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Paper : **Criminal Justice Administration**

Module : **Pre Trial Process: Procuring Attendance of Persons and Production of Documents**





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### DESCRIPTION OF MODULE

Items	Description of Module
Subject Name	Law
Paper Name	Criminal Justice Administration
Module Name/Title	Pre Trial Process: Procuring Attendance of Person and Production of Documents
Module Id	LAW/CJA/VIII
Objectives	<p>Learning Outcome:</p> <ul style="list-style-type: none"><li>• To make the learners understand the need for securing appearance of persons and production of documents in a criminal trial.</li><li>• To make the learners understand various processes to compel the presence of the accused.</li><li>• To acquaint the learners with the process relating to production of documents and things.</li><li>• To make the learners understand the circumstances in which search can be made with or without warrant.</li></ul>
Prerequisites	General understanding of the provisions of Code of Criminal Procedure pertaining to summons, warrant, search, seizure etc.
Key words	Summons, Warrant, Bailable warrant, Non-bailable warrant, Search, Seizure, Proclamation and Attachment of property



## 1. Introduction:

A condition precedent to a trial is securing the attendance of the accused, witnesses or other relevant persons before the court and also the production of the documents necessary for the investigation, inquiry or trial. The general rule in criminal trial is that the court should not proceed *ex parte* against the accused person. It is also one of the foremost requirements of fair trial principle that the trial must proceed in the presence of the accused. The presence of accused during trial is not a mere formality, but it gives an opportunity to the accused to understand the prosecution case, witnesses and evidence against him. This gives him a fair chance to prepare his defense. While taking measures for ensuring presence of the accused during trial, his personal liberty should not be lost sight of. The detention of the accused prior to trial will also cause unnecessary obstruction in the preparation of his defense. Therefore, if his presence can be reasonably ensured, he should not be deprived of his liberty.<sup>1</sup>

Similarly police and court may require documents and other things for the purposes of swift investigation and conduct of inquiry and trial. Such documents may be required to establish truth in a given case. It may also be helpful for the accused to prove his innocence or may be required by the prosecution to establish his guilt. Therefore, procurement of such documents and other relevant things may be vital from the point of view of the end result in any trial i.e. justice.

The primary aim of this module is to explain various methods envisaged under the Code for securing attendance of the person and production of documents required for conducting investigation, inquiry or trial.

## 2. Judicial Method to Secure Attendance of the Accused

The Code prescribes mainly two processes to compel the attendance of the accused i.e. issuance of summons to him or issuance of warrant and arresting him. It is completely within the discretion of the Magistrate to prefer one method over other. But such discretion must be exercised judicially.

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<sup>1</sup> KN Chandrasekharan Pillai, *R V Kelkar's Criminal Procedure*, Chapter 5 p. 43, 6<sup>th</sup> edn. (Eastern Book Company, 2014).



## 2.1 Securing Attendance by Summons:

Summons is a written order issued by the Court requiring attendance of the person so summoned in the Court. Summons may be issued ordinarily in all summons cases. Even in warrant cases where the court is satisfied that the presence of the accused person may be secured by issuing summons, summons may be issued.<sup>2</sup> Whether in a summons case or a warrant case, if the summons has been issued in the first instance, the Court may, *in lieu* of or in addition to summons, issue a warrant where there are reasons to believe that the person will not obey the summons, or where he does not attend, without any reasonable excuse, after service of summons.<sup>3</sup> The court issuing warrant either in lieu of, or in addition to summons must record reasons for doing so. The requirement for recording reasons is not a mere formality but it reflects on the exigency which forced the court to issue warrant. The Court may issue a summons to any witness on the application of the prosecution or the accused.<sup>4</sup>

<sup>2</sup> Section 204, Code of Criminal Procedure, 1973.

<sup>3</sup> Section 87, Code of Criminal Procedure, 1973.

<sup>4</sup> Sections 243(2), 244(2), 247, 254(2), Code of Criminal Procedure, 1973.



