

PARLIAMENT OF THE DEMOCRATIC

SOCIALIST REPUBLIC OF

SRI LANKA

CODE OF CRIMINAL PROCEDURE

(SPECIAL PROVISIONS)

ACT, No. 42 OF 2007

[Certified on 09th October, 2007]

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Code of Criminal Procedure (Special Provisions) 1

Act, No. 42 of 2007

[Certified on 09th October, 2007]

L. D. -O. 16/2007

ANACT TO PROVIDE FOR THE EXTENSION OF THEPERIOD OF DETENTION OF

PERSONS ARRESTED WITHOUT AWARRANT IN ORDER TOFACILITATE THE

CONDUCT OF INVESTIGATIONS; FOR DISPENSING WITH THE CONDUCT OF

THE NON-SUMMARY INQUIRY IN CERTAIN CASES; TO PROVIDE FOR THE

TAKING OFDEPOSITIONS OFWITNESSES FOR THE PROSECUTION; AND TO

MAKE PROVISION FOR MATTERS CONNECTED THEREWITHOR INCIDENTAL

THERETO.

BE it enacted by the Parliament of the Democratic Socialist

Republic of Sri Lanka as follows :—

1. This Act may be cited as the Code of Criminal Short title.

Procedure (Special Provisions) Act, No. 42 of 2007.

2. Notwithstanding anything contained in the Code of Period of

Criminal Procedure Act, No.15 of 1979 other than the detention of

person arrested

provisions of section 43 (A) of that Act, any peace officer

not to be more

shall not detain in custody or otherwise confine a person than twenty-four

arrested without a warrant for a longer period than under all hours or forty-

the circumstances of the case is reasonable and such period eight hours in

certain cases.

shall not exceed twenty-four hours exclusive of the time

necessary for the journey from the place of arrest to the

presence of the Magistrate:

Provided that where the arrest is in relation to an offence

as is specified in the Schedule to this Act, such period of

detention in police custody may, on production before him

of the person arrested and on a certificate filed by a police

officer not below the rank of the Assistant Superintendent of

Police submitted prior to the expiration of the said period of

twenty-four hours, to the effect that it is necessary to detain

such person for the purpose of further investigations, be

extended upon an order made in that behalf by the Magistrate

for a further period not exceeding twenty-four hours, so

however that the aggregate period of detention shall not

exceed forty-eight hours:

2—PL 002282—4,350 (07/2007)

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Provided further, that any person arrested and detained

for a further period shall be afforded an opportunity to consult

an Attorney-at-Law of his choice and to communicate with

any relative or friend of his choice during the period of such

detention.

Direct indictment 3. (1) Notwithstanding anything contained in the Code

in case of

of Criminal Procedure Act, No.15 of 1979, where there are

offence

committed in aggravating circumstances or circumstances that give rise to

aggravating public disquiet in connection with the commission of an

circumstances. offence, specified in the Second Schedule to the Judicature

Act, No. 2 of 1978, it shall be lawful for the Attorney-General

to forward indictment directly to the High Court.

(2) The Attorney-General may in forwarding indictment

directly in terms of subsection (1) proceed to do so ex mero

motu or upon receipt of the relevant record from the

Magistrate.

Magistrate to 4. (1) Notwithstanding anything contained in the Code

forward record of Criminal Procedure Act, No.15 of 1979 where there are

to Attorney-

General. aggravating circumstances or circumatsnces that give rise to

public disquiet in connection with the commission of an

offence specified in the Second Schedule to the Judicature

Act, No. 2 of 1978, the Magistrate shall not hold a preliminary

inquiry in terms of Chapter XV of the Code of Criminal

Procedure Act, No.15 of 1979 and shall forthwith forward the

record of the proceedings to the Attorney-General and

thereafter abide by the instructions of the Attorney-General.

(2) Upon receipt of the record of the proceedings by the

Magistrate in terms of subsection (1), the Attorney-General

shall—

(a) where he is of the opinion that there are aggravating

circumstances or circumstances that give rise to

public disquiet in connection with the commission

of the aforesaid offence, forward indictment directly

to the High Court ;

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(b) where he is of the opinion that the circumstances do

not warrant the forwarding of direct indictment to

the High Court, return the record to the Magistrate

within thirty days of the receipt of the same and

direct that a preliminary inquiry be held in terms of

Chapter XV of the Code of Criminal Procedure Act,

No.15 of 1979.

