



Department of Distance Education

Punjabi University, Patiala

Class : B.A- III (Police Administration) Semester : VI
(Law and Police Administration) Unit : 2
Medium : English

Lesson No.

- 2.1. :** **Summons case and Warrant case, Bailable and Non-bailable offence**
 - 2.2. :** **Arrest (section 41) & Rights of Arrest Persons**
 - 2.3 :** **Lodging of First Information Report (FIR) (Section 154) & Effects of Refusal to Lodge FIR**
 - 2.4 :** **Power of Police to Investigate**
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 - 2.6 :** **Search (section 165)**
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LESSON-2.1**SUMMON AND WARRANT****Summon Case: Section 2(w)**

The definition of summon case is given in section 2(w) of Cr.PC and it runs as under: "Summons case means a case relating to an offence not being a warrant case".

Warrant Case: Section 2(x)

The term warrant case has been defined under section 2 (x) of Cr.PC as under:

"warrant case means a case relating to an offence punishable by death, imprisonment for life or imprisonment for a term exceeding two years".

It is important to mention here that a police report is defined in Cr.PC and according to the provisions of this Code 'Police report means a report forwarded by a police officer to a Magistrate under section 173 of Cr.PC. When in any warrant case instituted on a police report the accused appears or is brought before a Magistrate at the commencement of trial. A Magistrate shall satisfy himself that he has complied with the provision of the code.

Procedure of trial of Warrant Case

The Cr.PC lays down the procedure for a warrant case in following way:
Cases must be instituted upon police report

Section 238 of Cr.PC lays down the procedure of trial of warrant cases instituted upon police report and according to it procedure of trial is that copy of the police report and other documents to be provided to the accused on the institution of any warrant case when the accused appears or brought before a Magistrate at the commencement of the trial.

Discharge of accused on groundless charges

According to section 239 of Cr.Pc, upon receiving the police report and other documents and providing of the accused the Magistrate shall consider each report. He shall be provided a reasonable opportunity of hearing to accused and prosecution (it is commonly called charge argument); the Magistrate shall examine the accused if necessary. If the Magistrate finds that the charge against the accused is groundless he shall discharge the accused under section 239. He will also check the prima facie of the case.

The framing of Charge

Under section 240 of Cr.PC, if the Magistrate is of the opinion that there is a ground for presuming that the accused has committed an offence and is competent to try such offence which can adequately punish the accused in his opinion. Then the charge shall be framed against the accused in writing and trial will start.

Conviction of Plea of Guilty

If the accused pleads guilty, the Magistrate shall record the plea and may in his discretion convict him under section 241.

Evidence for the Prosecution

If the accused refuses to plead guilty and claims to be tried, the Magistrate shall fix a date for the examination of the witnesses under section 242.

Evidence for defence

Under section 243 on completion of prosecution witnesses, defence witnesses produced by the accused, the expenses on compelling the attendance of the witnesses shall be borne by the accused.

A. Cases instituted otherwise than upon police report

The procedure of trial for summons cases is less brief in nature and it is explained as under:

There is no need of framing of formal charge in summons cases.

Accused can be convicted or acquitted.

Summons case cannot be reopened after completed once.

The complainant can withdraw his complaint in a summons case. Its effect would be the acquittal of accused.

In summons cases summons are generally issued to the accused.

Accused is not required to be heard on the question of sentence in summons case.

In summons cases there is no need for arguments generally before substance prosecution.

In summons case if the accused pleads guilty the Magistrate shall record the plea and may convict him on that basis under section 252.

Thus, in summons case if the Magistrate does not convict the accused on his plea of guilty he shall proceed to hear the prosecution and take all evidence. He will also hear the accused and take all evidence produced by the accused under section 254(1). Similarly under section 257, on the satisfaction of the Magistrate he may permit the

complainant to withdraw his complaint thereupon the accused shall be acquitted. In a summon case no provisions authorizing the Magistrate to permit the cross-examination of any prosecution witnesses to be deferred or recall of any witness for further examination. In summon case when summon has been issued to the complainant and he fails to appear on fix date the accused may acquit unless for some reasons he thinks to adjourn the hearing of the case to some other day under section 257.

(B) Bailable and Non Bailable Offence: Section 2(a)

The offences committed by an accused mainly fall under two categories:

Bailable Offence

Non-Bailable Offence

Section 2 (a) of Cr.PC defines the term ‘Bailable and Non Bailable Offence’ and it runs as under:

“Bailable offence” means an offence which is shown as bailable in the First Schedule, or which is made bailable by any other law for the time being in force; and non-bailable offence means any other offence.”

(a) Bailable Offence

When any person accused for a bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a

Court, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail, such person shall be released on bail. In case of a bailable offence bail is a matter of right. If such officer or Court, thinks it fit such person maybe released on a personal bond without sureties. In case of bailable offence, one has to only file the bail bonds and no application is required.

(b) Non-Bailable offence

In case a person is accused of a non-bailable offence it is a matter of discretion of the court to grant or refuse bail and application has to be made in court to grant bail. Chapter XXXIII ‘Provisions as to Bail and Bonds’ from sections 436 to 450 of the Cr.PC deals with the various facets of bail. Thus, in case of non-bailable offences, as per section 437 CrPC and section 439 CrPC, the grant or refusal of the bail is a matter of discretion of the court which means bail can be granted by the court. Only condition is that it cannot be demanded as a right by the accused. In this context, section 437 runs as under:

Section 437: When bail may be taken in case of non-bailable offence

(1) When a person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a Court other than the High Court or Court of Session, he may be released on bail, but-

such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence punishable with death or imprisonment for life.

such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable

with death or imprisonment for life or imprisonment for seven years or more or he had been previously convicted on two or more occasions of a cognizable offence punishable with imprisonment for three years or more but not less than seven years.

Provided that the Court may direct that a person referred to in clause (i) or clause

(ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

Provided further that the Court may also direct that a person referred to in clause

(ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:

Provided also that the mere fact that an accused may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the Court:

Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, imprisonment for seven years or more, be released on bail by the Court under this sub-section without giving an opportunity of hearing to the Public Prosecutor.

If it appears to such officer or Court at any stage of the investigation; inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed non bailable offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, subject to the provision of section 446-A and pending such inquiry, be released on bail or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code (45 of 1860) or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1), the Court shall impose the conditions,-

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,

that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence,

and may also impose, in the interests of justice, such other conditions as it considers necessary. An officer or a Court releasing any person on bail under sub-section

or sub-section (2), shall record in writing his or its reasons or special reasons for so doing.

Any Court which has released a person on bail under sub-section (1) or sub-section (2), may, if it considers it necessary so to do, direct that such person be arrested and commit him to custody.

If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

If, at any time after the conclusion of the trial of a person accused of a non-bailable offence and before judgment is delivered, the Court is of opinion that there are reasonable grounds for believing that the accused is not guilty of any such offence, it shall release the accused if he is in custody, on the execution by him of a bond without sureties for his appearance to hear judgment delivered.”

Thus, it is crystal clear from the section 437 of Cr.PC that bailable offences are regarded as less grave and less serious, while non-bailable offences are grave and serious offences *viz.*, offence of murder. In bailable offences, bail is claimed as a matter of right, while in non-bailable offences, bail is a matter of discretion.

LESSION- 2.2**ARREST (section41) & rights of arrest person****Introduction**

An arrest is a procedure in a criminal justice system and it is the act of apprehending a person and taking them into custody, usually because they have been suspected of committing or planning a crime. After the person is taken into custody, they can be questioned further or charged by the legal authority. Police and various other officers have powers of arrest and in some places, arrest by private person is also permitted. Arrests can be made in both criminal and civil cases, although in civil matters, arrest is a drastic measure which is not looked upon with favor by the courts. In India, the Code of Criminal Procedure, 1973 (hereinafter read as Cr.PC), Chapter V (sections 41 to

talks about arrest of a person, but it is important to note the Cr.PC does not define arrest anywhere.

Arrest: Meaning and Purpose

The word "arrest" is Anglo-Norman in origin, derived from the French word '*arret*' meaning 'to stop or stay' and signifies a restraint of a person. Lexicologically, the meaning of the word arrest is given in various dictionaries

depending upon the circumstances in which the word is used. In other words, Arrest means apprehension of a person by legal authority resulting in deprivation of his liberty. For instance, when a police officer apprehended a pick-pocket he is arresting the pick-pocket; but, when a dacoit apprehends a person with a view to extract ransom, the dacoit is not arresting that person but wrongfully confining him. Secondly, every compulsion is physical restraint is not arrest but when the restraint is total and deprivation of liberty is complete, that would amount to arrest. Arrest of a person might be necessary under the following circumstances:

(1) For securing attendance of an accused at trial

When a person is to be tried on the charge of some crime, his attendance at the time of trial becomes necessary. If his attendance is not likely to be ensured by issuing a notice or summons to him, probably his arrest and detention is the only effective method of securing his presence at the trial.

(2) As a preventive or precautionary measure

If there is imminent danger of the commission of a serious crime *viz.*, cognizable offence, arrest of the person intending to commit such a crime may become necessary as a preventive measure. There may be other circumstances where it is necessary as a precautionary measure to arrest a habitual offender or an ex-convict, or a person found under suspicious circumstances.

(3) For obtaining correct name and address

Where a person, on being asked by a police officer, refuses to give his name and address, then under certain circumstances, it would be proper on the part of the police to arrest such a person with a view to ascertain his correct name and address.

(4) For removing obstruction to police

Whoever obstructs a police officer in the execution of his duty would be and should be liable to be arrested then and there by such a police officer. This is essential for the effective discharge of police duties.

(5) For retaking a person escaped from custody

A person who has escaped from lawful custody should be arrested forthwith by the police.

