



CRIMINAL PROCEDURE CODE (AMENDMENT)

LAW, No. 9 OF 1972

OF

THE NATIONAL STATE ASSEMBLY

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Criminal Procedure Code (Amendment)
Law, No. 9 of 1972

L. D.—O. 19/72.

A LAW TO ENABLE MAGISTRATES TO INQUIRE INTO AND SETTLE SUMMARILY DISPUTES AFFECTING LAND; TO MAKE PROVISION FOR THE INTRODUCTION OF SUSPENDED SENTENCES; TO ENABLE THE ESTABLISHMENT OF AN OFFICE OF DIRECTOR OF PUBLIC PROSECUTIONS AND TO DEFINE HIS POWERS AND DUTIES; AND FOR THOSE PURPOSES TO AMEND THE CRIMINAL PROCEDURE CODE; AND TO MAKE PROVISION FOR ALL MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

Cap. 20
Vol. I
Page 494.

BE it enacted by the National State Assembly of the Republic of Sri Lanka as follows:—

1. (1) This Law may be cited as the Criminal Procedure Code (Amendment) Law, No. 9 of 1972.

Short title
and date of
operation.

(2) This Law shall come into operation in respect of all or any of its provisions on such date or dates as the Minister may by Notification published in the *Gazette* determine.

2. Section 2 of the Criminal Procedure Code (hereinafter referred to as the "principal enactment") is hereby amended as follows:—

Amendment of
section 2 of
Chapter 20.

(a) by the insertion, immediately after the definition of "District Judge", of the following new definition:—

" "explosives" has the same meaning as in the Explosives Act; "

(b) by the insertion, immediately after the definition of "offence", of the following new definition:—

" "offensive weapon" has the same meaning as in the Offensive Weapons Act, No. 18 of 1966; and

(c) by the insertion, immediately after the definition of "Supreme Court", of the following new definition:—

" "suspended sentence" means a sentence in respect of which an order under section 324A is made; "

Insertion of
new Chapter
VIIA in the
principal
enactment.

3. The following new Chapter is hereby inserted immediately after Chapter VII of the principal enactment and shall have effect as Chapter VIIA of that enactment:—

CHAPTER VIIA.

INQUIRIES INTO DISPUTES AFFECTING LAND.

Inquiries into
disputes
affecting
land.

98A. (1) Whenever a Magistrate, on information furnished by any police officer or otherwise, has reason to believe that the existence of a dispute affecting any land situated within the local limits of his jurisdiction is likely to cause a breach of the peace, he may issue a notice—

- (a) fixing a date for the holding of an inquiry into the dispute; and
- (b) requiring every person concerned in the dispute to attend at such inquiry and to furnish to the Court, on or before the date so fixed, a written statement setting out his claim in respect of actual possession of the land or the part in dispute and in respect of any right which is the subject of the dispute.

(2) A copy of the notice shall, in the manner provided by this Code for the service of summons, be served upon such person or persons as the Magistrate may direct, and at least one copy of such notice shall be affixed in some conspicuous place at or near the land which is the subject of the dispute. Where a copy of the notice has been so affixed, an inquiry under this Chapter may be held and any Order under this Chapter may be made notwithstanding that the notice may not have been served on any party concerned in such dispute.

Inquiry to
be held in
summary
manner.

98B. (1) Every inquiry under this Chapter shall be held in a summary manner on the date fixed under section 98A or on such other date or dates as which the inquiry may be adjourned by the Magistrate.

(2) Pending the conclusion of such inquiry the Magistrate may make an interim Order containing any provision which he is empowered under this Chapter to make in an Order at the conclusion of the inquiry.

Determi-
nation and
Order of
Magistrate.

98C. (1) Where at the inquiry it appears that the dispute relates to the right to the possession of any land or any part of a land and such dispute is likely to lead to a breach of the peace, it shall be the duty of the Magistrate holding the inquiry to determine as to who was in possession of the land or the part in dispute on the date of issue of the notice under section 98A. Where he makes a determination under this section he may, unless the provisions of subsection (3) apply, make an Order under subsection (2).

(2) An Order under this subsection shall declare any one or more persons therein specified to be entitled to the possession of the land or the part of such land in dispute in the manner specified in such Order until such person or persons are evicted therefrom under a judgment order or decree of a competent Court, and prohibit all disturbance of such possession otherwise than under the authority of such an order or decree.

(3) Where at an inquiry into a dispute relating to the right to the possession of any land or any part of a land the Magistrate is satisfied that any person who had been in possession of such land or part has been forcibly dispossessed within a period of two months immediately before the date on which the notice was issued under section 98A, he may make a determination to that effect and make an Order under subsection (4).

(4) An Order under subsection (2) may contain, in addition to the declaration and prohibition referred to in that subsection, a direction that any party

specified in the Order shall be restored to the possession of the land or any part specified in such Order.

(5) Where the dispute relates to any right to any land or any part of a land, other than the right to the possession of such land or part, the Magistrate shall determine as to who is entitled to the right which is the subject of the dispute and make an Order under subsection (6).

(6) An Order under this subsection may declare that any person specified therein shall be entitled to any such right in or respecting the land or in any part of the land as may be specified in the Order until such person is deprived of such right by virtue of a judgment order or decree of a competent Court, and prohibit all disturbance or interference with the exercise of such right by such party other than under the authority of a judgment order or decree as aforesaid. Such Order may also contain such other directions as the Magistrate may think fit with regard to the exercise of such right or the sale of any crop or produce of the land or part of the land or to the custody or disposal of the proceeds of the sale of such crop or produce.

(7) A determination under this section shall be made after examination and consideration of any statements furnished in compliance with the notice issued under section 98A and of all such evidence as may be admitted by the Magistrate in his discretion:

Provided, however, that a determination under subsection (1) or subsection (3) may be made without reference to the merits of the claims of any persons in possession of the land or part of the land.

(8) Where the terms of settlement of a dispute affecting any land are voluntarily agreed on between the persons concerned in the dispute and are approved by the Magistrate, an Order under the preceding provisions of this section may be made in accordance with the terms as settled.

(9) Except in the case provided for by subsection (8) a Magistrate of the Court by which an Order under this section was made may, on application made to him in that behalf by any person affected by the Order, rescind the Order or vary it in such manner as he may consider expedient.

(10) No appeal shall lie against an Order made by a Magistrate under this Chapter.

Penalty for contravention of or failure to comply with Order.

98D. Any person who acts in contravention of or fails to comply with an Order made under this Chapter shall be guilty of an offence and shall on conviction after summary trial before a Magistrate be liable to imprisonment for a term not exceeding three months or to a fine of five hundred rupees.

Order not to affect right of interest which may be established in civil suit.

98E. No Order under this Chapter shall affect or prejudice any right or interest in any land or part of a land which any person may be able to establish in a civil suit; and it shall be the duty of a Magistrate who commences to hold an inquiry under this Chapter to explain the effect of this section to the persons concerned in the dispute.

Section 14 of the Conciliation Boards Act not to apply.

98F. Notwithstanding the provisions of the Conciliation Boards Act, No. 10 of 1958, the provisions of section 14 of that Act shall not apply in relation to any proceedings in a Magistrate's Court under this Chapter.

Meaning of "dispute affecting land".

98G. In this Chapter "dispute affecting land" includes any dispute as to the right to the possession, or to the boundaries, of any land or part of a

land, or as to the right to cultivate any land or part of a land, or as to the right to the crops or produce of any land, or part of a land, or as to any right in the nature of a servitude affecting the land.'

Insertion of
new Chapter
XXVA in the
principal
enactment.

4. The following new Chapter is hereby inserted immediately after Chapter XXV of the principal enactment and shall have effect as Chapter XXVA of that enactment:—

CHAPTER XXVA.

