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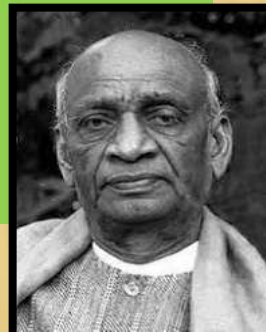
SEARCH AND SEIZURE INCLUDING ARREST WARRANT AND SEARCH WARRANT



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ORDER OR SUMMON TO PRODUCE DOCUMENTS OR THINGS

- **SECTION 91**
- A police officer or court may, under certain circumstances, issue an **order or summon** if such production is necessary or desirable for the purpose of any investigation, trial or other proceedings.
- In its true construction, does not apply to accused person on trial.
- **Section 94** and this section must be read and interrupted together.
- The documents can be in custody only if there is an existence.

SEARCH & SEIZURE

- Deals with the extent and limit of legal authority to procure evidence to make a search and to seize things for the purposes of investigation, inquiry or trial.
- Significant stage in the process of effective investigation.
- Sections 93, 94, 95 and 97 – Search with warrant
- Sections 103, 165 and 166 – Search without warrant
- Section 100 – General Provision

SEARCH WARRANT



- Search warrant is a written authority given to a police officer or any other authority by a Magistrate or Court for conducting the search of a place either generally or for specified items or documents or for persons who have been wrongfully detained.
- The power to issue warrant should be exercised with all the care and circumspection.
- Magistrate is required to record the reason before the issue of a search warrant.

CIRCUMSTANCES TO ISSUE SEARCH WARRANT

- Section 93, 94 deals with the circumstances.
- Section 93* deals with 3 circumstances
 1. Reason to believe that the person to whom a summon or order or requisition has been addressed will not produce such document/thing.
 2. Where such document is not known to the Court to be in the possession of any person.
 3. Where the Court considers that the purpose of any inquiry, trial would not be served by a general search or inspection.

- If the Magistrate or Court has reason to believe upon information or inquiry that any place is used for the deposit or sale of stolen property or for the deposit, sale or production of any objectionable article
- A Magistrate/ Court can issue search warrant under **Section 95 of CrPC** to enter upon any premises for search and seizure of any newspaper, book, document or publication which appears to the State Government to contain any material that is punishable for the offence of sedition under the Indian Penal Code.
- If a District/ Sub-Divisional Magistrate/ Magistrate of First Class has reason to believe that any person is confined unlawfully, he may issue search warrant for the search of that person.

**Reason to believe that the person to whom a
summon or order or requisition has been addressed
will not produce such document/ thing**

- **Section 93(1) (a)**
- If summon or order cannot be passed issued **u/s 91**, there cannot obviously be a search warrant under this clause.
- Reason to believe means the court/magistrate must himself/itself be satisfied that there is necessity for the search warrant to be issued otherwise the thing would not be produced.
- Discretion of the court to issue search-warrant

Where Such Document Is Not Known To
The Court To Be In The Possession Of Any
Person.

- A search warrant may also be issued where any document or other thing necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under the code is not known to the court to be in the possession of any person.

“General Search” means a search not in respect of any specific document or thing but a roving inquiry for the purpose of discovering documents or things which might involve persons in criminal liability.

“Inspection” relates only to the inspection of a locality and place and not of the document.

“for purposes of” is a very comprehensive term and should not be construed as meaning “during the pendency of” such proceedings.

★ **Form no. 10 of Schedule II** is the prescribed form in which a search-warrant is to be issued.

FORM 10

(WARRANT TO SEARCH AFTER INFORMATION OF A PARTICULAR OFFENCE)

To (name and designation of the Police Officer or other person or persons who is or are to execute to warrant).

WHEREAS complaint has been laid (or complaint has been made) before me of the commission (or suspected commission) of the offence of (mention the offence concisely), and it has been made to appear to me that the production of (specify the thing clearly) is essential to the inquiry now being made (or about to be made) into the said offence (or suspected offence);

This is to authorise and require you to search for the said (the thing specified) in the (describe the house or place or part thereof to which the search is to be confined), and, if found, to produce the same forthwith before this Court, returning this warrant, with an endorsement certifying what you done under it, immediately upon its execution.

