

PARLIAMENT OF CEYLON

2nd Session 1961-62



Criminal Law (Special Provisions) Act, No. 1 of 1962

Date of Assent : March 16, 1962

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L. D.—O. 7/62.

AN ACT TO MAKE SPECIAL PROVISION FOR THE APPREHENSION, DETENTION AND TRIAL OF PERSONS SUSPECTED OF HAVING COMMITTED, OR CHARGED WITH, OFFENCES AGAINST THE STATE, TO AMEND THE PENAL CODE, THE CRIMINAL PROCEDURE CODE AND THE COURTS ORDINANCE, AND TO MAKE PROVISION FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

[Date of Assent : March 16, 1962]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Representatives of Ceylon in this present Parliament assembled, and by the authority of the same, as follows :—

1. This Act may be cited as the Criminal Law (Special Provisions) Act, No. 1 of 1962. Short title.

PART I

Arrest and detention of persons suspected of committing offences against the State

2. (1) Where the Inspector-General of Police suspects that any person has committed, whether before or after the date of the commencement of this Act, any offence against the State, the Inspector-General of Police or any other police officer authorised by him in that behalf may arrest such person without a warrant. Detention of persons suspected of having committed offences against the State.

(2) Any person arrested under this section may be removed from the place of arrest to any other place situated anywhere in Ceylon, and detained in custody until a date not later than sixty days from the day of his arrest or until the date on which proceedings in respect of the offence referred to in sub-section (1) of this section are instituted against him in a Court, whichever date is earlier and the fact of such arrest, and the place of detention and any subsequent change of the place of detention, shall be notified to the Magistrate's Court having jurisdiction over the place in which such arrest took place.

(3) Any person who has the power under sub-section (1) of this section to arrest a person may—

(a) search such person and seize, remove and detain any vehicle, vessel, article, substance or other thing whatsoever used or suspected to be used in or in connection with the commission of any offence referred to in that sub-section ; and

(b) enter and search any such premises as may be necessary for the purposes referred to in paragraph (a) of this sub-section.

(4) Any person detained in pursuance of the provisions of sub-section (2) of this section shall be deemed to be in lawful custody, and shall be so detained in such place as may be authorised in writing by the Inspector-General of Police, and—

(a) where such place is not a prison established under the Prisons Ordinance, it shall be the duty of the person in charge of that place to receive such person and to keep him in detention in accordance with such instructions as may be issued by the Inspector-General of Police ; or

(b) where such place is a prison established under the Prisons Ordinance, it shall be the duty of the officer in charge of that prison to receive such person and to keep him in detention, and the provisions of the Prisons Ordinance and the rules made thereunder, other than the provisions of Part IX of that Ordinance and the rules made to give effect to the provisions of the said Part IX, shall, subject to the provisions of sub-section (5) of this section, apply to the person so detained.

(5) Where a person is detained in pursuance of the provisions of sub-section (2) of this section in a prison established under the Prisons Ordinance, the Permanent Secretary to the Ministry of Defence

and External Affairs may, from time to time, by order issued to the officer in charge of that prison direct—

(a) that any of the provisions of the Prisons Ordinance or the rules made thereunder, other than the provisions of Part IX of that Ordinance or the rules made to give effect to that Part, shall not apply to such person or shall apply to such person subject to such conditions or modifications as may be set out in the order ; or

(b) that all or any of the provisions of Part IX of the Prisons Ordinance or the rules made to give effect to that Part shall apply to such person, or shall apply subject to such conditions or modifications as may be set out in the order.

(6) So long as an order under sub-section (5) of this section is in force in respect of any person, the provisions of paragraph (b) of sub-section (4) of this section shall, in their application in the case of such person, have effect subject to such order.

(7) It shall not be necessary to publish any order made under sub-section (5) of this section in the *Gazette*, and accordingly such order shall take effect upon its being signed by the Permanent Secretary to the Ministry of Defence and External Affairs.

(8) The provisions of sections 36, 37 and 38 of the Criminal Procedure Code shall not apply in the case of any person arrested or detained in pursuance of the preceding provisions of this section.

(9) Any person in charge of any place referred to in paragraph (a) of sub-section (4) of this section, or any officer in charge of any prison referred to in paragraph (b) of that sub-section, who fails to perform the duty imposed on him by the said paragraph (a), or the said paragraph (b), as the case may be, shall be guilty of an offence and shall, on conviction after summary trial before a Magistrate, be liable to a fine not exceeding one thousand rupees or to imprisonment of either description for a term not exceeding six months, or to both such fine and imprisonment.

PART II

Amendments to the Criminal Procedure Code
and the Penal Code

Amendment of
section 395 of
the Criminal
Procedure Code.

3. Section 395 of the Criminal Procedure Code is hereby amended, by the substitution, for the expression "sections 114, 191" wherever it occurs in sub-sections (1) and (3) of that section, of the expression "sections 114, 115, 116, 191".

