

No. S 63

**CONSTITUTION OF BRUNEI DARUSSALAM
(Order under section 83(3))**

CRIMINAL PROCEDURE CODE (AMENDMENT) ORDER, 2002

ARRANGEMENT OF SECTIONS

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CONSTITUTION OF BRUNEI DARUSSALAM
(Order under section 83(3))

CRIMINAL PROCEDURE CODE (AMENDMENT) ORDER, 2002

In exercise of the power conferred by subsection (3) of section 83 of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

Citation.

1. This Order may be cited as the Criminal Procedure Code (Amendment) Order, 2002.

Amendment of section 33 of Criminal Procedure Code.

2. Section 33 of the Criminal Procedure Code, in this Order referred to as the Code, is amended, in subsection (3), by deleting "24" from the first line and by substituting "48" therefor.

Amendment of section 56.

3. Section 56 of the Code is amended —

(a) in subsection (1), by deleting "Whenever" from the first line and by substituting "Notwithstanding any other written law for the time being in force, whenever";

(b) by inserting the following new subsection immediately after subsection (1) —

"(1)A In the case of banker's books, no police officer below the rank of Superintendent shall exercise any powers conferred by this section or order the production of such books save at the place of business of the bank.";

(c) in subsection (3), by deleting "to affect the provisions of any law relating to evidence for the time being in force or" from the first two lines;

(d) by adding the following new subsection —

"(4) In this section, "bankers' books" include ledgers, day books, cash books, account books and all other books used in the ordinary business of a bank, whether these records are in

written form or are kept on microfilm, magnetic tape or any other form of mechanical or electronic data retrieval system."

Insertion of new section 251.

4. The Code is amended by inserting the following new section 251 —

"Date of commencement of sentence.

251. Subject to the provisions of this Code every sentence of imprisonment to which section 252 apply shall take effect from the date on which it was passed, unless the Court passing the sentence otherwise directs."

Repeal of Chapter XLII of Part X.

5. Chapter XLII of Part X of the Code is repealed.

Amendment of Chapter XLIV of Part X.

6. Chapter XLIV of Part X of the Code is amended by deleting "Appeals" from the first line and by substituting "Appeals by persons convicted" therefor.

Insertion of new Chapter XLIVA into Part X.

7. The Code is amended by inserting the following new Chapter immediately after Chapter XLIV of Part X —

"Chapter XLIVA

Appeals by Public Prosecutor

Appeal by Public Prosecutor against acquittal.

438A. Notwithstanding any other provision of this Code or of any other written law, the Public Prosecutor may appeal to the Court of Appeal against any acquittal of any person by the High Court in the exercise of its original criminal jurisdiction.

Arrest of respondent.

438B. When there is an appeal by the Public Prosecutor under section 438A, the Court of Appeal may, issue a Warrant directing that the accused be

arrested and brought before it, and may commit him to prison pending the determination of the appeal or admit him to bail.

Respondent not present.

438C. Where, at the hearing of the appeal, the respondent is not present and the Court of Appeal is not satisfied that the notice of appeal was duly served upon him, the Court of Appeal shall not make any order in the matter of the appeal adverse to or to the prejudice of the respondent, but shall adjourn the hearing of the appeal to a future day for his appearance, and shall issue the requisite notice to him for service.

Grounds for allowing appeal.

438D. (1) Except as provided by this Code, the Court of Appeal shall allow an appeal by the Public Prosecutor under section 438A if it thinks —

(a) that the acquittal should be set aside on the ground that it is unsafe or unsatisfactory; or

(b) that the acquittal should be set aside on the ground of a wrong decision on any question of law; or

(c) that there was a material irregularity in the course of the trial,

and in any other case shall dismiss the appeal.

(2) Notwithstanding subsection (1), the Court of Appeal may dismiss the appeal if it considers that, notwithstanding that the point raised in the appeal might be decided in favour of the Public Prosecutor, no miscarriage of justice has actually occurred.

(3) The Court of Appeal shall, if it allows the appeal, quash the acquittal.

(4) An order of the Court of Appeal quashing an acquittal shall, except when under section 438H the respondent is ordered to be retried, operate as a direction to the court of trial to enter, instead of the record of acquittal, a judgment and verdict of conviction.

Where appeal allowed.

438E. (1) This section applies where on an appeal by the Public Prosecutor against an acquittal after trial on 2 or more charges, the Court of Appeal allows the appeal in respect of one or some of the charges only.

(2) The Court of Appeal may in respect of any charge on which the respondent remains convicted pass such sentence, in substitution for any sentence passed thereon at the trial, as it thinks proper and which is authorised by law for the offence of which he remains convicted on that charge (whether the sentence so substituted is more or less severe).

Special finding.

438F. (1) This section applies on an appeal by the Public Prosecutor against an acquittal of a person in whose case the Judge has made a special finding.

(2) If the Court of Appeal considers that a wrong conclusion had been arrived at by the Judge, it may, instead of allowing the appeal, order such conclusion to be recorded as appears to it to be in law required, and pass such sentence in substitution for the sentence passed at the trial as may be authorised by law.

