

The Criminal Law (Amendment) Ordinance, 1944

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The Criminal Law (Amendment) Ordinance, 1944(38 of 1944)

111.

1. Short title, extent and commencement .(1) This Ordinance may be called The Criminal Law (Amendment) Ordinance , 1944.

(2)It extends to the whole of India except the State of Jammu and Kashmir and applies also to citizens of India outside India.(3)It shall come into force at once.

2. Interpretation

(1)In this Ordinance, scheduled offence means an offence specified in the Schedule to this Ordinance.(2)For the purpose of this Ordinance, the date of the termination of criminal proceeding shall be deemed to be(a)where such proceedings are taken to the Supreme Court in appeal, whether on the certificate of a High Court or otherwise, the date on which the Supreme Court passes its final order in such appeal; or(b)where such proceedings are taken to the High Court and orders are passed thereon and(i)no application for a certificate for leave to appeal to the Supreme Court is made to the High Court, the day immediately following the expiry of ninety days from the date on which the High Court passes its final order;(ii)an application for a certificate for leave to appeal to the Supreme Court has been refused by the High Court, the day immediately following the expiry of sixty days from the date of the refusal of the certificate;(iii)a certificate for leave to appeal to the Supreme Court has been granted by the High Court, but no appeal is lodged in the Supreme Court, the day immediately following the expiry of thirty days from the date of the order granting the certificate; or(c)where such proceedings are not taken to the High Court, the day immediately following the expiry of sixty days from the date of the last judgment or order of a Criminal Court in the Proceedings.(3)The functions of a District Judge under this Ordinance shall, in a Presidency town, be exercised by the Chief Judge of the Small Cause Court.

3. Application for attachment of property

(1)Where the [State Government or, as the case may be, the Central Government] [[Substituted by Act 49 of 1988, Section 29, for "State Government" (w.e.f.9.9.1988).]], hasreason to believe that any person has committed (whether after the commencement of this Ordinance or not) any scheduled offence, the [State Government or, as the case may be, the Central Government] [Substituted by Act 49 of 1988, Section 29, for "State Government" (w.e.f. 9.9.1988).]may, whether or not any Court hastaken cognizance of the offence, authorise the making of an application to the District Judge within the local limits of whose jurisdiction the said person ordinarily resides or carries on business, for the attachment, under this Ordinance of the money or other property which the [State Government or, as the case may be, the Central Government] [[Substituted by Act 49 of 1988, Section 29, for "State Government" (w.e.f.9.9.1988).]] believes the said person tohave procured by means of the offence, or if such money or property cannot for any reason be attached, or other property of the said person of value as nearly as may be equivalent to that of the aforesaid money or other property.(2)The provisions of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), shall apply to proceedings for an order of attachment under this Ordinance as they apply to suits by the Government.(3)An application under sub-section (1) shall be accompanied by one or more affidavit, stating the grounds on which the belief that the said person has committed any scheduled offence is founded, and the amount of money or value of other property believed to have been procured by means of the offence. The application shall also furnish(a)any information available as to the location for the time being of any such money or other property, and shall, if necessary, give particulars, including the estimated value, of other property of the said person;(b)the names and addresses of any other persons believed to have or to be likely to claim, any interest or title in the property of the said person.

4. Ad interim attachment

(1)Upon receipt of an application under section 3, the District Judge shall, unless for reasons to be recorded in writing he is of the opinion that there exist no prima facie grounds for believe that the person in respect of whom the application is made has committed any scheduled offence or that he has procured thereby any money or other property, pass without delay an ad interim order attaching the money or other property alleged to have been so procured, or if it transpires that such money or other property is not available for attachment, such other property of the said person of equivalent value as the District Judge may think fit:Provided that the District Judge may if he thinks fit before passing such order, and shall before refusing to pass such order, examine the person or persons making the affidavit accompanying the application.(2)At the same time as he passes an order under sub-section (1), the District Judge shall issue to the person whose money or other property is being attached, a notice, accompanied by copies of the order, the application and affidavits and of the evidence, if any, recorded, calling upon him to show cause on a date to be specified in the notice why the order of attachment should not be made absolute.(3)The District Judge shall also issue, accompanied by copies of the documents accompanying the notice under sub-section (2), to all persons represented to him as having or being likely to claim, any interest or title in the property of the person to whom notice is issued under the said sub-section calling upon each such person to appear on the same date as specified in the notice under the said sub-section and make objection if

he so desires to the attachment of the property or any portion thereof on the ground that he has an interest in such property or portion thereof.(4)Any person claiming an interest in the attached property or any portion thereof may, notwithstanding that no notice has been served upon him under this section, make an objection as aforesaid to the District Judge at any time before an order is passed under sub-section (1) or sub-section (3), as the case may be, of section 5.

