

Code Of Criminal Procedure (Maharashtra Amendment) Act, 1981

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Code Of Criminal Procedure (Maharashtra Amendment) Act, 1981

1. Section 1 :-

In section 24 in its application to the State of Maharashtra, -

(a) in sub-section (1), the words "after consultation with the High Court," shall be deleted.

(b) in sub-section (4), for the words "in consultation with the Sessions Judge," the words "with the approval of the State Government." shall be substituted.

Vide Maharashtra Act No. 34 of 1981.

NOTES

With experience of the working of the new Code for more than 6 years the State Government has come to the conclusion that the statutory obligation on Government to consult the Judiciary, which makes its recommendations almost binding, should be dispensed with and Government should be free to appoint Counsels of its own choice and confidence, both in the High Court and in the Sessions Courts. (Sec. 24 as amended).

Section 24 in the new Code is corresponding to section 492 of the old Code. It deals with the appointment of Public Prosecutors. This was recasted in the Amendment Act of 1978 (Central Amendment) for the following purposes :

1. to enable the Central Government and State Government to appoint one or more Additional Public Prosecutors for the High Court.
2. to enable the Central Government to appoint one or more Public Prosecutors in any district or local area.
3. to enable counting of service rendered as Prosecuting Officer before or after coming into force of the Code of Criminal Procedure,

1973, as service as an advocate for the purpose of appointment as Public Prosecutor.

4. to provide that in any State where there exists a regular cadre of Prosecuting Officers, appointment of Public Prosecutors or Additional Prosecutors will be made only from the cadre and when there are no proper and suitable persons available, appointment can be made from the panel prepared by the District Magistrate in consultation with the Sessions Court.

However, this Central Amendment Act is further amended in Maharashtra, and now the Maharashtra State Government is free to appoint Counsels of its own choice and confidence, without consulting the High Court or Sessions Judge. With this new provision, the role of Judiciary in recommending the names of advocates and preparing a panel of cadres for such recommendation is reduced to great extent.

2. Section 2 :-

In section 151 of the Code of Criminal Procedure, 1973-

(a) in sub-section (2) after the words "required or authorised", insert "under sub-section (3) or".

(b) after sub-section (2), insert following sub-section :-

(3) (a) Where a person is arrested under this section and the officer making the arrest, or the officer-in-charge of the police station before whom the arrested person is produced, has reasonable grounds to believe that the detention of the arrested person for a period longer than twenty-four hours from the time of arrest (excluding the time required to take the arrested person from the place of arrest to the Court of a Judicial Magistrate) is necessary, by reason that -

(i) the person is likely to continue the design to commit, or is likely to commit the cognizable offence referred to in sub-section (1) after his release; and

(ii) the circumstances of the case are such that his being at large is likely to be prejudicial to the maintenance of public order;

the officer making the arrest, or the officer-in-charge of the police station, shall produce such arrested person before the nearest Judicial Magistrate, together with a report in writing stating the reasons for the continued detention of such person for a period longer than twenty-four hours.

(b) Notwithstanding anything contained in this Code or any other law for the time being in force, where the Magistrate before whom

such arrested person is produced is satisfied that there are reasonable grounds for the temporary detention of such person in custody beyond the period of twenty-four hours, he may, from time to time, by order, remand such person to such custody as he may think fit :

Provided that no other person shall be detained under this section for a period exceeding fifteen days at a time, and for a total period exceeding thirty days from the date of arrest of such person.

(c) When any person is remanded to custody under clause (b), the Magistrate shall, as soon as may be, communicate to such person the grounds on which the order has been made and such person may make a representation against the order to the Court of Session. The Sessions Judge may, on receipt of such representation, after holding such enquiry as he deems fit, either reject the representation or if he considers that further detention of the arrested person is not necessary, or that it is otherwise proper and just so to do, may vacate the order and the arrested person shall then be released forthwith.

- Vide Maharashtra Act No. 7 of 1981 (w.e.f. 27.8.1980)

NOTES

Held, that in the absence of an allegation and in the absence of conclusion that the activities of the accused are prejudicial to the maintenance of public order, the order of the Magistrate is to be quashed. Chhagan Ghanshyam Jarhad v. State of Maharashtra, 1982 Mah. L. R. 218 (Bom.).

3. Section 3 :-

After section 197 of the said Code, the following section shall be inserted, namely :-

197-A. Prosecution of Commissioner or Receiver appointed by Civil Court- When any person who is a Commissioner or Receiver appointed by a Court under the provisions of the Code of Civil Procedure, 1908, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his functions as Commissioner or Receiver, no Court shall take cognizance of such offence, except with the previous sanction of the Court, which appointed such person as Commissioner or Receiver as the case may be.

