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കേരള ഗസറ്റ്

KERALA GAZETTE

അസാധാരണം

EXTRAORDINARY

ആധികാരികമായി പ്രസിദ്ധപ്പെടുത്തുന്നത്

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24th Thulam 1199

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SECRETARIAT OF THE KERALA LEGISLATURE

NOTIFICATION

No. 17743/Legn-2/2023/Leg.

Dated, Thiruvananthapuram, 10th November, 2023.

The Code of Criminal Procedure (Kerala Second Amendment) Bill, 2023 together with the Statement of Objects and Reasons and the Financial Memorandum is published, under Rule 69 of the Rules of Procedure and Conduct of Business in the Kerala Legislative Assembly.

A. M. Basheer,
Secretary.

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THE CODE OF CRIMINAL PROCEDURE (KERALA SECOND AMENDMENT) BILL, 2023

A

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 purposes hereinafter appearing;

BE it enacted in the Seventy-fourth 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 Second Amendment) Act, 2023.

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

(3) It shall come into force at once.

2. *Amendment of section 29.-* In section 29 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) (hereinafter referred to as the said Code), in sub-section (2), for the words “ten thousand rupees”, the words “one lakh rupees” shall be substituted.

3. *Amendment of section 62.-* In section 62 of the said Code, after sub-section (3), the following sub-section shall be inserted, namely:-

“(4) In addition to other modes of service, the summons shall, if practicable, be served electronically as well.” .

4. *Amendment of section 91.-* In section 91 of the said Code, after sub-section (3), the following sub-section shall be inserted, namely:-

“(4) In addition to other modes of service, the summons shall, if practicable, be served electronically as well on whom the summons is to be served under sub-section (1).”.

5. *Amendment of section 381.-* In section 381 of the said Code, in sub-section (1), for the existing proviso, the following proviso shall be substituted, namely:-

“Provided that an appeal against a conviction on a trial held by a Magistrate of the first class in



a case triable by 'Any Magistrate' as specified under headings I and II of the First Schedule of the Code, may be heard and disposed of by an Assistant Sessions Judge or a Chief Judicial Magistrate if the sentence passed is one of imprisonment for a term not exceeding one year or with fine or with both.”.

STATEMENT OF OBJECTS AND REASONS

The fines for violation of traffic rules have been increased ten times from the earlier amount after the enactment of the Motor Vehicles (Amendment) Act, 2019. The present limits of fine/sentence that can be passed by Courts of Judicial Magistrate may affect the prosecution procedures, if the offenders are unwilling to compound such offences, because as per section 29(2) of the Code of Criminal Procedure, 1973, the minimum amount of fine that a Court of Magistrate of First Class may impose is upto Rupees ten thousand only. This affects the true spirit of the amended Motor Vehicles Act and also causes loss to the public exchequer. Enhancing the power of the Judicial First Class Magistrates to impose fine will help to overcome the above impediments.

The Hon'ble High Court had proposed to amend sections 62 and 91 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), consequent to the direction of the Hon'ble Supreme Court. During the outbreak of the Covid 19 pandemic, the State Police Chief has reported that there are serious health hazards in following the conventional mode of service of summons. The electronic methods used to effect the service are much convenient and effective in locating the persons who are deliberately trying to avoid the service.

The service of summons is also a very important function of the Police, but the same cannot be discharged by the Police to the extent desired all over the State. Hence, the service of summons could be made possible through e-mail, in order to avoid delay that can be occasioned under the present circumstance.

Courts of Judicial Magistrates of the Second Class have ceased to exist in the State consequent to the integration of the Subordinate Civil and Criminal Judiciary. With effect from 01.01.93, there are only Judicial Magistrates of the First Class in the State.

Clause (a) of sub-section (3) of section 374 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) provides that any person convicted on a trial held by a Judicial Magistrate of the First Class may appeal to a Court of Sessions. Only appeals against convictions on trials held by Judicial Magistrates of the Second Class lies to Courts of Assistant Sessions Judges in view of the proviso to sub-section (1) of section 381 of the said Code.

In view of the above said provisions and also in view of the fact that there are only Judicial First Class Magistrates in our State, a situation is likely to arise where the Assistant Sessions Judges may not have any appellate work.



In order to overcome the said situation proviso to sub-section (1) of section 381 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) has to be substituted with a new proviso so as to vest the appellate powers over the decisions of Judicial First Class Magistrates with Assistant Sessions Judges and Chief Judicial Magistrates.

The Bill seeks to amend the Code of Criminal Procedure, 1973 in its application to the State of Kerala, to achieve the above object.

FINANCIAL MEMORANDUM

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

PINARAYI VIJAYAN.

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