### 2.1.1 Formal requirement of Summons:

The summons is a milder form of process which is issued either for appearance or for producing a document or thing relevant for the purposes of investigation, inquiry or trial. The summons may be issued to an accused or a witness. Section 61 of the Code deals with formal requirement of summons and prescribes that:

- Should be in writing;
- Issued in duplicate and signed by the presiding officer of the Court;
- Shall bear seal of the Court.

Other than these requirements summons shall also clearly mention the title of the Court, place, day and time when the attendance of the person summoned is required. It should also state that such person not to depart from the court without leave of the court and without ascertaining the date to which the case may be adjourned.

It may be noted that any defect or omissions in the summons shall not vitiate the trial unless it is proved before the court that such defect has led to failure of justice e.g. where the summons issued to accused does not mention the offence and the accused objected to it within reasonable time.



### **2.1.2 Modes of Service of Summons:**

Persons authorized for service of summons are mentioned in section 62. It provides that any police officer or an officer of the Court issuing it or any public servant may be authorized by the court issuing it to serve such summons. Intentional prevention of service of summons by any public servant is punishable with imprisonment for a term up to six months or with fine which may extend to five hundred rupees under section 173 of the IPC.

Sections 62-67 of the Code prescribe for different modes for service of summons depending on the situations, circumstances and persons on whom it is to be served.

#### **2.1.2.1 Personal Service of Summons, Substitutions, Service on Government Servants, Corporations, Witnesses and Persons Outside:**

The primary mode is personal service, which means delivering or tendering one of the duplicates of the summons to the person to be served.<sup>5</sup> If the person to be served cannot be found, by the exercise of due diligence, service may be effected by leaving one of the duplicates for him on some adult male member of the family, but not on a servant.<sup>6</sup> If required, the serving officer may take signature of such member on the back of the other duplicate. This ensures that the summons has been properly served.

In case even after exercising due diligence, the summons cannot be served in any of the above modes, it shall be served by affixing one of the duplicates to some conspicuous part of the house in which the person summoned ordinarily resides.<sup>7</sup> The court, after making such inquiries as it thinks fit, may either declare that the summons has been duly served or order fresh service.

Where the summons to be served to an active Government employee, the summons is to be forwarded to the head of the office in which the said person is employed and the latter will cause it to be served as per section 62.

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<sup>5</sup> Section 62, Code of Criminal Procedure, 1973.

<sup>6</sup> Section 64, Code of Criminal Procedure, 1973.

<sup>7</sup> Section 65, Code of Criminal Procedure, 1973.



Where the summons is to be served on a corporation, it is to be personally served on the secretary, local manager or other principal officer of the corporation, or by registered post addressed to the chief officer of the corporation.

Service of summons by post is valid in case of a witness as well. The court issuing a summons to a witness may in addition to and simultaneously with the issue of such summons, direct a copy of the summons to be served by registered post addressed to the witness.

Where the summons is to be served at any place outside the local jurisdiction of the Court issuing it, the Court shall send the summons for service to a Magistrate within whose local jurisdiction the service is to be made.<sup>8</sup> In case the serving officer is not present at the hearing of the case and the issue of due service is to be proved, an affidavit of the serving officer may be made before the Magistrate which should show how the service was made. Further, a duplicate of the summons purporting to be endorsed by the person to whom it was delivered or tendered to be delivered must be produced.

### **2.1.3 Punishment for non-compliance with summons:**

Section 350 of the Code provides for sentence of fine not exceeding 100 rupees for disobedience to a summons without 'just excuse' by any witness. Such penalty may be imposed by the court before which the person was summoned to appear, on a summary trial. 'Intentional disobedience' is punishable under section 174 of the IPC, provided that the summons is legally valid and duly served upon the person.

### **2.2 Warrant of Arrest:**

A warrant is a written order issued and signed by a Magistrate addressed to a certain person to arrest the accused to take him into custody and bring him before the Court issuing the warrant. The Code prescribes two kinds of arrest viz. i) arrest under warrant, and ii) arrest without warrant.<sup>9</sup> Ordinarily in all warrant cases arrest may be

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<sup>8</sup> Section 67, Code of Criminal Procedure, 1973.

