

THE CRIMINAL LAW AMENDMENT ORDINANCE, 1944

¹ORDINANCE No.XXXVIII OF 1944

[23 August, 1944]

An Ordinance to prevent the disposal or concealment of property procured by means of certain offences.

WHEREAS an emergency has arisen which makes it necessary to provide for preventing the disposal or concealment of money or other property procured by means of certain offences punishable under the Pakistan Penal Code;

Now, THEREFORE, in exercise of the powers conferred by section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935 (26 Geo. 5,c.2.), the Governor-General is pleased to make and promulgate the following Ordinance :—

1. Short title, extent and commencement.— (1) This Ordinance may be called the Criminal Law Amendment Ordinance, 1944.

²[(2) It extends to the whole of Pakistan and applies to all citizens of Pakistan and public servants wherever they may be.]

³[(3) It shall come into force at once.]

¹The Ordinance has been applied to—

(i) Baluchistan *see* Notification No.47-w., dated the 11th September, 1944, Gazette of India, 1944, Pt.I, p.1213;

(ii) such of the Baluch Tribal Areas beyond the western border of the Dera Ghzai Khan District of the Punjab as are not included in the Baluchistan Tribal Areas, subject to certain conditions *see* Gazette of India, 1945, Pt.I.p.159.

The Ordinance has also been extended to the Leased Areas of Baluchistan by the Leased Areas (Laws) Order, 1950 (G.G.O. 3 of 1950).

²Subs. by the Criminal Law Amendment Act, 1953 (37 of 1953),s.4, for the original sub-section (2) as amended by A.O, 1949.

³Sub-section (3) ins. and shall be deemed always to have been ins. by the Repealing and Amending Act, 1945 (6 of 1945),s.3 and 2nd Sch.

2. Interpretation.—¹[(1) In this Ordinance, unless there is anything repugnant in the subject or context,—

- (a) “appropriate Government” shall have the same meaning as defined in clause (a) of section 2 of the ²[Pakistan Criminal Law Amendment Act, 1958 (XL of 1958)] ;
- (b) “public servant” includes a public servant as defined in section 21 of the Pakistan Penal Code (XLV of 1860), and also every railway employee, or employee of such organization or body corporate as may be notified in the official Gazette by the appropriate Government;
- (c) “scheduled offence” means an offence specied in the schedule to this Ordinance;]

(2) For the purpose of this Ordinance the date of the termination of criminal proceedings shall be deemed to be—

- (a) where such proceedings are taken to the High Court, whether in appeal or on revision, the date on which the High Court passes its final orders in such appeal or revision, or
- (b) where such proceedings are not taken to the High Court, the day immediately following the expiry of sixty days from the date of the last judgment or order of a criminal Court in the proceedings.

³* * * * * *

3. Application for attachment of property.—(1) Where the ⁴[appropriate Government] has reason to believe that any person has committed (whether after the commencement of this Ordinance or not) any scheduled offence, the ⁴[appropriate Government] may, whether or not any Court

¹Subs. by Act 37 of 1953, s.4, for the original sub-section (1)

²Subs. by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981),s.3 and Sch.,II, for “Pakistan Criminal Law Amendment Act, 1948”.

³Sub-section (3) omitted by A.O., 1949.

⁴Subs. by the Criminal Law Amendment Act, 1953 (37 of 1953),s.4 for “Provincial Government”.

has taken cognizance of the offence, authorise the making of an application to the District Judge within the local limits of whose jurisdiction the said person ordinarily resides or carries on his business, for the attachment under this Ordinance of the money or other property which the ¹[appropriate Government] believes the said person to have procured by means of the offence, or if such money or other property cannot for any reason be attached, of other property of the said person of value as nearly as may be equivalent to that of the aforesaid money or other property.

(2) The provisions of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908 (V of 1908) shall apply to proceedings for an order of attachment under this Ordinance as they apply to suits by the ²[Government].

(3) An application under sub-section (1) shall be accompanied by one or more affidavits stating the grounds on which the belief that the said person has committed any scheduled offence is founded, and the amount of money or the value of other property believed to have been procured by means of the offence; the application shall also furnish—

- (a) any information available as to the location for the time being of any such money or other property, and shall, if necessary, give particulars, including the estimated value, of other property of the said person ;
- (b) the names and addresses of any other persons believed to have, or be likely to claim, any interest or title in the property of the said person.

4. *Ad interim* attachment.—(1) Upon receipt of an application under section 3, the District Judge shall, unless for reasons to be recorded in writing he is of opinion that there exist no *prima facie* grounds for believing that the person in respect of whom the application is made has committed any scheduled offence or that he has procured hereby any money or other property, pass without delay an *ad interim* order attaching the money or other property alleged to have been so procured, or if it transpires that such money or other property is not available for attachment, such other property of the said person of equivalent value as the District Judge may think fit:

Provided that the District Judge may if he thinks fit before passing such order, and shall before refusing to pass such order, examine the person or persons making the affidavits accompanying the application.

