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EXTRAORDINARY

প্ৰাপ্ত কৰ্তৃস্থৰ দ্বাৰা প্ৰকাশিত

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GOVERNMENT OF ASSAM

ORDERS BY THE GOVERNOR

LEGISLATIVE DEPARTMENT : LEGISLATIVE BRANCH

NOTIFICATION

The 8th February 1984

No.LGL.58/83/79.—The following Act of the Assam Legislative Assembly which received the assent of the President is hereby published for general information.

ASSAM ACT NO. III OF 1984.

(Received the assent of the President on 19th January, 1984.)

THE CODE OF CRIMINAL PROCEDURE (ASSAM AMENDMENT) ACT, 1983.

**An
Act**

to confer, in view of the extraordinary circumstances prevailing in the State of Assam, certain powers under the Code of Criminal Procedure Act of 1973, on Executive Magistrates in the State for a temporary period, and to amend certain provisions of the Code of Criminal Procedure Act, 1973 (Act 2 of 1974) in its application to the State of Assam.

It is hereby enacted in the Thirty-fourth Year of the Republic of India as follows :—

- Short title, extent and commencement.** 1. (i) This Act may be called The Code of Criminal Procedure (Assam Amendment) Act, 1983.
- (ii) It shall come into force at once.
- (iii) It extends to the whole of the State of Assam.
- Definitions.** 2. In this Act unless the context otherwise requires.
- (a) "Code" means the Code of Criminal Procedure, 1973 in its application to the State of Assam ;
- (b) "Executive Magistrate" means an Executive Magistrate in the State of Assam ; and
- (c) words and expressions used herein and not defined in the Code shall have the meanings respectively assigned to them in the Code.
- Conferment of temporary powers on Executive Magistrates.** 3. (1) Notwithstanding anything to the contrary contained in the Code, the Executive Magistrates may, in addition to the Judicial Magistrates, exercise powers of remand under Section 167 of the Code.

(2) Notwithstanding anything contained in the Code, the Executive Magistrates shall, to the exclusion of any other Magistrate, have power to take cognizance of, and try and dispose of cases relating to :

45 of 1860.

(a) offences under the Indian Penal Code or any other Law for the time being in force punishable with imprisonment which may extend to six months or with fine or with both.

(b) other offences, being offences punishable under Chapter VIII (Offences against the public tranquility), and Chapter X (Contempts of the lawful authority of public servants), of the Indian Penal Code :

45 of 1860.

(3) For the purpose of this Section, the Code shall have effect subject to the modifications specified in the Schedule and subject to such other modifications as may be necessary :

(4) Nothing in this Section shall apply to cases relating to offences taken cognizance of under the Code before the commencement of this Act.

Amendment to Section 197.

4. In Section 197 of the Code—

(a) in sub-section (1), for the words "in the discharge of" the words "in or in connection with the discharge of" shall be substituted :

(b) in sub-section (2), for the words "in the discharge of" the words "in or in connection with the discharge of" shall be substituted :

(c) after sub-section (4), the following sub-sections shall be inserted, namely :—

(5). Notwithstanding anything contained in this Code,—

(a) where a complaint is made to a Court against a public servant belonging to

any class or category specified under sub-section (3) alleging that he has committed an offence, the Court shall postpone the issue of process against the accused and make a reference to the State Government ; or

(b) where an accused, either by himself or through a pleader, claims before a Court that he belongs to any class or category specified under sub-section (3) and that the offence alleged to have been committed by him arose out of any action taken by him while acting or purporting to act in or in connection with the discharge of his official duty, the Court shall forthwith stay further proceedings and make a reference to the State Government.

(6). (i) Where a reference is received from a Court under sub-section (5), the State Government shall issue a certificate to the Court that the accused person was or was not acting or purporting to act in, or in connection with the discharge of his official duty.

(ii) If the State Government certifies that the accused was acting or purporting to act in or in connection with the discharge of his official duty, the Court shall dismiss the complaint or discharge the accused :

Provided that the complainant may, within sixty days from the date of the issue of such certificate prefer an appeal to the High Court against the Certificate :

Provided further that the High Court may entertain the appeal after the expiry of the said period of sixty days if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period.