<sup>9</sup> Circumstances of arrest without warrant are given in sections 41-44, Code of Criminal Procedure, 1973.



made under warrant of the court.<sup>10</sup> A Magistrate taking cognizance of an offence can issue a warrant for the arrest of the accused. The court empowered to issue summons for the appearance of any person may issue warrant of arrest

(a) if either before the issue of summons, or after the issue of the same but before time fixed for his appearance, the court sees reason to believe that he has absconded or will not obey the summons; or

(b) if, at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.<sup>11</sup>

A warrant of arrest should not, as a general rule, be issued where summons would be sufficient to secure the ends of justice. Personal liberty of accused is of paramount importance and where his presence may be secured otherwise, the court must not issue warrant of arrest. A warrant once issued remains in force until it is cancelled or executed. A warrant of arrest may be executed at any place in India and it is not restricted to the local limits of the jurisdiction of the Magistrate issuing such warrant. Generally, a court has no jurisdiction to issue a warrant where the offence has been committed outside his jurisdiction but in certain circumstances a Magistrate is empowered to issue a warrant for arresting a person within his jurisdiction for an offence committed by him outside his jurisdiction<sup>12</sup>. A warrant may be issued for the arrest of a person who fails to appear in Court, after having executed a bond in that behalf.<sup>13</sup>

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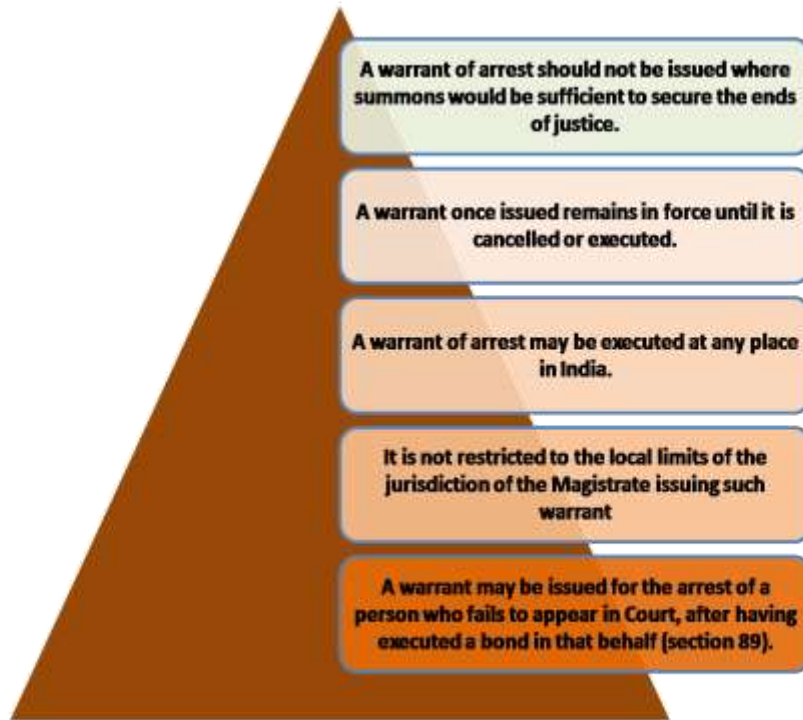
<sup>10</sup> Section 204, Code of Criminal Procedure, 1973.

<sup>11</sup> Section 87, Code of Criminal Procedure, 1973.

<sup>12</sup> Section 187, Code of Criminal Procedure, 1973.

<sup>13</sup> Section 89, Code of Criminal Procedure, 1973.





### 2.2.1 Formal requirements of a warrant of arrest:

Section 70 of the Code provides for form of warrant of arrest. Every warrant of arrest must satisfy following requirements

- i) Issued by a Court;
- ii) in writing;
- iii) bear name and designation of the person who is to execute it;
- iv) give full name and description of the person to be arrested;
- v) state the offence charged;
- vi) signed by the presiding officer;
- vii) bear seal of the Court.