Decision to Arrest

There are the circumstances in which arrest of a person is essential or at least desirable. The determination as to the existence of such circumstances and the consequent decision to arrest should be made fairly having due regard to the liberty of the individual and the interests of the society. Ideally a judicial officer is best suited to decide such issues with a fair measure of reasonableness, impartiality and detachment. Therefore, basically it is for a Magistrate to make an arrest decision on the information generally obtained from the police or the complainant. If the Magistrate makes a decision to arrest he would issue a warrant of arrest. A warrant of arrest is a written order signed, sealed and issued by a Magistrate and addressed to a police officer or some other person specially named and commanding him to arrest the body of the (accused) person named in it. It would also be seen that there might be circumstances where prompt and immediate arrest is needed and there is no time to approach a Magistrate and obtain a warrant from him. For instance, in a case where a serious crime has been perpetrated by a dangerous person and there is every chance of the person absconding unless immediately arrested, it would be certainly unwise to insist on the arrest being made only after obtaining a warrant from a Magistrate. There may be occasions where preventive action may be necessary in order to avert the danger of sudden outbreak of crime, and immediate arrest of the trouble-maker may be an important step in such preventive action. In those cases, often the arrest decision will have to be made by a person other than a Judicial Magistrate. In such cases it is the investigating agency which has discretion to effect arrests. In exercising its discretion it may sometimes arrest some

individuals whereas there co-accused are not arrested and detained. In all cases where arrests are made by the investigating agency, however, the Code contemplates a judicial scrutiny soon after such arrest. According to section 57 of Cr.PC every person arrested without a warrant is required to be produced, before the Judicial Magistrate within 24 hours of his arrest. The police is reported to have been flouting this legal requirement quite often. In so many cases, the Indian judiciary ruled that whenever a complaint is received by a Magistrate that a person has been arrested within his jurisdiction but has not been produced before him within 24 hours or a complaint is made to him that a person is being detained within his jurisdiction beyond 24 hours of his arrest he can and should call upon the police officer concerned to State, whether the allegations are true, and if so, on what and under whose custody he is being so held.

Who Can Arrest

Arrest can be made by police officer, Magistrate or any private person etc., only in accordance with the legal provisions mentioned in Cr.PC. Section 45 of the Cr.PC. exempts the members of Armed forces from being arrested for anything done by them in discharge of their official duties except after obtaining the consent of the concerned Government.

Arrest by Police Officer

According to the Cr.PC, a police officer may arrest a person with or without warrant in the following conditions. In other words, a police officer may arrest a person:

- without a warrant under sections 41 and 151 of the Cr.PC
- with a warrant under sections 72 to 74 of Cr.PC
- under the written order of an officer in charge under sections 55 and 157

- under the orders of Magistrate under section 44 and in non cognizable offence under section 42 Cr.PC

- A superior Police officer may arrest under section 36 Cr.PC

- An Officer-in-Charge of a Police Station may arrest under section 42 and 157 Cr.PC

Arrest by Private Individual

According to section 43 of Cr.PC any private individual may arrest a person without warrant only when the person is a proclaimed offender under section 82 Cr.PC and the person commits a non-bailable offence and cognizable offences in his presence. Similarly, any private individual may also arrest a person with warrant under sections 72 and 73, under order of a police officer under section 37 and under order of a Magistrate under sections 37, 44 and 60 (1) of Cr. PC.

Arrest by Magistrate

According to section 44 of Cr.PC, any Magistrate, whether Executive or Judicial, may arrest a person when any offence is committed in his presence then he may himself arrest or order any person to arrest the offender and thereafter, subject to the provisions herein contained as to bail, may commit the offender to custody. A military officer may

arrest under sections 130 and 131 of the Cr.PC.

Types of Arrest

If the officer denies the arrest, the Magistrate can make an inquiry and pass appropriate orders. Further detention shall be illegal unless permitted by a competent Judicial Magistrate. Thus it would be seen that the Code contemplates two types of arrests:

arrest made in pursuance of a warrant issued by a magistrate; and

arrest made without such a warrant but made in accordance with some legal provision permitting such an arrest.

Arrest with a Warrant

There is distinction between cognizable and non-cognizable offences. Where a person has been concerned in a non-cognizable offences, he cannot, except in a few cases to be considered later, be arrested without a warrant. The Cr.PC however does not expressly empower a Magistrate to issue a warrant of arrest before taking cognizance of any such offence, much less does it mention the circumstances in which such a warrant can be issued. In the absence of any restrictive provision, it may perhaps be theoretically possible for a Magistrate to issue a warrant of arrest in case of a cognizable or non-cognizable offence even before taking cognizance of the offence; in practice a warrant for arrest is hardly ever issued prior to taking cognizance of the offence. A warrant for arrest may be issued by a Magistrate after taking cognizance of any offence, whether it is 'cognizable' or 'non-cognizable'. Here the distinction between a 'Summons Case' and a 'Warrant Case' is also very relevant. If the case in which the cognizance has been taken is a summons case, a summons shall be issued to the accused person in the first instance for his attendance in court; and if the case is a warrant case, a warrant for the arrest of the accused may normally be issued for causing the accused to be brought before the court. The Cr.PC however gives discretion to the Magistrate to depart from his general rule if the circumstance so demand in a particular case. For instance, if, at any time, the Magistrate has reason to believe that the accused has absconded or would not obey the summons, he may issue a warrant for his arrest.

However, the Magistrate has hardly any occasion to issue a warrant of arrest if he has taken cognizance of a cognizable offence on a police report, because, the police report is submitted to the Magistrate after the police has completed the investigation into the offence; and during the investigation the police has power to arrest without warrant a person involved in the commission of a cognizable offence. Further the police is under a legal duty to apprehend every person whom it is legally authorized to apprehend. These provisions lead to the arrest and production of the accused before the court during investigation and therefore there would be no occasion in practice of issuing a warrant after taking cognizance of a cognizable offence on a police report.

Cognizance of any offence under section 190 of Cr.PC can be taken by a Magistrate not only upon a police report but also:

(i) upon receiving a complaint, or

upon information received from any person other than a police officer, or
upon the knowledge of the Magistrate himself

In such cases or where the cognizance has been taken on a police report in respect of a non-cognizable offence, the Magistrate may issue a warrant for arrest in accordance with the above-mentioned rules. The detailed provisions have been made in sections 70 to 73 of the Cr.PC in respect of form and contents of a warrant for arrest. Form 2 in the Second Schedule indicates the form in which such a warrant may be issued. Provisions have also been made in sections 74 to 81 in respect of the mode of the execution of a warrant for arrest. Sections 37 and 38 of Cr.PC deal with the duty and power of a private citizen to assist in the execution of a warrant for arrest.

Arrest without a Warrant

Powers to arrest without warrant are mainly and widely conferred on the police; but in some circumstances these are conferred on others also. There are some cases where a police officer may arrest a person without warrant are specified in Schedule I of the Cr.PC. Section 41 enumerates nine categories of offences and cases relating thereto where a police officer may arrest any person without an order from a Magistrate and without a warrant.

(A) A police officer may arrest without a warrant

According to section 41 of the Cr.PC, any police officer may without the order from the Magistrate and without a warrant, arrest any person in following situations:

any person actually concerned or reasonably suspected to be concerned in a cognizable offence;

any person who, in the presence of such an officer, has committed or has been accused of committing a non-cognizable offence and refuses to give his true name or residence. In such a case the arrest is to be made for the purpose of ascertaining the name or residence and after such ascertainment the arrested person is to be released on his executing a bond (with or without sureties) to appear before a Magistrate if so required. If such ascertainment or execution of bond could not be had within 24 hours from the time of arrest, the arrested person shall be forwarded to the nearest Magistrate having jurisdiction;

any person concerned or reasonably suspected to be concerned in any act committed at a place outside India which if committed in India would be punishable as an offence for which he would be liable to be apprehended or detained in custody in India;

any person for whose arrest any requisition is received from another police officer competent to arrest that person without a warrant;

any person reasonably suspected of being a deserter from any of the Armed Forces of the Union;

any person found in possession of any implement of house-breaking without any lawful excuse;

any person found in possession of property reasonably suspected to be stolen, and who

may be reasonable suspected of having committed an offence with reference to such property;

any person obstructing a police officer in the discharge of his duties;

any person who has escaped from lawful custody;

any released convict committing a breach of any rule made under section 356(5);

any person designing to commit a cognizable offence which cannot be prevented (except) by the arrest of such a person;

(B) Arrest as a Preventive Measure

In addition, under section 41 (2) of Cr.PC a police officer in charge of a police station may, as a preventive measure, arrest without warrant any person belonging to one or more of the categories of persons specified in section 109 or section 110 of Cr.PC. *i.e.*, persons taking precautions to conceal their presence with a view to committing a cognizable offence; habitual robbers, house-breakers, thieves, etc., and persons habitually indulging in the commission of certain social and economic offences.

Thus, an unusual situation created by the unlawful arrest of a Magistrate by the police has made the Supreme Court issue the following guidelines to be followed by the State Governments and the High Courts while effecting the arrest of a subordinate judicial officer:

If a judicial officer is to be arrested for some offence, it should be done under intimation to the District Judge or the High Court as the case may be.

If the facts and circumstances necessitate the immediate arrest of a judicial officer of the subordinate judiciary, a technical or formal arrest may be effected.

The fact of such arrest should be immediately communicated to the District and Sessions Judge of the concerned District and the Chief Justice of the High Court.

The judicial officer so arrested shall not be taken to a police station, without the prior order or directions of the District and Sessions Judge of the concerned district, if available.

Immediate facilities shall be provided to the judicial officer, for communication with his family members, legal advisers and judicial officers, including the District and Sessions Judge.

