

Published on 01-07-17

Fourteenth Kerala Legislative Assembly

Bill No. 70

**THE CODE OF CRIMINAL PROCEDURE (KERALA
AMENDMENT) BILL, 2017**

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2017

KERALA NIYAMASABHA PRINTING PRESS.

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BILL

further to amend the Code of Criminal Procedure, 1973, in its application to the State of Kerala.

Preamble.—WHEREAS, it is expedient further to amend the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), in its application to the State of Kerala for the purpose hereinafter appearing;

BE it enacted in the Sixty-eighth Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Code of Criminal Procedure (Kerala Amendment) Act, 2017.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force at once.

2. *Amendment of section 378.*—In the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), after sub-section (6) of section 378, the following sub-section shall be inserted, namely:—

“(7) If leave is granted under sub-section (3), the memorandum of appeal shall be entertained in the Registry of the High Court and notice shall be issued as soon as it is received.”.

STATEMENT OF OBJECTS AND REASONS

The Law Reforms Commission, Kerala, 2009 has recommended to amend section 378 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) to avoid multiplicity of procedures. At present, a special leave petition has to be filed against an order of acquittal and after obtaining leave, again appeal memorandum has to be prepared and presented before the court for admission.

The proposed amendment to section 378 of the Code of Criminal Procedure will avoid unnecessary time consuming procedures.

2. This Bill seeks to achieve the above object.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation, would not involve any expenditure out of the Consolidated Fund of the State.

PINARAYI VIJAYAN

EXTRACT FROM THE CODE OF CRIMINAL PROCEDURE, 1973
(CENTRAL ACT 2 OF 1974)

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378. *Appeal in case of acquittal.*—(1) Save as otherwise provided in sub-section (2), and subject to the provisions of sub-sections (3) and (5),—

- (a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;
- (b) the state Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision.

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946) or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may, subject to the provisions of sub-section (3), also direct the Public Prosecutor to present an appeal—

- (a) to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;
- (b) to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision.

(3) No appeal to the High Court under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If, in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2).

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