

Fifteenth Kerala Legislative Assembly  
Bill No. 178

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**THE CODE OF CRIMINAL PROCEDURE (KERALA  
SECOND AMENDMENT) BILL, 2023**

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**THE CODE OF CRIMINAL PROCEDURE (KERALA  
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(KERALA SECOND AMENDMENT)  
BILL, 2023

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*further to amend the Code of Criminal Procedure, 1973, in its application to the State of Kerala.*

*Preamble.*—WHEREAS, it is expedient further to amend the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), in its application to the State of Kerala, for the purposes hereinafter appearing;

BE it enacted in the Seventy-fourth Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Code of Criminal Procedure (Kerala Second Amendment) Act, 2023.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force at once.

2. *Amendment of section 29.*—In section 29 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) (hereinafter referred to as the said Code), in sub-section (2), for the words “ten thousand rupees”, the words “one lakh rupees” shall be substituted.

3. *Amendment of section 62.*—In section 62 of the said Code, after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) In addition to other modes of service, the summons shall, if practicable, be served electronically as well.”.

4. *Amendment of section 91.*—In section 91 of the said Code, after sub-section (3), the following sub-section shall be inserted, namely:—

“(4) In addition to other modes of service, the summons shall, if practicable, be served electronically as well on whom the summons is to be served under sub-section (1).”.

5. *Amendment of section 381.*— In section 381 of the said Code, in sub-section (1), for the existing proviso, the following proviso shall be substituted, namely:—

“Provided that an appeal against a conviction on a trial held by a Magistrate of the first class in a case triable by 'Any Magistrate' as specified under headings I and II of the First Schedule of the Code, may be heard and disposed of by an Assistant Sessions Judge or a Chief Judicial Magistrate if the sentence passed is one of imprisonment for a term not exceeding one year or with fine or with both.”.

#### STATEMENT OF OBJECTS AND REASONS

The fines for violation of traffic rules have been increased ten times from the earlier amount after the enactment of the Motor Vehicles (Amendment) Act, 2019. The present limits of fine/sentence that can be passed by Courts of Judicial Magistrate may affect the prosecution procedures, if the offenders are unwilling to compound such offences, because as per section 29(2) of the Code of Criminal Procedure, 1973, the minimum amount of fine that a Court of Magistrate of First Class may impose is upto Rupees ten thousand only. This affects the true spirit of the amended Motor Vehicles Act and also causes loss to the public exchequer. Enhancing the power of the Judicial First Class Magistrates to impose fine will help to overcome the above impediments.

The Hon'ble High Court had proposed to amend sections 62 and 91 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), consequent to the direction of the Hon'ble Supreme Court. During the outbreak of the Covid 19 pandemic, the State Police Chief has reported that there are serious health hazards in following the conventional mode of service of summons. The electronic methods used to effect the service are much convenient and effective in locating the persons who are deliberately trying to avoid the service.

The service of summons is also a very important function of the Police, but the same cannot be discharged by the Police to the extent desired all over the State. Hence, the service of summons could be made possible through e-mail, in order to avoid delay that can be occasioned under the present circumstance.

Courts of Judicial Magistrates of the Second Class have ceased to exist in the State consequent to the integration of the Subordinate Civil and Criminal Judiciary. With effect from 1-1-93, there are only Judicial Magistrates of the First Class in the State.

Clause (a) of sub-section (3) of section 374 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) provides that any person convicted on a trial held by a Judicial Magistrate of the First Class may appeal to a Court of Sessions. Only appeals against convictions on trials held by Judicial Magistrates of the Second Class lies to Courts of Assistant Sessions Judges in view of the proviso to sub-section (1) of section 381 of the said Code.

In view of the above said provisions and also in view of the fact that there are only Judicial First Class Magistrates in our State, a situation is likely to arise where the Assistant Sessions Judges may not have any appellate work.

In order to overcome the said situation proviso to sub-section (1) of section 381 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) has to be substituted with a new proviso so as to vest the appellate powers over the decisions of Judicial First Class Magistrates with Assistant Sessions Judges and Chief Judicial Magistrates.

The Bill seeks to amend the Code of Criminal Procedure, 1973 in its application to the State of Kerala, to achieve the above object.

#### FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation would not involve any additional expenditure from the Consolidated Fund of the State.

PINARAYI VIJAYAN.

## EXTRACT FROM THE CODE OF CRIMINAL PROCEDURE, 1973

(Central Act 2 of 1974)

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29. *Sentences which Magistrates may pass.*—(1) The Court of a Chief Judicial Magistrate may pass any sentence authorised by law except a sentence of death or of imprisonment for life or of imprisonment for a term exceeding seven years.

(2) The Court of a Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding ten thousand rupees, or of both.

(3) The Court of a Magistrate of the second class may pass a sentence of imprisonment for a term not exceeding one year, or of fine not exceeding five thousand rupees, or of both.

(4) The Court of a Chief Metropolitan Magistrate shall have the powers of the Court of a Chief Judicial Magistrate and that of a Metropolitan Magistrate, the powers of the Court of a Magistrate of the first class.

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62. *Summons how served.*—(1) Every summons shall be served by a police officer, or subject to such rules as the State Government may make in this behalf, by an officer of the Court issuing it or other public servant.

(2) The summons shall, if practicable be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.

(3) Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefore on the back of the other duplicate.

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91. *Summons to produce document or other thing.*—(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any

investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed-

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872) or the Bankers' Books Evidence Act, 1891 (13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

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381. *Appeal to Court of Session how heard.*—(1) Subject to the provisions of sub-section (2), an appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge or by an Additional Sessions Judge:

Provided that an appeal against a conviction on a trial held by a Magistrate of the second class may be heard and disposed of by an Assistant Sessions Judge or a Chief Judicial Magistrate.

(2) An Additional Sessions Judge, Assistant Sessions Judge or a Chief Judicial Magistrate shall hear only such appeals as the Sessions Judge of the division may, by general or special order, make over to him or as the High Court may, by special order, direct him to hear.

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