

*Criminal Procedure.***No. 22 of 1890.****An Ordinance to amend "The Criminal Procedure Code, 1883."***(See No. 3 of 1883.)*

WHEREAS it is expedient to amend in some respects "The Criminal Procedure Code, 1883:" Be it therefore enacted by the Governor of Ceylon, by and with the advice and consent of the Legislative Council thereof, as follows:

Preamble.

1 For section 17 of the said Code the following section shall be substituted, namely:

Section 17.

(1) A district or police court may award such term of imprisonment in default of payment of a fine as is authorized by law in case of such default. Provided that the term is not in excess of the court's powers under this Code.

Power of district or police courts to sentence to imprisonment in default of payment of fine.

(2) If no term of imprisonment in case of default of payment of a fine is specified in any Ordinance in respect of an offence which is punishable by fine only, a district or police court may direct the offender to be imprisoned in accordance with the provisions of section 63 of the Ceylon Penal Code.

(3) In no case decided by a district or police court, where imprisonment has been awarded as part of the substantive sentence, shall the period of imprisonment awarded in default of payment of the fine exceed one-fourth of the period of imprisonment which such court is competent to inflict as punishment for the offence, otherwise than as imprisonment in default of payment of the fine.

(4) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the court under section 15 or 16.

2 For section 82 of the said Code the following section shall be substituted, namely:

Section 82, as to search.

(1) The officer or other person executing the search warrant shall make a list of all things seized in the course of the search, and of the places in which they are respectively found, and shall sign such list.

Officer to make list of things seized.

(2) The occupant of the place searched, or some person on his behalf, shall in every instance be permitted to attend during the search, and a copy of the list prepared under this section, signed by the person executing the warrant, shall be delivered to such occupant or person at his request.

Occupant of place searched may attend.

3 For section 156 of the said Code the following section shall be substituted, namely:

Section 156, as to examination of complainant. Complainant to be examined.

In cases falling under heads (1), (3), and (4) of section 152, the police court shall commence the inquiry by examining the complainant, or informant, or other person or persons professing to be able to speak to the material facts of the case.

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In the absence of complainant accused may be discharged.

4 After section 165 of the said Code the following section shall be added and numbered 165 (a), namely :

If upon any day fixed for the hearing of a case instituted under this chapter upon complaint, the complainant is absent, and the offence is one that may be lawfully compounded, the police magistrate may in his discretion, notwithstanding anything hereinafter contained, at any time before the charge has been framed, discharge the accused.

Section 168, as to discharge.

5 For section 168 of the said Code the following section shall be substituted, namely :

When accused to be discharged.

(1) When the evidence referred to in section 164, paragraphs (a) and (b), has been taken, such police magistrate shall, if he finds there are not sufficient grounds for committing the accused for trial, discharge him.

(2) Nothing in this section shall be deemed to prevent a police magistrate from discharging the accused at any previous stage of the case, if for reasons to be recorded by such police magistrate he considers the charge to be groundless.

Explanation.—A discharge under this section is not equivalent to an acquittal, and does not bar the revival of a prosecution for the same offence.

Section 183, as to record of inquiry.

6 After section 182 of the said Code the following section shall be inserted and numbered 183, namely :

Record of inquiry under chapters XVI. and XIX.

In proceedings under this chapter or chapter XIX., the police magistrate shall, if he commits the accused for trial, file, as part of the record of the inquiry, (a) the list or lists of witnesses given by the accused ; (b) the list or lists of witnesses bound over, or in custody, to appear ; (c) a copy of the warrant of committal. And he shall record or cause to be recorded (a) a brief statement of his reasons for committal ; (b) whether the accused is on bail or in custody ; and every record of an inquiry shall be certified under the hand of such police magistrate.

Chapter XIX., as to cases summarily triable by police court.

7 For chapter XIX. of the said Code the following chapter shall be substituted, namely :

CHAPTER XIX.

The Trial of Cases where a Police Court has power to try Summarily.

Procedure to be observed.

215 The following procedure shall be observed by the police magistrate in all cases falling under—

(a) Heads (2) and (5) of section 152, in which the offence is one triable summarily by the police court ;

(b) Heads (1), (3), and (4) of section 152, where it shall appear, after the examination required by section 156, that the offence is one which the police court has jurisdiction to try summarily ; and

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- (c) Heads (1), (2), (3), (4), and (5) of section 152, in which the offence is one not triable summarily by the police court, but is one within the jurisdiction of the district court, and the police magistrate is of opinion that the same may be sufficiently dealt with and disposed of by the police court summarily, and the accused consents to the same being tried by the said court in manner provided in section 219.

216 If the accused, being before the police court, upon being asked if he has any cause to show why he should not be convicted as provided by section 219, does not admit that he has committed the offence, or if the accused is not before the police court, the police magistrate shall appoint a time for the appearance of the accused and the trial and hearing of the complaint, and shall ascertain, from the complainant or accused if present, or otherwise, the names of any persons likely to be acquainted with the facts of the case, and to be able to give evidence for the prosecution or defence, and shall summon to give evidence before the police court such of them as he thinks necessary.

When accused is not before court, or, being present, denies charge, magistrate to appoint time for trial.

217 (1) If the accused is not before the police court, and the case is one in which a summons should issue in the first instance, the police magistrate shall issue his summons for the attendance of the accused. If the case appears to be one in which a warrant should issue in the first instance, the police magistrate may issue a warrant, or, if he thinks fit, a summons, for enforcing the appearance of the accused at the time appointed before the police court.

Summons or warrant should be issued.

(2) Nothing in this section shall be deemed to affect the provisions of section 65.

218 Whenever a police magistrate issues a summons, he may, in his discretion, dispense with the personal attendance of the accused, and permit him to appear by his pleader. But the police magistrate may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and enforce his attendance in manner hereinbefore provided.

Personal attendance of accused may be dispensed with.

219 (1) When the accused appears, or is brought before the police magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted; but it shall not be necessary to frame a formal charge.

Particulars of case to be stated to accused.

(2) If the offence is one over which a police court does not have summary jurisdiction, but is one within the jurisdiction of the district court, and the police magistrate is of opinion that the same may be sufficiently dealt with and disposed of by the police court summarily, he shall explain to the accused the particulars of the offence, and say to him these words, or words to the like effect:

Magistrate may try accused by consent.

“Do you consent that you shall be tried by this court summarily, or do you desire to be tried by a superior court?”

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Consent to be recorded.

(3) If the accused consents to being summarily tried, such consent shall be recorded, and he shall be asked if he has any cause to show why he should not be convicted, and the case shall be proceeded with in manner hereinafter provided in this chapter. If he does not consent, then the police magistrate shall proceed with the case as is provided in chapter XVI.

Admission of offence by accused.

220 If the case is one summarily triable by the police court, or if the accused consents to the case being summarily tried by the police court in manner hereinbefore provided, and the accused, upon being asked if he has any cause to show why he should not be convicted as provided by section 219, admits that he has committed the offence of which he is accused, his admission shall be recorded as nearly as possible in the words used by him; and if he shows no sufficient cause why he should not be convicted, the magistrate shall convict him accordingly, and pass sentence upon him according to law, and shall record the finding and sentence.

If accused does not admit offence magistrate shall proceed with inquiry.

221 If the accused does not make such admission, the police magistrate shall proceed to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence. The accused shall be permitted to cross-examine any witness examined against him, and the prosecutor or complainant may re-examine any witness who may have been cross-examined.

Accused may cross-examine witnesses for prosecution.

Magistrate may issue process for compelling attendance of witnesses. Expenses of witnesses.

222 The police magistrate may, if he thinks fit, on the application at any time of the complainant or accused, issue process to compel the attendance of any witness, or the production of any document or other thing. The police magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred for the purposes of attending the trial be deposited in court.

