

## CHAPTER 9

# Witnesses – Criminal Courts

### Part A EXPENSES

(a) Rules made by the Punjab Government under the powers conferred by Section 544 of the Code of Criminal Procedure, 1898, [See Section 312 of new Code] regulating the payment of subsistence and travelling allowance to witnesses attending trials etc., in Subordinate Courts.

#### Rules

**1. Cases in which Government is to pay the Expenses**—The Criminal Courts are authorised to pay at the rates, specified below, the expenses of complainants or witnesses—(1) in cases in which the prosecution is instituted or carried on by or under the orders or with the sanction of the Government, or of any Judge, Magistrate, or any other public officer, or in which it shall appear to the presiding officer to be directly in furtherance of the interests of the public service; (2) in all cases entered in column 5 of Schedule II appended to the Code of Criminal Procedure, as not bailable; (3) in all cases which are cognizable by the Police; and (4) of witnesses in all cases in which they are compelled by the Magistrate, of his own motion, to attend under Section 540 of the Code of Criminal Procedure [Sec. 311 of new Code].

#### COMMENTS

The capacity of the accused to pay the expenses of his witnesses is not a valid ground for refusing to summon a witness except on the deposit of the diet money and process fee by an accused person. Neither Section 257 of the Cr. P.C. nor the rules framed by the Punjab High Court or the State under Section 544 of the Cr. P.C. warrant any such distinction between an accused who is in a position to meet the expenses of summoning defence witnesses and one who is unable to pay them. *Jit Singh Rattan Singh v. The State*, AIR 1963 Punjab 143.

Magistrate requiring the accused to meet the expenses of defence witnesses should state reasons. *Surinder Kumar v. State*, 1982 Cr. L.J. 548.

**2. Expenses of witnesses in summons cases**—No payment shall be made by Government to witnesses summoned at the instance of the complainant under Section 244 of the Code of Criminal Procedure [Sec. 254 of new Code] unless the prosecution appear to the Magistrate to be in furtherance of the interests of public justice; but under this section the Magistrate may require the complainant to pay their expenses.

**3. Expenses of witnesses in Session trials**—The expenses of witnesses in trials before Courts of Sessions shall like ordinary contingent expenditure be met by the Sessions Judge himself out of his permanent advance, the expenditure on his account being recouped when necessary from the grant under the head “27—Administration of Justice—G. Criminal Courts—G. 2 Others Charges—Diet and Road money to witnesses”. Deputy Commissioners are disbursing officers and District and Sessions Judges are controlling officers for allotments and expenditure under this head. Under paragraph 12.5 of the Punjab Budget Manual, allotments for all heads including “Diet and Road money to witness” under the minor head “Criminal Courts” are placed at the disposal of District and Sessions Judges and they are at liberty to retain whatever amount they consider necessary at their own disposal, and to allot the balance to disbursing officers for expenditure.

In cases tried by Additional Sessions Judges, payment to witnesses should be made by Additional Sessions Judge concerned himself—

- (a) out of his own permanent advance, if he is an ex-officio Additional Sessions Judge.
- (b) otherwise, out of an advance, placed at his disposal by the Sessions Judge of the District from his own permanent advance.
- (a) will result in expenditure on account of one district being debited to the allotment of another district, but will be in accordance with the spirit of the rule laid down in Rule 8.23 of the Punjab Financial Rules, Volume I, which requires that expenditure incurred by an officer on behalf of another officer of the same department should be treated as an expenditure of his own office.
- (i) Rates of subsistence allowance, that is, allowance for each day's necessary absence from residence and attendance at Courts.

*Class Rate per diem*

- (a) For ordinary labouring classes Rs. 1.75
  - (b) For witnesses of somewhat higher standard. Rs. 1.75
  - (c) For witnesses not included in (a) and (b) above Rs. 1.75
  - (d) For Municipal Commissioners, Income-tax payers and other respectable persons. Rs. 2.00
  - (e) For other persons of higher standard. Rs. 3.00
  - (f) Special rates for witnesses not coming within the scope of the above mentioned classes. Rs. 4.00
- (ii) Add the following as Note under (i):—

“*Note 1*—These rates have been sanctioned by the Punjab Government in their letter No. 7549-JJ-50/3664, dated the 1st August, 1950, and Endt. No. 15679-4J-60/1232, dated the 19th January, 1961, and apply only to Criminal Courts in the Punjab. The rates sanctioned by the Delhi Administration for Criminal Courts at Delhi are different and have not been incorporated in this Chapter as they are revised almost every year.”

*Note 2*—A technical witness, such as a draftsman who appears to give evidence in a criminal case and is required by the Court to prepare a site plan etc., may be allowed a separate fee for this purpose. The fee for preparing a plan should be commensurate with the work done and should not ordinarily exceed Rs. 50/- including the cost of tracing cloth etc. If, for any special reason, it is considered necessary to pay more than Rs. 50/- for the preparation of a plan, the sanction of the High Court should be obtained.

The Court in which a complainant or witness appears shall determine the class under which the complainant or witness shall be ranked. It has come to the notice of the Honorable Judges that Courts have been progressively over generous in classifying witnesses in the ‘special’ class and in the assessment of what a witness is entitled to receive as expenses. The necessity of a more careful scrutiny in these matters should be impressed upon all Courts.

- (ii) Travelling rates.

When the journey is made by rail, for classes (a), (b) and (c) third class fare.

For classes (d) and (e) second or their class fare at the discretion of the Court:—

Provided that second class fare shall not be allowed unless the Court is convinced that the witness is actually in the habit of travelling by that class.

For class (f) the fare actually paid.

*Note*—Retired Military Officers who were commissioned, gazetted or in pay as officer at the time of retirement shall be included in class (f) and those who retired as Junior Commissioned Officers or warrant officers shall be included in class (d).