(3) If the Magistrate proceeds to hold a preliminary inquiry

in terms of Chapter XV of the aforesaid Code, the Attorney-

General shall, call for the record of the proceedings, for the

purpose of considering the forwarding of indictment directly

to the High Court. In such an event the Magistrate shall

forthwith suspend proceedings and forward the record of the

proceedings to the Attorney-General and shall thereafter abide

by the instructions of the Attorney-General.

5. Any proceedings in terms of the provisions of this Proceedings to

Act shall be concluded within a period of ninety days from be terminated

within ninety

the date of the commencement of proceedings under Chapter days.

XV of the Code of Criminal Procedure Act, No.15 of 1979.

6. (1) Notwithstandings anything contained in Chapter Depositions.

XV of the Code of Criminal Procedure Act, No.15 of 1979, in

the course of holding of an inquiry under the aforesaid

Chapter, the following provisions shall apply to the taking

of statements of persons who know the facts and circumstances

of the case.

(2) Subject to the provisions of subsection (11), the

Magistrate shall read out, or cause to be read out to every

witness produced against the accused, in the presence and

hearing of the accused, the statement made by the witness in

the course of the investigation conducted in terms of Chapter

XI of the Code of Criminal Procedure Act, No.15 of 1979 and

shall ask the witness whether the statement is an accurate

record of what he had stated to the police.

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(3) (a)If the witness states, in response to an inquiry made

of him under subsection (1), that the statement is an accurate

record of what he had stated to the police, the Magistrate

shall record that fact. The Magistrate shall permit the witness,

if the witness so desires, to make such additions or alterations

to his original statement. Every such addition or alteration

shall be recorded.

(b) The Magistrate shall not permit any cross

examination of the witness by the accused or his pleader, but

the Magistrate may put to the witness, any clarification

required by the accused or his pleader of any matter arising

from the statement made by the witenss in the course of the

investigation, or any additions or alterations to his original

statement if any, and may put to the witness any clarification

which the Magistrate himself may require of any such matter.

Every clarification so made shall be recorded:

Provided that having considered the nature of the material

contained in the statement of a witness made to the police,

the prosecution may tender the witness for cross examination

by the accused or his pleader.

(4) The Magistrate shall thereafter read out or cause to be

read out to the witness, the statement made by the witness to

Court affirming the accuracy of the statement made by him

in the course of the investigation and the clarifications if

any made by him under subsection (2), and additions or

alterations to his original statement if any, made by him under

subsection(3), and shall require the witness to swear or affirm

to the truth of the matters recorded.

(5) (a) If on the other hand, the witness states in response

to an inquiry made of him under subsection (1), that the

statement is not, in its entirety or in part, an accurate record

of what he had stated to the police, the Magistrate shall permit

the witness to give an account of the circumstances relating

to the offence, or as the case may be, to make such additions

or alterations to his original statement as the witness may

wish to make.

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(b) The Magistrate shall not permit any cross-examination

of the witness by the accused or his pleader but the Magistrate

may put to the witness, any clarification required by the

accused or his pleader of any matter arising from the account

given, or additions or alterations made by the witness or may

put to the witness any clarification that the Magistrate himself

may require of any such matter:

Provided that having considered the nature of the material

contained in the statement of a witness made to the police,

the prosecution may tender the witness for cross examination

by the accused or his pleader.

(c) The Magistrate shall record the account given, or the

additions or alterations made by the witness under paragraph

(a) and any clarifications made by the witness under paragraph

(b), and read out the same or cause the same to be read out to

the witness and shall require the witness to swear or affirm to

the truth of the matters so recorded.

(6) Before a witness is produced against the accused, the

Magistrate shall permit the accused or his pleader to persue

in open court, the statement made by that witness to the

police in the course of the invesigation.

(7) The Magistrate shall sign, and shall cause the witness

to sign, a certified copy of the statement made by the witness

to the police in the course of the investigation and cause the

same to be filed of record. The copy so filed shall for all

purposes form part of the record of the inquiry.

(8) The Magistrate shall not summon an expert witness

or a police officer but shall cause the report of such expert

witness or the affidavit of such police officer, as the case may

be, to be produced and filed of record:

Provided that the Magistrate may, for reasons to be recorded

and in the case of an expert witness, with the prior sanction of

the Attorney-General, summon an expert witness or police

officer to be present in Court for examination.

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(9) Where an expert witness or a police officer appears in

court in response to summons issued on him under subsection

(8), the Magistrate shall not permit any cross examination of

such expert witness or police officer by the accused or his

pleader but may put to such expert witness or police officer,

any clarifications that the accused or his pleader may require,

of any matter arising from the report of the expert witness or

the affidavit of the police officer, as the case may be, or from

the examination of such expert witness or police officer, as

the case may be, and the Magistrate may himself put to the

witness any clarification that he may require of any such

matter. Every clarification so made shall be recorded.