Finding of insanity or unfitness to plead.

438G. (1) Where, on an appeal against an acquittal by the Public Prosecutor, the Court of Appeal is of the opinion —

(a) that the proper verdict would have been one of not guilty by reason of insanity; or

(b) that the case is not one where there should have been a verdict of acquittal, but that there should have been a finding that the respondent was under disability,

the Court of Appeal shall make an order that the respondent be admitted to a prison or hospital as the Court of Appeal may direct.

(2) On making an order under this section, the Court of Appeal may give such directions as it thinks fit for the detention of the respondent pending his admission to a prison or hospital.

Retrial.

438H. (1) Where the Court of Appeal allows an appeal by the Public Prosecutor against an acquittal and it appears to the Court of Appeal that the interests of justice so require, it may order the respondent to be retried.

(2) The respondent shall not under this section be ordered to be retried for any offence other than —

(a) the offence in respect of which he was acquitted and in respect of which the appeal is allowed as mentioned in subsection (1);

(b) an offence of which he could have been convicted at the original trial on a charge for the first-mentioned offence;

(c) an offence charged in an alternative count in respect of which the Judge did not give a verdict; and

(d) any other offence which may have been disclosed by evidence adduced at the original trial.

Supplementary provisions as to retrial.

438I. (1) A person who is to be retried for an offence in pursuance of an order under section 438G shall be tried on a fresh charge preferred by the Public Prosecutor.

(2) The Court of Appeal may, on ordering a retrial, make such orders as appear to it to be necessary or expedient —

(a) for the detention in custody or admission to bail of the person ordered to be retried, pending his retrial; or

(b) for the retention pending the retrial of any property or money howsoever paid by virtue of the original acquittal or of any order made on that acquittal.

(3) If the person ordered to be retried was, immediately before the determination of the appeal by the Public Prosecutor, liable to be detained in pursuance of a finding made under Chapter XXXI of this Code —

(a) that finding shall continue in force pending the retrial as if the appeal of the Public Prosecutor had not been allowed; and

(b) any order made by the Court of Appeal under this section for his detention in custody or admission to bail shall have effect subject to that finding.

Appeal by Public Prosecutor against sentence.

438J. Notwithstanding any other provision of this Code or of any other written law, the Public Prosecutor may appeal to the Court of Appeal against any sentence passed on any person by the High Court (not being a sentence fixed by law) in the exercise of its original criminal jurisdiction.

Supplementary provisions as to appeal against sentence.

438K. (1) Where the High Court has passed on an accused 2 or more sentences in the same proceeding, an appeal by the Public Prosecutor against any one of those sentences shall be treated as an appeal in respect of both or all of them.

(2) On an appeal against sentence by the Public Prosecutor, the Court of Appeal, if it considers that the respondent should be sentenced differently for an offence for which he was dealt with, may —

(a) quash any sentence or order which is the subject of the appeal; and

(b) in place of it pass such sentence or make such order as it thinks appropriate for the case (whether such sentence or order is more or less severe) and as the court below had power to pass or make when dealing with him for the offence.

Right of appeal by Public Prosecutor if person found incapable of making defence.

438L. Where there has been a finding by a Judge of the High Court under Chapter XXXI of the question of a person's fitness to make his defence, the Public Prosecutor may appeal to the Court of Appeal against that finding.

Disposal of appeal under section 438K.

438M. (1) The Court of Appeal shall allow an appeal by the Public Prosecutor under section 438L if it thinks —

(a) that the finding should be set aside on the ground that it is unsafe or unsatisfactory; or

(b) that the order giving effect to the finding should be set aside on the ground of a wrong decision on any question of law; or

(c) that there was a material irregularity in the course of the finding of the question of fitness to be tried,

and in any other case (except one to which subsection (3) applies) shall dismiss the appeal.

(2) Notwithstanding subsection (1), the Court of Appeal may dismiss the appeal if it considers that, notwithstanding that the point raised in the appeal might be decided in favour of the Public Prosecutor, no miscarriage of justice has actually occurred.

(3) An appeal by the Public Prosecutor under section 438L may, where the question of fitness to be tried was determined later than on the respondent being charged, be allowed by the Court of Appeal (notwithstanding that the finding was properly come to) if the Court of Appeal is of the opinion that the case is one in which the respondent should have not been acquitted before the question of fitness to be tried was considered; and, if an appeal is allowed under this subsection, the Court of Appeal shall, in addition to quashing the finding, direct that a new trial be ordered.

(4) Subject to subsection (3), where an appeal under section 438L is allowed, the respondent may be tried for the offence with which he was charged, and the Court of Appeal may make such order as appear to it to be necessary or expedient pending any such trial for his detention in custody or admission to bail.

Appeal of Public Prosecutor not to be allowed on certain grounds.

438N. Except where, in the opinion of the Court of Appeal, a miscarriage of justice has actually occurred, no appeal by the Public Prosecutor shall be allowed under this Chapter because of any —

(a) defect which, if pointed out during the progress of the trial, might have been amended by the court of trial; or

(b) informality in the swearing of a witness.