(iii) If the State Government certifies that the accused was not acting or purporting to act in or in connection with, the discharge of his official duty, the Court may proceed further with the complaint in accordance with the provisions of this Code.

(7) The provisions of sub-sections (5) and (6) shall apply to all proceedings pending on the date of commencement of this Act in respect of which a Court had taken cognizance of an offence in accordance with the provisions of this Code."

5. After Section 439 of the Code, the following shall be inserted, as a new Section 439A, namely:—

439A. (1) Notwithstanding anything
"Power to grant bail." contained in this Code, no person—

(a) who, being accused or suspected of committing an offence under any of the following Sections, namely, Sections 120B, 121, 121A, 122, 124A, 153A, 302, 303, 304, 307, 326, 333, 363, 364, 365, 367, 368, 392, 394, 395, 396, 399, 412, 431, 436, 449, and 450 of the Indian Penal Code, 1860, Sections 3, 4, 5, and 6 of the Indian Explosive Substances Act, 1908, and Sections 25, 26, 27, 28, 29, 30 and 31 of the Arms Act, 1959 is arrested or appears or is brought before a Court: or

(b) who, having any reason to believe that he may be arrested on an accusation of committing an offence as specified in clause (a) has applied to the High Court or Court of Session for a direction for his release on bail in the event of his arrest, shall be released on bail, or as

the case may be, directed to be released on bail, except on one or more of the following grounds, namely:—

- (i) that the Court including the High Court or the Court of Session, for reasons to be recorded in writing is satisfied that there are reasonable grounds for believing that such person is not guilty of any offence specified in clause (a);
- (ii) that such person is under the age of sixteen years or a woman or a sick or an infirm person;
- (iii) that the court including High Court or the Court of Session, for reasons to be recorded in writing is satisfied that there are exceptional and sufficient grounds to release or direct the release of the accused on bail."

THE SCHEDULE

See Section 3(3)

Modifications in the Code.

1. In Section 167 of the Code:—

(a) in sub-section (i), the reference to "Judicial Magistrate" shall be construed as reference also to Executive Magistrate;

(b) in sub-section (2):—

(i) for the word "Magistrate" at the first two places where that word is preceded by the definite article, the words "Judicial Magistrate or the Executive Magistrate, as the case may be," shall be substituted;

(ii) for the word "Magistrate", at the place where that word is preceded by the indefinite article "a", the words and brackets "Magistrate (whether Judicial or Executive)" shall be substituted;

(iii) paragraph (c) of the proviso shall be omitted;

(c) Sub-section (2A) shall be omitted:—

(d) in sub-section (4), for the words "to the Chief Judicial Magistrate," the words "where such Magistrate is a Judicial Magistrate, to the Chief Judicial Magistrate, and where such Magistrate is an Executive Magistrate to the Session Judge" shall be substituted.

2. In Section 190 of the Code, in sub-section (1), after the words "any Magistrate of the first class" the words "any Executive Magistrate" shall be inserted;

3. In Section 191 of the Code, the reference to "Chief Judicial Magistrate" shall, in relation to an offence taken cognizance of by an Executive Magistrate, be construed as a reference to the District Magistrate.

4. In Section 192 of the Code:—

(i) in sub-section (1), after the word "Any" the words "District Magistrate" shall be inserted;

(ii) sub-section (2) shall be substituted as follows:—

"(2) Any Sub-divisional Magistrate or Magistrate of the first class empowered in this behalf by District Magistrate or Chief Judicial Magistrate, as the case may be, may, after taking

cognizance of an offence, make over the case for enquiry or trial to such other competent Magistrate as the District Magistrate or Chief Judicial Magistrate may, by general or special order, specify, and thereupon such Magistrate may hold the enquiry or trial.

5. In Section 374 of the Code, in clause (a) of sub-section (3), for the words "Magistrate of the first class, or of the second class," the words "Magistrate of the first class, Executive Magistrate or a Magistrate of the second class," shall be substituted.

MD. SAADULLAH,
Secretary to the Govt. of Assam,
Legislative Department.