Dated, this day of, 20

(Seal of the Court)

(Signature)

Search – There has to be a nexus for a search, it cannot be random.

Seizure-

Section 165– Search by police officer : Here the Investigating officer/ or the OC is conducting search when they have reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorised to investigate may be found in any place within the limits of the police station of which he is in charge.

Elements of Section 165:

When can he search?... Reasonable Grounds for believing – **Section 93(1)** gives the grounds under which the search warrant may be issued. The same standard of reasonable doubt exists.

Reason suspect is not equal to Reason to believe. Reason to suspect is a better ground.

Section 47 – Search of place entered by person sought to be arrested: This gives duty to the person who or whose premises need to be searched by the person holding the warrant. If the police is not allowed in, they are allowed to break open the door. There is also an allowance for a 'no-knock break-in' to take place; this is to take the person by surprise.

A search memo needs to be made and submitted to the Magistrate. The Magistrate sends the memo to the owner/ the occupier of the place. This owner and occupier may not be the accused.. Therefore, the accused may, at times, not get the memo at all, until the trial.

Section 166 – When officer in charge of police station may require another to issue search warrant: A person of another limit may be requested to conduct any search, by the officer who is already conducting a search under Section 165. This has to be in accordance to **Section 165**. This other police officer must prepare a report and submit it to the original OC, after the search happens.

Section 100 – Persons in charge of closed place to allow search

A police carrying a warrant should be allowed to conduct a search. If he is not allowed to conduct the search, then force may be used. The force used should however, be reasonable. The search is not only of premises but also of person. If it is a female, a female officer must search, with decency. The search should be made before two respectable people from the locality. If there are no people from the locality, then people from outside the locality may also be taken. These are the 'Panchas'. The panchas need to sign the search document. These people need not necessarily be called as witnesses, infact they can't be called as witnesses.

Section 187 of the IPC states there should be no omission to assist public servant when bound by law to give assistance.

Elements:

- *Who can issue the summons?* Court or Officer in Charge of Police Station
- *What can they summon?* Document or any other thing
- *Why would they summon it?* Necessary or desirable
- *Who would they summon it from?* Whoever the police believes is in possession of the document or is in possession of the object
- *Where would the person produce it?* The person may attend and produce it, or to produce it, at the time and place stated in the summons or order. The person may also ask someone else to produce it on his behalf.
- *Which documents cannot be summoned?* Things under Bankers book, things under Section 123 and 124 of the Evidence Act ('Evidence as to affairs of state' and 'Official communications' resp.)

Section 92- Produce as to letters and telegrams

District Magistrate, Chief Judicial Magistrate, Court of Sessions or High Court are the only ones who can ask for the letters and telegrams to be produced. Other Judicial officers may as well however, ask for the stopping of such letters and telegrams, but such letters and telegrams would not be delivered to the officers.

Section 349 – Imprisonment or Committal of person refusing to answer or produce document

Section 345 – Procedure in some cases for contempt

Section 346 – Procedure where Court considers that case should not be dealt with under **Section 345**. – This becomes a case of perjury.

SEIZURE

Section 101

Section 102

Impounding – this is pertaining to documents.

Section 7A

Section 165

Constitutional Implications of Search and Seizure

There is no express constitutional bar to search and

Section 460– Irregularities, which do not vitiate proceedings

SEARCH OF PLACE SUSPECTED TO CONTAIN STOLEN PROPERTY, FORGED DOCUMENTS, ETC.

- **Section 94**
- Search warrant can be issued only by a district magistrate, sub-divisional magistrate, or a magistrate of first class
- Person authorised to search must be a police officer above the rank of a constable
- Before issuing the magistrate must have reason to believe that the place is used for the deposit or sale of stolen property, etc.