No statement of a judicial officer who is under arrest be recorded nor any *panchnama* be drawn up nor any medical test be conducted except in the presence of the legal adviser of the judicial officer concerned or another judicial officer of equal or higher rank, if available.

There should be no handcuffing of a judicial officer. If however, violent resistance to arrest is offered or there is imminent need to effect physical arrest in order to avert danger to life and limb the person resisting arrest may be overpowered and handcuffed. In such case, immediate report shall

be made in the District and Sessions Judge concerned and also to the Chief Justice of the High Court.

The Court has added that these are not exhaustive and that if the arrest and handcuffing are found to be unjustified the police officer would be guilty of misconduct and personally liable for compensation or damages as may be summarily be the High Court.

(C) Any private person may arrest without a warrant

According to section 43 of Cr.PC, any private person without a warrant, arrest any person in following situations:

any person committing a non-bailable and cognizable offence in his presence; or
any proclaimed offender under section 82 Cr.PC.

Such a private person arresting another shall, without delay, make over the arrested person to a police officer or if necessary take the arrested person in custody to the nearest police station. The police officer may then re-arrest the person so handed over to him, if any of the above-mentioned provisions for arrest without a warrant by a police officer is applicable; and if no such provision is applicable, he shall at once release that person.

Any Magistrate may arrest without a warrant

According to section 44 of Cr.PC any Magistrate without a warrant, arrest any person in following situations:

any person committing any offence within the local jurisdiction of and in the presence of such Magistrate; or

any person within his local jurisdiction for whose arrest he is competent to issue a warrant.

Despite the above rules contained in (A), (B), (C) and (D), a member of the Armed Forces shall not be arrested for anything done or purported to be done by him in the discharge of his official duties excepts after obtaining the consent of the Government controlling the concerned Armed Force.

Procedure in relation to Arrest

Whether the arrest to be made is with a warrant or without a warrant, it is necessary that in making such an arrest the police officer or other person making the same actually touches or confines the body of the person to be arrested unless there be a submission to custody by word or action. An oral declaration of arrest without actual contact or submission to custody will not amount to arrest. The importance of the precise arrest-procedure becomes obvious while determining the questions as to whether at a particular time a person was under arrest or not. The mode of arrest has been prescribed in section 46 of Cr.PC and it runs as under:

Section 46: Arrest how made

“(1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

Provided that where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed and unless, the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest.

If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.

Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.”

Powers in relation to Arrest

The following powers have been given by the Cr.PC for effecting of an arrest:

Power to use force

According to section 41 (1) of Cr.PC the making an arrest may use all means necessary to make the arrest if the person to be arrested resist the endeavour to arrest him or attempts to evade the arrest. However the power to use necessary force for making an arrest shall not extend to causing the death of a person who is not accused of an offence punishable with death

or with imprisonment for life. It may also be noted that the person arrested is not to be subjected to more restraint than is necessary to prevent his escape.

Time and again the Supreme Court has been emphasizing the need for exercising caution in subjecting the arrested person to handcuffing. Since the police has been allegedly handcuffing arrested person indiscriminately in spite of the courts warnings, the Supreme Court has ordered thus:

“In all the cases where a person arrested by police is produced before the Magistrate and remand—judicial or non judicial—is given by the Magistrate the person concerned shall not be handcuffed unless special orders in this respect are obtained from the Magistrate at the time of the grant of the remand.”

Hence, when the police arrest a person in execution of a warrant of arrest obtained from a Magistrate the person so arrested shall not be handcuffed unless the police has also obtained order from the Magistrate for the handcuffing of the person to be so arrested. Where a person is arrested by the police without warrant the police officer concerned may if he is satisfied, on the basis of the guidelines given by Supreme Court, that it is necessary to handcuff such a person, he may do till the time he is taken to the police station and thereafter his production before the Magistrate. Further use of fetters thereafter can only be under the orders of the Magistrate.

Power to search a place

According to section 47 of Cr.PC, an occupier of a house is under a legal duty to afford to the police, and to any person acting under a warrant of arrest, all the facilities to search the house for the purpose of making arrests. If such facilities are denied or obstructions are put in the search, the police officer or other person executing a warrant, shall have power to use force for getting entry into the house for search and also for the purpose of liberating himself in case he is detained in the house. These powers are subject to reasonable restrictions if the part of the house to be searched in occupation of any pardanashin woman.

Power of pursue

Under section 48 of Cr.PC, a police officer may, for the purpose of arresting without warrant any person whom he is authorized arrest, pursue such a person into any place in India. In case the arrest is to be made under a warrant, section 77 of Cr.PC makes it clear that the warrant may be executed at any place in India. However, when a warrant of arrest is to be executed outside the local jurisdiction of the court issuing it, a special procedure as prescribed in section 78 to 81, will have to be followed.

Power to obtain Assistance

A police officer can reasonably ask any person to assist him in the taking of a preventing the escape of any other person whom he (the officer) is authorized to arrest. The person asked to assist is under a legal obligation to give assistance and any intentional failure on his part is punishable under section 187 of the Indian Penal Code, 1860.

Power to require subordinate officer to arrest Any officer in charge of a police station, or any police officer making an investigation under Chapter XII of the Cr.PC can require any subordinate officer to arrest without a warrant (other than in his presence) any person who may lawfully be arrested without a warrant, and shall deliver to the officer so require an order in writing, specifying the person to be arrested and the offence or other cause for which the arrest is to be made.

Power to re-arrest escape

According to section 60 of Cr.PC, if a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in India. The person making such a re-arrest shall have the same powers and duties as mentioned above in respect of using force for arrest, and of search of place etc.

It is very important to note that under section 46 (4) there is a general rule that females are not to be arrested without the presence of a lady constable and no female be arrested after sunset but there are exceptions in some cases, where crime is very serious and arrest is important then the arrest can be made with special orders and it depends on facts and circumstances of each case. In this context, separate lock ups to be provided for them

Procedure after Arrest

There are certain statutory provisions in the Cr.PC regarding the procedure adopted after the arrest such as:

Search for arrested person

According to section 51 of Cr.PC whenever a person who is arrested cannot legally be admitted to bail, or is unable to furnish bail, the police officer making the arrest (or to whom the arrested person is made over after arrest by a private person) may search such a person, and place in safe custody all articles, other than necessary wearing apparel, found upon him. A receipt showing the articles so seized shall be given to such a person. The police's failure to take out a recovery memo, an irregularity, was however held not vitiating the trial. Where the arrested person is a woman the search shall be made by another woman with strict regard to decency.

Seizure of offensive weapons

According to section 52 of Cr.PC, the police officer or other person making an arrest may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the court or officer before which or whom the arrested person is to be produced.

Medical Examination of accused

According to section 53 of Cr.PC, if the offence with which the arrested person is charged is of such a nature and is alleged to have been committed under such circumstances

that the evidence as to the commission of the offence would be afforded by the medical examination of such an arrested person, then, at the instance of a police officer not below the rank of a sub-inspector, such examination could be made by a registered medical practitioner in order to ascertain the facts that might afford such evidence. For the purposes of such medical examination such force as is reasonably necessary could also be used. If the person to be so examined is a woman the examination shall be made by, or under the supervision of, a registered lady medical practitioner. Such medical examination has been held to be not violation of Article 20(3) of the Indian Constitution as it would not amount to compelling the arrested person “to be witness” against himself. The examination is not restrictively confined to what is visible on the body itself; it may include testing of blood, sputum, semen, urine etc., depending upon the nature of the case. If the process of examination is reasonable, then the discomfort, pain or hurt caused to the examinee in such examination is justified by the section.

Though the examination is to be done at the instance of a police officer not below the rank of sub-inspector, that does not mean that other superior police officers or the court concerned are debarred from exercising the power under section 53 if such examination becomes necessary for doing justice in a criminal case. Even if an accused person is released on bail he is still a person arrested on a charge of committing an offence as contemplated by section 53; moreover such a person while released on bail is nationally in the custody of the court (through the surety) and therefore his medical examination can be carried out in terms of section 53 of the Cr.PC.

Report of arrests to be sent to District Magistrate

According to section 58 of Cr.PC, every officer in charge of a police station is required to report to the District Magistrate the cases of all persons arrested without warrant, within the limits of his station.

Person arrested not to be discharged except on bond or bail

According to section 59 of Cr.PC, a person who has been arrested by a police officer shall not be discharged except on his own bond or on bail or under the special order of a Magistrate.

Rights of Arrested Person

The Cr.PC gives wide powers to the police for arresting a person. Such powers without appropriate safeguards for the arrested person will be harmful for the society. To ensure that this power is not used arbitrarily, several restraints have been put on it, which, indirectly, can be seen as recognition of the rights of a person being arrested. Thus, to meet the needs of “fair trial”, several provisions are given in Cr.PC that gives specific rights to an arrested person, such as:

Right to be informed about the grounds of Arrest

Right to be informed of the grounds of arrest is provided by section 50 of Cr.PC and Article 22 of Indian Constitution and it is a fundamental right to be informed. It is the duty of the police officer to inform the arrest person whether the offense is bailable or non-bailable.

Right to see the warrant

In non-cognizable cases, arrests are made with a warrant and the person going to be arrested has a right to see the warrant under section 75 of Cr.PC and warrant of arrest should fulfill certain requirements such as it should be in writing such as signed by the presiding officer, should have the seal of the court, Name and address of the accused and offense under which arrest is made. If any of these is missing, the warrant is illegal. The police officer must be wearing a clear, visible and clear identification of his name which facilitates easy identification. A memo of arrest must be prepared at the time of arrest (i) attested by least one witness, it can be a family member or member of the locality where an arrest is made (ii) countersigned by arrested person.

Meet the Legal Practitioner

Right of arrested person to meet an advocate of his choice during interrogation is recognized under sections 41D and 303 of the Cr.PC.

