



PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

CODE OF CRIMINAL PROCEDURE (SPECIAL PROVISIONS) ACT, No. 15 OF 2005

[Certified on 31st May, 2005]

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Code of Criminal Procedure (Special Provisions)
Act, No. 15 of 2005

[Certified on 31st May, 2005]

L. D. — O. 56/2004.

AN ACT TO PROVIDE FOR THE EXTENSION OF THE PERIOD OF DETENTION OF PERSONS ARRESTED WITHOUT A WARRANT IN ORDER TO FACILITATE THE CONDUCT OF INVESTIGATIONS; FOR DISPENSING WITH THE CONDUCT OF THE NON-SUMMARY INQUIRY IN CERTAIN CASES; TO PROVIDE FOR THE TAKING OF DEPOSITIONS OF WITNESSES FOR THE PROSECUTION; AND TO MAKE PROVISION FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO

BE it therefore enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows :—

Short title.

1. This Act may be cited as the Code of Criminal Procedure (Special Provisions) Act, No. 15 of 2005.

2. Notwithstanding anything contained in the Code of Criminal Procedure Act, No. 15 of 1979 other than the provisions of section 43(A) of that Act, any peace officer shall not detain in custody or otherwise confine a person arrested without a warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not exceed twenty - four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate :

Period of detention of person arrested not to be more than twenty - four hours or forty-eight hours in certain cases.

Provided that where the arrest is in relation to an offence as is specified in the Schedule to this Act, such period of detention in police custody may, on production before him of the person arrested and on a certificate filed by a police officer not below the rank of the Assistant Superintendent of Police submitted prior to the expiration of the said period of twenty - four hours, to the effect that it is necessary to detain such person for the purpose of further investigations, be extended upon an order made in that behalf by the Magistrate for a further period not exceeding twenty - four hours, so however that the aggregate period of detention shall not exceed forty-eight hours.

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Direct indictment
in case of offence
committed in
aggravating
circumstances.

3. (1) Notwithstanding anything contained in the Code of Criminal Procedure Act, No 15 of 1979, where there are aggravating circumstances or circumstances that give rise to public disquiet in connection with the commission of an offence, specified in the Second Schedule to the Judicature Act, No. 2 of 1978, it shall be lawful for the Attorney-General to forward indictment directly to the High Court.

(2) The Attorney-General may in forwarding indictment directly in terms of subsection (1) proceed to do so *ex mero motu* or upon receipt of the relevant record from the Magistrate.

Magistrate to
forward record to
Attorney-
General.

4. (1) Notwithstanding anything contained in the Code of Criminal Procedure Act, No. 15 of 1979 where there are aggravating circumstances or circumstances that give rise to public disquiet in connection with the commission of an offence specified in the Second Schedule to the Judicature Act, No. 2 of 1978, the Magistrate shall not hold a preliminary inquiry in terms of Chapter XV of the Code of Criminal Procedure Act, No. 15 of 1979, and shall forthwith forward the record of the proceedings to the Attorney-General and thereafter abide by the instructions of the Attorney-General.

(2) Upon receipt of the record of the proceedings by the Magistrate in terms of subsection (1), the Attorney- General shall —

- (a) where he is of the opinion that there are aggravating circumstances or circumstances that give rise to public disquiet in connection with the commission of the aforesaid offence, forward indictment directly to the High Court;
- (b) where he is of the opinion that the circumstances do not warrant the forwarding of direct indictment to the High Court, return the record to the Magistrate within thirty days of the receipt of the same and direct that a preliminary inquiry be held in terms of Chapter XV of the Code of Criminal Procedure Act, No. 15 of 1979.

(3) If the Magistrate proceeds to hold a preliminary inquiry in terms of Chapter XV of the aforesaid Code, the Attorney-General shall, call for the record of the proceedings, for the purpose of considering forwarding indictment directly to the High Court. In such an event the Magistrate shall forthwith suspend proceedings and forward the record of the proceedings to the Attorney-General and shall thereafter abide by the instructions of the Attorney-General.