### 2.2.2 Modes of execution of a Warrant of arrest:

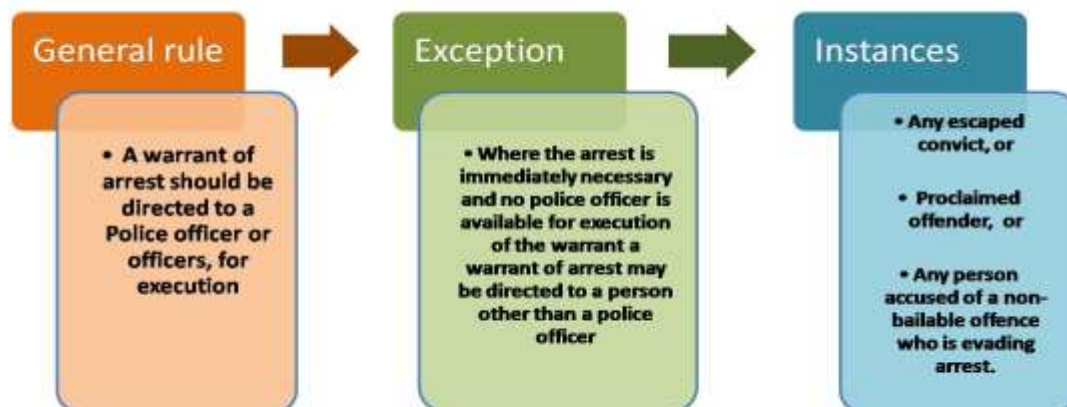
The general rule is that a warrant of arrest should be directed to a police officer or officers, for execution. Where it is directed to more officers than one, it may be executed by all or by any one or more of them. Where the arrest is immediately necessary and no police officer is available for execution of the warrant, a warrant of arrest may be directed to a person other than a police officer. The Code confers



special powers on the Chief Judicial Magistrate and Judicial Magistrate of the First Class to direct any person within his local jurisdiction to arrest:

- i) Any escaped convict, or
- ii) Proclaimed offender, or
- iii) Any person accused of a non-bailable offence and is evading arrest.

A warrant directed to a police officer may also be executed by any other police officer if endorsed by the other police officer. Where a warrant of arrest is to be executed outside the local jurisdiction of the Court issuing it, such Court may forward it by post or otherwise to any Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction it is to be executed. In cases, when a warrant of arrest is directed to a police officer is to be executed outside the local jurisdiction of the Court issuing it, he is required to take the same for endorsement either to an Executive Magistrate or to a Police Officer not below the rank of an officer-in-charge of a police station, within the local limits of whose jurisdiction it is to be executed.



### 2.2.3 Obligations upon the person executing a warrant:

The Code imposes following obligations upon the person executing warrant of arrest:

- (i) **To notify the substance of the warrant**



The object of notifying the substance is to inform the person arrested of the charge on which he was being arrested, so that he may arrange for his release or defense.

**(ii) To show the warrant, if required**

The obligation to show the warrant arises only if the person to be arrested demands it. It need not be shown when the substance thereof is notified. The warrant should be shown in such a manner that the person gets an opportunity to read it.

Non compliance with these requirements will make the arrest illegal. The person executing a warrant of arrest is under an obligation to bring the person arrested before the Court without unnecessary delay.

**2.2.4 Bailable Warrants:**

The term 'bailable warrant' is not used in the Code. Section 71 of the Code confers discretion upon the Magistrate issuing a warrant of arrest to make it 'bailable'. Therefore, where the arrested person executes a bond with sufficient sureties for his attendance before the Court at a specified time, the officer to whom the warrant is directed shall take such security and release the person from custody.

**2.2.5 Non-bailable Warrants:**

Merely because the warrant uses the expression like 'non-bailable' and that such terminology is not to be found in the Code, by itself cannot render the warrant bad in law. Under section 70, a Judicial Magistrate can convert warrant of arrest into a bailable warrant. He may also issue orders with regard to issuance of non-bailable warrants. It is for the court, clothed with the discretion, to determine whether the presence of the accused can be secured by a bailable or non-bailable warrant.<sup>14</sup>

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<sup>14</sup> Speech by Justice Dipak Misra on 'Relationship between Constitutional Concepts and Criminal Jurisprudential Perspective', available at <http://www.tnsja.tn.nic.in/Article/Relationship%20between%20const%20and%20crl-Dipak%20Misra.pdf>



In *Raghuvansh Dewanchand Bhasin vs. State of Maharashtra*<sup>15</sup> the Supreme Court has issued directions to the courts below in respect to non-bailable warrants and made following observation:

“Since the execution of a non-bailable warrant directly involves curtailment of liberty of a person, warrant of arrest cannot be issued mechanically/arbitrarily, but only after recording satisfaction that in the facts and circumstances of the case, it is warranted. The Courts have to be extra-cautious and careful while directing issue of non-bailable warrant; else a wrongful detention would amount to denial of constitutional mandate envisaged in Article 21 of the Constitution of India.”