5. Investigations of objections to attachment

(1)If no cause is shown and no objections are made under section 4 on or before the specified date, the District Judge shall forthwith pass an order making the ad interim order of attachment absolute.(2)If cause is shown or any objections are made as aforesaid, the District Judge shall proceed to investigate the same, and in so doing, as regards the examination of the parties and in all other respects he shall, subject to the provisions of this Ordinance, follow the procedure and exercise all the powers of a Court in hearing a suit under the Code of Civil Procedure, 1908 (5 of 1908) and any person making an objection under section 4 shall be required to adduce evidence to show that at the date of the attachment he had some interest in the property attached.(3)After investigation under sub-section (2), the District Judge shall pass an order either making the ad interim order of attachment absolute or varying it by releasing a portion of the property from attachment or withdrawing the order:Provided that the District Judge shall not(a)release from attachment any interest which he is satisfied that the person believed to have committed a scheduled offence has in the property, unless he is also satisfied that there will remain under attachment an amount of the said persons property of value not less than that of the property believed to have been procured by the said person by means of the offence, or(b)withdraw the order of attachment unless he is satisfied that the said person had not, by means of the offence, procured any money or other property.

6. Attachment of property of mala fide transferees

(1)Where the asset available for attachment of a person believed to have committed scheduled offence are found to be less than the amount or value which he is believed to have procured by means of such offence, and where the District Judge is satisfied, by affidavit or otherwise, that there is reasonable cause for believing that the said person has, after the date on which the offence is alleged to have been committed, transferred (whether after the commencement of this Ordinance or not) any of his property otherwise than in good faith and for consideration, the District Judge may by notice, require any transferee of such property (whether or not he received the property directly from the said person) to appear on a date to be specified in the notice and show cause why so much of the transferees property as is equivalent to the proper value of property transferred should not be attached.(2)Where the said transferee does not appear and show cause on the specified date, or where after investigation in the manner provided in sub-section (2) of section 6, the District Judge is satisfied that the transfer of the property to the said transferee was not in good faith and for consideration, the District Judge shall order the attachment of so much of the said transferees property as is, in the opinion of the District Judge, equivalent to the proper value of the property transferred.

7. Execution of orders of attachment

.An order of attachment of property under this Ordinance shall be carried into effect so far as may be practicable in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908) for the attachment of property in execution of a decree.

8. Security in lieu of attachment

.Any person whose property has been or is about to be attached under this Ordinance may, at any time apply to the District Judge to be permitted to give security in lieu of such attachment and where the security offered and given is in the opinion of the District Judge satisfactory and sufficient, he may withdraw or, as the case may be, refrain from passing, the order of attachment.

9. Administration of attached property

(1)The District Judge may, on the application of any person interested in any property attached under this Ordinance and after giving the agent of the [State Government or, as the case may be, the Central Government] [Substituted by Act 49 of 1988, Section 29, for "State Government" (w.e.f. 9.9.1988.) an opportunity of being heard, make such orders as the District Judge considers just and reasonable for (a) providing from such of the attached property as the applicant claims an interest in such sums as may be reasonably necessary for the maintenance of the applicant and of his family, and for the expenses connected with the defence of the applicant where criminal proceedings have been instituted against him in any Court for a scheduled offence; (b) safeguarding so far as may be practicable the interests of any business affected by the attachment, and in particular, the interests of any partners in such business. (2) Where it appears to the District Judge to be just and convenient, he may by order appoint a receiver to manage any property attached under this Ordinance in accordance with such instructions as the District Judge may, from time to time, think fit to give, and where a receiver is so appointed, the provisions of rules 2, 3, 4 and 5 of Order XL of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), shall be applicable.

9.

-A. Administration of attached property where Court ordering attachment has ceased to exercise jurisdiction of India. Where any property has been attached under this Ordinance by order of a District Judge made before the 15th day of August, 1947, and such District Judge has after that date ceased to exercise jurisdiction in the territories to which this Ordinance extends, that order of attachment shall be deemed to be an order made by the District Judge within the local limits of whose jurisdiction the Court taking cognizance of the scheduled offence is situate, and all function of the District Judge under this Ordinance in regard to the attached property shall be exercised by that District Judge.