FORM 11

(Warrant to search suspected place of Deposit)

- To (name and designation of the Police Officer above the rank of a constable).

WHEREAS information has been laid before me, and do inquiry thereupon had, I have been led to believe that the (describe the house or other place) is used as a place for the deposit (or sale) of stolen property (or is for either of the other purpose expressed in the section, state the purpose in the words of the section); This is to authorise and require you to enter the said house (or other place) with such assistance as shall be required, and to use, if necessary, reasonable force for that purpose, and to search every part of the said house (or other place, or of the search is to be confined to a part, specify the part clearly), and to seize and take possession of any property (or documents, or stamps, or seals, or coins, or obscene objects, as the case may be) (add, when the case requires it) and also of any instrument and materials which you may reasonable believe to be kept for the manufacture of forged documents, or counterfeit stamps, or false seals or counterfeit coins or counterfeit currency notes (as the case may be), and forthwith to bring before this Court such of the said things as may be taken possession of, returning this warrant, with an endorsement certifying what you have done under it, immediately upon its execution.

Dated, this day of, 20

(Seal of the Court)

(Signature)

Premises For Search And Seizure Of Any Newspaper, Book, Document Or Publication Which Appears To The State Government To Contain Any Material That Is Punishable For The Offence Under The Indian Penal Code. (S. 95)*

- Any newspaper, book, document or publication contains any matter which is punishable under section 124A, 153A, 153B, 292, and 295A of IPC.
- Empowers the State Government that it may by notification declare every copy to be forfeited to the government.
- Upon such declaration, magistrate by warrant authorise any police officer not below the rank of sub-inspector to enter upon and search any premises.

SEARCH FOR PERSON WRONGFULLY CONFINED

- The warrant is in the nature of a writ of habeas corpus for rescue of a wrongfully confined person by intervention of police directed by a magisterial order.
- Before the warrant is issued, the magistrate must be satisfied that a person is wrongfully confined.
- It is not an obligation on the magistrate to hold a detailed inquiry or to record such findings after adjudication

COMPEL RESTORATION OF ABDUCTED FEMALES

- **Section 98**
- Intended to give immediate relief to a women or girl abducted or detained for any unlawful purpose.
- An action under this section cannot be taken except upon a complaint on oath.
- The only order that can be passed is to restore the female her liberty or to her lawful guardian.
- To issue a warrant for arrest of female is not permissible under this section but it could be possible under **Section 97**.

SEARCH OF A PLACE WITHOUT WARRANT

1. Magistrate may direct search in his presence
2. Search by police officer during investigation
3. Power to conduct search in the limits of another police station
4. Search for false weights and measures

Magistrate may direct search in his presence

- **Section 103**
- A magistrate may direct a search to be made in his presence if he considers it advisable, in such cases it would not be necessary to formally issue a warrant.

Search by police officer during investigation

- **Section 165**
- Empowers responsible police officers to carry out searches without first applying to the courts for authority.
- In order to prevent the abuse of power, the legislature has laid down certain restrictions.

RESTRICTIONS

- (i) The power to search without a warrant can be exercised only by a police officer in charge of a police station or any officer authorized is: investigate into that offence. Such a police officer may require a subordinate officer to conduct the search under certain circumstances.
- (ii) The search is not to be a general search but must be one for particular thing.
- (iii) The place of search must be within the limits of the police station of which the officer is in charge.
- (iv) The police officer making the search must have reasonable grounds for believing the necessity of immediate search of the place.

- (v) A police officer before proceeding to search a place must record* the ground of his belief as to the necessity of such a search and must also specify in such a record the things for which the search is to be conducted.
- (vi) The copies of record made prior to the search are required to be sent forthwith to the nearest magistrate.
- (vii) The police officer, as far as possible, has to conduct the search in person.
- (viii) The provisions relating to search-warrant and the general provisions as to search shall be applied in the search made by a police officer without warrant

Power to conduct search in the limits of another police station

- **Section 166**
- When a search has to be conducted in the jurisdiction of another station, whether in the same or a different district, an officer-in-charge of a police station making an investigation may require the officer-in-charge of the former station to make a search or cause search to be made.
- where there is reason to believe that the delay occasioned by such a procedure might result in evidence being concealed or destroyed, the investigating police officer may make the search himself or cause the search to be made, in which case, he shall forthwith send a notice of the search together with a copy of the list to the officer-in-charge of the police station, within the limits of which the place searched is situated and to the nearest Magistrate empowered to take cognizance of the offence.