- See Maharashtra Act 60 of 1981, s. 2 (5.10.1981).

NOTES

On the recommendations of the Bombay High Court, the old Code

of Criminal Procedure. 1898 had been amended in its application to the Maharashtra State and the new section 197-A was inserted. This gives protection to the persons appointed as Commissioners or Receivers by Civil Courts from vexatious prosecution. The new Code of 1973 did not provide such provision, hence section 197-A was inserted as a new section.

*1. For section 438 of the Code of Criminal Procedure, 1973, in its application to the State of Maharashtra the following section shall be substituted, namely :-

"438. Direction for grant of bail to person apprehending arrest- When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest, he shall be released on bail, and that Court may, after taking into consideration, inter alia, the following factors :-

(i) the nature and gravity or seriousness of the accusation as apprehended by the applicant;

(ii) the antecedents of the applicant including the fact as to whether he has, on conviction by a Court, previously undergone imprisonment for a term in respect of any cognizable offence;

(iii) the likely object of the accusation to humiliate or malign the reputation of the applicant by having him so arrested: and

(iv) the possibility of the applicant, if granted anticipatory bail, fleeing from justice, either reject the application forthwith or issue an interim order for the grant of anticipatory bail :

Provided that, where the High Court or as the case may be the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail it shall be open to an officer-in-charge of a police station to arrest, without warrant the applicant on the basis of the accusation apprehended in such application.

(2) Where the High Court or, as the case may be, the Court of Session, considers it expedient to issue an interim order to grant anticipatory bail under sub-section (1), the Court shall indicate therein the date, on which the application for grant of anticipatory bail shall be finally heard for passing an order thereon, as the Court may deem fit; and if the Court passes any order granting anticipatory bail, such order shall include inter alia the following conditions, namely :-

(i) that the applicant shall make himself available for interrogation by a police officer as and when required;

- (ii) that the applicant shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the accusation against him so as to dissuade him from disclosing such facts to the Court or to any police officer;
 - (iii) that the applicant shall not leave India without the previous permission of the Court; and
 - (iv) such other conditions as may be imposed under sub section (3) of section 437 as if the bail was granted under that section.
- (3) Where the Court grants an interim order under sub section (1), it shall forthwith cause a notice, being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Commissioner of Police or as the case may be, the concerned superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.
- (4) The presence of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor the Court considers such presence necessary in the interest of justice.
- (5) On the date indicated in the interim order under sub section (2) the Court shall hear the Public Prosecutor and the applicant and after due consideration of their contentions, it may either confirm, modify or cancel the interim order made under sub-section (1)".

NOTES

Objects.-Section 438 of the Code of Criminal Procedure, 1973 empowers the High Court or the Court of Sessions to issue a direction that a person who apprehends arrest on an accusation of having committed a non-bailable offence, be released on bail. Power of granting such bail is somewhat extraordinary in character and it is only in exceptional cases where it appears that a person might be falsely implicated or a frivolous case may be launched against him, or there are reasonable grounds for holding that a person accused of an offence is not likely to abscond or otherwise, misuse his liberty while on bail, that such power is to be exercised, and this power being rather of an unusual nature, it is entrusted only to the higher echelons of the judiciary. Since anticipatory bail does to some extent intrude in the sphere of investigation of crime, the Court must be cautious and circumspect in exercising such power of a discretionary nature. Some of the relevant considerations for granting anticipatory bail are the nature and seriousness of the apprehended accusation, reasonable possibility

of the applicants presence not being secured at the trial, reasonable apprehension of the misuse of liberty while on bail and the large interests of the public or the State. The present section 438 does not make any provision for issuing notice to the Public Prosecutor and hearing the Public Prosecutor by the Court before granting anticipatory bail. But in view of the clear decision of the Supreme Court in Gurbaksh Singh Sibbia v. State of Punjab, AIR 1980 SC 1632 : (1980) 2 SCC 565, such a notice is being generally given to the Public Prosecutor by the Courts before final order is passed. The section does not also provide for making any interim order, although in view of the said Judgment of the Supreme Court, Courts have been making such interim orders and there after issuing a notice to the Public Prosecutor. With a view to provide for some safe-guards and to have certain such provisions as aforesaid inbuilt in the section itself, it is proposed to substitute a new section 438 in the Code of Criminal Procedure, 1973.-Statement of Objects and Reasons. Mah. Act 24 of 1993, s. 2 (w.e.f. 28.7.1993).
* Mah. Act 24 of 1993. Section 2 (w.e.f. 28.7.1993).