

(Rules for the payment of the expenses of complainants and witnesses attending any Criminal Court in Myanmar.)

No. 7

The 3rd January 1923.

[Amendment : 18.06.1989]

Judicial Department Notification No. 91, dated the 29th June 1916. Judicial Department Notification No. 97, dated the 12th July 1917. Judicial Department Notification No. 127, dated the 25th November 1918. Judicial Department Notification No. 134, dated the 18th July 1921.

No. 7. - Under the provisions of section 544 of the Code of Criminal Procedure, 1898, as amended by the Devolution Act, 1920, and in supersession of the notifications cited in the margin, the Local Government is pleased to make the following rules for the payment of the expenses of complainants and witnesses attending any Criminal Court in Myanmar for the purpose of any enquiry, trial, or other proceeding before such Court under the said Code.

These rules will come into force from the 1st April, 1923.

Rules for the payment of the expenses of complainants and witnesses attending any Criminal Court in Myanmar for the purpose of any enquiry, trial, or other proceeding before such Court under the said Code.

<Amendment 18.06.1989>

I.-The Criminal Courts may at their discretion pay, according to the scale set forth in Rule III, the expenses of complainants and witnesses either for the prosecution or for the defence-

- (1) in all cases which are cognizable by the police;
- (2) in all cases entered in column 5 of the Schedule II as not bailable;
- (3) in all cases in which witnesses are compelled to attend the Court under sections 94, 103, 208, 217, 257 and 540 of the Code of Criminal Procedure; and
- (4) in all cases where the prosecution is instituted or carried on by, or under the orders or with the sanction of, Government or any Judge, Magistrate, or public officer, or in which the presiding officer thinks the prosecution to be directly in furtherance of the interests of public justice.

II.-Expenses of complainants and witnesses shall be payable, according to the scale set forth in Rule III, on account of their journeys to and from the Court and for the days during which they have been absent from their homes for the purposes of the trial, proceedings, etc.: Provided that -

- (1) a Government servant whose salary exceeds Rs. 10 per mensem giving evidence in his official capacity-
 - (a) when giving evidence at a place more than five miles from his headquarters, shall not receive anything under these rules, but shall be given a certificate of attendance;
 - (b) when giving evidence at a place not more than five miles from his headquarters, shall, in cases where the Court consider it necessary, receive under these rules actual travelling expense, but shall not receive subsistence, special or expert allowances.
- (2) A Government servant whose salary does not exceed Rs.10 per mensem giving evidence in his official capacity shall receive his expenses from the Court.
- (3) A Government servant giving evidence in his private capacity shall receive actual travelling expenses under these rules, but shall not receive subsistence, special or expert allowances.
- (4) In cases in which the Magistrate acquits the accused under section 245 or section 247 of the Code of Criminal Procedure, and is of opinion that the complaint was frivolous or vexatious, the expenses of the complainant shall not be paid.

[NOTE 1.- Whenever the expenses of a Government servant summoned as a witness in his official capacity have to be deposited in advance, the term "expenses" shall be interpreted to mean the travelling and halting allowances admissible under the Civil Service Regulations.]

[NOTE 2.- Any fees or expenses which may be deposited in cases falling within proviso 1 (a) shall be credited to Government under the head "XVIA- Miscellaneous fees and fines."]

III.- The scale of expenses payable shall be as follows:-

- (1) **Ordinary Labouring Classes.**- The actual railway or steam-boat fare to and from the Court by the lowest class; or where the journey could not have been performed by rail or steam-boat, actual travelling expenses up to a limit of Rs.2 a day by boat and of four annas a mile by road; and an allowance for each day's absence from home of ten annas to those who are residents of places other than the place where the Court is held, and of eight annas to those who are residents of the place where the Court is held.
- (2) **Petty Village Officers.**- The same rates as above for railway or steam-boat fare, or actual travelling expenses by boat or road up to the limit of Rs.2 a day by boat and of four annas a mile by road; and

an allowance for each day's absence from home of fourteen annas to those who are residents of places other than the place where the Court is held, and of twelve annas to those who are residents of the place where the Court is held.

(3) Persons of higher ranks of life such as clerks, tradespeople, village headmen and headmen of circles.-

Second class railway or steam-boat fare to and from the Court; or, where the journey could not have been performed by rail or steam boat, actual travelling expenses up to a limit of Rs. 4 a day by boat and annas six a mile by road; and an allowance not to exceed except in special cases Rs. 1-8-0 for each day's absence from home.

(4) Persons of superior rank.- The actual sum spent in travelling to and from the Court with an allowance according to circumstances, not to exceed except in very special cases Rs.3 for each day's absence from home.

(5) Witnesses following any profession, such as medicine or law. – A special allowance according to circumstances. In determining the amount payable under this rule the Court may, in the case of any person summoned to give evidence as an expert, allow reasonable remuneration for the time occupied both in giving evidence and in performing any work of an expert character necessary for the case.

(6) Lodging allowance.- In addition to the above, a lodging allowance not exceeding except in special cases Re.1 for persons in class (3) and Rs. 2 for persons in classes (4) and (5) may be allowed for each night necessarily spent away from home if the Court is satisfied that the witness had to pay for his night's lodging. When an amount exceeding this scale is sanctioned as a special case, it shall not exceed the actual amount spent and the Court must be satisfied that such expenditure was necessary.

Judges and Magistrates should not grant maximum rates as a matter of course to every witness, but should take into account the witness's rank, earning capacity and the actual loss likely to be caused to him on account of his attendance at Court, in fixing the allowance.

[NOTE.- When the journey has to be performed partly by rail or steam-boat and partly by road or boat, the fare shall be paid in respect of the former and the mileage or boat-allowance in respect of the latter part of the journey.]

IV.- Allowances shall be paid under the orders of the Court, and in the presence of the presiding officer, and ordinarily at the conclusion of the trial, enquiry, or other proceeding. The presiding officer of the Court shall check the statement of charges and will be responsible that unauthorized charges are not allowed.

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Provided that, for sufficient reason, the Court may direct that the said allowances shall be paid to the person summoned at the time of serving the summons.

[NOTE.- This rule does not apply to the High Court of Judicature at Rangoon where the charges are passed by the Clerk of the Crown and the payments are made by the Accountant.]

V.- In cases committed to the Court of Session, or to the High Court, the Magistrate who commits the case shall note in the list of witnesses the class to which, in his opinion, each belongs.

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