Inform Family Member, Relative or Friend

An arrested person has a right to inform a family member, relative or friend about his arrest under section 50 of Cr.PC.

Production before Magistrate

According to section 57 of Cr.PC, an arrested person have right not to be detained for more than 24 hours, without being presented before a Magistrate, it is to prevent unlawful and illegal arrests. This right is a fundamental right under Article 22 of the Indian Constitution. This is a healthy provision that allows Magistrates to keep a check on the police investigation. If a police officer fails to produce an arrested person before a Magistrate within 24 hours, he shall be held guilty of wrongful detention.

Medical Examination

According to sections 54 and 54A of Cr.PC, an arrested person has the right to be medically examined.

Right to Remain Silent An arrested person has a right to remain silent under Article 20(3) of Indian Constitution so that police cannot extract self incriminating statement from a person without a will or without his consent.

Right to Free Legal Aid

The State is under Constitutional mandate to provide free legal aid to an indigent accused person and this Constitutional obligation arises not only when the trial is commenced but also when the person is first produced before a Magistrate and also when he is remanded from time to time. The Indian Judiciary also held in so many cases that it is the duty on all courts and Magistrates to inform the indigent person about his right to get free legal aid.

LESSON-2.3**LOADING OF FIRST INFORMATION REPORT (FIR) (SECTION 154) & EFFECTS OF REFUSAL TO LODGE FIR****Introduction**

The information as recorded under section 154 the Code of Criminal Procedure, 1973 (hereinafter read as Cr.PC) is usually known and referred to as the 'First Information Report' or simply as FIR, which is the abbreviated form of 'First Information Report'. As will be seen later, the evidentiary value of FIR is far greater than that of any other statement recorded by the police during the course of the investigation. FIR and investigation plays an important part in administration of criminal justice. It is the first information report which begins in investigation, and it is the investigation which collects evidence for trial that determines that a prima facie case exist against the accused or not. Sections 154 to 173 of the Cr.PC contained the various provisions for first information report and investigation.

Meaning of First Information Report (FIR)

Section 154 of Cr.PC, used the word report. The word 'first information report' have a legal import. It may be possible that there may be more than one report about the one and the same incident. In such cases, the first report would be a report under this section. The first information report is the earliest report made to the police officer with a view to his taking action in the matter.

10. 2 FIR in respect of Cognizable Offences

Any person aware of the commission of any cognizable offence may give information to the police and may, thereby set the criminal law in motion. Such information is to be given to the officer-in-charge of the police station having jurisdiction to investigate the offence. The information so received shall be recorded in such a form and manner as is provided in section 154. That section is intended to ensure the making of an accurate record of the information given to the police. Section

154 runs as under:

Section 154: Information in cognizable cases

“(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

Provided that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB, section 376E or section 509 of the Indian Penal Code is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer; Provided further that— in the event that the person against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB, section 376E or section 509 of the Indian Penal Code is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of

an interpreter or a special educator, as the case may be;

the recording of such information shall be videographed;

the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5A) of section 164 as soon as possible.

A copy of the information as recorded under Sub-Section (1) shall be given forthwith, free of cost, to the informant.

Any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in Sub-Section

may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.”

Thus, according to section 154 of the Cr.PC, following are the main component of FIR:

If the information is given orally to the officer-in-charge of the police station, it shall be reduced to writing by the officer himself or under his direction.

If the information is given in writing, or if reduced to writing as aforesaid, the writing shall be signed by the informant.

The information is taken down in writing shall be read over to the informant.

The substance of the information shall then be entered, by the police officer, in a book to be kept by such an officer in the form prescribed by the State Government.

A copy of the information as recorded above shall be given forthwith, free of cost, to the informant.

If the officer-in-charge of the police station refuses to record the information, any person aggrieved by such refusal may send, in writing and by post, the substance of such information to the Superintendent of Police concerned. If the Superintendent is satisfied that such information discloses the commission of a cognizable offence, he shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him. Such an officer shall have all the powers of an officer-in-charge of the police station in relation to that offence.

☐ ☐ **Telephonic Message**

A telephonic message recorded in police diary from an unknown person received by a police officer or a person in the police station that one unknown person was murdered is only a cryptic and anonymous message and does not clearly specify the cognizable offence. Although it being the information first in time, but it could not be construed as FIR.

Signature on FIR

Informant's signature is required. But it is only a procedural not mandatory provision. It will not affect the value of FIR.

Information may be oral or in writing Information may be given orally or writing. If it is given orally to the officer in charge of the police station, it shall be reduced to writing. In both the cases, it has to be signed by the person making the report. In case of an oral report, the police officer has to read it to the informant.

Shall be signed

The maker of the report should sign after making the report. The fact that the report was made is relevant, but it cannot be said with confidence as to who made it. It has been held that the failure to sign is only a technical formality and if the information is known, the report is admissible. The absence of signature on FIR of the informant is not necessarily fatal to the case not to the admissibility.

FIR: Where to be made

A report of cognizable offence or cognizable case can be made at the police station within the local limits of which the offence takes place or at any other police station. It is to be borne in mind that a report under section 154 is to be made only at the police station and not at a beat house or at out-post police station. Reports made at out posts are not first information under section 154.

FIR: By whom to be made

It is not necessary that FIR should be lodged by the victim, it may come from any quarter. FIR need not contain the details of events but only basic features to set the law into motion. It is important to note that in several judgments, the Indian judiciary expressed that a Magistrate while directing investigation of an offence has no power to direct the police to record FIR. It is the function of the Police officer to register FIR.

FIR: To whom to be made

When a report of a cognizable case is made at a police station, it has to be made to the officer in charge of the police station. According to section 2 (o) of Cr.PC, “Officer-in-charge of the police station includes, when the officer in charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when, the State Government so directs, any other police officer so present.”

It is also relevant to note that First information report may be made to a superior officer, because section 154 does not create any bar to the making of a report to a superior officer.

Evidentiary value of FIR

Though the FIR is not substantive evidence, but it can be used to corroborate the information under section 157 of the Indian Evidence Act, 1872 or to contradict him under section 145 of that Act, if the information is called as witness at the time of trial. Obviously, the FIR cannot be used for the purposes of corroborating or contradicting any witness other than the one lodging the FIR. The FIR can have better corroborative value if it is recorded before there is time and opportunity to embellish or before the informant's memory fails. Undue or unreasonable delay in lodging the FIR therefore, inevitably gives rise to suspicion which puts the court on guard to look for the possible motive and the explanation and consider its effect on the trustworthiness or otherwise of the prosecution version. The fact that the FIR does not contain the names of the accused or of the eye-witness, is normally an important circumstance, but the omission loses its significance if the FIR is from a person other than an eye witness.

If the FIR is given to the police by the accused himself, it cannot possibly be used either for corroboration or contradiction because the accused cannot be a prosecution witness, and he would very rarely offer himself to be a defence witness under section 315 of the Cr.PC.

Moreover, if the FIR is of a confessional nature it cannot be proved against the accused-informant, because according to section 25 of the Indian Evidence Act, 1872 no confession made to a police officer can be proved as against a person accused of any offence. But it might become relevant under section 8 of the Evidence Act as his conduct. If the FIR given by the accused person is non-confessional, it may be admissible in evidence against the accused as an admission under section 21 of the Evidence Act or again, as showing his conduct under section 8 of the Evidence Act, 1872.

Though, generally speaking the contents of FIR can be used only to contradict or corroborate the maker thereof, there may be cases where the contents become relevant and can be put to some other use also.

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LESSON- 2.4**POWER OF POLICE TO INVESTIGATE**

Investigation begins with the 'first information report' (hereinafter read as According to section 155 of Code of Criminal Procedure, 1973 (hereinafter read as Cr.PC), if FIR is regarding any non-cognizable offence then such information shall be recorded in the related register and the person giving information will be referred to the Magistrate. It means that investigation cannot be done without the order of the Magistrate in non-cognizable offences. But in cognizable offence, there is no need of the order of the Magistrate to begin the investigation. But if report or complaint is in respect of both cognizable and non-cognizable offences then the police officer can investigate cognizable offence along with the non-cognizable. The legal provisions regarding in this respect is laid down in Chapter XII entitled 'Information to the Police and their Powers to Investigate' under sections 154 to 176 of the Cr.PC, but it is important mention here that section 154 deals with the FIR *i.e.*, information to the Police. The remaining sections deal with the different facets of investigation under Cr.PC.

Meaning of Investigation

In common parlance, "investigation" and "inquiry" are used as synonymous or interchangeable terms. The Cr.PC, however, uses them differently and with specific distinct connotations. "Investigation", according to the Code, is to be conducted always by a police officer or any other authorized person (other than a Magistrate); it includes all the proceedings under the code for the collection of evidence. A preliminary inquiry prior to the registration of the case, even if by a Deputy Superintendent of Police, is not, however, part of the investigation. An "inquiry", according to the Code, means every inquiry which is conducted by a Magistrate or court and which is not a trial. An "inquiry" is never conducted by the police, though in common parlance we talk to police inquiries. Broadly speaking, the investigation of an offence consists of:

Proceeding to the place of offence; Ascertainment of the facts and circumstances of the case;
Discovery and arrest of the suspected offender;
Collection of evidence relating to the commission of the offence which may consist of: the examination of various persons including the accused, and the reduction of their statements into writing if the police officer making the investigation thinks fit;

the search of places or seizure of things considered necessary for the investigation or trial;

Formation of the opinion as to whether on the materials collected, there is a case to place the accused before a Magistrate for trial, and if so, taking the necessary steps for the same by the filing of a charge-sheet (it is commonly known as *Challan*) under section 173 of Cr.PC.