¹Subs. by the Criminal Law Amendment Act, 1953 (37 of 1953), s.4, for “Provincial Government”.

²Subs. by A.O., 1961, Art.2, for “Crown” (*with effect from the 23rd March, 1956*).

(2) At the same time as he passes an order under sub-section (1), the District judge shall issue to the person whose money or other property is being attached a notice, accompanied by copies of the order, the application and affidavits and of the evidence, if any, recorded calling upon him to show cause on a date to be specified in the notice why the order of attachment should not be made absolute.

(3) The District Judge shall also issue notice, accompanied by copies of the documents accompanying the notice under sub-section (2), to all persons represented to him as having, or being likely to claim, any interest of title in the property of the person to whom notice is issued under the said sub-section, calling upon each such person to appear on the same date as that specified in the notice under the said sub-section and make objection if he so desires to the attachment of the property or any portion thereof on the ground that he has an interest in such property or portion thereof.

(4) Any other person claiming an interest in the attached property or any portion thereof may, notwithstanding that no notice has been served upon him under this section make an objection as aforesaid to the District Judge at any time before an order is passed under sub-section (1) or sub-section (3), as the case may be, of section 5.

5. Investigation of objections to attachment.— (1) If no cause is shown and no objections are made under section 4 on or before the specified date, the District Judge shall forthwith pass an order making the *ad interim* order of attachment absolute.

(2) If cause is shown or any objections are made as aforesaid, the District Judge shall proceed to investigate the same, and in so doing, as regards the examination of the parties, and in all other respects he shall, subject to the provisions of this Ordinance, follow the procedure and exercise all the powers of a Court in hearing a suit under the Code of Civil Procedure, 1908 (V of 1908); and any person making an objection under section 4 shall be required to adduce evidence to show that at the date of the attachment he had some interest in the property attached.

(3) After investigation under sub-section (2), the District Judge shall pass an order either making the *ad interim* order of attachment absolute or varying it by releasing a portion of the property from attachment or withdrawing the order:

Provided that the District Judge shall not—

- (a) release from attachment any-interest which he is satisfied that the person believed to have committed a scheduled offence has in the property, unless he is also satisfied that there will remain under attachment an amount of the said person's property of value not less than that of the property believed to have been procured by the said person by means of the offence, or
- (b) withdraw the order of attachment unless he is satisfied that the said person has not by means of the said offence procured any money or other property.

6. Attachment of property of *mala fide* transferees.—(1) Where the assets available for attachment of a person believed to have committed a scheduled offence are found to be less than the amount or value which he is believed, to have procured by means of such offence; and where the District Judge is satisfied, by affidavit or otherwise, that there is reasonable cause for believing that the said person has, after the date on which the offence is alleged to have been committed transferred (whether after the commencement of this Ordinance or not) any of his property otherwise than in good faith and for consideration, the District Judge may by notice require any transferee of such property (whether or not he received the property directly from the said person) to appear on a date to be specified in the notice and show cause why so much of the transferee's property as is equivalent to the proper value of the property transferred should not be attached.

(2) Where the said transferee does not appear and show cause on the specified date, or where after investigation in the manner provided in sub-section (2) of section 5, the District Judge is satisfied that the transfer of the property to the said transferee was not in good faith and for consideration, the District Judge shall order the attachment of so much of the said transferee's property as is in the opinion of the District Judge equivalent to the proper value of the property transferred.

7. Execution of orders of attachment. An order of attachment of property under this Ordinance shall be carried into effect so far as may be practicable in the manner provided in the Code of Civil Procedure, 1908 (V of 1908), for the attachment of property in execution of a decree.

8. Security in lieu of attachment. Any person whose property has been or is about to be attached under this Ordinance may at any time apply to the District Judge to be permitted to give security in lieu of such attachment, and where the security offered and given is in the opinion of the District Judge satisfactory and sufficient, he may withdraw or, as the case may be, refrain from passing, the order of attachment.

9. Administration of attached property.—(1) The District Judge may, on the application of any person interested in any property attached under this Ordinance and after giving the agent of the ¹[appropriate Government] an opportunity of being heard, make such orders as the District Judge considers just and reasonable for—

- (a) providing from such of the attached property as the applicant claims an interest in, such sums as may be reasonably necessary for the maintenance of the applicant and of his family, and for the expenses connected with the defence of the applicant where criminal proceedings have been instituted against him in any Court for a scheduled offence;
- (b) safeguarding so far as may be practicable the interests of any business affected by the attachment, and in particular, the interest of any partners in such business.