“But in situations where neither the accused nor his lawyer appear before the Court on the date given and also fail to file petition seeking condonation of the absence, the issuance of non-bailable warrant is justified.”

In *Inder Mohan Goswami vs. State of Uttaranchal*<sup>16</sup> the Supreme Court instructed that the non-bailable warrant should not be issued to bring a person to court when summons or bailable warrants would likely serve the purpose. Though issuance of a non-bailable warrant would not be unjustified where:

- It is reasonable to believe that the person will not voluntarily appear in court; or
- The police authorities are unable to find the person to serve him with a summons; or
- It is considered that the person could harm someone if not placed into custody immediately.

In case of *State of U.P. vs. Poosu*<sup>17</sup> the Supreme Court made it clear that before exercising its power to issue non-bailable warrant, the court should consider factors like the nature and seriousness of the offence involved; the past conduct of the accused; his age and the possibility of his absconding.

Recently in the case of *Vikas vs. State of Rajasthan*<sup>18</sup> the Supreme Court reiterated that the court should properly balance both personal liberty and societal interest before issuing warrants. There cannot be any straightjacket formula for issuance

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<sup>15</sup> (2012)9SCC791.

<sup>16</sup> (2007) 12 SCC 1.

<sup>17</sup> (1976) 3 SCC 1.

<sup>18</sup> (2014)2SCC(Cri.)172.



of warrants but as a general rule, unless an accused is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided. The court in all circumstances in complaint cases at the first instance should first prefer issuing summons or bailable warrant failing which a non-bailable warrant should be issued. The Supreme Court has modified the orders passed by the Trial Court and confirmed by the High Court, and directed that summons be issued against the appellant for his appearance.

### **2.3 Proclamation and Attachment of property:**

The object of proclamation and attachment of property is to put considerable pressure on the accused so as to impel him to appear before the court in order to avoid deprivation of his property.<sup>19</sup> A proclamation cannot be issued without first issuing a warrant of arrest. Before issuing a proclamation the court must satisfy itself that a warrant of arrest had already been issued and that the accused is absconding, concealing or evading the execution of warrant of arrest. The Criminal Procedure (Amendment) Act, 2005 strengthened the criminal courts while dealing with accused of serious offences by empowering the courts to declare accused of serious offences as proclaimed offenders where he fails to appear in response to its proclamation under section 80(4).<sup>20</sup>

#### **2.3.1 Procedure for issuance of proclamation:**

Where the court has reason to believe that any person against whom a warrant has been issued by it i) has absconded, or ii) concealing himself to avoid execution of warrant, may publish a written proclamation requiring him to appear at a specified time and place not less than 30 days from the date of publishing such proclamation.

The Court issuing such proclamation may at any time thereafter, order the attachment of any property, movable or immovable or both, belonging to the proclaimed person.

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<sup>19</sup> KN Chandrasekharan Pillai, *R V Kelkar's Criminal Procedure*, 6<sup>th</sup> edn. (Eastern Book Company, 2014).

<sup>20</sup> Justice M. R. Mallick, *D.D. Basu Criminal Procedure Code*, 1973, Chapters VIII & XII (4<sup>th</sup> edn.) LexisNexis, (2010)



If the proclaimed person appears within the time specified in the proclamation, the court shall make an order releasing the property from the attachment.

### **2.3.1.1 Modes of publication:**

Section 82(2) prescribes three modes for publication of proclamation. These are:

- i) The proclamation shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;
- ii) The proclamation shall be affixed to some conspicuous part of the house in which such person ordinarily resides or to some conspicuous place of such town or village;
- iii) A copy of the proclamation shall be affixed to some conspicuous part of the Court house.