When the journey is made otherwise than by rail, the necessary and actual expenses of carriage may be paid at the discretion of the Court; provided that the expenses incurred do not exceed six annas a mile and where a witness travels by a private motor car he may also be paid travelling expenses up to six annas a mile; provided that the journey could not, with reference to the age, position and habits of life of the person have been made on foot.

In assessing the amount of actual expenses, Courts should bear in mind that the fares charged by motor buses do not generally exceed one anna per mile. To persons in classes (d), (e) and (f) a further sum may be allowed to cover the cost of carriage hire to and from the Court on the days of attendance at Court.

(iii) Fees for searching for and copying documents required for production in criminal cases shall be allowed to witnesses according to the following scale :

Search Fees

- |  |  |
|--|--|
| (a) For documents not easily accessible.         | Rs. 5 per document.  |
| (b) For documents easily traced such as cheques. | Rs. 2 per document when the documents do not exceed two in number and Rs. 1 for each such document beyond that number. |

Copying Fees

- |  |  |
|--|--|
| (c) For copying documents other than entries in Account Books. | At Court rates.  |
| (d) For certified copies of entries in Account Books.          | Rs. 5 per ledger folio or part of ledger folio where the number of such folios does not exceed four and Rs. 2.50 per ledger folio or part thereof after the first four folios. |

*Note 1—Expenses of minors' attendant*—When a minor of tender age is required to attend Court as a witness and such a witness cannot safely travel alone, the attendant who accompanies the minor may also be paid expenses at the ordinary rates prescribed for witnesses.

*Note 2—Discretion of Courts*—These rules intentionally allow the Criminal Courts a discretion as to the payment of witnesses. The circumstances of cases differ, and there are many Criminal Proceedings in which the prosecution is not called for on public grounds. It is not in every case that the State has undertaken, and is bound to provide the cost of the prosecution. In many instances, moreover, witnesses live at such a short distance from the Court that their being

summoned to give evidence cannot be considered to entitle them to remuneration. At the same time, doubtful cases should be interpreted liberally, and in no case should it happen that complainants and witnesses who have been put to trouble and inconvenience in the prosecution of offenders, should be denied their legitimate expenses.

*Note 3—Payment should be made personally by the Court and without delay*—It is the duty of the Magistrate to ascertain in each case how far the witness has to travel to and from the Court and how many days it takes the witness to travel to the Court to give evidence and to return to his home. Every endeavour should be made to avoid delay in payment of the expenses of witnesses. As soon as the evidence of the prosecution witnesses in cases launched by the State has been recorded the Magistrate should have the memorandum of costs of witnesses made out and forwarded to the Nazir from whom he should receive and personally disburse the amount to the witnesses before leaving the Court.

*Note 4—Expenses of Government servants*—According to Rule 2.80 of the Travelling Allowance Rules framed by the Punjab Government an officer of the Government who is summoned to give evidence of facts which have come to his knowledge or of matters with which he has had to deal in his public capacity in a criminal case (including a case before a Court-martial) is entitled to draw travelling allowance from Government. Accordingly the Courts should not grant to Government officers, except in the two cases mentioned below, fees or expenses which may have been deposited in such cases for their travelling and halting or subsistence allowances. The amounts should be credited to Government under the head “XXI—Administration of Justice—Miscellaneous Fees and Fines.”

In the case of employees of the Central Government sums on account of road and diet money will be deposited into the Treasury to the credit of department concerned in the receipt Schedule of Central Departments. In the case of Railway Employees the amount is creditable to the accounts of Railway concerned under the head adjusting account with Railways in the States Section of the Accounts.

*Exception*—When a Government servant is summoned to give evidence at a Court situate not more than 5 miles from his headquarters or to give evidence of facts which came to his knowledge in his private capacity and is, therefore, not entitled to any travelling allowance under the ordinary rules from Government the Court may, if it considers necessary, pay him the actual travelling expenses incurred.

The practice, prevailing in some districts of requiring the parties to pay the subsistence allowance of a Government servant at the rate of pay of official concerned, is illegal. A Government servant is entitled only to his subsistence allowance at the rates prescribed above for other witnesses.

*Court certificate*—In all cases in which an officer of Government is summoned to give evidence the Court should give him a certificate in the prescribed form (A) specifying the dates on which the officer was required to attend and the amount, if any, paid by the Court. The certificate will be attached by the officer concerned to pay travelling allowance bill which he may submit under the rules quoted above.

FORM A

**Form of certificate to be given by the Court to an officer of Government summoned to give evidence at a Court**

In the Court of the ..... in the ..... District.

1. Certified that.....<sup>1</sup> was summoned to give evidence in this Court in his capacity in the case of..... and was required to attend for a period of..... days that is, from the .....to the ..... 19 ...

<sup>2</sup>2. He was paid the following amounts in accordance with the rules of the Court:—

3. The amount of ..... as his diet-money deposited in the local ' on date .....

*Note 5—Expenses of persons subject to Military Travelling Allowance rules—*Individuals subject to the military travelling allowance rules when they are detailed or summoned either as witnesses or accused, to attend a Civil Court in criminal case, are entitled to payment of travelling expenses by the Court only when they are not entitled to free conveyance at the expense of the Army under paragraph 201-II of Passage Regulation, India which is reproduced as under :—

*“Paragraph 201-II—Witnesses attending Civil Courts—*An individual detailed or summoned either as a witness or as an accused to attend a Civil Court in a criminal case involving the interests of the State, provided that in the case of a witness the facts as to which he is to give evidence have come to his knowledge in the discharge of his public duties, will be entitled to free conveyance. When such conveyance is provided, a witness may not accept any payment on account of travelling or subsistence allowance from the Court. Any fees which may be deposited in the Court for the travelling and subsistence allowance of the witness must be credited to Government.

