

Coast Guard Act, 1978

Chapter 8 - CHAPTER 8: PROCEDURE OF COAST GUARD COURTS:

SECTION 73: Law Officer: Every Coast Guard Court shall be attended by a Law Officer, or if no such officer is available, an officer approved by the Chief Law Officer or a Law Officer. SECTION 74: Challenges: (1) At all trials by a Coast Guard Court, as soon as the court is assembled, the names of the presiding officer and members shall be read over to the accused, who shall thereupon be asked whether he objects to being tried by any officer sitting on the court. (2) If the accused objects to such officer his objection and also the reply thereto of the officer objected to shall be heard and recorded, and the remaining officers of the court shall, in the absence of the challenged officer, decide on the object ... (3) If the objection is allowed by one-half or more of the votes of the members entitled to vote. the objection shall be allowed, and the member objected to shall retire and his vacancy may be filled in the prescribed manner, by another officer Subject to the same right of the accused to object. (4) Where no challenge is made, or when a challenge has been made and disallowed, or the place of every officer successfully challenged has been filled by another officer to whom no objection is made or allowed, the court shall proceed with the trial. SECTION 75: Oaths of member Law Officer and witness: (1) An oath or affirmation in the prescribed manner shall be administered to every member of a Coast Guard Court and to the Law Officer or, as the case may be. the officer approved under (section 73), before the commencement of the trial. (2) [Every person] giving evidence before a Coast Guard Court shall be examined after being duly sworn or affirmed in the prescribed form. (3) The provisions of sub-section (2) shall not apply where the witness is a child under twelve years of age and the Coast Guard Court is of opinion that though the witness understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation. SECTION 76: Voting by members: (1) Subject to the provisions of sub-sections (2) and (3), every decision of a Coast Guard Court shall be passed by an absolute majority of votes; and where there is an equality of votes on either the finding or the sentence, the decision shall be in favour of the accused. (2) No sentence of death shall be passed by a Coast Guard Court without the concurrence of at least two-third of the members of the Court. (3) In matters other than a challenge or the finding or sentence, the presiding officer shall have a casting vote. SECTION 77: General rule as to evidence: (Evidence Act, 1872), shall subject to the provisions of this Act, apply to all proceedings before a Coast Guard Court. SECTION 78: Judicial notice: A Coast Guard Court may take judicial notice of any matter within the general knowledge of the members as officers of the Coast Guard. SECTION 79: Summoning of witnesses: (1) The convening authority, the presiding officer of a Coast Guard Court, the Law Officer or, as the case may be, the officer approved under (section 73) or the Commanding Officer of the accused person may, by summons under his hand, require the attendance, at a time and place to be mentioned in the summons, of any person either to give evidence or to produce any document or other thing. (2) In the case of a witness who is subject to this Act, the summons shall be sent to his Commanding Officer and such officer shall serve it upon him accordingly. (3) In the case of any other witness, the summons shall be sent to the Magistrate within whose jurisdiction he may be, or resides, and such Magistrate shall give effect to the summons as if the witness were required in the court of such a Magistrate. (4) When a witness is required to produce any particular document or other thing in his possession or power, the summons shall describe it with reasonable precision. SECTION 80: Documents exempted from production: (1) Nothing in (section 79) shall be deemed to affect the operation of (sections 123) and (S.124 of the Indian Evidence Act, 1872), or to apply to any letter post card. telegram or other document in the of the custody or telegraph authorities. (2) If any document in such custody is, in the opinion of any Chief Judicial Magistrate, Chief Metropolitan Magistrate, Court of Session or High Court, wanted for the purpose of any Coast Guard Court, such Magistrate or Court may require the postal or telegraph authorities, as the case may be, to deliver such document, to such person as such Magistrate or Court may direct. (3) If any such document is, in the opinion of any other Magistrate or of any Commissioner of Police or District Superintendent of Police wanted for any such purpose, he may require the postal or telegraph authorities, as the case may be, to cause such search to

be made for, and to detain such document pending the orders of any such Chief Judicial Magistrate, Chief Metropolitan Magistrate, Court of Session or High Court.

SECTION 81: Commissions for examination of witnesses:(1) Whenever, in the course of a trial by a Coast Guard Court, it appears to the court that the examination of a witness is necessary for the ends of justice. and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, in the circumstances of the case, would be unreasonable, such court may address the Chief Law Officer in order that a commission to take the evidence of such witness may be issued.(2) The Chief Law Officer may then if he thinks necessary, issue a commission to any Metropolitan Magistrate or Judicial Magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.(3) The Magistrate to whom the commission is issued, or, if he is the Chief Metropolitan Magistrate or Chief Judicial Magistrate, he or such Metropolitan Magistrate or Judicial Magistrate of the first class as he appoints in this behalf shall proceed to the place where the witness is, or shall summon the witness before him and shall take down his evidence in the same manner, and may, for this purpose, exercise the same powers, as in the trials of warrant-cases under (Code of Criminal Procedure, 1973).(4) When the witness resides in any place outside India, the commission may be issued in the form and manner specified in sub-section (3) of (S.285 of Code of Criminal Procedure, 1973).