5. Any proceedings in terms of the provisions of this Act shall be concluded within a period of ninety days from the date of the commencement of proceedings under Chapter XV of the Code of Criminal Procedure Act, No. 15 of 1979. Proceedings to be terminated within ninety days.

6. (1) Notwithstanding anything contained in Chapter XV of the Code of Criminal Procedure Act, No. 15 of 1979, in the course of holding of an inquiry under the aforesaid Chapter, the following provisions shall apply to the taking of statements of persons who know the facts and circumstances of the case. Depositions.

(2) Subject to the provisions of subsection (11) the Magistrate shall read out, or cause to be read out to every witness produced against the accused, in the presence and hearing of the accused, the statement made by the witness in the course of the investigation conducted in terms of Chapter XI of the Code of Criminal Procedure Act, No. 15 of 1979 and shall ask the witness whether the statement is an accurate record of what he had stated to the police.

(3) (a) If the witness states, in response to an inquiry made of him under subsection (1), that the statement is an accurate record of what he had stated to the police, the Magistrate shall record that fact. The Magistrate shall permit the witness, if the witness so desires, to make such additions or alterations to his original statement. Every such addition or alteration shall be recorded.

(b) The Magistrate shall not permit any cross examination of the witness by the accused or his pleader, but the Magistrate may put to the witness, any clarification required by the accused or his pleader of any matter arising from the statement made by the witness in the course of the investigation, or any additions or alterations to his original statement if any, and may put to the witness any clarification which the Magistrate himself may require of any such matter. Every clarification so made shall be recorded :

Provided that having considered the nature of the material contained in the statement of a witness made to the police, the prosecution may tender the witness for cross examination by the accused or his pleader.

(4) The Magistrate shall thereafter read out or cause to be read out to the witness, the statement made by the witness to Court affirming the accuracy of the statement made by him in the course of the investigation and the clarifications if any made by him under subsection (2), and additions or alterations to his original statement if any, made by him under subsection (3), and shall require the witness to swear or affirm to the truth of the matters recorded.

(5) (a) If on the other hand, the witness states in response to an inquiry made of him under subsection (1), that the statement is not, in its entirety or in part, an accurate record of what he had stated to the police, the Magistrate shall permit the witness to give an account of the circumstances relating to the offence, or as the case may be, to make such additions or alterations to his original statement as the witness may wish to make.

(b) The Magistrate shall not permit any cross-examination of the witness by the accused or his pleader but the Magistrate may put to the witness, any clarification required by the accused or his pleader of any matter arising from the account given, or additions or alterations made, by the witness or may put to the witness any clarification that the Magistrate himself may require of any such matter :

Provided that having considered the nature of the material contained in the statement of a witness made to the police, the prosecution may tender the witness for cross examination by the accused or his pleader.

(c) The Magistrate shall record the account given, or the additions or alterations made by the witness under paragraph (a) and any clarifications made by the witness under paragraph (b), and read out or cause to be read out the same to the witness and shall require the witness to swear or affirm to the truth of the matters so recorded.

(6) Before a witness is produced against the accused the Magistrate shall permit the accused or his pleader to peruse in open court, the statement made by that witness to the police in the course of the investigation.

(7) The Magistrate shall sign, and shall cause the witness to sign, a certified copy of the statement made by the witness to the police in the course of the investigation and shall cause the same to be filed of record. The copy so filed shall for all purposes form part of the record of the inquiry.

(8) The Magistrate shall not summon an expert witness or a police officer but shall cause the report of such expert witness or the affidavit of such police officer as the case may be to be produced and filed of record :

Provided that the Magistrate may, for reasons to be recorded and in the case of an expert witness, with the prior sanction of the Attorney-General, summon an expert witness or police officer to be present in Court for examination.