If the Court in which he gives evidence is situated within 5 miles (or 10 miles in the case of a mounted officer) of his headquarters and no travelling allowance, is, therefore, admissible for the journey, he may, if he be not in receipt of permanent travelling allowance, accept such payment of actual travelling expenses as the Court may make.

*Note—*(1) An individual summoned to give evidence while on leave is entitled to the concessions described in this Rule.

(2) When a witness attends a Civil Court in his private capacity, he is only entitled to such travelling subsistence allowances as are admissible in accordance with the rules of the Court. If the Court pays him any sum as subsistence allowance or compensation, apart from travelling expenses, he must credit that sum Government before drawing full pay for the day or days of absence. An individual ordinarily eligible to travel on warrant will be entitled to receive advance of travelling expenses for both the forward and the return journeys which will be refunded as soon as such charges are paid to him by the Court.”

*Note 6—Expenses of a Civil Surgeon—*Under the orders of Government, the attendance of the

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1 . Here enter the name and official designation of the officer.

2 . Paragraph 2 is only required in the following cases namely :—

In cases in which Government servants have to give evidence at a Court situated not more than 5 miles from their headquarters or in their private capacity actual travelling expenses incurred by them may, when the Court considers it necessary, be paid to them.

Civil Surgeon at the Criminal Courts of the station for the purpose of giving evidence, is one of his ordinary official duties, and he is not entitled to claim, nor are the Courts authorised to grant a fee, for this duty. When a Civil Surgeon is required to proceed more than five miles beyond the limits of his station, he is entitled to travelling allowance under the ordinary rules relating to such allowances.

*Note 7—Fees for medico-legal work*—Fees for medico-legal work not falling within the ordinary duties of medical officer, not being a Civil Surgeon or an office in medical charge of a civil station shall be rupees sixteen for conducting a *post mortem* examination and rupees ten for conducting a medico-legal examination other than a *post mortem* examination, in cases not falling within the ordinary discharge of his duties, whether or not he is required to give evidence in a Court of Justice in connection with such examination. It is, however, to be distinctly understood that, when such an officer is required, under these circumstances to give evidence in a Court of Justice he shall not be entitled to any remuneration in addition to the fee above sanctioned other than the usual expenses paid to a witness. This Rule applies only to officers of commissioned rank. A fee of rupees four will be paid to a medical subordinate for conducting such examinations when they do not fall within the ordinary scope of his duties. It is however, to be understood that medical subordinates lent by the Government to Municipalities or Dispensary Committees will be required to perform these examinations as a part of their regular duties without further remuneration. [*Government of India, Resolution No. 3050, dated the 11th August, 1882, and letter No. 90 (Home Department), dated the 21st February, 1884*].

*Note 8—Expenses of Civil Assistant Surgeons and Hospital Assistants*—Civil Surgeons, Assistant Surgeons and Hospital Assistants should, when summoned to attend a Court in their official capacity, be paid the actual expenses incurred by them on account of carriage hire, when their attendance in Court entails such expenditure. Actual travelling expenses should be paid to an officer who travels in his own car to appear as witness in a Court.

*Note 9*—The Punjab Government have entered into a reciprocal arrangement with the Himachal Pradesh Government in regard to the payment of the expenses of Government servants summoned by Criminal Courts in Punjab and Himachal Pradesh to give evidence in their official capacity on the following terms and conditions :—

(i) In criminal cases to which State or the Union is a party, a Government servant giving evidence regarding facts of which he has official knowledge will, on production of the certificate of attendance issued by the summoning Court, be paid travelling allowance by the Government under whom he is serving.

(ii) In criminal cases to which State is not a party, a Government servant giving evidence regarding facts of which he has official knowledge will be paid travelling allowance by the summoning Court according to the rules under which he draws his travelling allowance for a journey on tour, and the charges will be borne by the Chief Commissioner, Himachal Pradesh or the Government of the Punjab according as the Court is situated in Himachal Pradesh or in the State of the Punjab.

(iii) When a Government servant serving in a Commercial Department or when any other officer is summoned to give evidence as a technical or expert witness the pay of the Government servant concerned for the period of his absence from his headquarters and travelling allowance and other expenses due to him will first be borne by the Government under whom he is serving and will subsequently be recovered from the Government in whose jurisdiction the Court in which he is summoned to give evidence is situated.

*Note 10*—Rules for payment of fees to expert witnesses summoned in Criminal Court.

I. When any Court has to form an opinion upon a point of foreign law or of science or art or upon the identity of handwriting or finger impressions, a person who is called to give an opinion in view of his special skill in such foreign law, science or art or in questions of identity of handwriting or finger impressions, is an expert witness and his evidence is expert evidence.

*Explanation*—The question whether evidence is expert or not must be judged by the purpose for which the witness is called and the nature of the facts to which the witness testifies in examination in chief. Evidence is not to be classed as expert merely on the strength of cross-examination. If the witness is called primarily to testify to facts observed by him in his ordinary or in his professional capacity, his evidence is ordinary evidence. If however, he is called primarily to give an opinion based on his special knowledge or skill but not on any previous acquaintance with the facts of the particular case which is before the Court, his evidence is expert evidence.

*Examples*—(i) A doctor who is called on account of his special knowledge to give an opinion on the question whether a particular person is physically capable of doing an act which is attributed to him gives expert evidence. If he is called to describe injuries which he has himself seen or to attest a certificate of injuries which he has supplied, his evidence is his examination he uses technical terms in describing the injuries or if he is asked to give an opinion regarding the effect of the injuries on the constitution of the injured person.

(ii) A goldsmith who was called on account of his technical knowledge to advise the Court where a particular ornament was made would be giving expert evidence, if the opinion was one which could be given by a goldsmith; but it would not be expert knowledge if he was merely identifying an ornament made by himself.