SECTION 82: Examination of a witness on commission:(1) The prosecutor and the accused person in any case in which a commission is issued under (section 81) may respectively forward any interrogatories in writing which the court may think relevant to the issue, and the Magistrate executing the commission shall examine the witness upon such interrogatories.(2) The prosecutor and the accused person may appear before such Magistrate by counsel, or except in the case of an accused person in custody, in person, and may examine, cross-examine and re-examine, as the case may be, the said witness.(3) After a commission issued under (section 81) has been duly executed, it shall be returned together with the deposition of the witness examined thereunder to the Chief Law Officer.(4) On receipt of a commission, and deposition returned under sub-section (3), the Chief Law Officer shall forward the same to the Coast Guard Court at whose instance the commission was issued or, if such court has been dissolved, to any other court convened for the trial of the accused person and the commission, the return there to and the deposition shall be open to inspection by the prosecutor and the accused person and may subject to all just exceptions, be read in evidence in the case by either the prosecutor or the accused, and shall form part of the proceedings of the Court.(5) In every case in which .a commission is issued under (section 81) the trial may be adjourned for a specified time reasonably sufficient for the execution and return of the commission,

SECTION 83: Alternative findings:If an accused is charged before a Coast Guard Court with one offence and it appears in evidence that he committed a different offence. He may be convicted of the offence which he is shown to have committed although he was not charged with it,

SECTION 84: Presumption as to signatures:In any proceeding under this Act, any application. certificate, warrant, reply or other document purporting to be signed by an officer in the service of the Government shall, on production be presumed to have been duly signed by the person by whom and in the character in which it purports to have been signed, until the contrary is shown.

SECTION 85: Enrolment paper:(1) Any enrolment paper purporting to be signed by an enrolling officer shall, in proceedings under this Act, be evidence of the person enrolled having given the answers to questions which he is therein represented as having given.(2) The enrolment of such person may be proved by the production of the original or a copy of his enrolment paper purporting to be certified to be a true copy by the officer having the custody of the enrolment paper.

SECTION 86: Presumption as to certain documents:(1) A letter, return or other documents respecting the service of any person in, or the dismissal or discharge of any person from, any unit or ship of the Coast Guard .or respecting the circumstances of any person not having served in, or belonged to, any unit or ship if purporting to be signed by or on behalf of the Central Government or the Director-General, or by any prescribed officer. shall be evidence of the facts stated in such letter, return or other document.(2) A Coast Guard List or Gazette purporting to be published by authority shall be evidence of the status and rank of the officers therein mentioned and of any appointment held by them and of the unit or ship of the Coast Guard to which they belong.(3) Where a record is made in the books of a ship in pursuance of this Act or any rule or otherwise in the discharge of official duties, and purports to be signed by the Commanding Officer or by the officer whose duty it is to make such record, such record shall be evidence of the facts therein stated,(4) A copy of any record in the books of ship purporting to be certified to be a true copy by the officer having custody of such books shall be evidence of such record.(5) Where any person subject to this Act is being tried on a charge of desertion or of absence without leave, and such person has surrendered himself

into the custody or any officer or other person subject to this Act or any unit or ship of the Coast Guard, or has been apprehended by such officer or person, a certificate purporting to be signed by such officer, or by the Commanding Officer of the unit of ship to which such person belongs, as the case may be. and stating the fact, date and place of such surrender or apprehension, and the manner in which he was dressed shall be evidence of the matters so stated.(6) Where any person subject to this Act is being tried on a charge of desertion or of improperly leaving a ship or of absence without leave and such person has surrendered himself into the custody of, or has been apprehended by, a police officer not below the rank of an officer in charge of a police station, a certificate purporting to be signed by such police officer and stating the fact, date and place of such surrender or apprehension and the manner in which he was dressed shall be evidence of the matters so stated.(7) Any document purporting to be a report under the hand of a Chemical Examiner or assistant Chemical Examiner to Government ["or any of the Government scientific experts, namely, the Chief Inspector of the Explosives, the Director of the Fingerprint Bureau, the Director, Haffkine Institute, Mumbai, the Director of a Central Forensic Science Laboratory or a State Forensic Science Laboratory and the Serologist to the Government"] upon any matter or thing duly submitted to him for examination or analysis and report, may be used as evidence in any proceeding under this Act.