Procedure for appeal by Public Prosecutor.

438O. (1) The Public Prosecutor, in any appeal under this Chapter, shall give notice of appeal in such manner as may be provided by rules and orders made under section 441.

(2) Notice of appeal shall be given within 28 days from the date of the acquittal or finding appealed against or, in the case of an appeal against sentence, from the date on which the sentence was passed or, in the case of an order made or treated as made on conviction, from the date of the making of the order.

(3) If sentence was passed more than 7 days after the date of the acquittal or finding, notice of appeal against the acquittal or finding may be given within 28 days from the date on which the sentence was passed.

(4) The time for giving notice under this section may be extended, either before or after it expires, by the Court of Appeal.

Groundless appeals by Public Prosecutor.

438P. (1) If it appears to the Registrar that a notice of appeal by the Public Prosecutor under this Chapter does not show any substantial ground of appeal, he may refer the appeal to the Court of Appeal for summary determination.

(2) If a case is referred to it under subsection (1), the Court of Appeal may, if it considers that the appeal is frivolous or vexatious and can be determined without a full hearing, dismiss the appeal summarily without calling on any person to attend the hearing.

Preparation of case.

438Q. (1) The Registrar shall —

(a) take all necessary steps for obtaining a hearing of any appeal by the Public Prosecutor of which notice has been given to him and which is not dismissed summarily under section 438O; and

(b) obtain and lay before the Court of Appeal in proper form all documents, exhibits and other things which appear necessary for the proper determination of the appeal.

(2) Rules and orders made under section 441 may enable the Public Prosecutor to obtain from the Registrar any documents or things, including copies or reproductions of documents, required for his appeal.

Evidence.

438R. (1) For the purposes of this Chapter, the Court of Appeal may —

(a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to it to be necessary for the determination of the appeal by the Public Prosecutor;

(b) order any witness who would have been a compellable witness in the proceedings from which the appeal lies to attend for examination and be examined before the Court of Appeal, whether or not he was called in those proceedings; and

(c) subject to subsection (3), receive the evidence, if tendered, of any witness.

(2) Without prejudice to subsection (1), where evidence is tendered to the Court of Appeal it shall, unless it is satisfied that the evidence, if received, would not afford any ground for allowing the appeal, exercise its powers of receiving it if —

(a) it appears to it that the evidence is likely to be credible and would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal; and

(b) it is satisfied that it was not adduced in those proceedings but that there is a reasonable explanation for the failure to adduce it.

(3) Paragraph (c) of subsection (1) applies to any witness who is competent but not compellable, and applies also to the respondent's husband or wife where the Public Prosecutor makes an application for that purpose and the evidence of the husband or wife could not have been given in the proceedings from which the appeal lies except on such an application.

(4) For the purposes of this Chapter, the Court of Appeal may order the examination of any witness whose attendance might be required under paragraph (b) of subsection (1) to be conducted, in manner provided by rules and orders made under section 441, before any Judge or other person appointed by the Court of Appeal for that purpose, and allow the admission of any depositions so taken as evidence before the Court of Appeal.

Effect of appeal on sentence.

438S. (1) The time during which a respondent is detained in custody pending the determination of an appeal by the Public Prosecutor shall,

subject to any direction which the Court of Appeal may give to the contrary, be reckoned as part of the term of any sentence of imprisonment which Court of Appeal may impose.

(2) Where the Court of Appeal gives a contrary direction under subsection (1), it shall state its reasons for doing so.

(3) The term of any sentence passed by the Court of Appeal shall, unless the Court of Appeal otherwise directs, begin to run from the time when it would have begun to run if passed in the proceedings from which the appeal lies.

Restitution.

438T. (1) The operation of an order for the restitution of property to any person made on an acquittal by the High Court shall (unless the court of trial directs to the contrary in any case in which, in its opinion, the title to the property is not in dispute) be suspended —

(a) in any case, until the expiration of 28 days from the date of the acquittal; and

(b) where notice of appeal is given by the Public Prosecutor within 28 days from the date of the acquittal, until the determination of the appeal.

(2) In cases where the operation of such an order is suspended until the determination of the appeal, the order shall not take effect as to the property in question if the acquittal is quashed on appeal.

(3) Provision may be made by rules and orders made under section 441 for securing the safe custody of any property, pending the suspension of the operation of any such order.

(4) The Court of Appeal may be order annul or vary any order made by the court of trial for the restitution of property to any person, although the conviction is not quashed; and the order, if annulled, shall not take effect and, if varied, shall take effect as so varied."

Amendment of section 439.

8. Section 439 of the Code is amended, in subsection (2) —

(a) by deleting "section 421(2)" from paragraph (e) and by substituting "sections 421(2) and 438I(2)" therefor;

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(b) by deleting "section 436(1)" from paragraph (f) and by substituting "sections 436(1) and 438S(1)" therefor

(c) by deleting "under section 402(4)" from paragraph (h) and by substituting "under sections 402(4) or 438B or admitted to bail under section 438B" therefor.

Made this 29th. day of Ramadan, 1423 Hijriah corresponding to the 4th. day of December, 2002 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM