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Act 17 of 1971

THE KERALA DRUGS AND OTHER STORES (UNLAWFUL POSSESSION) ACT, 1971[1]

An Act to provide for the punishment of the offence of unlawful possession of drugs and other stores belonging to the Health Department, the Animal Husbandry Department or the Department of the Indigenous Medicine of the Government of Kerala

Preamble.—WHEREAS it is expedient to provide for the punishment of the offence of unlawful possession of drugs and other stores belonging to the Health Department, the Animal Husbandry Department or the Department of the Indigenous Medicine of the Government of Kerala.

Be it enacted in the Twenty-second Year of the Republic of India as follows: —

1. *Short title, extent and commencement.*— (1) This Act may be called the Kerala Drugs and other Stores (Unlawful Possession) Act, 1971.

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

(3) It shall be deemed to have come into force on the 2 nd day of December, 1970.

2**.** *Definitions.*— In this Act, unless the context otherwise requires, —

(a) 'drug' includes

(i) all medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of disease in human beings or animals; and

(ii) such substances (other than food) intended to affect the structure or any function of the human body or intended to be used for the destruction of vermin or insects which cause disease in human beings or animals as may be specified from time to time by the Government by notification in the gazette and include such substances which have been specified by the Central Government under sub-clause (ii) of clause (b) of section 3 of the Drugs and Cosmetics Act, 1940 (Central Act 23 of 1940) before the commencement of this Act.

(b) "Health Department" means the Health Services Department of the Government of Kerala and includes all medical institutions attached to the Government Medical Colleges in the State.

(c) "Inspector" means an Inspector appointed under section 4.

(d) "Other stores" includes articles of linen, instruments or appliances acquired by the Health Department, the Animal Husbandry Department or the Department of Indigenous Medicine of the Government of Kerala and having such seal or mark as may be notified by the Government in this behalf indicating that they belong to the Health Department, the Animal Husbandry Department or the Department of Indigenous Medicine of the Government of Kerala.

3. *Unlawful possession of drugs or other stores.*— If any person is found or is proved to have been in possession of—

(a) any drug having any seal or mark on it or on packages or containers thereof indicating that it belongs to the Health Department , the Animal Husbandry Department or the Department of Indigenous Medicine of the Government of Kerala, or having such seal or mark removed, defaced or in manner tampered with; or

(b) other stores including such stores the seal or mark over which has been removed, defaced or in any manner tampered with,

and which is or are reasonably suspected of being stolen or unlawfully obtained, such person shall, if he cannot account satisfactorily as to how he came into possession thereof, be punished with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine which shall not be less than one thousand rupees:

Provided that the court may for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for term of less than six months or of fine of less than one thousand rupees or of both imprisonment for a term of less than six months and fine of less than one thousand rupees.

4. *Inspectors.*— The Government may, by notification in the gazette appoint such persons not below the rank of Sub Inspector of Police or an Inspector appointed under section 21 of the Drugs and Cosmetics Act, 1940 (Central Act 23 of 1940) to be Inspectors for the purposes of this Act and may assign to them such local limits as it may think fit.

5. *Powers of Inspectors.*— (1) An Inspector may, within the local limits of the area for which he is appointed –

(a) enter and search with such assistance as he considers necessary, any place in which he has reason to believe that an offence under this Act has been committed or is being committed and may seize such drugs or other stores which may furnish evidence thereof;

(b) may examine any record, register, documents or other material object found in any place mentioned in clause (a) and seize the same, if he has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act.

(2) The provisions of the Code of Criminal Procedure 1898 (Central Act 5 of 1898), shall, so far as may be, apply to any search or seizure under this Act as they apply to any search or seizure made under the authority of a warrant issued under section 98 of the said Code.

(3) If any person wilfully obstructs an Inspector in the exercise of the powers conferred upon him by or under this Act, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine which shall not be less than one thousand rupees:

Provided that the Court may for any adequate and special reasons to be mentioned in the judgment impose a sentence of imprisonment for a term of less than six months or of fine of less than one thousand rupees or of both imprisonment for a term of less than six months and fine of less than one thousand rupees.

6. *Procedure.*— where an Inspector seize any drug or other stores or any record, register, document or any other material object under section 5, he shall, within twenty-four hours of such seizure produce them before a Magistrate having jurisdiction over the area and take his orders as to the custody thereof.

7. *Disposal of drugs or other stores on acquittal.*— When any person has been acquitted in respect of an offence punishable under this Act and it is found that the drugs or other stores produced before the courts bear any seal or mark as specified in section 3 or it is found that such seal or mark removed, defaced, or in any manner tampered with, the Court may make an order directing delivery of such drugs or other stores to that Department of the Government to which they belong.

8. *Cognizance of offences.*— (1) No court shall take cognizance of any offence punishable under this Act except upon a complaint made by an Inspector appointed under this Act.

(2) No court inferior to that of a Magistrate of the First Class shall try any offence punishable under this Act.

9. *Offences by companies.*—Where an offence under this Act has been committed by a company, every officer of the company, who at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section —

(a) "company" means any body corporate and includes a firm, a co-operative society or other association or individuals;

(b) "director" in relation to a firm means a partner in the firm;

(c) "officer of the company" means the Managing Director, Directors, Managing Agent, Secretary, Treasurer or Manager of the Company and includes the office bearers of a firm, co-operative society or other association of individuals.

10. *Indemnity.*—No suit, prosecution or other legal proceedings shall lie against any person for anything which is, in good faith, done or intended to be done under this Act.

11. *Savings.*—Notwithstanding the expiry of the Kerala Drugs (Unlawful Possession) Ordinance, 1970 (19 of 1970) —

(a) anything done or any action taken in exercise of any powers conferred by or under the said Ordinance shall be deemed to have been done or taken in exercise of the powers conferred by or under the corresponding provision or this Act;

(b) anything done or any action taken after such expiry and before the date of publication of this Act in the Gazette which could have been done or taken under the said Ordinance if it had not expired, shall be deemed to have been done or taken under this Act; or

(c) any investigation, legal proceedings, or remedy which could have been instituted, continued or enforced under the said Ordinance if it had not expired, may be instituted, continued or enforced under the corresponding provision of this Act.

(2) The expiry of the Kerala Drugs (Unlawful Possession) Ordinance, 1970 shall not—

(a) affect any right, privilege, obligation or liability acquired, accrued or incurred under the said Ordinance; or

(b) affect any penalty or punishment incurred in respect of any offence committed under the said ordinance; or

(c) affect any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, or punishment, and any such investigation, legal proceedings or remedy may be instituted, continued or enforced, and any such penalty or punishment may be imposed under the provisions of this Act.

(3) Notwithstanding anything contained in this Act, no person shall be convicted of any offence under this Act for having committed the same after the 22 nd April, 1971, and before the date of publication of this Act in the Gazette.