Acquittal.

223 If the police magistrate, upon taking the evidence referred to in section 221, and such further evidence (if any) as he may, of his own motion, cause to be produced, and (if he thinks fit) examining the accused, finds the accused not guilty, he shall record an order of acquittal. If he finds the accused guilty, he shall pass sentence upon him according to law.

Sentence.

Power to police magistrate to acquit accused at any time if he considers complaint to be groundless.

224 Nothing in the preceding section contained shall be deemed to prevent a police magistrate from acquitting the accused at any previous stage of the case, if, for reasons to be recorded by him, he considers the complaint to be groundless.

Commitment for trial before superior court.

225 (1) In cases falling under the heads (a) and (b) of section 215, if the police magistrate, after taking the evidence adduced for the prosecution and the defence, is of opinion that the offence cannot be adequately punished by

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the police court, and that there is sufficient evidence on which the accused may be committed for trial before a superior court, the police magistrate may refrain from passing sentence on the accused, and shall forward the proceedings taken in the case to the Attorney-General.

(2) The Attorney-General may, in his discretion, frame a charge in writing, which shall be filed with the record, and a copy of which shall be served on the accused, and instruct the magistrate as to the court to which the case shall be committed for trial.

(3) The police magistrate shall thereupon commit for trial the accused upon the charge so framed as aforesaid to the court named for the purpose by the Attorney-General, and to no other.

226 (1) A police magistrate may convict an accused of any offence over which a police court has summary jurisdiction, which, from the facts admitted or proved, he appears to have committed, whatever may be the nature of the complaint or information.

Conviction not limited to complaint or information.

(2) The police magistrate, before he so convicts an accused as aforesaid, shall frame a charge in writing, and shall read and explain the same to the accused; and such of the provisions of chapter XVIII. as relate to altered charges shall apply to a charge framed under this section.

227 In every case summarily disposed of under this chapter, the police magistrate shall record, or cause to be recorded, a brief statement of the reasons for his finding; and he shall certify under his hand as such police magistrate the record of every such case.

Magistrate to state reasons for his finding.

228 If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the police magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day.

Accused may be acquitted in the absence of complainant.

229 If a complainant, at any time before a final order is passed in any case under this chapter, satisfies the police magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the police magistrate may permit him to withdraw the same, and shall thereupon acquit the accused.

Withdrawal of charge by complainant.

230 In any case instituted under this chapter otherwise than upon a complaint, a police magistrate may, with the previous sanction of the Attorney-General, for reasons to be recorded by the magistrate, stop the proceedings at any stage without pronouncing any judgment, either of acquittal or conviction, and may thereupon discharge the accused.

Accused may be discharged by magistrate with sanction of Attorney-General.

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Where accused tried by consent, police court to have jurisdiction to impose double ordinary sentence.

231 In any case in which the offence is one triable summarily by the police court with the consent of the accused as provided in section 219, the police court shall have jurisdiction, upon the conviction of the offender, to impose on him any sentence not exceeding double the maximum sentence which a police court may pass under section 16.

How statement of accused to be recorded.

232 When an accused person in any proceedings under this chapter makes a statement only, or makes a statement and is examined thereon as is provided by section 352, the substance of such statement or statement and examination shall be recorded, and shall be shown or read and interpreted to him in a language he understands, and he shall be at liberty to explain or add to his statement or answers.

Statement to be signed by magistrate.

233 Such statement or statement and examination shall be signed by the police magistrate, but it shall not be necessary for the police magistrate to attach any certificate to the same.

How confession of accused to be recorded.

234 When an accused person in the course of any proceedings under this chapter makes any confession, the police magistrate shall record the same in such manner as is in this Code prescribed for recording evidence, and the confession so recorded shall be shown or read and interpreted to the accused, and shall be signed by the police magistrate, and it shall not be necessary for the police magistrate to attach any certificate to the same.