Report to be send to Magistrate

According to section 157 of Cr.PC, as soon as a police officer records a FIR, he shall forthwith send a copy of such report without any delay to the Magistrate for cognizance through a police officer. When FIR is received, Officer-in-charge or his subordinate officer shall investigate the facts and circumstances of the case.

Who can investigate?

The Code does not confer the power to investigate on every police officer. According to section 156, only an officer in charge of a police station or any other officer of the higher rank, is empowered to investigate. It may be that such an officer may depute his subordinate officers (not below the rank prescribed by the State Government in this behalf) to investigate the facts and circumstances of any particular case. The principal agency for carrying out investigation of offences is police; and the police can proceed to investigate:

On the information received from any person as to the commission of any cognizable offence; or Even without any such information, but if they have reason suspect the commission of any cognizable offence; or

On receiving any order to investigate from any Judicial Magistrate empowered to take cognizance of any offence.

Powers of Police to Investigate

The power of police to investigate may start when FIR is given under section 154 of Cr.PC or when the competent Magistrate orders the police under section 156 (3) without taking cognizance of the offence on a complaint under section 200 of Cr.PC. However, following are the other important powers of police in relation to investigation under Cr.PC, namely:

Power to Investigate in cases of non-cognizable offence

According to section 155 (2) of Cr.PC, no police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial. But when the Magistrate gives order in this regard and any police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

Power to Investigate in cases of cognizable offence

In case of cognizable offence, the investigation is initiated by the giving of information under section 154 of Cr.PC to a police officer and the police officer's powers to investigate in cognizable offence is given under section 156 of Cr.PC. In this context, section 157 of Cr.PC, laid down the procedure for investigation. So, these provisions are explained as under:

Section 156: Police officer's power to investigate cognizable case

Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.”

Section 157: Procedure for Investigation

“(1) if, from information received or otherwise, an officer-in-charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and the circumstances of the case, and if necessary, to take measures for the discovery and arrest of the offender:

Provided that-

when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.

Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality.

In each of the cases mentioned in clauses (a) and (b) of the proviso to sub- section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that sub-section, and, in the case mentioned in clause

(b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated.” Thus, these provisions requires that if from information received or otherwise an officer-in-charge of the police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send the report of the same to the Magistrate empowered to take cognizance of the offence upon a police report. This is really designed to keep the Magistrate informed of the investigation of such cognizable offence so as to be able to control the investigation and if necessary to give appropriate direction or to proceed at once or depute any Magistrate subordinate to him to proceed to hold a preliminary enquiry into or otherwise dispose of the case in the manner provided in the Code under

section 159 of Cr.PC.

The section is mandatory and the sending of occurrence report is a step which is an essential preliminary to an investigation. The failure to send such report is a serious neglect of duty and is likely to result in failure of justice as it lays the police open to the suspicion concocting false evidence. But the failure does not vitiate the trial if there is no prejudice.

Section 158: Report how submitted

“(1) Every report sent to a Magistrate under section 157 shall, if the State Government so directs, be submitted through such superior officer of police as the State Government, by general or special order, appoints in that behalf.

Such superior officer may give such instructions to the officer-in-charge of the police station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.”

Section 159: Power to hold investigation or preliminary inquiry

“Such Magistrate, on receiving such report, may direct an investigation, or, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to hold a preliminary inquiry into, or otherwise to dispose of, the case in the manner provided in the Code.”

Power of Police to require attendance of Witness

For effective investigation the police must be able to obtain information from persons acquainted with the facts and circumstances relevant to the commission of the offence under investigation. It is, therefore, necessary to empower the investigating officer to call for and to secure the attendance of persons who are likely to have relevant information. According to section 160(1), an investigating police officer may by order require the attendance before himself of any person, if the following conditions are satisfied:

The order must be in writing;

The person to whom the order is made is one who appears to be acquainted with the facts and circumstances of the case;

Such a person is within the limits of the police station of the investigating police officer or is within the limits of any adjoining police station.

Power of Police to Examination of Witnesses

According to section 161 (1) of Cr.PC, in order to facilitate the collection of evidence, the investigating police officer has been given power to examine orally any person supposed to be acquainted with the facts and circumstances of the case. Such a person is required to answer truly all questions relating to the case put to him by such an officer; however, he is not bound to answer such questions, the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture. If a person, being legally bound to answer truly all questions relating to such a case, refuses to answer any such question demanded of him, he is liable to be punished under section

179 of the Indian Penal Code, 1860 (hereinafter read as IPC). Further, if such a person gives an answer which is false and which he either knows or believes to be false or does not believe it to be true, he is liable to be punished under section 193 of IPC for giving false evidence.

Evidentiary value of statement made to the police officer

Section 162 provides (1) that statements written under section 161 shall not be signed, and (2) that the statement shall not be used for any purpose except for contradicting the witness if he is examined by the prosecution. In other words investigating officer will not be able to take signature of witness over such statements. Here it is important that statements made by witnesses during investigation can not be used as substantial evidence. It is important to note that the statements made to the police are of three categories:

A statement which has been recorded as an FIR

A statement recorded by the police in the course of the investigation

A statement recorded by the police but not falling under the above (1) or (2) category

Under section 163 of Cr.PC, no police officer shall offer any such inducement, threat or promise to any person and prevent any person from making any statement with his own free will. Under section 164 of Cr.PC, if during the investigation any accused wants to make confession or any witness wants to make a statement, then the investigating officer should produce such accused or witness before the Magistrate through proper method. Magistrate shall record such confession properly. The Magistrate shall record confession only when he is satisfied that it is being made voluntarily. Also, the Magistrate shall before recording any such confession, explain to the person make it that-

He is not bound to make a confession, and

Such confession may be used as evidence against him. Power of Search by Police during Investigation

Under section 165 of Cr.PC, during investigation, police officer can search any place where there is possibility of finding things related to the offence. During such search, a list of things found shall be made and a copy of it shall be provided to the person who is the owner or occupier of that place. It is expected that the list of such things shall be made the place where they are found.

Power in relation to Police Custody

Under section 167 of Cr.PC, when the investigation cannot be completed within 24 hours, then the arrested person shall be produced before the nearest Magistrate and such person can be kept in police custody after 24 hours only, by the order of the Magistrate. It is called 'Remand'. The duration of this police custody cannot be more than 15 days. If such person is in judicial custody and the investigation is still pending then he shall be released on bail after following duration:

after 90 day, when investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years, after 60 days, where it relates to any other matter.

Power to submit charge-sheet

Under section 168 of Cr.PC, when the investigation is completed, then the investigating officer shall report the result of such investigation to the officer-in-charge of the police station. Under section 169, if no evidence is found or is insufficient evidence against the accused, then the accused shall be released on proper bond. Under section 170 of Cr.PC, if there are sufficient evidence against the accused then he shall be sent to the Magistrate for proper trial.

After the completion of investigation, a charge-sheet against accused under section 173 shall be produced before the Magistrate. It is also called '*Challan*' or '*Charge-sheet*'. It mentions various important points *viz.*, name of the parties; nature of information; names of persons who appear to be acquainted with the circumstances of the case; whether any offence appears to have been committed, and if so by whom; whether the accused has been arrested; whether he has been released on bond, and if so, whether with or without sureties; whether he has been forwarded in custody under section 170 etc.

Power in the case of suicide and unnatural death

Section 174 of Cr.PC is a legal provision that deals with the procedure that the police and the Magistrate need to follow in cases of suicide and unnatural death. Section 174 runs as under:

Section 174: Police to inquire and report on suicide, etc.

“(1) When the officer in charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any); such marks appear to have been inflicted.

The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Sub-divisional Magistrate.

When—

the case involves suicide by a woman within seven years of her marriage;
or

the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman; or
the case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in this behalf; or there is any doubt regarding the cause of death; or

the police officer for any other reason considers it expedient so to do, he shall, subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the State Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub-divisional Magistrate and any other Executive Magistrate specially empowered in this behalf by the State Government or the District Magistrate.”

Procedure to be followed on completion of Investigation **Release of accused when evidence is deficient**

Section 169 of Cr.PC deals with power of police to release of accused when evidence is deficient. According to section 169, if upon investigation it appears to the officer in charge of the police station that there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such an officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report, and to try the accused or commit him for trial.

Cases to be sent to Magistrate when evidence is sufficient Under section 170 of Cr.PC, the following procedure to be followed when accused is forwarded to a Magistrate:

If upon investigation there is sufficient evidence or reasonable ground to justify the forwarding of the accused to a Magistrate, the officer in charge of the police station shall forward the accused under custody to a competent Magistrate, or if the offence is bailable and accused is able to give security, shall take security from him for his appearance before such a Magistrate.

In a situation mentioned in (a) above, the officer in charge of the police station shall send to such a Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant (if any) and the witnesses to execute a bond to appear before the Magistrate as thereby directed and prosecute or give evidence (as the case may be), in the matter of the charge against the accused.

A complainant or a witness on his way to any court is not required to accompany a police officer, nor is he to be subjected to unnecessary restraint or inconvenience or to be required to give any security for his appearance other than his own bond. However, if such a person refuses to attend or to execute a bond as directed in section 170(2), the officer in charge of the police station may forward him in custody to the Magistrate who may detain him in custody until he executes such a bond, or until the hearing of the case is completed.

Report of police on completion of investigation

The following points to be ensured before a police report is submitted:

According to section 173 of Cr.PC, every investigation is required to be completed without unnecessary delay. As soon as the investigation is completed, a report is to submitted to the Magistrate having jurisdiction. If the report alleges the commission of a crime by an accused person, the report is commonly called the “charge-sheet” or the “challan”.