The court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

### **2.3.2 Procedure regarding attachment of property:**

The court issuing proclamation, at any time after the issue of proclamation, may order the attachment of property belonging to proclaimed person. The purpose of attachment of the property of the absconder is not to punish him but to procure his presence. If the proclaimed person does not appear within the time specified in the proclamation, the property under the attachment shall be at the disposal of the State Government.

But it can be sold in following situations:

- i) Where the time period of six months from the date of the attachment is expired, and
- ii) Where any claim preferred or objection made under section 84 is disposed of.

Provided further that where the property is subject to speedy and natural decay, or the sale would be for the benefit of the owner, the court may cause it to be sold whenever it thinks fit.



Though no time limit is prescribed for issuing a proclamation under section 83 but the general rule is that an order of attachment should be made only after the issuance of proclamation. But in certain circumstances the Code allows issuance of an order of attachment simultaneously with the issue of the proclamation and such order shall not be held illegal. The situations are referred hereunder

- i) Where the proclaimed person is about to dispose of the whole or any part of his property, or
- ii) Where the proclaimed person is about to remove the whole or any part of his property from the local jurisdiction of the court.

This provision removed the hardship in cases where the person concerned, even before knowing issuance of proclamation, finds his property being attached.

### **3. Processes to compel production of documents or other things:**

#### **3.1 Summons:**

Section 91 of the Code confers a general power on Court and police officer to issue summons/order for production of document or other thing which is necessary for the purposes of conducting investigation, inquiry, and trial. The use of expression 'whenever' in section 91 indicates that such summons or order may be issued at any stage of the proceeding. The non-compliance may lead to issuance of a search warrant by the Court. The summons under section 91 may be issued at the instance of any party to the proceeding, including the prosecution or complainant or the accused. Before issuing the summons the Court must satisfy itself that the document or thing required for investigation, inquiry or trial is in the possession of the person to be summoned. It must be noted that summons under this section cannot be issued against the accused to produce documents or things which are incriminating against the accused.

#### **3.2 Search Warrants:**



Section 93 provides a more efficacious method for the production of a document or thing i.e. search-warrant. It's a more drastic step, and involves serious invasion of the rights and privacy of the individual. While under section 91, the summons or order to produce is addressed to the person who has its custody, a warrant under section 93 is addressed to a police officer for execution. A court having jurisdiction over the subject-matter of the proceeding may issue a search-warrant for search in any place in India in the same way as a warrant of arrest. Provisions relating to warrant of arrest apply to search-warrants.

### 3.2.1 Conditions for issuing search warrant:

A search warrant may be issued by a court only if any of the following three circumstances exists:

- i) Reason to believe that summons for production will not be obeyed;
- ii) It is not known whether the document or thing is in possession of any person or court;
- iii) Where a **general search** or inspection is considered necessary for the purpose of any trial or inquiry or other proceeding of the Code.

Other circumstances in which a search warrant may be issued are:

- i) Search of a place suspected to contain stolen property, forged documents etc.
- ii) Search of a place suspected to contain any book, newspaper or documents which the State Government has declared to be forfeited.
- iii) Search for the person who is wrongfully confined.

### 3.2.2 Constitutional validity of search-warrants:

Whether a search-warrant is valid when issued against the accused person relating to documents or things in his possession? The Supreme Court in *Shyamlal Mohanlal v. State of Gujarat*<sup>21</sup> has held that the term 'person' in section 94 (now section 91) does not include an accused person. Therefore, the court or police officer, as the case may be, is precluded from issuing a summons/order to an accused person to produce any

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<sup>21</sup> AIR 1965 SC 1251.





document or thing in his possession as that would be violative of Article 20(3) of the Constitution. A search-warrant under section 93(1)(a) can be issued only in cases where a summons has been or might have been issued. As the term 'person' in section 91 does not include an accused, therefore, a search-warrant under section 93(1)(a) for the documents or things in the possession of the accused cannot be issued.