Amendment of
section 440A
of the
Criminal
Procedure Code.

4. Section 440A of the Criminal Procedure Code is hereby amended as follows :—

(1) in sub-section (1) of that section by the substitution—

(a) in paragraph (a) of that sub-section, for the expression '(hereinafter, unless the context otherwise implies, referred to as "sedition")'; of the expression '(hereinafter, unless the context otherwise implies, referred to as "sedition"), or any other offence under Chapter VI of that Code'; and

(b) for the expression "the person charged shall be tried", of the expression "the trial of such offence shall be held";

(2) in sub-section (3) of that section, by the substitution, for all the words from "by the Court" to the end of that sub-section, of the words "by the court of trial"; and

(3) in sub-section (5) of that section, by the substitution, for the word "information", of the following :—

"information :

Provided, however, that any such person shall not be admitted to bail except with the consent of the Attorney-General."

5. The First Schedule to the Criminal Procedure Code is hereby amended as follows :—

Amendment of
the First
Schedule to
the Criminal
Procedure
Code.

- (1) in the entry in the third column of that Schedule relating to section 113B of the Penal Code, by the substitution, for the words “if arrest”, of the words “if arrest for the offence” ;
- (2) in the entry in the—
 - (a) third column of that Schedule relating to section 114 of that Code, by the substitution, for the words “Shall not”, of the word “May” ; and
 - (b) seventh column of that Schedule relating to section 114 of that Code, by the substitution, for the words “for twenty years”, of the words “which shall extend to at least ten years but shall not extend to more than twenty years” ;
- (3) in the entry in the seventh column of that Schedule relating to section 115 of that Code, by the substitution, for that entry, of the entry “Death or imprisonment of either description which shall extend to at least ten years but shall not extend to more than twenty years, and forfeiture of property.” ; and
- (4) in the entry in the third column of that Schedule relating to section 123 of that Code, by the substitution, for the words “Shall not”, of the word “May”.

6. (1) Section 114 of the Penal Code is hereby amended, by the substitution, for the words “which may be extended to twenty years,”, of the words “which shall extend to at least ten years but shall not extend to more than twenty years,”.

Amendment of
sections 114 and
115 of the Penal
Code.

(2) Section 115 of the Penal Code is hereby amended as follows :—

- (a) by the substitution, for all the words from “Ceylon, shall” to “to fine.”, of the following :—

“Ceylon, or conspires to overthrow, or attempts or prepares to overthrow, or does any act, or conspires to do, or

attempts or prepares to do any act, calculated to overthrow, or with the object or intention of overthrowing, or as a means of overthrowing, otherwise than by lawful means, the Government of Ceylon by law established, or conspires to murder, or attempts to murder, or wrongfully confines, or conspires or attempts or prepares to wrongfully confine, the Governor-General or the Prime Minister or any other member of the Cabinet of Ministers, with the intention of inducing or compelling him to exercise or refrain from exercising in any manner any of the lawful powers of such Governor-General, Prime Minister or Cabinet Minister, shall be punished with death, or imprisonment of either description which shall extend to at least ten years but shall not extend to more than twenty years, and shall forfeit all his property." ; and

(b) in the marginal note to that section, by the substitution, for the word "section.", of the words "section, and certain other offences against the State."

Insertion of
New section
126A in the
Penal Code.

7. The following new section is hereby inserted immediately after section 126, and shall have effect as section 126A, of the Penal Code :—

' Definition
of the
expression
" State
prisoner ".

126A. For the purposes of this Code, the expression " State prisoner " includes any person who is detained or remanded in custody or imprisoned in any place whatsoever, whether under the Criminal Procedure Code or any other written law, in connection with any offence under this Chapter or under any regulation made under the provisions of the Public Security Ordinance.'

PART III

General Provisions

8. Any direction issued by the Minister of Justice under section 440A of the Criminal Procedure Code shall be final and conclusive, and shall not be called in question in any Court, whether by way of writ or otherwise.

Direction issued by the Minister of Justice under section 440A of the Criminal Procedure Code to be final and conclusive.

9. Where the Minister of Justice issues a direction under section 440A of the Criminal Procedure Code that the trial of any offence shall be held before the Supreme Court at Bar by three Judges without a jury, the three Judges shall be nominated by the Minister of Justice, and the Chief Justice if so nominated or, if he is not so nominated, the most senior of the three Judges so nominated, shall be the president of the Court.

Constitution of the Supreme Court for the trial of an offence against the State at Bar by three Judges without a jury.

The Court consisting of the three Judges so nominated shall, for all purposes, be duly constituted, and accordingly the constitution of that Court, and its jurisdiction to try that offence, shall not be called in question in any Court, whether by way of writ or otherwise.