(iii) A small arms expert called from a Government arsenal to state whether the marks on a bullet could be caused by the rifling of a particular kind of rifle or revolver or whether a shot could travel a particular distance gives expert evidence.

II. Subject to the provisions of Rules III to V below expert witnesses who happen to be Government servants are bound by the ordinary rules relating to payment of travelling allowance and subsistence allowance to Government servants called as witnesses. These rules are contained in Travelling Allowance Rules 2.80 to 2.81.

III. In any case in which it is absolutely necessary to summon either the Chemical Examiner or his Assistant to give evidence in Court, the following fees shall be paid:

	For Each Appearance in Court	
	At station of posting	Outside station of posting
Chemical Examiner ....	Rs. 16.00	Rs. 100 with first class railway fare and all travelling expenses.
Assistant Chemical Examiner	10.00	Rs. 50 with second class railway fare and all travelling expenses.

In case in which the above fees are payable to the Chemical Examiner or his Assistant by Government, no payment shall be made. He will draw travelling allowance at the usual rates admissible under the travelling allowance Rule. In other cases in which travelling allowance is admissible under the Travelling Allowance Rules and fees are payable by private persons, such

fees should be credited to Government.

IV. The following scale of fees has been prescribed for medical men of different classes summoned as expert witnesses :

	For giving evidence in a criminal case in a station where he resides	For giving evidence in a station other than the one in which he ordinarily resides
	Rs.	
1. Civil Surgeon or other medical officer of equivalent standing	16 to 50	Rs. 16 to Rs. 90 per diem <i>plus</i> travelling allowance at tour rates
2. Assistant Surgeon	10 to 25	Rs. 10 to Rs. 25 per diem <i>plus</i> travelling allowance at tour rates
3. Sub-Assistant Surgeon	4 to 10	Rs. 4 to Rs. 10 per diem <i>plus</i> travelling allowance at tour rates
4. Private Medical practitioners	16 to 32	Rs. 16 to 100 per diem provided that sanction of the High Court is obtained to any fee over Rs. 32 per diem <i>plus</i> actual travelling allowance.

(1) If a Government medical officer is summoned by the Court at the instance of the State, he should be treated as being on duty and he should be allowed to draw his travelling and daily allowance under the Punjab Travelling Allowance Rules, if the Court is situated away from his headquarters ; if the Court is situated at his headquarters, he should not be paid anything.

(2) If such an officer is summoned by the Court at the instance of a private person or party, such attendance in the Court should be regarded as private practice of the nature of expert evidence and should be regulated as follows :—

(i) The Officer may accept the fee within the limit prescribed above with the sanction of the Court concerned. If, however, in any individual cases it is considered necessary by the Court that a fee in excess of the prescribed limit should be allowed, this should be done with the specific sanction of Government in each case, which should be obtained through the Head of the Department in which the officer, is serving.

(ii) The apportionment of the fees realized from private persons or parties between Government and the medical officer would be in the ratio of 50 : 50 but for accounting purpose it would be, in the first instance, necessary that the full amount realized should be credited to Government, the share of the officer being thereafter drawn from the Treasury on a refund bill.

(iii) The officer's travelling and subsistence allowance should be paid by the private person or party at whose instance he may have been summoned.

V. In the case of certain other particular experts special fees have been fixed as follows:—

	For giving evidence in a criminal case in a station where he resides	For giving evidence in a station other than the one in which he ordinarily resides
1. Government, examiner of Questioned Documents.	.....	See Annexure
2. Officials of the Finger Bureau.	No fees	No fees.
3. Non-official handwriting experts.	Rs. 16 to 32	Rs. 16 to Rs. 100 per diem provided that the sanction of the High Court is obtainable to any payment at rates exceeding Rs. 32 per diem plus actual travelling expenses.
4. Registered Accountants as defined in Rule 12 of the Auditor's Certificate Rules, 1932.	Rs. 50 to 150, according to the professional standing of the witness, for each day spent in attendance	Rs. 50 to Rs. 150 according to the professional standing of the witness for the day of evidence provided that the sanction of the High Court shall be necessary to the payment of any fees over Rs. 75. He will further be entitled to actual travelling expense, as also to an amount of Rs. 25 to Rs. 75 per diem for travelling on a working day other than the day of evidence.

*Note*—The Auditor's Certificate Rules, 1932, are published at page 299 of the Gazette of India, Part I, dated the 20th March, 1932.

VI. In order that payments may be easily checked in audit a clear distinction should be drawn between amounts paid as subsistence allowance and amounts paid as travelling allowance.

### ANNEXURE

(Referred to in Rule V. Note 10)

#### **Rules Regulating Applications for, and payment of the Service of the Government Examiner of Questioned Documents.**

1. Applications should be sent direct to the Government Examiner of Questioned Documents, Intelligence Bureau, Ministry of Home Affairs, "Dormers", Simla-1.

2. (i) Applications received direct from private individuals will not be entertained.

(ii) Applications received from Police Officers below the rank of Superintendent of Police will not be entertained.

3. Acceptable applications fall into two classes:

#### **A. Official applications from—**

(i) State Governments (including Part C States), and offices subordinate to them;

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3. Punjab Government endorsement No. 7206-H-563/62203, dated the 28th August 1953, on letter No. 41/3/50-Police-II, dated the 6th July 1953, from the Government of India, Ministry of Home Affairs, to all State Governments.

- (ii) Presiding officers of Criminal Courts (including Sessions Courts); High Court; Courts Martial, etc;
- (iii) Ministries of Government of India and their attached and subordinate Offices;
- (iv) Railway administrations under the Ministry of Railway (Railway Board).

**B. Other applications.** These include—

(i) Cases from private parties in civil suits in Indian Union Courts. These will be accepted only on the requisition of the Court in which the case is being heard. The party concerned must move the Court and it will rest with the Court to take the further step necessary to obtain the services of the Government Examiner of Questioned Documents.

*Explanation:* Reference made by a Court *suo motu* in civil cases in which the State is not a party will be deemed to be cases from private parties for the purposes of these rules.

(ii) Cases from Municipal Corporations, District Boards, Municipalities, and other local bodies and from Universities, Railway Administrations (not under the Ministry of Railways of the Government of India) from autonomous corporation and quasi-Government Bodies, e.g., D.V.C., D.T.S., etc, with Indian Union.

Applications from recognized universities will be received direct. Applications from Railway Administrations (not under the Ministry of Railways, Government of India) should be submitted through the Agent of the Railway concerned. Applications from municipal corporations will be received direct but from other local bodies will be accepted only if received through the local District Magistrate who should satisfy himself, before forwarding the application, that it is desirable that the Government Examiner of Questioned Documents should be consulted.

(iii) Complaint cases, revenue cases, Tenancy Act cases, and other miscellaneous Act cases from Indian Union Courts.

These cases will be accepted only if forwarded by presiding officers of Courts.

**4.** Applications falling under classes A and B will ordinarily be accepted but may be refused at the discretion of the Government Examiner of Questioned Documents if they cannot be undertaken without detriment to his other work.

**5.** An inclusive fee will be charged in each case in which an opinion is given and will normally cover the opinion, the cost of photographs and the giving of evidence (limited in class B cases to one day). The inclusive fee for class A cases (*see* Rule 3) will be Rs. 220 and for class B cases Rs. 250. (This fee does not cover travelling allowance which is governed by Rule 15 below).

Where one Class A case is split up in Court into several cases, a fee of Rs. 150 (one hundred and fifty) will be charged for each split up cases. Similarly, where one Class B case is split up in Court into several cases, the fee will be Rs. 200 (two hundred) for each split up case.

**6.** Subject to the exception stated at the end of this rule, the fee is payable in advance in all cases and each application should be accompanied by a certificate in the following form—

“Certified that sum of rupees two hundred and twenty (Rs. 220)/two hundred and fifty (Rs. 250) has been deposited in the. . . . . Treasury on..... on account of the Government Examiner of Questioned Documents’ fee in case/suit No. . . . . and that this amount has been shown under Head:

XXIII—Police-Central-fees, fines and forfeitures, in the Cash Account of Central Subject for the month of . . . . . and appears at item No. . . . . in the relevant Receipt Schedule.

Countersigned. Signature of Treasury Officer

Signature of officer submitting the case.”

In special circumstances, which should be stated in application, class A cases will be accepted without this certificate, but the certificate should be forwarded as soon as possible.

**7.** In cases where the cost of photographs is exceptionally heavy, the fee will be Rs. 180 *plus* actual cost of the photographs in class A cases and in class B cases, Rs. 200 *plus* the actual cost of the photographs.

In class B cases the authority submitting the case will be informed of the extra cost involved before it is incurred and will be required to certify that it has been deposited before the Government Examiner of Questioned Documents proceeds with the case.

**8.** (A) No fees are chargeable by the Government Examiner of Questioned Documents for the cases investigated by the Special Police Establishment and also for cases arising in—

(i) the main Ministries of the Central Government

(ii) their attached offices, and

(iii) Union Territories namely—Delhi, Himachal Pradesh, Tripura, Manipur, Andaman and Nicobar Islands and Laccadive, Minicoy and Amindivi Islands.

(B) Fees are, however, chargeable in all other cases.

**9.** (i) In cases in which no opinion is given but photographs are taken, only the actual cost of the photographs will be charged, subject to a minimum of Rs. 35.

(ii) In cases in which examination has been completed but no opinion could be expressed, a consolidated fee of Rs. 100 will be charged.

**10.** No reduction in the fee will be allowed if evidence is not required or is taken on commission.

**11.** (i) In class B cases an additional fee of Rs. 200 will be charged for each day after the first day on which evidence is given, whether in Court or on commission, or on which the officer is detained. The Presiding Officer or the Commissioner will be requested to certify, before the second and each subsequent day's work is begun that the fee for that day and also for any intervening day or days of detention has been deposited, and subsequently to furnish a certificate in Rule 6 above.

(ii) A fee of Rs. 250 will be charged in class B cases even for the first day's evidence if evidence is taken upon an opinion expressed on the same documents when they formed part of a criminal case.

**12.** In cases falling under class B, the Government Examiner or his Assistant will be prepared to attend Courts provided that he can do so without detriment to his other work. When evidence is taken on commission, the commission should be issued to the Senior Sub-Judge, Simla, and normally should be so worded that either the Government Examiner or his Assistant can give evidence.

**13.** Presiding Officers of Courts are requested to detain the Government Examiner of Questioned

Documents or his Assistant for the least possible time compatible with the requirements of the case. They are also requested to accept, so far as possible, the time and latter frequently have to attend several Courts in the course of one tour.

**14.** The Government of India in the Ministry of Home Affairs reserve the right to impose an extra charge in any case in which they consider that the usual fee is incommensurate with the time and labour spent on the case.

**15.** When the Government Examiner of Questioned Documents or his Assistant is required to travel in order to given evidence or for any other purpose the authority or party employing his services will be required to pay travelling allowance at the rates laid down in the Supplementary Rules of the Government of India for journeys on tour. Travelling allowances will also be payable for the class IV servant accompanying the officer at the rates fixed for Government of India, class IV servants. These payments will be adjusted as directed in the Home Department (now Ministry of Home Affairs) Letter No. 128/VII/27-Police, dated the 12th January, 1928 (see Appendix).

In class B cases the Presiding Officer of the Court concerned will be required to certify that the cost of travelling allowance has been deposited before the Government Examiner of Questioned Documents or his Assistant undertakes the journey.