Whether a search-warrant is valid where it is issued for a general search or inspection of the premises in possession or occupation of the accused person? Where a search warrant is issued under section 93(1)(b) & (c), for particular thing or document not known to be in possession of any person or a warrant for general search of the premises in possession of the accused person, cannot be said to be violative of Article 20(3) of the Constitution.

The question was answered by the Supreme Court way back in 1954 in *M. P. Sharma v. Satish Chandra*<sup>22</sup> in following words:

“Article 20(3) of the Constitution gives protection to the accused person against testimonial compulsion. In these cases the search and consequent seizure of the documents or other things are not the acts of the accused. Neither the search nor the seizure is acts of the occupier of the searched premises. They are acts of another to which he is obliged to submit and are; therefore, not his testimonial acts in any sense.”

### **3.2.3 Procedure relating to search of a place:**

Section 100 is applicable when a search is to be made of a place and not of person. Any person residing in, or being in charge of such closed place shall on production of the warrant, allow free entry and afford all reasonable means for smooth search of the place. If there is any reasonable suspicion that any person is concealing on his person any article or thing for which the search of a place is to be made, the person may be searched. If the person to be searched is a woman, then the search shall be made by another woman with strict regard to her decency.

### **3.2.4 Safeguards against arbitrary search and seizure:**

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<sup>22</sup> AIR1954SC300.



Section 100 provides certain safeguards against arbitrary search and seizure, and invasion of privacy. These safeguards are made applicable in all cases whether the search is with or without warrant. These safeguards are:

- i) The search should be made in presence of two or more independent and respectable witnesses;
- ii) A list of things seized in course of the search should be prepared and signature of the witnesses should be obtained on it;
- iii) The occupant of the place searched or his representative should be permitted to attend the search and a copy of the search list should be delivered to him.

### **3.2.5 Search of a place without warrant and safeguards thereof:**

Section 103 empowers a Magistrate to direct a search to be made in his presence of any place for the search of which he is competent to issue a search warrant. Similarly a police officer during any investigation, in exceptional circumstances, may carry out search without warrant. Such power is conferred by section 165 of the Code. It empowers a police officer making an investigation to conduct search without a warrant if he has reasonable grounds for believing that anything necessary for the purpose of an investigation into any offence may be found and that he is of the opinion that undue delay may frustrate the object of the search. As search is a process exceedingly arbitrary in character, stringent statutory conditions are imposed on the exercise of the power. Section 165 provides certain safeguards to the person concerned in order to prevent the arbitrary exercise of the powers. Section 165 does not permit a general search and it authorizes police officer the power to search for particular things or documents, necessary for the purposes of the investigation. The police officer must have reasonable grounds for believing that:

- i) The thing for which search is to be made for the purposes of the investigation may be found in the place within the limits of his police station.
- ii) Such thing, in his opinion, cannot otherwise be obtained without undue delay i.e. it would be too late before a search-warrant is obtained from a Magistrate. Therefore, the section ensures that the search by police officer is



not arbitrary and are genuinely required in cases where there is no time to approach a Magistrate for a search-warrant.<sup>23</sup>

iii) The police officer before proceeding to search a place must record the grounds of his belief as to the necessity of such search and must also specify the things for which the search is to be conducted. The non recording of reasons for search would make the search illegal.

iv) Copies of record relating to searches made by the police officer shall be sent forthwith to the nearest Magistrate. This requirement prohibits any kind of manipulation or fabrication afterwards.

v) The section requires the Magistrate to furnish; free of cost, to the occupier of the place searched a copy of the entire record furnished to him. It enables the occupier to satisfy himself as to the legality of the search.

Other than these instances the police officer may also search a place without warrant in following situations:

i) Section 166 enables a police officer to effectuate search of a place located beyond the limits of his own police station, if the exigencies of the situation so require.

ii) Where a police officer in charge of a police station has reason to believe that weights, measures or instruments for weighing which are false, are used or kept in any place, he can inspect and search the place and seize such things as per section 153 of the Code.<sup>24</sup>

### 3.3 Seizure:

Section 102 of the Code confers power on a police officer to seize certain property. In case of *M.T. Enrica Lexie v. Doramma*<sup>25</sup> the Court elaborated upon the power of police to seize any property under section 102 and held that such power can be exercised if such property is:

i) alleged to be stolen or is suspected to be stolen or

ii) the object of the crime under investigation or has direct link with the commission of offence under investigation.