Search for false weights and measures

- **Section 153**
- Any officer in charge of a police station may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures or instruments for weighing which are false.
- If he finds in such place any weights, measures or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to a Magistrate having jurisdiction.

GENERAL PROVISIONS ON SEARCH

- **Section 100**
 - Any deviations or violations of the procedures laid down under the Section 100 of CrPC will adversely affect the prosecution case and vitiate the trial as well.
 - Three important aspects*:-
 1. the occupant of a place is liable to search is required to give all reasonable facilities to the persons authorised to conduct the search.
 2. the police or others authorised to search are armed with necessary powers for the purpose and effective execution of the search.
 3. procedures have been designed “to obtain as reliable evidence as possible of the search and to exclude the possibility of any concoction, or malpractice of any kind.
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PROCEDURES

1. The free ingress and reasonable facilities are to be made under both for search under a warrant as well as for a search without a warrant.
2. The police officer or other conducting the search is empowered to enter the place and in order to effect an entrance into such a place can break open an outer or inner door or window of any house or place if after notification of his authority and purpose, and demand of admittance duly made, he could not otherwise obtain admittance. Section 47(2) provides a safeguard in favour of a pardanashin woman and the same would apply in case of a search also. Further, it has been held that if in the exercise of the power or the performance of the official duty, improper or unlawful obstruction or resistance is encountered, there must be the right to use reasonable means to remove the obstruction or overcome the resistance. This accords with common sense and does not seem contrary to any principle of law.

3. In order to obviate the chance of **any person stealthily taking away on his person any article or thing** for which the search of a place is to be made, sub-section (3) of Section 100 provides for the search of such a person. The provision is necessary **to prevent the object of the search getting frustrated**. If the person to be searched is a **woman**, then, in order to protect her modesty it has been provided that the **search shall be made by another woman with strict regard to decency**.

4. The search is to be made in the presence of at least two independent and respectable inhabitants of the locality in which the place to be searched is situated. However, if no such inhabitant of the said locality is available or willing to be a witness to the search, the search can be made in the presence of persons of other locality.

The object of the provision is to guard against possible chicanery and unfair dealings on the part of the persons authorized to search and ensure that anything incriminating which may be said to have been found in the premises searched was really found there and was not introduced by the members of the search-party.

The presence of witnesses at a search is always desirable and their absence will weaken and may sometimes destroy the admissibility of the evidence as to the finding of the articles.

Sub-section (4) of Section 100 also lays down that the officer or other person making the search is to call the above-said persons [panch witnesses] to attend and witness the search and they make for this purpose issue a written order to them.

If a person so ordered to be a witness neglects or refuses without reasonable cause to attend and witness a search, then according to sub-section (8) of Section 100 he shall be deemed to have committed an offence under Section 187 IPC.

5. As far as possible a search has to be conducted in daylight. If information is received after dusk necessitating the immediate search of a house and if it is apprehended that delay till daybreak might result in evidence being concealed or destroyed, the house should be sealed and guarded and if that is not possible, search should be conducted during the night itself.

6. Before entering the premises to be searched, the exterior of the place shall be inspected to see whether facilities for introducing property from outside exist

7. Before commencing search the investigating and the panch witnesses should ensure that mutual search of each other is done.

8. Search and seizure must be systematic and thorough.

9. Women should be allowed to withdraw while effecting search and seizure.

10. Indiscriminate search and damage to property should be avoided.

11. The occupant of the place of search, or his nominee, shall in every case be permitted to attend during the search. Denial of such permission may cause suspicion as to the reliability of the discoveries made out. However, where the securing of the presence of the occupier or his nominee might cause such delay as to frustrate the purpose of the search, it may be permissible to dispense with his presence.