#### APPENDIX

**Procedure for the payment and audit of travelling allowances drawn by the Government Examiner of Questioned Documents or his Assistant during tours (*vide* Home Department Letter**

**No. F-128/VII-27 Police, dated the 12th January 1928.)**

**1.** (1) The Examiner or his Assistant should submit his travelling allowance bills to the Accountant-General Central Revenues, for audit and payment.

(2) As soon as a journey is completed, that is, in respect “of any complete journey from headquarters. To headquarters, the Examiner or his Assistant should send a statement to the Accountant-General Central Revenues, showing the total amount of travelling allowance claimed or drawn and the distribution of the entire amount among various Courts for recovery.

(3) In cases where several Courts are attended, the cost should be distributed between them in proportion to the distance by rail from headquarters.

(4) As the travelling allowance is debitable to the various local Governments or the parties concerned, the recoveries should be treated as follows :—

(i) recoveries from the various State Governments should be taken in reduction of expenditure, provided they are effected within the Accounts of the same year; if not, they should be shown as receipt; and

(ii) recoveries from parties such as local boards, local bodies and private persons should be taken as receipts under the Head XXIII-Police-Central-Fees, fines and forfeitures.

**2.** The principles laid down above apply to the payment and audit of the travelling allowance of the person accompanying the Examiner or his Assistant.

**3.** If after the Examiner or his Assistant has actually commenced a tour; intimation is received

from a Court included in the tour to the effect that his evidence would not be required on the date originally fixed, the Court shall pay the difference between the total expenditure actually incurred on the tour and the expenditure that would have been incurred if attendance in that Court had not been included in the tour. This shall be specifically made clear when the bill is sent to the Court for acceptance.

4. The Examiner and his Assistant shall observe the provisions of Supplementary Rule 30 when they frame their programme for tour.

### Rules

(b) Rules made by the Punjab Government, under the power conferred by Section 544 of the Code of Criminal Procedure, regulating the payment of subsistence and travelling allowance to complainants and witnesses attending trials before the High Court, in the exercise of its original criminal jurisdiction.

1. *Disbursing Officer*—All disbursements on account of the expenses of complainants and witnesses attending criminal trials before the High Court, will be made by the Committing Magistrate, and will be adjusted by him.

The Committing Magistrate will determine the class to which each complainant and witness belongs.

In the case of a Cantonment Magistrate committing a case for trial by the High Court, the disbursement of expenses and the payment of advances should be made by the District Magistrate of the district.

2. *Travelling by road not allowed*—Except for any special reason in any particular case, complainants and witnesses travelling at the public expense will not be allowed to travel by road and charge accordingly, when the journey can be accomplished more cheaply and expeditiously by rail.

3. *Committing Magistrate to despatch witnesses to High Court*—The Committing Magistrate, when despatching complaints and witnesses to the High Court will instruct them to report themselves to the Registrar of the Court, on their arrival at Chandigarh, and will at the same time report to that officer—

(a) the name of each complainant and witness ;

(b) the class to which he belongs ;

(c) the date of his departure to attend at the High Court ;

(d) whether any, and, if so, what advances have been made to such complainant or witness to enable him to reach Chandigarh.

4. *Registrar to inform Committing Magistrate departure of witnesses*—When the trial in which the complainant/witnesses have appeared in the High Court is concluded. The Registrar of that Court will intimate to the Committing Magistrate the date of the arrival of the complainants, witnesses at Chandigarh and the date on which it was possible for them to quit the station. The subsistence allowance at Chandigarh will cease as soon after the conclusion of the trial as the means of quitting the station become available.

5. *Payment in advance*—The Committing Magistrate may make reasonable advances to

complainants and witnesses to enable them to reach Chandigarh; and, when necessary, the Registrar of the High Court will make advances to them at Chandigarh to enable them to return to their homes. Care should be taken in making these advances that a larger sum is not paid to any complainant or witness than he is entitled to receive under these rules, and before making advances to witnesses for the defence, the Committing Magistrate should satisfy himself that such witnesses are material.

**6. Recovery of advances made by Registrar**—Advances made by the Registrar of the High Court under the proceeding rule will be recovered at once from the Committing Magistrate, who will include the amount of such advances in his bill.

**7. Submission of bill by Committing Magistrate**—When all the expenses to which complainants and witnesses are entitled under these rules have been paid, the Committing Magistrate will submit a bill for the same, supported by the necessary vouchers, to the Registrar of the High Court for countersignature. The Registrar's countersignature will be sufficient authority to support such charges in the Public Accounts.

**8. Application of rules to trials held elsewhere**—These Rules apply *mutatis mutandis* in case of trials held by the High Court elsewhere than at Chandigarh.

**9. Expenses of witnesses in other cases**—In the event of a witness being summoned to attend the High Court in a criminal case, other than a trial before the High Court in exercise of its original criminal jurisdiction, the expenses of such witness will be paid by the Registrar or District Magistrate at such rates as the Court may direct.

*Notes*—(1) *Fees of Superintendent, Mental Hospital*—The Superintendent of the Mental Hospital, being the Government specialist in lunacy, is not entitled to any fee for giving expert evidence on behalf of Government in High Court.

(2) *Fees of Chemical Examiner*—The Chemical Examiner or the Assistant Chemical Examiner when summoned to give evidence before the High Court shall be entitled to recover the following fee for each appearance :—

Rs.

Chemical Examiner 16

Assistant Chemical Examiner 10

(3) As charges under Rule 7 are debitable to audit contingencies, vouchers for sum above Rs. 25 should accompany the bill sent to the Accountant-General, for audit.

(*Punjab Government, Home/Judicial Department Notification No. 5034-J-56/8467, dated the 13th November, 1956*).