<sup>23</sup> *State of Rajasthan v. Rehman*, AIR1960SC210.

<sup>24</sup> Justice M. R. Mallick, *D.D. Basu Criminal Procedure Code, 1973*, Chapters VIII & XII (4<sup>th</sup> edn.) LexisNexis, (2010); Sudipto Sarkar, *Sarkar Code of Criminal Procedure*, Chapters VII & XII (10<sup>th</sup> edn.), LexisNexis, (2014). Read Ashish Chugh, "The Exclusionary Rule of Evidence with the Emergence of an Analogous "Fourth Amendment" in the Indian Constitution" (2009) 7 *SCC J-24*.

<sup>25</sup> (2012) 6 *SCC* 760.



Where a search warrant is issued for the search of any particular things, the person making the search has been empowered to seize such things if recovered during such search. Every police officer shall report the seizure to the Magistrate and in case the property cannot be carried to the court, to give it to a person executing bond for its production before the court.

The issue whether failure on the part of the investigating officer to comply with the procedural requirements under sections 103 and 165 will make the search and subsequent seizure illegal has been examined by the Supreme Court in a series of cases. The Court has maintained the consistent view that if no prejudice is caused to the accused person such evidence, though collected by illegal search and seizure, will be admissible in the court of law.

The consequence of such search and seizure is elaborated by the Supreme Court as early as in 1962 in the case of *Radhakrishnan v. State of U.P.*<sup>26</sup> The Court has observed that

“So far as the alleged illegality of the search is concerned, it is sufficient to say that even assuming that the search was illegal the seizure of the articles is not vitiated. It may be that where the provisions of sub-section 103 and 165 of the Code, are contravened the search could be resisted by the person whose premises are sought to be searched. It may also be that because of the illegality of the search the Court may be inclined to examine carefully the evidence regarding the seizure. But beyond these two consequences no further consequence ensues.”

In *Shyam Lal Sharma v. State of M. P.*<sup>27</sup> the Supreme Court has held that even if the search is illegal being in contravention with the requirements of section 165, that provision ceases to have any application to the subsequent steps in the investigation.

In another case of *Khet Singh v. Union of India*<sup>28</sup> the Supreme Court has observed that

“Even if there is any sort of procedural illegality in conducting the search and seizure, the evidence collected thereby will not become inadmissible and the Court would consider all the circumstances and find out whether any serious

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<sup>26</sup> AIR 1963 SC 822

<sup>27</sup> AIR 1972 SC 886.

<sup>28</sup> (2002)4SCC380.



prejudice had been caused to the accused. If the search and seizure was in complete defiance of the law and procedure and there was any possibility of the evidence collected likely to have been tampered with or interpolated during the course of such search or seizure, then, it could be said that the evidence is not liable to be admissible in evidence.”<sup>29</sup>

#### **4. Summary:**

It can be seen from the discussion so far that the Code of Criminal Procedure prescribes for different methods for securing the attendance of persons as well as procuring the documents and other relevant things required for the purposes of investigation, inquiry and trial. As far as securing the attendance of the accused is concerned we have seen that the methods like summons, warrant, proclamation and attachment of property are the measures adopted by the Court. Summons being the milder method should be used at first instance and in case it is not obeyed by the accused person the court may resort to other methods. But in no case the proclamation and attachment proceeding shall begin before issuance of warrant. Issuance of warrant is a condition precedent for invoking the proceeding of proclamation and attachment of property. We have also discussed that non bailable warrant must not be issued at first instance. It has been observed by the courts that such issuance of non bailable warrant is violative of Article 21 right. Similarly in case of production of documents and other things the Code prescribes for issuance of summons and search warrants as effective methods to procure the same. In this regard both Police and Magistrate are given power under the Code. The foregoing discussion also revealed the safeguards or protections provided to individuals against arbitrary search and seizure.

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<sup>29</sup> *Id.* at Para 16.