned S.P./ D.S.P. regarding the acquittal/conviction in a particular decided case immediately so that the said S.P./ D.S.P. is in a position to depute an official for procuring copy of the judgement for examination and analysis.

(ii) Every proposal for appeal will be prepared in the attached proforma (Annexure-I) by the APP/PP and the case file will be submitted to the concerned DM for his final decision.

(iii) The proforma will be filled up in 3 copies; one copy will be retained by the APP/PP, one copy will be forwarded to the SP for analysis/action at his end and one will be submitted alongwith case file to concerned DM.

(iv) Remedial action in such cases shall mainly be the responsibility of the concerned SP/PP, as the case may be. These cases and remedial action in order to prevent a repeat of a similar investigative/ prosecution failure will be specifically discussed in monthly/ quarterly crime meetings by the SPs and DIGs. Copy of minutes of the aforesaid meetings will be forwarded to Home Department and DGP. These cases will also be discussed in Police-Prosecution meeting taken by DMs, minutes of which also will be sent to the Home Department as per existent instructions.

(v) The DM while conveying the approval to appeal or otherwise to the APP/PP shall fill up and return Part- II of the proforma (Annexure- I) accompanying this letter and shall simultaneously endorse the second copy of the proforma to the DGP/Director of Prosecution as the case may be

filed in District folders maintained by the DM for the quarterly District level meetings.

(vi) The DM must hold monthly Police-Prosecution meetings. In addition the Prosecution/ Secretary (Home) will hold quarterly District level meetings with DM, SP and PP of the District which will inter-alia discuss these cases with special reference to Part II of Annexure-I for suggesting improvements for the future guidance of the prosecution and investigation wings of Home Department.

"ANNEXURE -I OF APPENDIX -II"
PROPOSAL FOR CRIMINAL APPEAL IN SESSIONS COURT
PART-I: PROPOSAL.

1. Name of Parties.....
2. FIR NO.....DATE.....
3. P.S.....DISTT.....
4. CASE NO.....COURT.....
5. Sections & Acts.....
6. Facts of Crime (in
brief).....
7. Name of IO(s) with period.....
8.
 - (a) Challan put up on (date).....
 - (b) Case decided on (date).....
9. Evidence used in Trial.....
 - (a) Direct.....
 - (b) Circumstantial.....
 - (c) Medical/Forensic.....
10. Final Verdict.....
11. Reasons given in judgement (in
brief).....
12. Whether recommended for appeal.....
13. Grounds of appeal (attach sheet).....
14. Whether any investigative/prosecution deficiency mentioned in judgement/order
(mention in
brief).....

Concerned A.P.P.

Countersigned/recommended

PART-II DECISION of DISTRICT MAGISTRATE

1. Case No..... Court.....
2. Decision to file/not file
appeal.....
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3. Prosecution shortcoming requiring to be
addressed.....
.....
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4. Investigation shortcoming requiring to be
addressed.....
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District Magistrate