#### Part B

#### INSTRUCTIONS FOR THE GUIDANCE OF THE NAZARAT AND PRESIDING OFFICERS IN ORDER TO CHECK FRAUD AND EMBEZZLEMENT WITH RESPECT TO THE DISTRIBUTION OF DIET AND ROAD MONEY OF WITNESSES

**Instructions for prevention of frauds etc, in expenses of diet money and road money**—The following instructions have been issued by the Punjab Government for the guidance of the

Nazarat officers and the Presiding officers of the Courts with a view to the prevention of frauds and embezzlements in the expenses of diet and road money of witness:

(1) *Specimen signatures to be kept*—The Nazarat officer should be provided with specimen signatures of all Presiding officers for whose Courts he has at any time to pay bills for diet money of witnesses, etc.

(2) *Comparison of specimen signatures*—The Nazarat officer will be expected to satisfy himself that the signatures on the bills placed before him conform to the specimen signatures received by him. Should any loss be occasioned by the neglect of this rule, the Nazarat officer will be held responsible.

(3) *Responsibility of Nazir, Menials or peons not to make payments*—At the same time the Nazir should be informed that he is responsible for all money transactions entrusted to his charge, and that if the Naib-Nazir or any other of his assistants is utilised for disbursement work, the Nazir will remain responsible for supervising them and their work. On no account should a Chaprasi or a menial be employed for the payment of any Government moneys.

(4) *Criminal Register XVIII*—Showing the amount of diet and road money of witnesses for which memoranda have been issued should be maintained in each Magistrate's Court and comparison should be regularly, though not necessarily daily, made with the Nazarat Register by the Presiding officer, who should initial in the column provided for the purpose in token of his having made the comparison.

*Outlying Courts*—This register should also be maintained in the Courts of Sessions Judges, who should compare it with the register of contingent expenditure at least once a week and put their initials in column 10 in token of their having done so. The diet money and travelling expenses of witnesses examined before a Court of Sessions should be paid in the presence of the Sessions Judge.

The following instructions are laid down in regard to checking of entries in the register maintained by outlying Courts:

(a) When the outlying Court (or if there is more than one Court, the naib-nazir appointed at the place) holds an advance from the district nazir.

In case there is only one Court, no comparison of the entries in the register of road and diet money paid to witnesses is necessary. If there are several Courts, it is presumed that the payments are made by the naib-nazir under the supervision of one presiding officer as is the case at district headquarters. In that case the entries to the register of road and diet money paid to witnesses should be compared with those in the contingent register maintained by the naib-nazir. No further comparison with the district nazir contingent register is necessary.

(b) When the outlying Court holds no advance.

The payment are made by the district nazir on receipt of the written orders of payment direct from such outlying Courts. In such cases, comparison with the entries in the contingent register of the district nazir is necessary and may be effected by the issue of fortnightly memoranda by the outlying Courts to the Nazarat officer.

(5) *Security from officials*—Steps should be taken to see that security is actually taken in all cases where the rules lay down that an official should furnish it.

(6) *Nazirs should not keep money deposits. Inspection by Deputy Commissioners*—The Nazir should not be allowed to keep in his possession any sum received by him in the form of a deposit, but such money should be deposited in the Treasury without delay.

It is hoped that Deputy Commissioners will make occasional inspections of the Nazir's accounts and satisfy themselves that these and other instructions relating to the Nazarat are being properly observed.

## Part C COMMISSIONS

**1. All Magistrates can now issue commissions for examination of witnesses**—The provision of the Code with regard to issue of Commissions in criminal cases have undergone important changes during the last few years. Now any Magistrate can issue a commission for the examination of a witness under the circumstances mentioned in sub-section (1) of Section 503 of the Code [*See* Section 284 (1) of new Code]. as substituted by Act 1 of 1951 and then amended by Act No. 26 of 1955. It is not now necessary that an application should be made for the purpose of the District Magistrate.

**President, Governors etc, to be always examined on commission**—Where the examination of the President or the Vice-President or the Government of a State as a witness is necessary for the ends of justice, a commission shall be issued for the examination of such a witness. (Proviso to Section 503 [*See* Section 284 (1) of new Code].

**2. Commissions within India**—If the witness is within the territories to which the Code extends, the Commission shall be directed to the District Magistrate or the Chief Presidency Magistrate within the local limits of whose jurisdiction the witness is to be found. Section 504 (1) [*See* Section 285 of new Code].

The Code of Criminal Procedure now extends to the whole of India except the State of Jammu and Kashmir and Manipur [Section 1 (2)]. In this connection also see the definition of 'India' in Section 4 (1) (j).

**3. Arrangements with Jammu and Kashmir State**—(1) If this Code does not extend, the commission shall be directed to such Court or officer, as the Central Government may, by notification in the official Gazette, specify in this behalf. Section 504 (2) [*See* Section 285 of new Code].

(1) The Central Government has issued the following notification under sub-section (2) of Section 504 of the Code [*See* Section 285 of new Code].

New Delhi, the 13th May, 1952

**S.R.O. 847**—In pursuance of sub-section (2) of Section 504 of the Code of Criminal Procedure, 1898), [*See* Section 285 of new Code] (V of 1898), and in supersession of the notification of the Government of India, in the Ministry of Home Affairs No. 4/8/48-Judicial dated the 9th May, 1950, the Central Government hereby specifies the following Courts in the State of Jammu and Kashmir to which the said Code does not extend, as Courts to which commission or examination of witnesses residing within the local limits of their respective jurisdiction, may be directed, namely:

1. The Court of the District Magistrate, Srinagar.
2. The Court of the District Magistrate, Jammu.
3. The Court of the District Magistrate, Baramulla.
4. The Court of the District Magistrate, Anantnag.
5. The Court of the District Magistrate, Doda.
6. The Court of the District Magistrate, Udhampur.
7. The Court of the District Magistrate, Kathua.
8. The Court of the District Magistrate, Poonch.
9. The Court of the District Magistrate, Ladakh.

