

Criminal Laws (Amendment) Act, 2007

9 of 2007

[26 February 2007]

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An Act to further amend the Jammu and Kashmir State Ranbir Penal Code, Samvat 1989, the Code of Criminal Procedure, Samvat 1989 and the Evidence Act, Samvat 1977. Be it enacted by the Jammu and Kashmir State Legislature in the Fifty-eighth Year of the Republic of India as follows:-

CHAPTER 1 PRELIMINARY

1. Short Title And Commencement :-

(1) This Act may be called the Criminal Laws (Amendment) Act, 2007.

(2) It shall come into force from the date of its publication in the Government Gazette.

CHAPTER2 AMENDMENT TO THE JAMMU AND KASHMIR STATE RANBIR PENAL CODE, SAMVAT 1989

2. Insertion Of Section 195-A In Act Xii Of Samvat 1989 :-

After section 195 of the Jammu and Kashmir State Ranbir Penal Code, Samvat 1989, the following section shall be inserted, namely;-

"195-A. Threatening or inducing any person to give false evidence.-
Whoever,

(i) threatens any person with any injury to the person, reputation or property or to the person or reputation of any one in whom that person is interested; or

(ii) induces any person through any means, to cause such person to give false evidence,

shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

CHAPTER3 AMENDMENTS TO THE CODE OF CRIMINAL PROCEDURE, SAMVAT 1989

3. Amendment Of Section 161, Act Xxiii Of Samvat 1989 :-

In section 161 of the Code of Criminal Procedure, Samvat 1989 (hereinafter in this Chapter referred to as the Code in sub-section (3), the full-stop at the end shall be substituted by colon and thereafter the following provisos shall be inserted: -

Provided that in respect of offences specified in sub-section (1) of section 164-A, where such person is required to be forwarded to the nearest Magistrate for recording his statement under that section, his statement shall not be reduced into writing by the police officer under this sub-section:

Provided further that where any statement has been recorded under section 164-A, the police officer shall enclose a copy of such statement as part of his police diary recording therein that such

person has made such statement before the Judicial Magistrate and proceed further investigation in accordance with the provisions of this Code.

4. Amendment Of Section 162, Act Xxiii Of Samvat 1989 :-

In section 162 of the Code, for sub-section (1), the following sub-section shall be substituted, namely:-

(1) The statement made by any person to a police officer in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it and a copy of the statement as recorded shall be given forthwith free of cost by the police officer to the person who made the statement, under acknowledgment.

(1-A) Every statement referred to in sub-section (1) shall contain the date, time and place as to when and where the statement was recorded and shall, subject to section 173, be forthwith forwarded by the officer in charge of the police station to the Magistrate empowered to take cognizance of the offence upon a police report.

(1-B) Any statement referred to in sub-section (1) or any record thereof, whether in a police diary or otherwise, or any part of such statement or record shall not be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Evidence Act, Samvat 1977; and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

5. Insertion Of Section 164-A In Act Xxiii Of Samvat 1989 :-

After Section 164 of the Code, the following section shall be inserted, namely:-

164-A. Evidence of material witnesses to be recorded by Magistrate in certain cases. (1) Any police officer, not below the rank of sub-inspector, making in investigation of any offence punishable with death or imprisonment for seven years or more, shall, in the course

of such investigation, produce all persons whose statement appears to him to be material and essential for proper investigation of the case, to the nearest Judicial Magistrate, for recording their statements.

(2) Subject to the provisions of sub-section (3), the Magistrate shall record the statements of such person produced before him under sub-section (1) on oath and shall forward such statements so recorded to the Magistrate by whom the case is to be inquired into or tried.

(3) The Magistrate shall, before recording any statement of a person under sub-section (2), satisfy himself that such person is making the statement voluntarily and not under any inducement, threat or promise.

(4) Copies of such statement shall be furnished to the police officer referred to in sub-section (1)..

6. Amendment Of Section 195, Act Xxiii Of Samvat 1989 :-

In section 195 of the Code, in clause (b) of sub-section (1), for the words except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate, the words except on the complaint in writing of that Court or by such officer of the Court as that Court may authorize in writing in this behalf, or of some other Court to which that Court is subordinate shall be substituted.

7. Insertion Of New Chapter Xxiia In Act Xxiii Of Samvat 1989 :-

After Chapter XXII of the Code, the following Chapter shall be inserted, namely:-

ction 7 - Insertion of new Chapter XXIIA in Act XXIII of Samvat 1989

After Chapter XXII of the Code, the following Chaptershall be inserted, namely:-

CHAPTER XXII-A

PLEA BARGAINING

265-A. Application of the Chapter.-

(1) This Chapter shall apply in respect of an accused against whom-

(a) the report has been forwarded by the officer in charge of the police station under section 173 alleging therein that an offence appears to have been committed by him than an offence for which the punishment of death or of imprisonment for life or of

imprisonment for a term exceeding seven years has been provided under the law for the time being in force; or

(b) a Magistrate has taken cognizance of an offence on complaint, other than an offence for which the punishment of death or of imprisonment for life, or of imprisonment for a term exceeding seven years, has been provided under the law for time being in force, and after examining complainant and witnesses under section 200, issue the process under section 204, but does not apply where such offence affects the socio-economic condition of the country or has been committed against a women, or child below the age of fourteen years.

(2) For the purpose of sub-section (1), the Government shall, the notification, determine the offences under the law for the time being in force which shall be the offences affecting the socio-economic condition of the country.

265-B. Application for plea bargaining.-

(1) An accused of an offence may file application for plea bargaining in the Court in which such offence is pending for trial.

(2) The application under sub-section (1) shall contain a brief description of the case relating to which the application is filed including the offence to which the case relates and shall be accompanied by an affidavit sworn by the accused stating therein that he has voluntarily preferred, after understanding the nature and extent of punishment provided under the law for the offence, the plea bargaining in his case and that he has not previously been convicted by an Court in a case in which he has been charged with the same offence.

(3) After receiving the application under sub-section (1), the court shall issue notice to the public prosecutor or the complainant of the case, as the case may be, and to the accused to appear on the date fixed for the case.

(4) When the public prosecutor or the complainant of the case, as the case may be , and the accused appear on the date fixed under sub-section (3), the court shall examine the accused in camera, where the other party in the case shall not be present to satisfy itself that the accused has filed the application voluntarily and where-

(a) the court is satisfied that the application has been filed by the accused voluntarily, it shall provide time to the public prosecutor or the complainant of the case, as the case may be, and the accused to work out a mutually satisfactory disposition of the case which may include giving to the victim by the accused the compensation

and other expenses during the case and thereafter fix the date for further hearing of the case;

(b) the court finds that the application has been filed involuntarily by the accused or he has previously been convicted by the court in a case in which he had been charged with the same offence, it shall proceed further in accordance with the provisions of this code from the stage such application has been filed under sub-section (1).

265-C. Guidelines for mutually satisfactory disposition.-

In working out a mutually satisfactory disposition under clause (a) of sub-section (4) of section 265-B, the court shall follow the following procedure, namely:-

(a) in a case instituted on a police report, the court shall issue notice to the public prosecutor, the police officer who has investigated the case, the accused and the victim of the case to participate in the meeting to work out a satisfactory disposition of the case:

Provided that throughout such process of working out a satisfactory disposition of the case, it shall be the duty of the court to ensure that the entire process is completed voluntarily by the parties participating in the meeting:

Provided further that the accused, if he so desires, may participate in such meeting with his pleader, if any, engaged in the case;

(b) in case instituted otherwise than on police report, the court shall issue notice to the accused, the complainant of the case and the victim of the case to participate in a meeting to work out a satisfactory disposition of the case:

Provided that it shall be the duty of the court to ensure throughout such process of working out a satisfactory disposition of the case, that it is completed voluntarily by the parties participating in the meeting:

Provided further that if the victim of the case or the accused, as the case may be so desires, he may participate in such meeting with his pleader engaged in the case.

265-D. Report of the mutually satisfactory disposition to be submitted before the Court.-

Where in a meeting under section 265-C, a satisfactory disposition of the case has been worked out, the Court shall prepare a report of such disposition which shall be signed by the presiding officer of the Court and all other persons who participated in the meeting and if no such disposition has been worked out, the Court shall record such observation and proceed further in accordance with the provisions of this Code from the stage the application under sub-

section (1) of section 265-B has been filed in such case.

265-E. Disposal of the case.-

(1) Where a satisfactory disposition of the case has been worked out, under section 265-D, the Court shall dispose of the case in the following manner, namely: -

(a) The Court shall award the compensation to the victim in accordance with the disposition under section 265-D and hear the parties on the quantum of the punishment, releasing of the accused on probation of good conduct or after admonition under section 360 or for dealing with the accused under the provisions of the Jammu and Kashmir Probation of Offenders Act, 1966 or under the Jammu and Kashmir Juvenile Justice Act, 1997 or any other law for the time being in force and follow the procedure specified in the succeeding clauses for imposing the punishment of the accused.

(b) After hearing the parties under clause (a), if the Court is of the view that section 562 or the provisions of the Jammu and Kashmir Probation of Offenders Act, 1966 or the Jammu and Kashmir Juvenile Justice Act, 1997 or any other law for the time being in force are attracted in the case of the accused, it may release the accused on probation or provided the benefit of any such law, as the case may be.

(c) After hearing the parties under clause (b), if the Court finds that minimum punishment has been provided under the law for the offence committed by the accused, it may sentence the accused to half of such minimum punishment.

(d) In case after hearing the parties under clause (b), the Court finds that the offence committed by the accused is not covered under clause (b), or clause (c), then, it may sentence the accused to one-fourth of the punishment provided or extendable, as the case may be, for such offence.

265-F. No disability on punishment under this Chapter.-

Notwithstanding anything contained in any law for the time being in force, the punishment imposed under this Chapter shall be considered expiatory in nature and no person punished under this Chapter shall be liable to any disability under any law for the time being in force on the ground that he has been punished under this Chapter.

265-G. Judgment of the Court.-

The Court shall deliver its judgment in terms of section 265-E in the open Court and the same shall be signed by the presiding officer of the Court.

265-H. Finality of the Judgment.-

The judgment delivered by the Court under section 265-G shall be final and no appeal (except the Special leave petition under article 136 and writ petition under articles 226 and 227 of the Constitution of India writ petition under section 103 of the Constitution of Jammu and Kashmir) shall lie in any court against such judgment.

265-1. Powers of the Court in plea-bargaining.-

A Court shall have, for the purpose of discharging its functions under this Chapter, all the powers vested in respect of bail, trial of offences and other matter relating to the disposal of a case in such Court, under this Code.

265-J. Period of detention undergone by the accused to be set off against the sentence of imprisonment.-

The provisions of section 397-A shall apply, for setting of the period of detention undergone by the accused against the sentence of imprisonment imposed under this Chapter, in the same manner as they apply in respect of the imprisonment under other provisions of this Code.

265-K. Savings.-

The provisions of this Chapter shall have effect notwithstanding anything inconsistent therewith contained in any other provisions of this Code and nothing in such other provisions shall be construed to constrain the meaning of any provision of this Chapter.

Explanation:-For the purpose of this Chapter, the expression Public Prosecutor has the meaning assigned to it under clause (q) of section 4.

8. Amendment Of Section 476, Act Xxiii Samvat 1989 :-

After the proviso to sub-section (1) of section 476 of the Code, the following proviso shall be inserted, namely:-

Provided further that in any other case, by the presiding officer, of that court or by such officer of the court as that court may authorize in writing in this behalf.

9. Insertion Of Section 479-B In Act Xxiii Of Samvat 1989 :-

After section 479-A of the Code, the following section shall be inserted, namely: -

479-B. Summary procedure for trial of witnesses disposing contrary to statements recorded under section 164-A by Magistrate.-

(1) If, at the time of any judgment or final order disposing of any judicial proceeding, a Court of Sessions or Magistrate of the first class expresses an opinion to the effect that, any witness, whose

statement recorded under sub-section (2) of section 164-A in respect of one offence or in respect of a different offence as referred to in sub-section (2) of section 221, appearing in such proceeding and subsequently retracted his statement in material particulars by stating inconsistent facts or had changed his version by narrating new facts which were destructive of the prosecution case and the Court of Sessions or a Magistrate of first class is satisfied that such retraction, contradiction or change of version is of such a nature that the witness is guilty of knowingly or willfully giving false evidence or fabricating false evidence with the intention that such evidence should be used in such proceeding, it or he may, if satisfied that it is necessary and expedient in the interest of justice that the witness should be tried summarily for giving or fabricating , as the case may be, false evidence, take cognizance of the offence and may after giving the offender a reasonable opportunity of showing cause why he should not be punished for such offence, try such offender summarily and notwithstanding anything contained in the provisions of this Code, sentence him to imprisonment for a term which shall not be less than three months but which may extend to two years and shall also be liable to fine: Provided that the provisions of this section shall apply only where the giving of fabrication of false evidence relates to the conduct of the witness subsequent to the recording of his statement under sub-section (2) of section 164-A.

(2) The provisions of sub-sections (2), (3) and (4) of section 479-A shall apply for trial of an offence under this section as they apply to the summary trial of an offence referred to in sub-section (1) of that section..

10. Amendment Of The Second Schedule To Act Xxiii Of Samvat 1989 :-

In the Second Schedule to the Code of Criminal Procedure, under the heading 1. Offences under the State Ranbir Penal Code, after the entries relating to section 195, the following entries shall be inserted, namely:-

195-A Threatening or inducing any person to give false evidence
Cognizable -do- Non-bailable -do- Imprisonment for 7 years or fine,
or both

CHAPTER 4 AMENDMENT TO THE EVIDENCE ACT, SAMVAT 1977

11. Amendment Of Section 154, Act Xiii Of Samvat 1977 :-

In the Evidence Act, Samvat 1977, section 154 shall be numbered as subsection (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:-

"(2) Nothing in this section shall disentitle the person so permitted under sub-section (1), to rely on any part of the evidence of such witness."