SECTION 87: Evidence of previous convictions and general character:(1) When any person subject to this Act has been convicted by a Coast Guard Court of any offence, such court may inquire into, and receive, and record evidence of any previous convictions of such person, either by a Coast Guard Court or by a criminal court, or any previous award of punishment under (section 57) and may further inquire into and record the general character of such person and such other matters as may be prescribed.(2) Evidence received under this section may be either oral, or in the shape of entries in, or certified extracts from. books of Coast Guard Courts or other official records; and it shall not be necessary to give notice before trial to the person tried, that evidence as to his previous convictions or character will be received.

SECTION 88: Lunacy of accused:(1) Whenever, in the course of a trial by a Coast Guard Court, it appears to the court that person charged is by reason of unsoundness of mind incapable of making his defence. or that he committed the act alleged but was by reason of unsoundness of mind incapable of knowing the nature of the act or knowing that it was wrong or contrary to law, the court shall record a finding accordingly.(2) The presiding officer of the Coast Guard Court shall forthwith report the case to the convening authority.(3) The convening authority to whom the finding of a Coast Guard Court is reported under sub-section (2) shall order the accused person to be kept in custody in the prescribed manner and shall report the case for the orders of the Central Government.(4) On receipt of a report under sub-section (3). the Central Government may order the accused person to be detained in a lunatic asylum or other suitable place of safe custody.

SECTION 89: Subsequent fitness of lunatic accused for trial:Where any accused person, having been found by reason of unsoundness of mind to be incapable of making his defence, is in custody or under detention under (section 88), any officer prescribed in this behalf, may,- (a) if such person is in custody under sub-section (3) of (section 88), on the report of a medical officer that he is capable of making his defence, or(b) if such person is detained in jail under sub-section (4) of (section 88), on and certificate of the Inspector-General of Prisons, and if such person is detained in a lunatic asylum under the said sub-section, on a certificate of any two or more of the visitors of such asylum and if he is detained in any other place under that sub-section, on a certificate of the prescribed authority, that he is capable of making his defence, take steps to have such person tried by the same or another Coast Guard Court for the offence with which he was originally charged, or, if the offence is a civil offence, by a criminal court.

SECTION 90: Transmission to Central Government of orders under section 89:A copy of every order made by an officer under (section 89) for the trial of the accused shall forthwith be sent to the Central Government.

SECTION 91: Release of lunatic accused:Where any person is in custody under sub-section (3) of (section 88) or under detention under sub-section (4) of that section,- (a) if such person is in custody under the said sub-section (3). on the report of the medical officer, or(b)if such person is detained under the said sub-section (4). on a certificate from any of the authorities mentioned in clause (b) of (section 89) that in the judgment of such officer or authority such person may be released without danger of his doing injury to himself or to any other person. the Central Government may order that such person be released or detained in custody, or transferred to a public lunatic asylum if he has not already been sent to such asylum.

SECTION 92: Delivery of lunatic accused to relatives:Where any relative or friend of any person who is in custody under sub-section (3) of (section 83) or under detention under sub-section (4) of that section desires that he should be delivered to his care and custody, the Central Government. may.

upon application by such relative or friend and. on his giving security to the satisfaction of that Government that the person delivered shall be properly taken care of, and. prevented from doing injury to himself or to any other person, and be produced for the inspection of such officer. and at such times and places, as the Central Government may direct orders such person to be delivered to such relative or friend.

SECTION 93: Order for custody and disposal of property pending trial: When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before a Coast Guard Court during a trial, the court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the trial, and if the property is subject to speedy or natural decay may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

SECTION 94: Order for disposal of property regarding which offence is committed: (1) After the conclusion of a trial before a Coast Guard Court, an officer not below the rank of a Deputy Inspector-General within whose command the trial was held, may make such order as he thinks fit for the disposal by destruction, confiscation, delivery to any person claiming to be entitled to possession thereof, or otherwise, or any property or document produced before the court or in its custody, or regarding which any offence appears to have been committed or which has been used for the commission of any offence. (2) Where any order has been made under sub-section (1) in respect of property regarding which an offence appears to have been committed, a copy of such order signed and certified by the authority making the same may, whether the trial was held within India or not be sent to a Magistrate within whose jurisdiction such property for the time being is situated, and such Magistrate shall thereupon cause the order to be carried out into effect as if it were an order passed by him under the provisions of the Code of Criminal Procedure, 1973. (3) In this section, the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any person, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange whether immediately or otherwise.

SECTION 95: Powers of Coast Guard Court in relation to proceedings under this Act: Any trial by a Coast Guard Court under the provisions of this Act shall be deemed to be a judicial proceeding within the meaning of (sections 193) and (S. 228 of the Indian penal Code, 1860) and the Coast Guard Court shall be deemed to be a court within the meaning of (sections 345) and (S.346 of the Code of Criminal Procedure, 1973).