(2) Where it appears to the District Judge to be just and convenient, he may by order appoint a receiver to manage any property attached under this Ordinance in accordance with such instructions as the District Judge may from time to time think fit to give; and where a receiver is so appointed, the provisions of rules, 2, 3, 4 and 5 of Order XL of the First Schedule to the Code of Civil Procedure, 1908 (V of 1908), shall be applicable.

¹Subs. By the Criminal Law Amendment Act, 1953 (37 of 1953),s.4, for "Provincial Government".

10. Duration of attachment. An order of attachment of property under this Ordinance shall, unless it is withdrawn earlier in accordance with the provisions of this Ordinance, continue in force—

- (a) where no Court has taken cognizance of the alleged scheduled offence at the time when the order is applied for, for three months from the date of the order under sub-section (1) of section 4 or sub-section (2) of section 6, as the case may be, unless cognizance of such offence is in the meantime so taken, or unless the District Judge on application by the agent of the ¹[appropriate Government] thinks it proper and just that the period should be extended and passes an order accordingly ; or
- (b) where a Court has taken cognizance of the alleged scheduled offence, whether before or after the time when the order was applied for until orders are passed by the District Judge in accordance with the provisions of this Ordinance after the termination of the criminal proceedings.

11. Appeals.—(1) The ¹[appropriate Government] or any person who has shown cause under section 4 or section 6 or has made an objection under section 4 or has made an application under section 8 or section 9, if aggrieved by any order of the District Judge under any of the foregoing provisions of this Ordinance, may appeal to the High Court within thirty days from the date on which the order complained against was passed.

(2) Upon any appeal under this section the High Court may, after giving such parties as it thinks proper an opportunity of being heard, pass such orders as it thinks fit.

(3) Until an appeal under this section is finally disposed of by the High Court, no Court shall, otherwise than in accordance with the provisions of section 8 or section 13, order the withdrawal or suspension of any order of attachment to which the appeal relates.

12. Criminal Courts to evaluate property procured by scheduled offences.—(1) Where before judgment is pronounced in any criminal trial for a scheduled offence it is represented to the Court that an order of attachment of property has been passed under this Ordinance in connection with such offence, the Court shall, if it is convicting the accused, record a finding as to the amount of money or value of other property procured by the accused by means of the offence.

(2) In any appeal or revisional proceedings against such conviction, the appellate or revisional Court shall, unless it sets aside the conviction, either confirm such finding or modify it in such manner as it thinks proper.

(3) In any appeal or revisional proceedings against an order of acquittal passed in a trial such as is referred to in sub-section (1), the appellate or revisional Court, if it convicts the accused, shall record a finding such as is referred to in that sub-section.

¹Subs. by the Criminal Law Amendment Act, 1953 (37 of 1953),s.4 for “Provincial Government”.

¹[(4) Where the accused is convicted of a scheduled offence other than one specified in item 1 of the Schedule to this Ordinance and where it appears that the offence has caused loss to more than one Government referred to in said Schedule or local authority, the finding referred to in the section shall indicate the amount of loss sustained by each such Government or local authority.

(5) Where the accused is convicted at the same trial of one or more offences specified in item 1 of the schedule to this Ordinance and of one or more offences specified in any of the other items of the said schedule, the finding referred to in this section shall indicate separately the amounts procured by means of the two classes of offences.]

13. Disposal of attached property upon termination of criminal proceedings.— (1) Upon the termination of any criminal proceedings for any scheduled offence in respect of which any order of attachment of property has been made under this Ordinance or security given in lieu thereof, the agent of the ²[appropriate Government] shall without delay inform the District Judge, and shall where criminal proceedings have been taken in any Court, furnish the District Judge with a copy of the Judgment or order of the trying Court and with copies of the judgments or orders, if any, or the appellate or revisional Courts thereon.

(2) Where it is reported to the District Judge under sub-section (1) that cognizance of the alleged scheduled offence has not been taken or where the final judgment or order of the criminal Courts is one of acquittal, the District Judge shall forthwith withdraw any orders of attachment of property made in connection with the offence, or where security has been given in lieu of such attachment, order such security to be returned.

¹Sub-section (4) and (5) ins. by the Criminal Law (1944 Amdt.) Amending Ordinance, 1945 (14 of 1945),s.2.

²Subs. by the Criminal Law Amdt. Act, 1953 (37 of 1953), s.4 for “Provincial Government”.