The report is to be in the form prescribed by the State Government, stating:

The names of the parties; The nature of the information;

The names of persons who appear to be acquainted with the circumstances of the case;

Whether any offence seems to have been committed and if so, by whom;

LESSION- 2.5

COGNIZABLE AND NON- COGNIZABLE OFFENCE AND PUBLIC PROSECUTOR**A. COGNIZABLE AND NON- COGNIZABLE OFFENCE: SECTION 2 (C) AND (L)**

Offence implies an illegal act or a crime. In finer terms, offence entails any act, which is punishable in nature and against which a complaint is registered, with the appropriate authority, *i.e.*, police or magistrate. The offence can be classified as a cognizable offence and non-cognizable offence also, wherein the cognizable offence means the one in which the police can arrest the accused without a warrant. Section 2(c) of defines the term ‘cognizable offence’ as under:

“Cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant.”

On the other hand, the non-cognizable offence can be described as the offence in which the police cannot arrest any person without warrant and express permission of the court is also required for investigation. When it comes to crimes, one should know about the differences between cognizable and non-cognizable offence, to understand the law in a better way. Section 2(l) of defines the term ‘non-cognizable offence’ as under:

"Non-cognizable offence means an offence for which, and "non-cognizable case" means a case in which, a police officer has no authority to arrest without warrant.”

Thus, the offence in which the police officer does not require any warrant to arrest the accused and has the authority to begin an investigation without any permission of the court is known as a cognizable offence. In such kind of offences, once the accused is arrested, he/she will be produced before the Magistrate, in the stipulated time. As the crime is serious in nature, court’s approval is implicit, in cognizable offences. The first information report (commonly termed as FIR) is lodged only in case of cognizable crimes. Cognizable Offences are severe crimes *viz.*, murder, rape, rioting, theft, dowrydeath, kidnapping, criminal breach of trust and like other types of heinous offences. While on the other hand, non-cognizable offences are the offences listed under the First Schedule of Cr.PC and are bailable in nature. When an offence is non-cognizable, the police has no right to arrest the accused without a warrant, as well as they are not entitled to start an investigation without prior approval of the court. It includes crimes like forgery, assault, cheating, defamation, public nuisance, hurt, mischief etc. In non-cognizable offence judicial process initiates by lodging a criminal complaint with the Magistrate, who then orders the concerned police station to investigate the crime accordingly, after which a charge sheet is filed with the court, which is followed by the trial. After the trial, the court will pass orders regarding the issue of a warrant to arrest the accused.

8.2 Compliant: Section 2 (d)

“Complaint” is defined under section 2 (d) of Cr.P.C. and it runs as under: “Complaint means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report”.

Therefore, the complaint within the meaning of section 2 (d) Cr.P.C. should be any allegation made orally or in writing to a Magistrate and the same should be with a view to his taking action under the Code, and that the allegation should be that some person has committed an offence.

Important note: The detailed study, in this context, is contained in Section C, Lesson No 4, under the title of “Complaint Cases”.PUBLIC PROSECUTER

-Introduction

Prosecutor, government official charged with bringing defendants in criminal cases to justice in the name of the state. Although responsibilities vary from one jurisdiction to another, many prosecutors are in charge of all phases of a criminal proceeding, from investigation by the police through trial and beyond to all levels of appeal. Many also defend the state in civil actions. In the United Kingdom, prosecution is carried out in the name of the crown. In this sense the crown can be said to prosecute, and the prosecution is often referred to as “the crown. A Public Prosecutor is considered as the agent of the state to represent the interest of common people in the criminal justice system. The prosecution of the accused is the duty of the state but not individually the duty of the aggrieved party. They are appointed in almost all countries. The Public Prosecutor is defined in **Section 24** of Cr.P.C. They serve as the basic principle of Rule of Law i.e. *auld alteram partem* (no person shall be condemned unheard).

Meaning

Section 2(u) of the Code of Criminal Procedure defines Public Prosecutor.

“A person who is appointed under Section 24 of CrPC and it also includes any person who is acting under the directions of Public Prosecutor.”

In the case of Babu vs State of Kerala,

The Court observed that Public Prosecutors are ministers of justice who is duty bound to assist the judge in the administration of justice.

Functions

The functions of the Public Prosecutor differ according to their designation.

- Public Prosecutor- supervise the function exercised by the Additional Public Prosecutor in Session Court and High Court. Chief Prosecutor- supervise the functions

exercised by Assistant Public Prosecutor in Metropolitan Magistrate Court.

- Additional Prosecutor- conduct criminal proceedings in the Session Court.
- Assistant Public Prosecutor- they examine the charge sheet prepared by agencies and submit the acquittal or discharge. They also are responsible for the evaluation of evidence and filing revisions petitions. They also conduct the criminal proceedings in the Court of Metropolitan Magistrate.
- Director of Prosecution- it is the head office. They exercise the overall control and supervision of officers of Directorate. They also look after the Account Branches.

The objective of establishing a Directorate of Public Prosecutors is to supervise and scrutinise the functions relating to various prosecution agencies at Assistant Session level and Session level except at High Court.

Reasons for the Appointment of Public Prosecutor

Whenever any crime is committed against a group or individual, it is assumed that it has been committed against society. It is the duty of the state to provide justice to any group of society or person who is affected by the crime. In India, it is necessary that the criminal justice system should function within the limits of the Indian Constitution, which means that it is necessary for the Public Prosecutor to act in accordance with the principles of:

- Equality before law
- Protection against double jeopardy
- Protection against self-incrimination
- Protection against ex-post law
- Right to life and personal liberty except procedure established by law
- Presumption of innocence until proven guilty
- Arrest and detention must be in accordance with the provisions of Cr.P.C.
- Equal protection of laws
- Speedy trial
- Prohibition of discrimination
 - Right of accused to remain silent

It is divided into two parts:

- In investigating process
- During the trial

Role of the Public Prosecutor in the investigating process

- To make an appearance in the Court and obtain an arrest warrant
- To obtain search warrants for conducting a search in specified premises

- To obtain police custody remand for interrogation (including custodial interrogation) of the accused
- To initiate a proceeding for the declaration of the non-traceable offender as the proclaimed offender
- To record the evidence of accused in the police report regarding the advisability of the prosecutions

Role of Public Prosecutors at the time of trial

- Sentencing- when the accused is proven guilty, then the defence counsel and the Public Prosecutor further argue to decide the quantum of punishment. At this stage, the Public Prosecutor may argue for the adequate punishment keeping in mind the facts, circumstances of case and gravity of the offence. It helps the judge to arrive at a judicious decision.
 - To conduct a speedy trial- Right to a speedy trial is a fundamental right and it is impliedly given in **Article 21** of Constitution of India which states “Right to life and Personal Liberty”. The prosecutors have a responsibility to call all the witnesses whose evidence is essential to decide the case. To cross-examine the witness and to see that no witness is left unexamined. To produce all the necessary documents. Other Important Roles
- The Public Prosecutor cannot aggravate the facts of the case or deny to examine the witness whose evidence may weaken the case. The main aim must be to discover the truth.
- He should not defend the accused. It is against the fair play of administration of justice or against the legal profession.
- He represents the State, not police. He is an Officer of State and is appointed by State Government. He is not a part of any investigating agencies but an independent authority. He is charged with statutory duties.
- Superintendent of police or District Magistrate cannot compel the Public Prosecutor to withdraw the case.
- If there is an issue which is raised by defence counsel and failed, it should be brought out in the notice of the court by Public Prosecutor.
- To ensure that justice is done.

Provision Under Cr.P.C

Hierarchy of Public Prosecutor according to **Section 24**:

- The Public Prosecutor appointed by Central Government
- The Public Prosecutor appointed by State Government
- Additional Public Prosecutor appointed by State Government.
- Special Public Prosecutor appointed by Central Government
- Special Public Prosecutor appointed by State Government.

Section 24 of Cr.P.C talks about the appointment of Public Prosecutors in the District Court and High Court by the state government and central government respectively.

Sub-section 3 states that the Public Prosecutor needs to be appointed for each district and may also appoint Additional Public Prosecutor.

Subsection 4 states that the District Magistrate in consultation with Session judge needs to prepare a panel of names which is considered as fit for such an appointment.

Subsection 5 states that the person can't be appointed as a Public Prosecutor or Additional Public Prosecutor by the State Government in a district unless his names are on the panel prepared under subsection 4.

Subsection 6 explains that in a case where a state has a local cadre of prosecuting officers, but there is no suitable person in such cadre for an appointment the appointment must be made from the panel prepared under subsection 4.

Subsection 7 states that person can be appointed as Public Prosecutor only after he has been practised as an advocate for the minimum period of 7 years.

Section 25 of Cr.P.C states that the Assistant Public Prosecutors is appointed in the district for the purpose of conducting prosecution in Magistrate Court. The court may appoint one or more Assistant Public Prosecutors for the purpose of conducting a case.

If there are no Assistant Public Prosecutors then District Magistrate may appoint any other person to act as the Assistant Public Prosecutors.

Section 321 permits the Public Prosecutor or Assistant Public Prosecutor to withdraw from the case or prosecution with the permission of the court at any time before the judgement is pronounced. The power of the prosecutor is derived from the statute itself and they must act in the interest of the administration of justice.

Judicial trend

In the case of *Vineet Narain vs Union of India*,

Facts– the offence involves high political dignitaries. CBI failed to investigate properly.

The court stated that there are no limitations or restrictions as to launching of prosecutor or initiation of investigations.

In the case of *Jitendra Kumar @Aju vs State (NCT OF Delhi)* The High Court of Delhi stated that “the Public Prosecutor acts on the behalf of the state. They are the ministers of justice who play a pivot role in the administration of criminal justice”.

In the case of *Zahira Habibullah vs State of Gujarat*,

This case is known as “**Best Bakery Case**”.

Facts– burning down of construction in the city of Vadodara results in the death of 14 persons. This matter came up before the Supreme Court for consideration.

