

Fourteenth Kerala Legislative Assembly

Bill No. 86

**THE CODE OF CRIMINAL PROCEDURE (KERALA
AMENDMENT) BILL, 2018**

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BILL

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 Sixty-eighth 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 Amendment) Act, 2018.

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

(3) It shall come into force at once.

2. *Amendment of section 125.*—In the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) (hereinafter referred to as the principal Act), after sub-section (2) of section 125, the following sub-section shall be inserted, namely:—

“(2A) If any person, without sufficient cause, fails to comply with the order, he shall be liable to pay interest at the rate of twelve per cent per annum on the amount so payable as monthly allowance for the maintenance or interim maintenance.”.

3. *Amendment of section 378.*—After sub-section (6) of section 378 of the principal Act, the following sub-section shall be inserted, namely:—

“(7) If leave is granted under sub-section (3), the memorandum of appeal shall be entertained in the Registry of the High Court and notice shall be issued as soon as it is received.”.

STATEMENT OF OBJECTS AND REASONS

Sixth Report of the Committee for Welfare of Women, Children and Handicapped (1996-1998) of the Kerala Legislative Assembly recommended that a specific provision is to be made in the Code of Criminal Procedure for enabling courts to order interest and cost while ordering maintenance in appropriate cases. The Committee recommended that there shall be an enactment to realize double the amount of maintenance, if a person bound to pay maintenance fails to pay that amount within the specified time. The Committee also recommended enhancing the maintenance amount in proportion to husband's income. Government have considered the recommendations and have decided to amend the Code of Criminal Procedure, 1973, by inserting a sub-section to section 125 of the Code of Criminal Procedure, 1973, for realizing twelve per cent interest on the defaulted amount of monthly allowance for the maintenance or interim maintenance including the expenses of the proceedings.

2. The Law Reforms Commission, Kerala, 2009 has recommended to amend section 378 of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) to avoid multiplicity of procedures. At present, a special leave petition has to be filed against an order of acquittal and after obtaining leave, again appeal memorandum has to be prepared and presented before the court for admission. The proposed amendment to section 378 of the Code of Criminal Procedure will avoid unnecessary time consuming procedures.

3. This Bill seeks to achieve the above objects.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation, would not involve any expenditure out of 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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125. *Order for maintenance of wives, children and parents.*—(1) If any person having sufficient means neglects or refuses to maintain,—

- (a) his wife, unable to maintain herself, or
- (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or
- (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself,

or

(d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct:

Provided that the Magistrate may order the father of a minor female child referred to in clause (b) to make such allowance, until she attains her majority, if the Magistrate is satisfied that the husband of such minor female child, if married, is not possessed of sufficient means:

Provided further that the Magistrate may, during the pendency of the proceeding regarding monthly allowance for the maintenance under this subsection, order such person to make a monthly allowance for the interim maintenance of his wife or such child, father or mother, and the expenses of such proceeding which the Magistrate considers reasonable, and to pay the same to such person as the Magistrate may from time to time direct:

Provided also that an application for the monthly allowance for the interim maintenance and expenses of proceeding under the second proviso shall, as far as possible, be disposed of within sixty days from the date of the service of notice of the application to such person.

Explanation.—For the purposes of this Chapter,—

(a) “minor” means a person who, under the provisions of the Indian Majority Act, 1875 (9 of 1875) is deemed not to have attained his majority;

(b) “wife” includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried.

(2) Any such allowance for the maintenance or interim maintenance and expenses for proceeding shall be payable from the date of the order, or, if so ordered, from the date of the application for maintenance or interim maintenance and expenses of proceeding, as the case may be.

(3) If any person so ordered fails without sufficient cause to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in the manner provided for levying fines, and may sentence such person, for the whole, or any part of each month’s allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month or until payment if sooner made:

Provided that no warrant shall be issued for the recovery of any amount due under this section unless application be made to the Court to levy such amount within a period of one year from the date on which it became due:

Provided further that if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied that there is just ground for so doing.

Explanation.—If a husband has contracted marriage with another woman or keeps a mistress, it shall be considered to be just ground for his wife’s refusal to live with him.

(4) No wife shall be entitled to receive an allowance for the maintenance or the interim maintenance and expenses of proceeding, as the case may be, from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

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378. *Appeal in case of acquittal.*—(1) Save as otherwise provided in sub-section (2), and subject to the provisions of sub-sections (3) and (5),—

(a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision.

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946) or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may, subject to the provisions of sub-section (3), also direct the Public Prosecutor to present an appeal,—

(a) to the Court of Session, from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision.

(3) No appeal to the High Court under sub-section (1) or sub-section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.

(6) If, in any case, the application under sub-section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub-section (1) or under sub-section (2).

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