(3) Where the final judgment or order of the criminal Courts is one of conviction, the District Judge shall order that from the property of the convicted person attached under this Ordinance or out of the security given in lieu of such attachment, there shall be forfeited to ¹[Government] such amount or value as is found in the final judgment or order of the criminal Courts in pursuance of section 12 to have been procured by the convicted person by means of the offence, together with the costs of attachment as determined by the District Judge; and where the final judgment or order of the criminal Courts has imposed or upheld a sentence of fine on the said person (whether alone or in conjunction with any other punishment), the District Judge may order, without prejudice to any other mode of recovery, that the said fine shall be recovered from the residue of the said attached property or of the security given in lieu of such attachment.

(4) Where the amounts ordered to be forfeited or recovered under sub-section (3) exceed the value of the property of the convicted person attached, and where the property of any transferee of the convicted person has been attached under section 6, the District Judge shall order that the balance of the amount ordered to be forfeited under sub-section (3) together with the costs of attachment of the transferee's property as determined by the District Judge shall be forfeited to ¹[Government] from the attached property of the transferee or out of the security given in lieu of such attachment; and the District Judge may order, without prejudice to any other mode of recovery, that any fine referred to in sub-section (3) or any portion thereof not recovered under that sub-section shall be recovered from the attached property of the transferee or out of the security given in lieu of such attachment.

(5) If any property remains under attachment in respect of any scheduled offence or any security given in lieu of such attachment remains with the District Judge after his orders under sub-sections (3) and (4) have been carried into effect, the order of attachment in respect of such property remaining shall be forthwith withdrawn, or as the case may be, the remainder of the security returned, under the orders of the District Judge.

²[(6) Every sum ordered to be forfeited under this section in connection with any scheduled offence other than one specified in Item 1 of the Schedule to this Ordinance shall, after deduction of the costs of attachment as determined by the District Judge, be credited to the Government (being a Government referred to in the said Schedule) or local authority to which the offence has caused loss, or where there is more than one such Government or local authority, the sum shall, after such deduction as aforesaid, be distributed among them in proportion to the loss sustained by each.]

¹Subs. by A.O., 1961, Art.2, for "His Majesty" (*with effect from the 23rd March, 1956*).

²Sub-section (6) added by the Criminal Law (1944 Amdt.) Amending Ordinance, 1945 (14 of 1945).s.3.

14. Bar to other proceedings. Save as provided in section 11 and notwithstanding anything contained in any other law,—

- (a) no suit or other legal proceedings shall be maintainable in any Court—
 - (i) in respect of any property ordered to be forfeited under section 13 or which has been taken in recovery of fine in pursuance of an order under that section, or
 - (ii) while any other property is attached under this Ordinance, in respect of such other property,—

by any person upon whom a notice has been served under section 4 or section 6 or who made an objection under sub-section (4) of section 4 ; and

- (b) no Court shall, in any legal proceedings or otherwise, pass any decree or order, other than a final decree in a suit by a person not being a person referred to in clause (a), which shall have the effect of nullifying or affecting in any way any subsisting order of attachment of property under this Ordinance, or the right of the District Judge to hold security in lieu of any such order of attachment.

15. Protection of action taken. No suit, prosecution or other legal proceedings shall lie against any person for anything in good faith done or intended to be done in pursuance of this Ordinance.

THE SCHEDULE

(See section 2)

OFFENCES IN CONNECTION WITH WHICH PROPERTY IS LIABLE TO BE ATTACHED.

1. An offence punishable under section 161 or section 165 of the Pakistan Penal Code¹[or any conspiracy to commit or any attempt to commit or any abetment of such offence.]

2. An offence punishable under section 406²[or section 408], or section 409 of the Pakistan Penal Code where the property in respect of which the offence is committed is property entrusted by³* * * the⁴[Federal] or a Provincial Government or a department of any such Government or a local authority or a person acting on behalf of any such Government or department or authority.

3. An offence punishable under section 411 or section 414 of the Pakistan Penal Code, where the stolen property in respect of which the offence is committed is property such as is described in the proceeding item and in respect of which an offence punishable under section 406²[or section 408] or section 409 of the said Code has been committed.

4. An offence punishable under section 417 or section 420 of the Pakistan Penal Code, where the person deceived is³* * * the⁴[Federal] or a Provincial Government or a department of any such Government or a local authority or a person acting on behalf of any such Government or department or authority.

5. Any conspiracy to commit or any attempt to commit or any abetment of any of the⁵[offences specified in items 2,3 and 4].

¹Added by the Criminal Law (1944 Amdt.) Amending Ordinance, 1945 (14 of 1945),s.4.

²Ins.*ibid.*

³The original words "His Majesty's Government in the United Kingdom or in any part of His Majesty's dominions or" omitted by the Criminal Law Amending Act, 1953 (37 of 1953),s.4.

⁴Subs. by F.A.O., 1975, Art.2 and Table, for "Central".

⁵Subs. by Act 37 of 1953, for "aforesaid offences".