SUSPENDED SENTENCES

Suspended
sentences of
imprison-
ment.

324A. (1) A Court which passes a sentence of imprisonment on an offender for a term not exceeding two years for an offence may order that the sentence shall not take effect unless, during a period specified in the order, being not less than five years from the date of the order (hereinafter referred to as the "operational period"), such offender commits another offence punishable with imprisonment (hereinafter in this Chapter referred to as "subsequent offence").

(2) A Court which passes a sentence of imprisonment for a term not exceeding six months in respect of one offence on an offender who has had no previous experience of imprisonment shall make an order under subsection (1) unless—

(a) the offence involved the use or threat of violence, or the use or possession of a firearm, an explosive or an offensive weapon; or

(b) the offence is one in respect of which a probation order or order for conditional discharge was originally made; or

(c) the offender was subject to ~~suspended sentence~~ at the time the offence was committed.

324A. A Court which passes a suspended sentence on any person in respect of one offence shall not impose a sentence of imprisonment in respect of a different offence, in the same proceeding.

(4) On passing a suspended sentence the Court shall explain to the offender in ordinary language his liability under section 324B if during the operational period he commits a subsequent offence.

(5) If the offender does not commit a subsequent offence during the operational period, the suspended sentence imposed on the offender shall be deemed, for all purposes, never to have been imposed.

(6) Before a suspended sentence is imposed by any Court under the provisions of this Chapter, the Court shall make an order for the identification and finger printing of the offender.

Power of Court on conviction of subsequent offence to deal with suspended sentence.

324B. (1) Where an offender is convicted of a subsequent offence committed during the operational period, the Court which so convicts him shall order that the suspended sentence shall take effect either immediately, or upon the expiration of a term of imprisonment which may have been imposed on the offender by such Court in respect of the subsequent offence:

Provided that the Court may, in an appropriate case, having regard to the extenuating circumstances under which the subsequent offence was committed or to the trivial nature of such offence,—

(a) order that the suspended sentence shall take effect with the substitution of a lesser term for the original term;

(b) by order vary the original order under subsection (1) of section 324A by substituting for the operational period specified therein an operational period

expiring not later than five years from the date of the variation; or

(c) make no order with respect to the suspended sentence;

and in every case where the Court acts under paragraph (a), (b) or (c) it shall state its reasons therefor.

(2) Where a Court deals with an offender under this section in respect of a suspended sentence passed by another Court, the Court dealing with the offender shall notify the Court which passed the sentence of the manner in which the offender was dealt with.

(3) An order made by a Court under this section in respect of a suspended sentence shall, for the purpose of preferring any appeal, be deemed to be a sentence passed on the offender by such Court for the offence for which the suspended sentence was originally passed.

Discovery
of further
offences.

324c. (1) Where during the operational period of a suspended sentence any offender is convicted by a Court of a subsequent offence but such Court not being aware of the suspended sentence does not deal with the offender in respect of such sentence, any Court may on receipt of information relating to such suspended sentence and the conviction for the subsequent offence issue a summons requiring such offender to appear at the place and time specified therein or may issue a warrant for his arrest.

(2) A summons or warrant issued under subsection (1) shall direct the offender to appear or to be brought before the Court by which he is convicted in respect of the subsequent offence and upon such offender appearing or being so brought, the Court shall proceed to deal with him under subsection (1) of section 324B in respect of the suspended sentence.

5. The following new Chapter is hereby inserted immediately after Chapter XXXV of the principal enactment and shall have effect as Chapter XXXVA that enactment:—

Insertion of new Chapter XXXVA in the principal enactment.

CHAPTER XXXVA

THE DIRECTOR OF PUBLIC PROSECUTIONS,
HIS POWERS AND DUTIES

Director of
Public
Prosecutions,
powers and
duties.

393A. (1) There shall be, in the Department of the Attorney-General, an officer to be called and known as the Director of Public Prosecutions (hereafter in this Chapter referred to as "the Director").