The Supreme Court stated the “Public Prosecutors acted more as the defence rather than focusing on presenting the truth before Court”.

In the case of *Thakur Ram vs State of Bihar*,

The reason behind the establishment of the office of Public Prosecutor is that no private person can use the legal apparatus to wreak private vengeance anyone.

In the case of *Tikam Singh vs State & Ors*,

There is no dispute related to the office of the Public Prosecutor but there is a public element attached to it. He acts as the representative of the state but not a complainant. The role of the Public Prosecutor is distinguished from the role of private counsel.

In the case of *Sandeep Kumar Bafna vs State of Maharashtra & Anr*,

The court stated that “a Public Prosecutor is not expected to show a thirst to reach the case in the conviction of the accused somehow or other irrespective of the facts of the case. The attitude of the Public Prosecutor must be fair towards the investigating agencies and as well as towards the accused.”

In the case of *Radheyshyam vs State of M.P & Ors*, The court stated that a special Public Prosecutor can be appointed when the administration of justice is required. They cannot appoint only on the request of the complainant. His remuneration is paid by the state because if it will be paid by the private party, then his ability or capacity to perform his role as a Public Prosecutor will be endangered. The government cannot appoint Special Public Prosecutor on such terms, directing him to receive his remuneration from any private individual.

In the case of *Kunja Subidhi and Anr vs Emperor*,

The duty of the Public Prosecutor is to place before the court all the relevant evidence whether it is in favour or against the accused and to leave upon the court to decide the matter.

Recent illustrations

In the year 2018, The Government of Delhi appointed senior lawyers, Rebecca Mammen John and Vishal Goshen as special Public Prosecutors in the murder case of Ankit Saxena Murder Case for the purpose of the trial.

In the year 2019, Arvind Kejriwal ordered for the appointment of a special Public Prosecutor in the Soumya Vishwanath's case.

Present scenario India

There is no uniformity in the structure of the public prosecution in India. There is no boundary created between the investigating agency and the prosecution in a number of states. This affects the impartiality of Public Prosecutor since police control the prosecutions. When the prosecution is headed by a senior police officer, the boundary collapses completely.

Although the Law Commission in the year 1958 suggested the establishment of Directorate of prosecution with its own cadre, such a recommendation was not accepted in Cr.P.C. Some states have Directorate of Prosecution while others do not. Suggestions

- Encouraging more lawyers to become Public Prosecutors.
- Increasing the salary structure of the Public Prosecutor so that it can act as a reinforcement to more people.
- Limit the experience required to 3 years instead of 7 years.
- To establish a national institute to impart proper training upon the aspiring candidates.
- Making compulsory for all the states to create its own Directorate of Prosecutions.

Conclusion

A Public Prosecutor is an officer of the court helping in the administration of justice. It is clear from the fact that the main duty of the Public Prosecutor is to help the court in finding the facts of the case. The Public Prosecutor must be impartial, fair and honest. He must act on the directions of the judge. He should not believe in the conviction of accused by hook or crook. The guiding principles of any public prosecution must be equity, justice and good conscience.

LESSON-2.6

SEARCH (section 165)

As per the law dictionary and as observed in different judicial decisions, the term 'search', in the simplest language, denotes an action of a government machinery to go, look through or examine carefully a place, area, person, object etc. in order to find anything concealed or for the purpose of discovering evidence of a crime. The search of a person or vehicle or premises etc., can only be carried out under proper and valid authority of law. It is also well established that search should have a nexus with the crime, it cannot be a random search.

A search warrant is a written order which is issued by a Judge/ Magistrate or a Court to a police officer or any other person authorizing them to conduct a search of a person, location or vehicle for evidence of a crime and confiscate illegal evidence of a crime. The court in *Kalinga Tubes Ltd. v. D. Suri* and in many other cases has cautioned the police officer to use search warrant with a little precaution and care and do not abuse their power.

Section 165 of CrPC provides for the circumstances and the way in which search is carried out by a Police Officer. A police officer while making an investigation should have reasonable grounds for believing that something very necessary for the purpose of investigation into an offense which he is authorized to investigate may be found in any place within the local limits of the police station in which he is in charge. He is also required to make a record in writing specifying his grounds of belief and why the search was conducted within the limits of such station.

When the search warrant is issued?

In the following circumstances and conditions a search warrant is issued by a court: Where a court has reason to believe that a person to whom summons or orders under Section 91 and a requisition under Section 92(1) is addressed will not produce the things or documents as required.[Section 93(1)(a)]

1. Where the thing or document in question is not known to the court to be in the possession of any person. [Section 93(1)(b)]
2. Where the court considers that the purposes of any inquiry, trial or other proceedings will be served by general search or inspection.

In the following circumstances and conditions search warrant is issued by the Magistrate:

1. If a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class gets any information and after inquiry of the same, thinks it necessary or has reason to believe that a place is being used for the deposit or sale of stolen property or for the

deposit, sale or production of any objectionable article or any such objectionable article which is deposited in any place, he may authorize any police officer by way of a search warrant to enter, search or take in possession any property to which this section applies.(Section 94)

2. When any newspaper, book or document, wherever printed, contains any matter, the publication of which is punishable under section 124-A, 153-A, 153-B, 292, 293 or 295-A of Indian Penal Code, 1860, the State Government may, by notification stating the reasons for such action, declare every copy of such newspaper, book, or document, to be forfeited to the government. After such action, any Magistrate may, by a warrant, authorize any police officer not below the rank of a Sub-Inspector to enter upon and search for such copies in any premises where there is a sufficient reason for suspicion. (Section 95)
3. If any District Magistrate, Sub-divisional Magistrate or Magistrate of the first class has sufficient reason to believe that he can issue a search warrant to a person against a person who is kept under confinement for an offense, then he can direct the person to whom he issued a search warrant to search for the person so confined. Such a search will be made in accordance therewith, and if found, the person shall be immediately taken before a Magistrate who will make such order as appears to be proper. (Section 97).
4. Power to compel restoration of abducted females – A Magistrate may upon a complaint made on oath of the abduction or unlawful detention of a woman, or of a female child under 18 years of age, for any unlawful purpose, make an order for the instant restoration of such woman to her liberty. It is also issued to such female child to her husband, parent, guardian, or other person having lawful charge of such child and can compel compliance with such order necessary by using sufficient force (Section 98).

Search of a place suspected

Section 94 of CrPC provides for the search of a place that is suspected to contain stolen property, forged documents etc. It states that a District Magistrate, Sub-divisional Magistrate or Magistrate of first-class may issue warrant to a police officer above the rank of a constable authorizing him to enter, search, take possession of any property, convey any article or to take into custody upon information and inquiry as the Magistrate thinks necessary or has reason to believe that any place is used for deposit or sale of stolen property, or for the deposit or sale of stolen property or for the deposit, sale or production of any objectionable article to which this section applies. The objectionable articles as mentioned in this subsection (2) are counterfeit coin, pieces of metal made in contravention of Metal Tokens Act, 1889, counterfeit currency or stamps, forged documents, false seals, obscene seals or objects referred to in Section 292 of IPC, 1860 and instruments or materials used for the production of any of the article mentioned above.

Search for persons wrongfully confined

There is a provision under Section 97 of the Code of Criminal Procedure, 1973 which provides for direction in case of search of persons wrongfully confined. It states that a District Magistrate, Sub-divisional Magistrate or Magistrate of first-class has enough reason to believe that a person who is confined under such circumstances that the confinement amounts to an offense, he may issue a search warrant, and the person to whom such a search warrant is issued may be directed

to search the person so confined. And such search shall be made in accordance therewith, and the person on being found shall be instantly taken before a Magistrate and he shall make such order as in the circumstances of the case seems proper.

Power to compel restoration of abducted females

Section 98 states that where a woman or a female child under 18 years of age has been abducted or unlawfully detained for an unlawful purpose, the Magistrate may restore the woman to her liberty or the female child to her proper custody. A sufficient amount of force is allowed for compliance with this section.

Power to declare a publication forfeited

The power to declare certain publications forfeited and to issue search warrants for the same is mentioned under Section 95. It provides that where any newspaper, book or any document wherever printed contains any matter, the publication of which is punishable under section 124-A, 153-A, 153-B, 292, 293 or 295-A of Indian Penal Code, 1860, the State Government may, by notification stating the reasons for such action, declare every copy of such newspaper, book, or document, to be forfeited to the government. After such action, any Magistrate may, by a warrant, authorize any police officer not below the rank of a Sub-Inspector to enter upon and search for such copies in any premises where there is a sufficient reason for suspicion. The meaning of the newspaper, book, and document is contained in its explanation clause.

Constitutional validity of search warrants

The entire procedure specified in the Code of criminal procedure, 1973 is based on the principle of justice and fairness. One of the basic principles of legal jurisprudence is that a person accused of any offence should be given an equal chance to be heard and to defend himself. It is compatible with this theory only that there are provisions in Code of Criminal Procedure, 1973 (CrPC) related to the issue of process, provisions in section 161(3), provision in section 162 of the code that any statement recorded during the course of investigation, shall not be signed by the person making the statement, has been specified.

Similarly, upholding a similar proposition, the protection against self-incrimination has been provided as a special fundamental right, under Part III [Under Article 20(3)] of the Constitution of India. It provides that no person who is accused of an offence can be compelled to be a witness against himself.

In several cases, the constitutional validity of search warrant has been questioned. For instance, in the case of *V. S. Kuttan Pillai v. Ramakrishnan*, wherein it was opined by the court that a search of the premises occupied by the accused does not amount to compulsion on him to give evidence against himself and hence was not violative of Article 20(3) of the Constitution of India.

Search of a place without warrant

Section 165 prescribes procedure undertaken by a police officer to search a place without a warrant. It states that whenever an officer in charge of a police station or any police officer making an investigation has reasonable grounds to believe that in the process of investigation, there are some things necessary for an offence, which he is authorised to investigate within the local limits of his police station without unnecessary delay, can search even without a search warrant. He is also required to specify the reason for such a search, cause of search, etc. Section 165(3) provides that where a police officer is unable to conduct the search in person, and there is no other person competent to carry out the search at the time, then he may after recording in writing his reasons for so doing, require any officer subordinate to him to make the search. The senior authorizing for the same has to give the subordinate officer an order in writing, specifying the place of search, the reason for which the search is made and subsequent to this the subordinate may thereupon search for such thing in such place. The copies made by the police officer undertaking search shall be sent to the nearest Magistrate empowered to take cognizance of the offence. On the application of the owner or occupier of the place searched shall be furnished, free of cost with a copy of the same by the Magistrate.

Search by a police officer during the investigation

The procedure adopted by a police officer during the search in an investigation is provided in Section 165. Section 165(1) provides that whenever an officer in charge of a police station or a police officer making an investigation in a particular matter has reasonable grounds for believing that anything necessary for the investigation into any offence on which he is authorized to investigate may be found in any place within his local limits and that thing according to him be otherwise obtained without unnecessary delay. Such officer may record the grounds of his belief in writing and prescribing in such writing the thing for which the search is made, or cause a search to be made with the local limits of his station. Section 165(2) authorize the police officer to conduct the search in person. Section 165(3) states that if he is unable to conduct the search in person, he may after recording in writing the reason for so doing authorize a person subordinate to him to conduct search. Section 165(4) says that all the general conditions regarding the search warrant will be applied to this section as contained in Section 100. Section 165(5) provides that copies of the record made in sub-section (1) and (2) should be sent to the Magistrate who is empowered to take cognizance of the offence. The owner or occupier of the premises can also, on the application, be provided with a copy of the same that is present with the Magistrate, without any cost.

Search In the presence of magistrates

Section 103 of CrPC states that the Magistrate may direct search in his presence. It provides that any magistrate may order a search to be made in his presence of any place in which he is legally competent to issue a search warrant.

Search in the limits of another police station

Section 166 provides the conditions under which the search is conducted in the limits of another police station. Sub-section(1) states that an officer in charge of a police station or a police officer

not below the rank of sub-inspector making an investigation may if he requires an officer of another police station whether in the same or different district to cause a search to be made in any place within the limits of the former officer's jurisdiction. Sub-section(2) the officer shall now carry out the search according to the provisions of Section 165 and forward the thing found on such search to the police officer at whose request the search is made. Sub-section (3) permits an investigating officer who belongs to one police station to search any place that belongs to the limits of another's police station in certain emergency situations. The one that has been expressly mentioned is when there is a possibility of delay in requisitioning the services of police personnel of another police station and if such delay can destroy the very purpose of the search. Sub-section (4) says that the officer in charge of conducting the search has to send a notice of search to the officer within whose local jurisdiction such place is situated and shall also send a copy of the notice to the nearest Magistrate. Sub-section (5) says that on the application of the owner of the premises of the place searched, he shall be provided a free copy of the said notice that was sent to the Magistrate.

Search for false weights and measures

Section 153 provides for the inspection of weights and measures. This section authorizes a police officer in charge of a police station to 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 there without a warrant. The police officer must have a valid reason to believe that there are presence of false weights, measures or instruments in that place. It also provides that if he finds such weights, measures or instruments to be false, he has the option of seizing them or give information of such seizure to the Magistrate within the jurisdiction.

Analysis of the general provision of search

Section 99, Section 100 and Section 101 contains the general provisions which are necessary while carrying out the process of search. Section 100 primarily provides for the provision relating to searches. This section provides the right of free ingress in the case of closed premises on demand and on the production of the search warrant by the police officer. It also ensures that searches are conducted fairly and squarely.

Sub-section (1) provides that whenever any place which is liable to search of inspection is closed, any person who is residing in, or being in charge of on-demand of the officer or other person executing the warrant may allow him to free ingress(enter upon) into and afford all reasonable facilities for a search therein.

Sub-section (2) provides that if ingress to such place can't be obtained, then the officer may proceed in the manner provided in Section 47(2) which provides for breaking a door or window.

Sub-section (3) provides that where a person is suspected of concealing about his person any article for which the search should be made can be searched. Where the search is made of a female then it will be carried out by another female with strict regard to decency.

Sub-section (4) mandates that the police officer is required to call two or more independent and respectable inhabitants of the locality in which the place to be searched is situated. If he cannot find any such person or no such inhabitant of the locality is available then a person from the other locality available or is willing can also be called upon to be a witness to such search.

Sub-section (5) requires a police officer to keep a record in writing the things seized on the search and of the places in which they are respectively found, in the presence of the witnesses. The witnesses who are present at the time of search under this section are not required to attend the court as a witness of the search unless specially summoned by it.

Sub-section (6) states that the occupier whose place is searched or any other person on his behalf has every right to attend the search and also be delivered a copy of the list prepared during the search which is duly signed by the witnesses.

Sub-section (7) provides that the person who is searched under sub-section (3) shall be entitled to get the copy that contains the list of all things taken in possession of at the time of the search.

Sub-section (8) states that a person who without reasonable cause refuses or neglects to attend and witness a search when called upon to do so by an order in writing delivered or tendered to him shall be deemed to have committed an offence under Section 187 of the Indian Penal Code.

Section 101 prescribes for disposal of things found in search beyond the jurisdiction of the court. When in the execution of a search warrant at any place beyond the jurisdiction of the court which issued the warrant, the things found in such search shall immediately be taken before the court issuing the warrant, unless such place is nearer to the Magistrate having jurisdiction than to such court, in which case the list and things and shall be taken to the Magistrate unless there is a good cause to the contrary, such Magistrate shall make an order authorizing them to be taken to such court.

Consequences of non-compliance with the provisions relating to searches

There are different sections in the Code which prescribes for the effects when the provisions relating to searches are not complied with.

Section 460 of CrPC prescribes that if a search warrant is issued under Section 94 by a Magistrate who is not empowered by law to issue such warrant will not vitiate (destroy or impair) the proceedings. A search warrant for the search of a place that is suspected to contain stolen property, forged documents, etc can only be issued by a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class. But, if a situation arises that the warrant is issued by a person other than a Magistrate though erroneously, but in good faith, then the warrant will not become ineffective just because the Magistrate was not empowered to issue such a warrant. Section 461 also provides for irregularities which can vitiate the proceedings. It says that under Section 93(3) only a District Magistrate or a Chief Judicial Magistrate can issue a warrant for a document, parcel or another thing in the custody of postal or telegraph authority. According to Section 461 if a Magistrate who is not empowered by law to issue such a warrant, issues the same, will make the warrant ineffective.

A Magistrate, not empowered by law, issues a search warrant in case of wrongful confinement under Section 97, then the warrant will become illegal and any entry into such place subsequent to such illegal warrant shall be considered to be without legal authority.

Magistrates not empowered to issue a search warrant

Section 460 states the circumstances in which a search warrant is not vitiated even when it is issued by a Magistrate who has no authority to do so. A search warrant for the search of a place that is suspected to contain stolen property, forged documents, etc can only be issued by a District Magistrate, Sub-divisional Magistrate or a Magistrate of the first class. But, if a situation arises that the warrant is issued by a person other than a Magistrate though erroneously, but in good faith, then the warrant will not become ineffective just because the Magistrate was not empowered to issue such a warrant.

Section 461 of CrPC clearly provides for conditions in which a search warrant will be illegal when a Magistrate who is not empowered issues a warrant. It says that under Section 93(3) only a District Magistrate or a Chief Judicial Magistrate can issue a warrant for a document, parcel or another thing in the custody of postal or telegraph authority. According to Section 461 if a Magistrate who is not empowered by law to issue such a warrant, issues the same, will make the warrant ineffective.

Search without warrant by police officers not authorized

It has been comprehended from various sections like Section 153, 165 and 166, that a place can be searched by a police officer of a certain rank or any other person authorized by law without a warrant. A search by any other police officer or any other person would be illegal and the entry into such place will also be unlawful. Even a search by a police officer outside the limits of his police station and in the situations where he is not authorized to do so would be without legal authority and illegal. [Section 166(3)]. Section 165 of the CrPC provides for an exception to this, which states that where there is reasonable ground for if the search is not conducted immediately, then the valuable evidence and facts will be destroyed then in such cases, he may straight away search, after sending advance intimation to the court. It has been comprehended from various sections like Section 153, 165 and 166, that a place can be searched by a police officer of a certain rank or any other person authorized by law without a warrant. A search by any other police officer or any other person would be illegal and the entry into such place will also be unlawful. Even a search by a police officer outside the limits of his police station and in the situations where he is not authorized to do so would be without legal authority and illegal [Section 166(3)]. Section 165 of the CrPC provides for an exception to this, which states that where there is reasonable ground for if the search is not conducted immediately, then the valuable evidence and facts will be destroyed then in such cases, he may straight away conduct the search, after sending advance intimation to the court.

Effect of contravention of the search procedure

Section 100 of CrPC provides general procedures that need to be necessarily followed at the time of the search. Besides this, Section 165 and Section 166 also provides for additional procedures to be followed, when the search is made by a police officer without a warrant. Contravention of these articles would make the search illegal or irregular. Whether the contravention would vitiate the proceedings or not is provided in Section 460 and Section 461, discussed above.

Search with the consent of the occupant

If the entry into the place of search is with the consent of the occupant of such place, then the search and recovery will not be affected on the ground that the search procedure mentioned under Section 100 and Section 165 was not followed. In addition to this, where it is proved that the articles were produced by the accused himself, Section 165 of CrPC does not apply.

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