10. The determination of any question before the Supreme Court on a trial at Bar by three Judges without a jury shall be according to the opinion of the majority of such Judges.

Determination of questions by majority of the Court.

11. (1) In the case of any offence against the State, the Attorney-General may, at any time before or after the commencement of the trial of that offence but before judgment is pronounced, with a view to obtaining on such trial the evidence of any person supposed to have been directly or indirectly concerned in or privy to that offence, tender a pardon to such person, whether or not he is an accused, on the condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to that offence and to every other person concerned, whether as principal or abettor in the commission thereof.

Tender of pardon to an accomplice in the case of any offence against the State.

(2) The provisions of section 284 of the Criminal Procedure Code shall not apply in the case of any offence against the State but the other provisions of that Code relating to a pardon tendered under that section shall, *mutatis mutandis*, apply to a pardon tendered under sub-section (1) of this section in like manner and to the same extent as such other provisions apply in the case of a pardon tendered under the said section 284.

Admissibility
of statements
in the case of
offences against
the State.

12. (1) In the case of an offence against the State, a statement, whether or not it amounts to a confession, made by any person may, whether or not that person was in the custody of a police officer at the time the statement was made and whether or not such statement was made in the immediate presence of a Magistrate, be proved as against such person if, but only if, such statement is not irrelevant under section 24 of the Evidence Ordinance :

Provided, however, that no such statement shall be proved as against such person if such statement was made to a police officer below the rank of Assistant Superintendent.

(2) In the case of an offence against the State, a statement made by any person which may be proved under sub-section (1) of this section as against himself may be proved as against any other person jointly charged with such person if, but only if, such statement is corroborated in material particulars by evidence other than a statement proved under that sub-section.

(3) The burden of proving that any statement referred to in sub-section (1) of this section is irrelevant under section 24 of the Evidence Ordinance shall lie on the person asserting it to be irrelevant.

(4) The provisions of sections 25, 26 and 30 of the Evidence Ordinance shall not apply in the case of any offence against the State.

(5) A statement made by any person may be proved under sub-section (1) or sub-section (2) of this section notwithstanding the provisions of sub-section (3) of section 122 of the Criminal Procedure Code.

13. In the case of any offence against the State, it shall not be necessary to comply with the provisions of Chapter XII of the Criminal Procedure Code.

Provisions of Chapter XII of the Criminal Procedure Code need not be complied with in the case of any offence against the State.

14. The trial of a person for an offence against the State may commence or continue in his absence if the Court is satisfied that he is evading arrest, or absconding, or feigning illness.

Circumstances in which the trial of an offence against the State may be held in the absence of the accused.

15. A person who is convicted on a trial held before the Supreme Court under section 440A of the Criminal Procedure Code shall have no right of appeal to the Court of Criminal Appeal, and accordingly section 4 of the Court of Criminal Appeal Ordinance shall not apply to such person.

No right of appeal to Court of Criminal Appeal.

PART IV

Miscellaneous Provisions

16. For the purpose of the exercise, discharge or performance of any power, duty or function conferred or imposed on any person in respect of any offence against the State, such person may use all such means, measures and force, as may be necessary for that purpose.

Special provisions relating to the exercise, etc., of certain powers, functions or duties.

17. (1) Subject to the provisions of sub-section (2) of this section, section 7 of the Courts Ordinance is hereby amended as follows :—

Amendment of the Courts Ordinance.

- (a) by the substitution, for the word " nine ", of the word " eleven " ;
- (b) by the substitution, for the word " eight ", of the word " ten " ; and
- (c) in the marginal note to that section, by the substitution, for the word " eight ", of the word " ten " .

(2) The provisions of sub-section (1) of this section shall come into operation on such date as may be appointed by the Minister of Justice by Order published in the *Gazette*.

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This Act to prevail over other written law.

Retrospective operation of this Act.

18. The provisions of this Act shall have effect notwithstanding anything to the contrary in any other written law.

19. The provisions of this Act, other than the provisions of section 17, shall be deemed, for all purposes, to have come into operation on January 1, 1962 :

Provided, however, that the provisions of Part I of this Act shall be limited in its application to any offence against the State alleged to have been committed on or about January 27, 1962, or any matter, act, or thing connected therewith or incidental thereto.

Interpretation:

20. In this Act, the expression "offence against the State" means any act or omission made punishable by Chapter VI of the Penal Code.

Operation of this Act.

21. The preceding provisions of this Act, save and except Part I and section 17, shall cease to be operative after the conclusion of all legal proceedings connected with or incidental to any offence against the State committed on or about the 27th January, 1962, or from one year after the date of commencement of this Act, whichever is later, provided that the Senate and the House of Representatives may, by resolution setting out the grounds therefor, extend the operation of this Act from time to time for further periods not exceeding one year at a time.