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NOTIFICATION

No. LJD. 10/59/94, the 17th. October, 1980. The following ordinance is re-published for general information.

K. N. Srivastava,
Deputy Secretary to the Govt. of Mizoram,
Law etc. Department

THE CODE OF CRIMINAL PROCEDURE (AMENDMENT) ORDINANCE, 1980 No 12 OF 1980

Promulgated by the President in the Thirty-first Year of the Republic of India:
An Ordinance further to amend the Code of Criminal Procedure, 1973.

Whereas Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:

1. (1) This Ordinance may be called Code of Criminal Procedure (Amendment) Ordinance, 1980.

(2) It shall come into force at once.

2. During the period of operation of this Ordinance, the Code of Criminal Procedure, 1973 (hereinafter referred to as the Principal Act.) shall have effect subject to the amendments specified in section 3 to 9.

3. In sections 108, 109 and 110 of the principal Act, for the words, "a Judicial Magistrate of the first class," the words "an Executive Magistrate" shall be substituted.

Short
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Act. 2 of
1974 to
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Amend-
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sections
108, 109
and 110

Amendment of section 196.

4. In section 196 of the principal Act,—

(a) in sub-section (1), in clause (a), for the words, figures and letters “section 153B, section 295A or section 505,” the words, figures, letter and brackets “section 295A or sub-section (1) of section 505” shall be substituted;

(b) after sub-section (1), the following sub-section shall be inserted, namely :—

“(1A) No Court shall take cognizance of (a) any offence punishable under section 153B or sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code, or

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1960

(b) a criminal conspiracy to commit such offence, except with the previous sanction of the Central Government or of the State Government or of the District Magistrate”;

(c) in sub-section (3), for the words, brackets and figures under sub-section (1)”, the words, brackets, figures and letter “under sub-section (1) or sub-section (1A) and the District Magistrate may, before according sanction under subsection (1A),” shall be substituted.

Amendment of section 436.

5. In section 436 of the principal Act, in sub-section (1), in the second proviso, after the words and figures “section 1166,” the words, figures and letter “or section 446A” shall be inserted.

Amendment of section 437.

6. In section 437 of the principal Act,—

(a) for sub-section (1), the following sub-section shall be substituted, namely :—

“(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detailed without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but—

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for seven years or more or he had been previously convicted on two or more occasions of a non-bailable and cognizable offence :

Provided that the Court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm :

Provided further that the Court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason :

Provided also that the mere fact that an accused person may be required for being indentified by witness as during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court;"

(b) in sub-section (2), for the words "the accused shall, pending such inquiry, be released on bail," the words, figures and letter "the accused shall, subject to the provisions of section 446A and pending such inquiry, be released on bail" shall be substituted ;

(c) in sub-section (4), for the words "reasons," the words "reasons or special reasons" shall be substituted.

7. In section 446 of the principal Act, in sub-section (2), the following proviso shall be inserted, namely :—

Amendment of section 446.

"Provided that where such penalty is not paid and cannot be recovered in the manner aforesaid, the person so bound as surety shall be liable, by order of the Court ordering the recovery of the penalty, to imprisonment in civil Jail for a term which may extend to six months".

8. After section 446 of the principal Act, the following section shall be inserted, namely :—

Insertion of new section 446A.

"446A. Without prejudice to the provisions of section 446, where a bond under this Code is for appearance of a person in a case and it is forfeited for breach of a condition :—

(a) the bond executed by such person as well as the bond, if any, executed by one or more of his sureties in that case shall stand cancelled ; and

(b) thereafter no such person shall be released only on his bond in that case, if the Police Officer or the Court, as the case may be, for appearance before whom the bond was executed, is failure of the person bound by the bond to comply with its condition :

Provided that subject to any other provision of this Code he may be released in that case upon the execution of a fresh personal bond for such sum of money and bond by one or more of at such sureties as the Police Officer or the Court, as the case may be, thinks sufficient."

Substitution of new section for section 478.

9. For section 478 of the principal Act, the following section shall be substituted, namely :—

"478. If the Legislative Assembly of a State by a resolution so permits, the State Government may, after consultation with the High Court, by notification, direct that references in sections 108, 109, 110, 145 and 147 to an Executive Magistrate shall be construed as references to a Judicial Magistrate of the first class."

Power to alter functions allocated to Executive Magistrates in certain cases.

Consequential amendment of Act 34 of 1978. Saving.

10. Section 72 of the Delhi Police Act, 1978 shall be omitted.

11. All proceedings under Section 108, 109 and 110 of the principal Act, pending before any Judicial Magistrate immediately before the commencement of this Ordinance shall, notwithstanding anything contained in this Ordinance, be dealt with as if this Ordinance had not been promulgated.

**N. SANJIVA REDDY
PRESIDENT**