(2) The Director in the exercise and performance of his powers and duties under this Code or any other law, shall be assisted by such officers as may be assigned for that purpose by the Attorney-General.

(3) The Director shall in the exercise and performance of his powers and duties under this Code or any other written law be subject to the directions, whether general or special, of the Attorney-General.

(4) The Director may in matters pertaining to the prosecution of criminal offences in any Court exercise all the powers of the Attorney-General under any written law, save and except the power of entering a *nolle prosequi* or of pardoning an accomplice or of sanctioning an appeal from an acquittal or of compounding an offence under section 290 (2).

(5) It shall be the duty of the Director to exercise the powers of the Attorney-General on his behalf:—

(a) in the case of any offence not triable summarily by a Magistrate's Court, and in respect of which a Magistrate has not commenced proceedings under section 152 (3);

(b) in any case referred to him by a Government department or State Corporation in which he considers that criminal proceedings should be instituted; and

(c) in any case in which it appears to him for any reason that his intervention is necessary.

(6) Nothing in the preceding provisions of this section shall preclude any person from instituting or carrying on any criminal proceedings if the institution or carrying on of such proceedings by such person is authorized or permitted by any other section of this Code; but the Director may undertake at any stage the conduct of those proceedings if he thinks fit.

Advice on
criminal
matters.

393B. (1) The Director may give advice, whether on application or on his own initiative, to the Police and any Government department or State Corporation or to such other person as he may think proper, in any criminal matter, and such advice may at his discretion be given either orally or in writing.

(2) The Director may authorize a pleader other than an officer assigned to assist him, to act as his agent in the conduct of a prosecution and determine the fees to be paid to pleaders so authorized.

(3) The Director may assist a prosecution by authorizing the payment of special expenses, if he is satisfied that such expenses are necessarily incurred for the proper conduct of any criminal proceeding.

Reports to be
made to
Director.

393c. The Superintendent or Assistant Superintendent of Police in charge of any area shall, in respect of offences alleged to have been committed within that area, report to the Director at the earliest opportunity—

- (a) every offence not triable summarily by a Magistrate's Court;
- (b) every offence in respect of which a prosecution is by law required to be instituted by or with the consent or sanction of the Attorney-General;
- (c) every cognizable offence in which the prosecution is withdrawn or is not proceeded with within a reasonable time;
- (d) every case in which a request for information has been made by the Director;
- (e) every case in which it appears to such Superintendent or Assistant Superintendent, that the advice or assistance of the Director is desirable;
- (f) every case of any other offence specified by the Attorney-General by Order to be an offence in respect of which a report under this section is necessary.

Information
to be
supplied when
submitting
Police
reports.

393d. When reporting in terms of the preceding section, the Superintendent or the Assistant Superintendent of Police, as the case may be, shall supply to the Director—

- (a) a full report of the circumstances;
- (b) copies of the statements of all witnesses;
- (c) a report of any proceedings taken before any judicial officer, Justice of the Peace and Unofficial Magistrate, or inquirer in connection with the offence; and

(d) such other information, documents or productions as may be relevant or as may be required by the Director.

Regulation as to Director's powers and duties.

393E. (1) The Minister may make regulations containing all such incidental or supplementary provisions as may be necessary to enable the Director to exercise and perform his powers and duties under this Chapter.

(2) Every regulation so made shall be published in the *Gazette* and shall come into operation upon the date of such publication and every such regulation shall be tabled in the National State Assembly and shall continue in force unless disapproved.

Savings for powers of Attorney-General.

393F. Nothing in this Chapter shall be construed to be in derogation or restriction of the powers and functions of the Attorney-General under this Code or any other law.

Interpretation.

393G. In this Chapter, unless a different intention appears from the subject or context, "Director of Public Prosecutions" includes an acting Director of Public Prosecutions, and any officer assigned to assist the Director of Public Prosecutions and acting under his authority.