(9) Where an expert witness or a police officer appears in court in response to summons issued on him under subsection (8), the Magistrate shall not permit any cross examination of such expert witness or police officer by the accused or his pleader but may put to such expert witness or police officer, any clarifications that the accused or his pleader may require, of any matter arising from the report of the expert witness or the affidavit of the police officer, as the case may be, or from

the examination of such expert witness or police officer, as the case may be, and the Magistrate may himself put to the witness any clarification that he may require of any such matter. Every clarification so made shall be recorded.

(10) A statement made by an expert witness or police officer and the deposition made by a witness tendered for cross examination under this section, shall be deemed to be admissible in evidence in terms of section 33 of the Evidence Ordinance (Chapter 14).

(11) (a) Where the accused-

- (i) is absconding or has left the island ; or
- (ii) is unable to attend or remain in court by reason of illness and has consented either to the commencement or continuance of the inquiry in his absence, such inquiry may commence or continue without any prejudice to him ; or
- (iii) by reason of his conduct in court is obstructing or impeding the progress of the inquiry,

the Magistrate may, if satisfied of these facts, commence and proceed or continue with the inquiry in the absence of the accused.

(b) An Attorney- at- Law may appear for such absent accused.

(c) The inquiry shall proceed as far as is practicable in accordance with the provisions of this Act except that the provisions of section 416 of the Code of Criminal Procedure Act, No. 15 of 1979 shall not apply to the depositions recorded where there is a trial on indictment in the High Court, whether the accused is present in the High Court or not.

(12) The statement made by a witness to the police in the course of the investigation together with, as the case may be, his statement and clarifications, if any, recorded under subsection (3) or the additions, alterations and clarifications

made and recorded under subsection (4) or the account given and recorded under subsection (5), shall be regarded for the purposes of this Act, as the deposition of that witness.

(13) Every witness produced against the accused at the inquiry shall be entitled to be represented by an Attorney-at Law.

(14) If after the conclusion of the procedure set out above, the Magistrate does not consider that the case should be dealt with in accordance with the provisions of section 153 of the Code of Criminal Procedure Act, No. 15 of 1979, the Magistrate shall read the charge to the accused and explain the nature thereof in ordinary language and inform him that he has a right to call witnesses and, if he so desires to give evidence on his own behalf.

(15) The provisions of Chapter XV of the Code of Criminal Procedure Act, No. 15 of 1979 shall *mutatis mutandis* apply to any preliminary inquiry held under the provisions of this Act.

7. The provisions of this Act shall be in operation for a period of two years from the date of its coming into operation. Duration of the Act.

8. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail. Sinhala text to prevail in case of inconsistency.

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SCHEDULE

(Section 2)

Abetment of an offence set out in the Schedule, if the act abetted is committed	Section 102 - Penal Code
Conspiracy for the abetment or commission of any offence set out in the Schedule.	Section 113B - Penal Code
Murder	Section 296 - Penal Code
Culpable Homicide not amounting to murder	Section 297 - Penal Code
Attempt to commit murder	Section 300 - Penal Code
Kindapping or abduction to commit murder	Section 355 - Penal Code
Kidnapping or abduction with intent to wrongfully confine a person	Section 356 - Penal Code
Kidnapping or abduction with intent to wrongfully subject person to grievous hurt	Section 358 - Penal Code
Concealing or keeping in confinement a kidnapped person	Section 359 - Penal Code
Rape	Section 364 - Penal Code
Theft, preparation having being made to cause death &c.,	Section 371 - Penal Code
Robbery with attempt to cause death or grievous hurt	Section 383 - Penal Code
Attempt to commit robbery when armed with deadly weapons	Section 384 - Penal Code
Attempt to commit any of the above offences	Section 490 - Penal Code
An offence committed with the use of explosives, an offensive weapon or a gun.	Explosive as defined in the Explosives Act (Chapter 183); offensive weapon as defined in the Offensive Weapons Act, No. 18 of 1966 and a Gun as defined in the Firearms Ordinance (Chapter 182).

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