12. List of all things seized in the course of the search and of the places in which they are respectively found shall be prepared by the police officer or other person making the search and shall be signed by the panch witnesses. The signature of the accused on the search is not required under law.

13. A search list shall be prepared in quadruplicate, all the copies being signed by the police officer making the search and the witnesses to the search. One copy will be handed over to the owner or occupant of the house, the second copy should be sent to the Magistrate and the third copy should be sent with the case diary to the superior officer to whom case diaries are sent. The fourth copy will form the station record.

EXCLUSIONARY RULE

Exclusionary rule of evidence – this states that things which are found out of an illegal search or seizure are not admissible: Silverthorne Lumber Co. v. USA. The exceptions are that

- they are discovered in spite of the tainted source, i.e., if whatever was found was stated by a witness who had no connection to the search.

In India however the ERoE is not generic in nature. One needs to show that the search was unfair in nature.

- There is no exclusionary rule in India because under the India Evidence Act this is not there – Puranmal Case
- State of Punjab v. Baldev Singh
- State v. Natwarlal

M.P. Sharma case

State of Gujarath v. Shyamlal AIR 1965 SC 1251

Wire tap – Tapping of the phone. The power to do this the power is given by Section 5(2) of the Indian Telegraph Act

UCL v. Union of India

Pooran Mal v. Dy. Of Inspections

Facts: A search warrant is issued under the Income Tax Act against the petitioners. The petitioners claim that this is illegal and the evidence can't be admissible. Furthermore, they ask for the exclusion of that part of the evidence which is acquired from the property which was not mentioned for in the search warrant.

Decision: The court held that any statute can call for search and seizure to be conducted, as long as it broadly follows the principles as laid down in the CrPC. It also said that the findings of a search and seizure can't be held to be inadmissible merely on the ground of the illegality of the search and seizure. Also, it held that if there are some materials acquired during the search which are useless, this doesn't mean the entire evidence is inadmissible. There are no constitutional principles or fundamental rights interpretation which gives for exclusion of evidence.

State of Punjab v. Balbir Singh

Issue: Whether any arrest and search of a person or search of a place without conforming to the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' for short), becomes illegal and consequently vitiates the conviction.

Held: If a police officer, even if he happens to be an "empowered" officer while effecting an arrest or search during normal investigation into offences purely under the provisions of CrPC fails to strictly comply with the provisions of Sections 100 and 165 CrPC including the requirement to record reasons, such failure would only amount to an irregularity.

Neither Section 41(2) nor Section 42(1) mandates such empowered officer to record the grounds of his belief. It is only proviso to Section 42(1) read with Section 42(2) which makes it obligatory to record grounds for his belief. To that extent we have already held the provisions being mandatory. A fortiori, the empowered officer though is expected to record reasons of belief as required under Section 165, failure to do so cannot vitiate the trial particularly when Section 41 or 42 do not mandate to record reasons while making a search. Section 165 in the context has to be read along with Sections 41(2) and 42(1) where under he is not required to record his reasons. The general principles laid down regarding the irregularities committed in such searches, equally apply even to cases where the grounds of belief as required under Section 165 are not recorded.

The provisions of CrPC namely Sections 100 and 165 would be applicable to such arrest and search.

State of Maharashtra v. Natwarlal Damodardas Soni (SC – 1979)

Facts: The Anti-Corruption Bureau of the Police raided the house of the respondent and recovered gold biscuits with foreign markings stitched in a jacket lying in a steel trunk underneath some clothes. At the time of the raid, the respondent was not in the house but his wife and mother were present. At about the same time the Customs Authorities also raided his house and took proceedings under the Customs Act, 1962 in respect of the smuggled gold found in the house. The respondent, who remained absconding, surrendered to the police a week thereafter.

At the trial the respondent contended that the gold was brought into his house by someone and left there in his absence and that, therefore, he had no connection with the gold.

