

PROSECUTORIAL DECISION-MAKING GUIDELINES

These Guidelines are promulgated and issued under section 10(1) of the Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act 2006 to the prosecutors in Punjab for effective and efficient prosecution and to make use of these guidelines when they are required to take decisions relating to various stages of trial and thereafter.

1. Introduction

- 1.1. The Punjab Criminal Prosecution Service (Constitution, Functions and Powers) Act 2006 provides for separation of investigative and prosecutorial functions of the criminal justice system. Once a prosecution has been commenced and referred to the Punjab Criminal Prosecution Service the decision whether to continue the prosecution is made by the Prosecution Service independently of those who are responsible for investigation of a crime.
- 1.2. The following guidelines are issued to provide assistance to prosecutors in arriving at an informed decision before, during and after conclusion of a trial under their charge.

2. Decision to prosecute - General principles

- 2.1 The decisions to prosecute or not to prosecute are weighty matters undertaken on behalf of the State and should be undertaken with utmost care and responsibility. This is more so as decisions such as these impact in ways more than one on those effected by them. Fair and effective prosecution is essential to the maintenance of law and order and leads to public confidence and respect for the rule of law. It is the responsibility of the Prosecutor to make sure that the right person is prosecuted for the right offence and to bring offenders to justice wherever possible. Responsible and informed decisions taken fairly, firmly, impartially, consistently and with integrity will lead to justice delivery for victims, witnesses, accused and the public-at-large.
- 2.2 Each case must be considered on its own facts and merit. There are general principles that apply to the way in which Prosecutors must approach each case. Prosecutors must be fair, independent and objective. Personal views about the ethnic or national origin, gender, disability, age, religion or belief, political views, sexual orientation etc must not influence the decision making process.
- 2.3 Prosecutors must not be influenced by improper or undue pressure from any source. Prosecutors must, at all times, act in the interests of justice and not for the sole purpose of obtaining a conviction.
- 2.4 The police are responsible for conducting investigations into allegations of cognizable criminal conduct. Every case that is received from the Police is reviewed by the Prosecutor. Prosecutors must ensure that they have all the information they need to make an informed decision about the case. This often involves providing investigative advice and support, lines of inquiry, evidential

requirements, and assistance in any pre-charge proceedings throughout the investigative and prosecution process. However, a prosecutor cannot direct investigations.

2.5 Prosecutors must ensure that they do not allow a case to be prosecuted, or continue to be prosecuted, where to do so would be seen as oppressive or unfair by the Courts. The review process is a continuing one and Prosecutors must take account of changing circumstances as the case develops. Prosecutors and police work close together but the final responsibility for the decision as to whether the case should go ahead rests with the Prosecution Service.

2.6 Prosecutor must apply the Evidential test and Public Interest test in determining whether to prosecute and to continue a prosecution.

3. The Evidential test

3.1. Where in the opinion of the prosecutor the evidential test is not met and the case cannot be strengthened on the basis of available evidence, the case must not proceed. This ensures that those accused against whom there is insufficient evidence will not face criminal proceedings and will not be exposed to litigation. The presumption of innocence is guaranteed so is due process and fair trial. The evidential test requires the prosecutor to ask whether there is a realistic prospect of conviction (is it more likely than not that the accused will be convicted). If there is not a realistic prospect of conviction the case cannot, and must not, go ahead. This is an objective test based on the assessment of the evidence. Determining whether the evidential test is met is never an easy task – it requires experience and judgment.

3.2. It must be understood that the realistic prospect of conviction is a different test to the one applied by the Court. The Court will convict only where it is sure that the accused is guilty of the offence charged (the criminal standard of proof- beyond reasonable doubt). The Prosecutor will be guided by the precedent and the declaration of law in similar matters.

4. Public Interest test

4.1. Where there is a realistic prospect of conviction, the prosecutor is required to consider whether it is in accordance with public interest to prosecute - the Public Interest test. All prosecutions are in public interest unless there are factors in existence that require a prosecution may not be made.

4.2. A prosecution will usually take place unless the prosecutor is sure that there are public interest factors tending against prosecution which outweigh those in favour of prosecution. The more serious the offence or the offender's record of criminal behavior, the more likely it is that a prosecution will be required in the public interest. Terrorist cases will almost certainly require a prosecution where the evidential criteria are met.

4.3. In considering public interest factors it is not simply a matter of adding up the number of factors for and against each side and seeing which side has the greater number. Each case must be considered

on its own facts and on its own merits. Prosecutors must assess the overall impact of the public interest factors upon the decision and the case.

5. Public Interest Factors

The following are some common factors which must be applied while making prosecutorial decisions. They are not exhaustive and each case must be considered on its own merits.

5.1 Public Interest Factors in support of prosecution

- The offence involves a terrorist act.
- The offence involves the inflicting of an intentional debilitating injury to a person.
- The offence is planned or is the outcome of a concerted and coordinated activity.
- Offence committed by a group.
- The offence is against a vulnerable person (children, infirm or sick etc.).
- The offence was committed against a public servant while acting in the discharge of his duties.
- An offence is the outcome of hatred on account of race, caste, religion or sect.
- The accused has previous convictions of the same or serious nature.
- The accused has committed the offence while on bail or on probation.
- The offence causes a public nuisance, restricts use of public health or morals.
- The offence includes an element of corruption or misappropriation of public money.
- There is a likelihood of recurrence of offence.
- Seriousness of offence; an offence is serious if it involves a substantial unlawful gain or substantial loss to some person.
- The offence involves breach of trust by a person holding money or property in trust for a child or a vulnerable person or in relation to a charity.

5.2 Public Interest Factors against prosecution

- The offence carries a small punishment and is not likely to be repeated.
- The accused is an elderly and infirm person.
- Before or during the trial the accused is suffering from a significantly seriously mental or physical illness.
- The victim or the witnesses would be subjected to risk of serious physical or mental trauma if the case is allowed to proceed.
- The loss or harm caused by the offence is slight and was a result of single incident or it was caused by an error of judgment or genuine mistake.
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- The offence is a result of a misunderstanding of the law and the offender has not obtained any advantage from the act.

- The offender has cooperated in the investigation and is ready to undo the effects of his action.
- The offence has been lawfully compounded or may be compounded.
- The offence is not of a serious nature and has occurred as a result of grave provocation.

5.3 The following factors are not to be taken into consideration in evaluating the public interest:

- The possible political consequences of the exercise of the discretion;
- The prosecutor's personal feelings concerning the alleged offender or victim, if this be the case the prosecutor should withdraw himself from the charge of the case

6. Necessary Action under Section 10(3) Punjab Criminal Prosecution Service Act 2006

6.1 If, after applying the Evidential and Public Interest tests, a prosecutor decides that a prosecution shall not commence or continue, then the prosecutor should follow the requirements of Section 10(3) of the Act .

7. The Role of Prosecutor

7.1 A prosecutor is not entitled to act as if representing private interests in criminal proceedings. A prosecutor represents the community and not any private or sectional interest. A prosecutor does not have a client in the conventional sense and acts independently, yet in the public interest.

8. Review of these guidelines

8.1 These guidelines shall be reviewed periodically and as determined by the Punjab Criminal Prosecution Service. These guidelines are promulgated in January, 2012.

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