(10) A statement made by an expert-witness or police

officer and the deposition made by a witness tendered for

cross examination under this section, shall be deemed to be

admissible in evidence in terms of section 33 of the Evidence

Ordinance (Chapter 14).

(11) (a)Where the accused—

(i) is absconding or has left the island; or

(ii) is unable to attend or remain in court by

reason of illness and has consented either

to the commencement or continuance of

the inquiry in his absence, such inquiry

may commence or continue without any

prejudice to him; or

(iii) by reason of his conduct in court is

obstructing or impeding the progress of the

inquiry,

the Magistrate may, if satisfied of these facts, commence and

proceed or continue with the inquiry in the absence of the

accused.

(b) An attorney-at-Law may appear for such absent

accused.

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(c) The inquiry shall proceed as far as is practicable in

accordance with the provisions of this Act except that the

provisions of section 416 of the Code of Criminal Procedure

Act, No.15 of 1979 shall not apply to the depositions recorded

where there is a trial on indictment in the High Court, whether

the accused is present in the High Court or not.

(12) The statement made by a witness to the police in the

course of the investigation together with, as the case may be,

his statement and clarifications, if any, recorded under

subsection (3) or the additions, alterations and clarifications

made and recorded under subsection (4) or the account given

and recorded under subsection (5), shall be regarded for the

purposes of this Act, as the deposition of that witness.

(13) Every witness produced against the accused at the

inquiry shall be entitled to be represented by an Attorney-at-

Law.

(14) If after the conclusion of the procedure set out above,

the Magistrate does not consider that the case should be

dealt with in accordance with the provisions of section 153

of the Code of Criminal Procedure Act, No.15 of 1979, the

Magistrate shall read the charge to the accused and explain

the nature thereof in ordinary language and inform him that

he has a right to call witnesses and, if he so desires to give

evidence on his own behalf.

(15) The provisions of Chapter XV of the Code of Criminal

procedure Act, No.15 of 1979 shall mutatis mutandis apply

to any preliminary inquiry held under the provisions of this

Act.

7. (1)The provisions of this Act shall be in operation for Duration of the

a period of two years commencing from the thirty-first day of Act.

May, 2007.

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(2) The Minister may, at any time within one month prior

to the expiration of the period of operation of this Act, by

Order published in the Gazette, extend for a further period

the operation of the Act, so however that the aggregate period

of any one extension shall ont exceed two years from the

date of such extension, as is specified in the Gazette.

(3) The Order published in the Gazette under subsection

(1) shall be placed before the Parliament for its approval.

(4) A Notification specifying of the date on which

Parliament has approved the Order shall be published in the

Gazette.

Validation. 8. Any act or thing done for which enabling provision is

made under this Act, during the period commencing on the

thirty-first day of May, 2007 and ending on the date of the

coming into operation of this Act, shall be deemed to have

been done validly.

Sinhala text to 9. In the event of any inconsistency between the Sinhala

prevail in case of and Tamil texts of this Act, the Sinhala text shall prevail.

inconsistency.

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SCHEDULE (Section 2)

Column I Column II

1. Abetment of an offence set out in the

Schedule, if the act abetted is

committed Section 102 - Penal Code

2. Conspiracy for the abetment or

commission of any offence set out in

the Schedule Section 113B - Penal Code

3. Murder Section 296 - Penal Code

4. Culpable Homicide not amounting to

murder Section 297 - Penal Code

5. Attempt to commit murder Section 300 - Penal Code

6. Kidnapping or abduction to commit

murder Section 355 - Penal Code

7. Kidnapping or abduction with intent

to wrongfully confine a person Section 356 - Penal Code

8. Kidnapping or abduction with intent

to wrongfully subject person to

grievous hurt Section 358 - Penal Code

9. Concealing or keeping in confinement

a kidnapped person Section 359 - Penal Code

10. Rape Section 364 - Penal Code

11. Theft, preparation having being made

to cause death &c,. Section 371 - Penal Code

12. Robbery with attempt to cause death

or grievous hurt Section 383 - Penal Code

13. Attempt to commit robbery when

armed with deadly weapons Section 384 - Penal Code

14. Attempt to commit any of the above

offences Section 490 - Penal Code

15. An offence committed with the use Explosive as defined in the

of explosives, an offensive weapon explosives Act (Chapter

or a gun 183); offensive weapon as

defined in the Offensive

Weapons Act, No 18 of

1966 and a Gun as defined

in the Firearms Ordinance

(Chapter 182).

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