On appeal to this court it was contended on behalf of the respondent that (i) the search of his house and the seizure of gold by the police was illegal; (ii) that section 123 of the Customs Act was not applicable because the seizure was made not by the Customs Authorities but by the police under the Code- of Criminal Procedure and therefore the burden of proving the offence lay on the Police which it did not discharge.

Issue: Whether an illegal search will vitiate the trial? – relevant Sections of CrPC are 103, 105 and 165.

Analysis: Taking the first contention first, the court observed that the police had powers under the Code of Criminal Procedure to search and seize this gold if they had reason to believe that a cognizable offence was being committed. Even if the search was illegal (assuming), then also, it will not affect the validity of the seizure and further investigation by the Customs Authorities or the validity of the trial which followed on the complaint of the Assistant Collector of Customs.

CONSEQUENCES OF NON-COMPLIANCE

1. Magistrates not empowered to issue a search-warrant

- ★ According to **Sec 460**, any magistrate other than district magistrate, sub-divisional magistrate or magistrate of I class erroneously and in good faith issues a warrant, it shall not be ineffective merely on the ground that the magistrate was not empowered to issue.
- ★ According to **Sec 461**, any warrant issued for a document, parcel or things in the custody of postal or telegraph dept by magistrates other than district magistrate or chief judicial magistrate has no effect.
- ★ Search warrant for persons wrongfully confined issued by magistrate other than district magistrate, sub-divisional magistrate or magistrate of I class is illegal

2. Search without warrant by police officers not authorised:

A search conducted by any other police officer not belonging to a certain rank or other person is illegal and the entry into the house or place for such search would be unlawful and search outside the limits is illegal.

3. Effect of contravention of the search-procedure:

Section 100, 165, 166 provides the procedure to be followed in search. Contravention to these provisions is illegal or atleast irregular. According to **Sec. 465** non-compliance with the provisions of **Sec 100 and 165** will not vitiate the trial or make evidence of the search officer inadmissible in evidence.

4. Search with consent of the occupant:

Entry into the place of search are with the consent of the occupant, the search or recovery will not be affected on the ground that the search in **Sections 100** and **165** was not followed. Where it is alleged and proved that the articles were produced by the accused person himself, **Sec. 165** does not apply.

SEIZURE

- The word 'seize' has to be construed to mean taking physical possession as in the case of taking actual physical possession of movable property.
- A police officer during the investigation of any offence searches a place for any particular things, he has the power to seize such things if recovered in the search.
- It has a wide sweep and is not restricted to recoveries during the search alone, nor it is confirmed only to cases in respect of cognizable offences.

★ PROPERTY LIABLE TO SEIZURE*

1. stolen or suspected to be a stolen property
2. property which has direct link with commission of crime.

★ Object of crime should be considered

★ A police officer shall report to magistrate seizure of property and in case the property cannot be carried to court, to give it to a person executing bond for its production before the court.

★ A wide power is given to a police officer to seize property under this section should be availed only in those cases where he has the power to investigate into offences conferred by the code or by other laws.

DISPOSAL OF THE SEIZED PROPERTY

The police are not empowered to dispose of the property seized without the order of the competent court. Under **sub-section (2)** of Section **102 CrPC** the police are empowered to hand over the custody of the property seized which could not be retained in their custody for want of accommodation to any person on execution of a bond with a direction to produce before the court as and when required. So also where the property seized under **sub-section (1)** is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police. In all other cases and circumstances court is empowered to dispose of the property seized as per the provisions of **Sections 457 and 458 CrPC**.

Jai Sanatan Bharat
Vande Mataram
Jai Adi Shankaracharya
Jai Chandra Sekhar Azad

From Dr. BNR, Mentor, CSARD Foundation

Kalikata / Hastinapur / Bengaluru / Bhagyanagar / Boppidi / Chennapatnam / Mumbai
/ Gurugram / Indraprasta / Vijaywada / Visakhapatnam



Thank You