

Code Of Criminal Procedure (Amendment)

Act No 11 of 1988

AN ACT TO AMEND THE CODE OF CRIMINAL PROCEDURE ACT, No. 15 OF 1979

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

Short title and of operation. **1.** This Act may be cited as the Code of Criminal Procedure (Amendment) Act, No. 11 of 1988 and shall come into operation on such date as the Minister may appoint by Order published in the Gazette.

Replacement of section 124 of Act No 15 of 1979. **2.** Section 124 of the Code of Criminal Procedure Act, No. 15 of 1979 (hereinafter referred to as the "principal enactment ") is hereby repealed, and the following section substituted therefor:

Magistrate to 124. Every Magistrate to whom application- is made that behalf shall assist assist the conduct of an investigation by making and issuing appropriate orders investigation. and processes of court and may, in particular hold, or authorize the holding of, an identification parade for the purpose of ascertaining the identity of the offender, and may for such purpose require a suspect or other person to participate in such parade, allow a witness to make his identification from a concealed portion and make or cause to be made a record of the proceedings of such parade."

Replacement of section 161 of the principal enactment. **3.** Section 161 of the principal enactment is hereby repealed and the following section substituted therefor:

"When trial shall be by jury and when not. 161. Subject to the provisions of this Code or any other law , all prosecutions on indictment instituted in the High Court shall be tried by a Judge of that Court:

Provided that in any case where at least one of the offences falls within the list of offences set out in the Second Schedule to the Judicature Act, No. 2 of 1978, trial shall be by a jury, before a Judge, if and only if, the accused elects to be tried by a jury."

Amendment of section 195 of the principal enactment. **4.** Section 195 of the principal enactment is hereby amended by the insertion immediately after paragraph (e) of that section of the following paragraph:

(ee) if the indictment relates to an offence triable by a jury, inquire from the accused whether or not he elects to be tried by a jury".

Amendment of section 266 of the principal enactment. **5.** Section 266 of the principal enactment is hereby amended by the repeal of subsection (4) of that section and the substitution therefor, of the following subsection:

" (4) Subject to the provisions of any other law the compounding of any offence under this section shall

(a) when a prosecution for such offence is not pending in the Magistrate's Court, not have the effect of an acquittal of the accused;

(b) when a prosecution for such offence is pending in a Magistrate's Court, have the effect of an acquittal of the accused."

Amendment of  
section 414 of the  
principal enactment.

**6.** Section 414 of the principal enactment is hereby amended as follows:-

(a) by the repeal of subsection (!) of that section and the substitution therefor, of the following subsection:

" (l) Any document purporting to be a report under the hand of the Government Analyst, the Government Examiner of Questioned Documents, the Registrar of Finger Prints, Examiner of Motor Vehicles or Government Medical Officer upon any person, matter or thing duly submitted to him for examination or analysis and report, or the report of a Government Medical Officer based upon any skiagraph purporting to have been made by a Government Radiologist or such skiagraph itself and any document purporting to be a report under the hand of such Radiologist upon such skiagraph, may be used as evidence in any inquiry, trial or other proceeding under this Code although such officer is not called as a witness: Provided that nothing in this section shall affect the necessity of proving the identity of the person, matter or thing so examined or analysed and reported on,";

(b) by the insertion, immediately after subsection (5) of that section, of the following new subsection :

" (5a) 'The written statement of a public officer other than a public officer referred to in subsection (1) verified by affidavit, relating to any act done by such public officer in the performance or discharge, of any duty or function of his office may be given in evidence in any inquiry, trial or other proceeding under this Code, although such officer is not called as a witness.'".

(c) by the substitution for the proviso to subsection (6) of that section of the following proviso;

" Provided that if in any case the court of trial is of the opinion on the application of any party or otherwise and for reasons to be recorded, that it is necessary that the Government Medical Officer or other medical witness or the Government Analyst or Government Examiner of Questioned Documents or the Registrar of Finger Prints or Examiner of Motor Vehicles or Government Radiologist or the Magistrate or Justice of the Peace or the interpreter or any other witness referred to in the preceding subsections should be present to give evidence at any particular trial to which the deposition or report may refer, such officers shall be summoned as witnesses for the purpose of giving evidence in the same manner as the other witnesses for the prosecution. "-

Amendment of  
section 419 of the  
principal enactment.

**7.** Section 419 of the principal enactment is hereby amended by the repeal of subsection (1) of that section and the substitution therefor, of the following subsection:

" (1) At the conclusion of non summary proceedings under Chapter XV, it shall be the duty of the Magistrate to inquire from the accused person whether he agrees to make any admission of the facts in issue or facts relevant to the facts in issue including the identity of any person, matter or

thing, the fact that an identification parade was held and that a particular witness identified a particular person at that parade, the fact that a particular matter or thing was sealed in the presence of a particular person and forwarded to the Government Analyst for examination and analysis, the fact that a particular matter or thing sent to the Government Analyst for analysis and examination was returned by him to Court, after such examination and analysis the fact that a particular survey or sketch was made by a particular person, and if the accused person through his attorney-at-law, agrees to make any such admission, the Magistrate shall pre-prepare a memorandum of the matters agreed and such memorandum shall be read over and explained to the accused in a language he understands. If the accused agrees that such memorandum is an accurate record of the admissions, he shall sign the memorandum and such memorandum shall be filed of record. The High Court shall when passing sentence on the accused person, have regard to the fact that he has made an admission under this section-".

Amendment of section 420 of the principal enactment.

**8.** Section 420 of the principal enactment is hereby amended as follows :

- (a) by the renumbering of that section as subsection (2) of that section ; and
- (b) by the insertion immediately before the renumbered subsection (2), of the following new subsection :

" (1) At the commencement of every summary prosecution or trial on indictment, it shall be the duty of court to inquire from the accused person whether he agrees to make any admissions of the facts in issue or facts relevant to the facts in issue including the identity of any person, matter or thing, the fact that an identification parade was held and that a particular witness identified a particular person at that parade, the fact that a particular matter or thing was sealed in the presence of a particular person and forwarded to the Government Analyst for examination and analysis, the fact that a particular matter or thing sent to the Government Analyst for analysis and examination was returned by him to court, after such examination and analysis, the fact that a particular survey or sketch was made by a particular person, and if the accused person through his attorney-at-law, agrees to make any such admission, court shall record such admission. The court shall, when passing sentence on the accused person have regard to the fact that he has made an admission under this section."

Amendment of section 451 of the principal enactment.

**9.** Section 451 of the principal enactment is hereby amended by the repeal of subsection (2) of that section and the substitution therefor of the following subsection:

" (2) Anything to the contrary in this Code or any other law notwithstanding an accused person may appeal from any judgment, sentence or order pronounced at a trial held under section 450."

Transitional provision.

**10.** Where on the date of coming into operation of this Act, there is pending in any High Court,

a trial

(a) for any offence set out in the Second Schedule to the Judicature Act, No, 2 of 1978; and

(b) in which no evidence has been led, then, the Judge shall inquire from, the accused whether or not he elects to be tried by a jury, notwithstanding anything to the contrary in this Act or the fact that the accused has elected a panel of jurors and chosen a- jury. If the accused elects to be tried without a jury, the Judge shall proceed to try him without a jury.