10. Duration of attachment

.An order of attachment of property under this Ordinance shall, unless it is withdrawn earlier in accordance with the provisions of this Ordinance, continue in force(a)where no Court has taken cognizance of the alleged scheduled offence at the time when the order is applied for, [one year] [Substituted by Act 49 of 1988, Section 29, for "three monthss" (w.e.f. 9.9.1988.)] from the date of the order undersub-section (1) ofsection 4 or sub-section (2) of section 6, as the case may be, unless cognizance of such offence is in the meantime so taken, or unless, the District Judge on application by the agent of the [State Government or, as the casemay be, the Central Government] [Substituted by Act 49 of 1988, Section 29, for "State Government" (w.e.f. 9.9.1988).] thinks it proper and just that theperiod should be extended and passes an order accordingly; or(b)where a Court has taken cognizance of the alleged scheduled offence whether before or after the time when the order was applied for until orders are passed by the District Judge in accordance with the provisions of this Ordinance after the termination of the criminal proceedings.

11. Appeals

(1)The [State Government or, as thecase may be, the Central Government] [Substituted by Act 49 of 1988, Section 29, for "State Government" (w.e.f. 9.9.1988).] or any person who has shown cause undersection 4 or section 6 or has made an objection under section 4 or has made an application under section 8 or section 9, if aggrieved by any order of the District Judge under any of the foregoing provisions of this Ordinance, may appeal to the High Court within thirty days from the date on which the order complained against was passed.(2)Upon an appeal under this section the High Court may, after giving such parties as it thinks proper an opportunity of being heard, pass such orders as it thinks fit.(3)Until an appeal under this section is finally disposed of by the High Court, no Court shall, otherwise than in accordance with the provisions of section 8 or section 13, order the withdrawal or suspension of any order of attachment to which the appeal relates.

12. Criminal Courts to evaluate property procured by scheduled offences

(1)Where before judgment is pronounced in any criminal trial for a scheduled offence it is represented to the Court that an order of attachment of property has been passed under this Ordinance in connection with such offence, the Court shall, if it is convicting the accused, record a finding as to the amount of money or value of other property procured by the accused by means of the offence.(2)In any appeal or revisional proceedings against such conviction, the appellate or revisional Court shall, unless it sets aside the conviction, either confirm such finding or modify it in such manner as it thinks proper.(3)In any appeal or revisional proceedings against an order of acquittal passed in a trial such as is referred to in sub-section (1), the appellate or revisional Court, if it convicts the accused, shall record a finding such as is referred to in that sub-section.(4)Where the accused is convicted of a scheduled offence other than one specified in Item I of the Schedule to this Ordinance and where it appears that the offence has caused loss to more than one Government referred to in the said Schedule or local authority, the finding referred to in this section shall indicate the amount of loss sustained by each such Government or local authority.(5)Where the accused is convicted at the same trial of one or more offences specified in Item I of the Schedule to

this Ordinance and of one or more offences specified in any of the other items of the said Schedule, the finding referred to in this section shall indicate separately the amounts procured by means of the two classes of offences.