Statement and confession may be given in evidence.

235 The statement or confession of an accused taken and recorded by a police magistrate under the provisions of sections 232, 233, and 234, may be given in evidence without further proof in any subsequent judicial proceedings, or in any later stage of the same judicial proceedings, anything in this Code to the contrary notwithstanding.

Frivolous or vexatious complaints.

236 (1) If in any case instituted on complaint a police magistrate acquits the accused under section 223, and is of opinion that the complaint was frivolous or vexatious, he may, in his discretion, by his order of acquittal, direct the complainant to pay to the accused, or to each of the accused when there are more than one, such compensation, not exceeding ten rupees, as the police magistrate shall think fit.

Recovery of compensation.

(2) The sum so awarded shall be recoverable as if it were a fine. Provided that, if it cannot be realized, the imprisonment to be awarded shall be simple, and for such term not exceeding thirty days as the police magistrate directs at the time of awarding compensation. In any subsequent civil suit relating to the same matter, the court shall take into account any sum paid or recovered as compensation under this section.

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(3) If in any case inquired into or tried before a police magistrate under this chapter the complaint be not proceeded with within such time as the police magistrate may deem reasonable, or, if the complaint is declared by the magistrate to have been frivolous or vexatious, it shall be lawful for such police magistrate to make an order for the complainant to pay by way of Crown costs a sum not exceeding five rupees, such sum to be recovered as if it were a fine; and against such order there shall be no appeal; and if any sum which a complainant is awarded to pay by way of Crown costs cannot be recovered, it shall be lawful for the police magistrate to sentence such complainant to simple imprisonment for any period not exceeding fourteen days.

Crown costs.

237 In any case in which a police magistrate has committed the accused for trial before a superior court under the provisions of section 225, he shall and may perform or exercise all or any of the duties, powers, acts, matters, or things which such police magistrate, if acting under chapter XVI., might perform or exercise after commitment under that chapter.

Police magistrate committing under this chapter to have same powers as if he had acted under chapter XVI.

(a) The Attorney-General may exercise, in respect of any case forwarded to him under the provisions of section 225, all or any of the powers conferred on him by chapters XVI. and XX.

Powers of Attorney-General.

(b) Sections 368, 369, 370, and 473 shall not apply to statements or confessions taken and recorded by a police magistrate in proceedings carried on under the provisions of this chapter.

Sections 368, 369, 370, and 473 shall not apply to statements and confessions taken under this chapter.

238 In any trial before a police court, if at any stage of the proceedings the evidence shows that an offence has been committed which is not triable summarily, or which cannot be sufficiently dealt with and disposed of by the police court notwithstanding the consent of the accused, the police court shall not be at liberty to disregard material parts of the evidence and convict for a lesser offence and so withdraw the case from the proper tribunal, but it shall be the duty of such court to stop further proceedings under this chapter and to proceed under chapter XVI.

Police court cannot convict for lesser offence and so withdraw case from a superior court.

8 In section 242 of the said Code the words "to the Attorney-General" shall be substituted for "to the court."

Section 242 amended.

9 Section 322 of the said Code shall be taken and read as though the following words were inserted at the end thereof:

Section 322 amended.

The clerks of the Executive and Legislative Councils.

The presidents of village tribunals.

Exemptions from service as jurors.

All persons employed in the postal and telegraph department, or in the railway department, or in any police court.

All municipal councillors and members of local boards of health and improvement.

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Power of Governor to exempt certain persons from service for specified periods.

10 (1) In any district in which it shall appear to the Governor in Executive Council that sufficient panels of jurymen can be secured from any one of the three lists numbered (1), (2), and (3) respectively in section 323 of the said Code, it shall be lawful for him, by Proclamation in the *Government Gazette*, to order that no person whose name shall be included in such list shall be liable, save and except under the provision contained in the second proviso to section 289 of the said Code, to serve as a juror at any criminal sessions of the Supreme Court more than once in such period as shall be defined in such Proclamation, anything in the said Code to the contrary notwithstanding.