*(Published in the Gazette of India, Part II, Section 3, dated the 17th May, 1952, (No. 67/51-Judl.)*

**4. Arrangements with Foreign Countries**—(1) If the witness is in a country or place outside India and arrangements are made by the Central Government with the Government of such country or place for taking evidence of witnesses in Criminal matters, a commission for the purpose can be issued by the Courts in India, in such form and to such Court or authority and through such channels as may be specified by the Central Government in a notification in the Official Gazette. [Section 504 (3)] [See Section 285 of new Code].

(2) Any Court, Judge or Magistrate exercising jurisdiction in a country or place outside India and having authority under the law in that country or place to issue commissions for examination of witnesses in criminal matters may issue such a commission for the examination of witnesses in India if such Court, Judge or Magistrate is specified in this behalf by the Central Government in a notification in the Official Gazette. The provisions of Section 505 to Section 507 of the Code [See Sections 286 to 288 of new Code] relating to execution and return of commission shall apply as if these commissions had been issued by a Criminal Court in India. (Section 508-A of the Code). [See Section 289 of new Code].

3. *Notification*—The Central Government has issued the following notifications specifying the Court to which commissions for the examination of witnesses residing in the Union of Burma, United Kingdom, Australia, Canada, Ceylon and Pakistan may be issued under the Code of Criminal Procedure.

*I. Government of India, Ministry of Home Affairs Notification No. 4/8/48- Judicial, dated the 25th January, 1950 :—*

In pursuance of sub-section (2B) of Section 503 of the Code of Criminal Procedure, 1898, (V of 1898) [See Section 284(1) of new Code] the Central Government is pleased to specify the following Courts having authority in the Union of Burma, to whom commissions for examination of witnesses residing in the Union of Burma may be issued under the said Code, namely,—

The Court of any District Magistrate or a Magistrate of the first class within the local limits of whose jurisdiction in the Union of Burma the witness resides.

*II. Government of India, Ministry of Home Affairs Notification No. 4/8/48-Judicial, dated the 8th April, 1950:*

In pursuance of sub-section (2B) of Section 503 of the Code of Criminal Procedure, 1898 (V of 1898) [See Section 284(1) of new Code] the Central Government is pleased to specify the Courts and Judges mentioned in column 2 of the schedule hereto annexed as Courts and Judges having authority in the country specified in the corresponding entry in column 1 of the said schedule, to whom commissions for examination of witness residing in that country, may be issued under the

said Code.

### The Schedule

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*Country Court or Judge*

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The United Kingdom (a) The Supreme Court of Judicature at the Royal Courts of Justice, London, in case the witness resides in England, or

(b) The Supreme Court of Northern Ireland, in case the witness resides in Northern Ireland, or

(c) The Court of Sessions, Scotland if the witness resides in Scotland.

Australia (a) The Chief Justice of the Supreme Court of the State in which the witness resides, or

(b) The Judge of the Supreme Court of the Australian Capital Territory, Canberra, in case the witness resides in that territory, or

(c) The Judge of the Supreme Court of the Northern Territory, Darwin, in case the witness resides in that territory.

Canada The Supreme Court of Canada or any Superior Court in any provinces of Canada.

Ceylon The Supreme Court of Ceylon.

Pakistan Any District Magistrate or Magistrate of the first class within the local limits of whose jurisdiction in Pakistan the witness resides.

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#### Part D

#### EXPERT WITNESSES

**1. Evidence of expert witnesses and instructions regarding the same**—Much inconvenience is caused to expert witnesses by the reckless manner in which they are often summoned to give evidence by Courts. The following instructions should be borne in mind by Presiding Officers of Courts with regard to this class of witness:

(a) Care should be taken that when an expert is summoned, his evidence is duly taken and, where possible, completed on the day of his appearance ;

(b) Where possible the expert should be previously consulted in regard to the suitability of the date which it is proposed to fix for his evidence; and

(c) Courts should always consider the desirability of avoiding causing inconvenience to experts by taking their evidence on commission in cases where **the** evidence is such as can suitably be so taken.

**2. Evidence of the Chief Inspector of Explosives**—The Chief Inspector of Explosives to the Central Government has drawn attention to the fact that number of summonses he receives for personal appearance before the Courts all over India interferes with his legitimate duties and he has suggested that it would be of very great assistance if the issue of summonses on him and his inspectors for appearance in Magistrates' Courts could be restricted to the minimum consistent with the requirements of State Governments, the Central Government have observed that where it is necessary to have the evidence of the Chief Inspector or his subordinates taken in

Magistrates' Courts which are at a great distance from their headquarters and the cases are such as would normally be committed to the Courts of Sessions, a great deal of inconvenience may be avoided by having resort to Section 503 and Section 506, Criminal Procedure Code as the case may be. The Punjab Government have accordingly directed that prosecuting officers should press for taking evidence on commission in suitable cases. This should be borne in mind by Criminal Courts.

**3. Evidence of Chemical Examiner or his Assistant**—Courts are warned to be careful to see before summoning the Chemical Examiner or his Assistant that the evidence of another medical witness whose services are more conveniently procurable will not be sufficient.

**4.** When an application is made for the summoning of a fire-arms expert in a case, the Magistrate should first ascertain from the party wishing to call him as a witness on what points his evidence is required, and then write a letter to the expert asking him if he is able to give evidence on those points, and whether he wishes to examine any exhibits before giving an opinion. After these preliminaries, if the reply of the expert shows that he is in a position to give relevant evidence, then and not till then, summons should be issued to him to appear as a witness subject to the instructions given in preceding paragraphs.

**5.** When it is considered necessary to summon a Government Inspector of Railways as an expert witness, reasonable notice should be given to the Government Inspector concerned and the summons served on him through the Chief Government Inspector of Railways, Department of Posts and Air (Railway Inspectorate), Government of India, who will make himself responsible that the summons is served on the Government Inspector.