13. Disposal of attached property upon termination of criminal proceedings

(1) Upon the termination of any criminal proceedings for any scheduled offence in respect of which any order of attachment of property has been made under this Ordinance or security given in lieu thereof, the agent of the [State Government or, as the case may be, the Central Government] [Substituted by Act 49 of 1988, Section 29, for "State Government" (w.e.f. 9.9.1988.)] shall without delay inform the District Judge, and shall where criminal proceedings have been taken in any Court, furnish the District Judge with a copy of the judgment or order of the trying Court and with copies of the judgments or orders, if any, of the appellate or revisional Courts thereon. (2) Where it is reported to the District Judge under sub-section (1) that cognizance of the alleged scheduled offence has not been taken or where the final judgment or order of the Criminal Court is one of acquittal, the District Judge shall forthwith withdraw any orders of attachment of property made in connection with the offence, or where security has been given in lieu of such attachment, order such security to be returned. (3) Where the final judgment or order of the Criminal Courts is one of conviction, the District Judge shall order that from the property of the convicted person attached under this Ordinance or out of the security given in lieu of such attachment, there shall be forfeited to Government such amount or value as is found, in the final judgment or order of the Criminal Courts in pursuance of section 12 to have been procured by the convicted person by means of the offence, together with the costs of attachment as determined by the District Judge and where the final judgment or order of the Criminal Courts has imposed or upheld a sentence of fine on the said person (whether alone or in conjunction with any other punishment), the District Judge may order, without prejudice to any other mode of recovery, that the said fine shall be recovered from the residue of the said attached property or of the security given in lieu of attachment. (4) Where the amounts ordered to be forfeited or recovered under sub-section (3) exceed the value of the property of the convicted person attached, and where the property of any transferee of the convicted person has been attached under section 6, the District Judge shall order that the balance of the amount ordered to be forfeited under sub-section (3) together with the costs of attachment of the transferee's property is determined by the District Judge shall be forfeited to Government from the attached property of the transferee or out of the security given in lieu of such attachment; and the District Judge may order, without prejudice to any other mode of recovery, that any fine referred to in sub-section (3) or any portion thereof not recovered under that sub-section shall be recovered from the attached property of the transferee or out of security given in lieu of such attachment. (5) If any property remains under attachment in respect of any scheduled offence of any security given in lieu of such attachment remains with the District Judge after his orders under sub-sections (3) and (4) have been carried into effect, the order of attachment in respect of such property remaining shall be forthwith withdrawn or as the case may be, the remainder of the security returned, under the orders of the District Judge. (6) Every sum ordered to be forfeited under this section in connection with any scheduled offence other than one specified in item I of the Schedule to this Ordinance shall, after deduction of the costs of attachment as determined by the District Judge, be credited to the Government being a Government referred to in the said Schedule or local authority to which the

offence has caused loss, or where there is more than one such Government or local authority, the sum shall, after such deduction as aforesaid, be distributed among them in preparation to the loss sustained by each.

14. Bar to other proceedings

.Save as provided in section 11 and notwithstanding anything contained in any other law,(a)no suit or other legal proceeding shall be maintainable in any Court(i)in respect of any property ordered to be forfeited under section 13 or which has been taken in recovery of fine in pursuance of an order under that section, or(ii)while any other property is attached under the Ordinance, in respect of such other property by any person upon whom a notice has been served under section 4 or section 6 or who has made an objection under sub-section (4) of section 4; and(b)no Court shall, in any legal proceedings or otherwise, pass any decree or order, other than a final decree in a suit by a person not being a person referred to in clause (a), which shall have the effect of nullifying or affecting in any way any subsisting order of attachment of property under this Ordinance, or the right of the District Judge to hold security in lieu of any such order of attachment.

15. Protection of action taken

.No suit, prosecution or other legal proceedings shall lie against any person for anything in good faith done or intended to be done in pursuance of this Ordinance.The Schedule(See section 2)Offences in connection with which property is liable to be attached[- - -] [Paragraph 1 omitted by Act 49 of 1988, Section 29 (w.e.f. 9.9.1988.)] 2. An offence punishable under section 406 or section 408 or section 409 of the Indian Penal Code (45 of 1860), where the property in respect of which the offence is committed is property entrusted by His Majestys Government in the United Kingdom or in any part of His Majestys dominions or the Central or a State Government or a department of any such Government or a local authority or a corporation establish by or under a Central, provincial or State Act, or an authority or a body owned or controlled or aided by Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956), or a society aided by such corporation, authority, body or Government company or a person acting on behalf of any such Government or department or authority [or corporation or body or Government company or society] [Inserted by Act 49 of 1988, Section 29 (w.e.f. 9.9.1988.).]

3. An offence punishable under section 411 or section 414 of the Indian Penal Code (45 of 1860), where the stolen property in respect of which the offence is committed is property such as is described in the preceeding item and in respect of which an offence punishable under section 406 or section 408 or section 409 of the said Code has been committed.

4. An offence punishable under section 417 or section 420 of the Indian Penal Code (45 of 1860), where the person deceived is His Majestys Government in the United Kingdom or in any part of His Majestys dominions or the Central

or State Government or a department of any such Government or a local authority or a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956) or a society aided by such corporation, authority, body or Government Company or a person acting on behalf of any such Government or department (or authority or corporation or body or Government company or society).

[4-A. An offence punishable under the Prevention of Corruption Act, 1988 (49 of 1988).]
[[Substituted by Act 49 of 1988, Section 29, for Paragraph 4-A (w.e.f.9.9.1988.)]

5. Any conspiracy to commit or any attempt to commit or any abetment or any of the offences specified in [items 2, 3, 4 and 4-

A] [[Substituted by Act 49 of 1988,Section 29, for "items 2, 3 and 4" (w.e.f. 9.9.1988.)].