(2) The Governor in Executive Council may amend or revoke such Proclamation, but no such amendment or revocation shall take effect until the same is duly proclaimed in the *Government Gazette*.

Section 355 amended.

11 In section 355 of the said Code "315" shall be substituted for "317."

Section 358 amended.

12 Section 358 of the said Code shall be taken and read as though the following proviso were inserted at the end thereof :

Deposition of witness taken in absence of accused to be read over to him.

Provided that if the evidence of any witness shall have been taken in the absence of the accused, whose attendance has not been dispensed with, such evidence shall be read over to the accused in the presence of such witness, and the accused shall have a full opportunity allowed him of cross-examining such witness thereon.

Section 455 as to bail.

13 For section 455 of the said Code the following section shall be substituted, namely :

When bail may be taken in case of non-bailable offence.

(1) When any person accused of any non-bailable offence is arrested or detained without warrant, or appears, or is brought before a court, he may be released on bail at the discretion of the court, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused.

Power to direct admission to bail or reduction of bail.

(2) If it appears to the court at any stage of the inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed such offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or at the discretion of the court on the execution by him of a bond without sureties for his appearance as hereinafter provided.

Accused committed for trial for non-bailable offence other than offences under section 114, 191, 295, 296, or 297.

(3) When any person has been committed for trial by a police magistrate for any non-bailable offence other than an offence under section 114, 191, 295, 296, or 297 of the Ceylon Penal Code, the police magistrate may, in his discretion, release the accused on bail. Any person charged under section 114, 191, 295, 296, or 297 of the Ceylon Penal Code may be admitted to bail, by order of the Supreme Court, or by the authority of the Attorney-General.

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(4) Any court may, at any subsequent stage of any proceeding under this Code, cause any person who has been released under this section to be arrested, and may commit him to custody.

Court may re-arrest person bailed.

14 In section 473 of the said Code the following words shall be inserted at the end of paragraph (g) of the second proviso to the said section, and the said section shall take effect and be construed accordingly :

Section 473 amended.

“the witness, whether such deposition was made in his presence or not.”

Deposition taken in absence of accused receivable in evidence.

15 In section 476 of the said Code the words “or immovable” shall be inserted after the word “movable” in the second and third paragraphs thereof, and the said section shall be read and construed accordingly.

Section 476 amended.

16 In the fourth column of schedule II. to the said Code the word “warrant” shall be substituted for the word “same” as applying to sections 315, 316, and 317 of the Ceylon Penal Code, and in the seventh column of the said schedule the words “district court” shall be inserted as applying to the whole of section 380 (including robbery “if committed on the highway between sunset and sunrise”) and to section 457 of the Ceylon Penal Code, and the said schedule shall be read and construed accordingly.

Schedule II. amended.

17 All voluntary statements or confessions made by an accused, and all questions put to, and answers given by, an accused in examination by a police magistrate under section 16 of the Ordinance No. 1 of 1888, in the course of a proceeding under chapter XIX., may be recorded and signed in manner provided in sections 232, 233, and 234, without any certificate being attached thereto, anything in sections 15 and 16 of Ordinance No. 1 of 1888 to the contrary notwithstanding.

District court may try offences under sections 380 and 457 of Ceylon Penal Code.

Voluntary statements or examination in proceedings under chapter XIX. to be recorded in manner provided under sections 232, 233, and 234.

18 The Ordinance No. 5 of 1886, intituled “An Ordinance to amend ‘The Criminal Procedure Code, 1883,’” is hereby repealed.

Repealing clause.

19 This Ordinance, which may be cited as “The Criminal Procedure Code Amendment Ordinance, 1890,” and Ordinance No. 3 of 1883, intituled “The Criminal Procedure Code, 1883,” shall be read together as one Ordinance.

To be read as one with “Criminal Procedure Code, 1883.”

11th December, 1890.