

## CHAPTER III

### PROCESS TO COMPEL APPEARANCE AND PRODUCTION OF THINGS

**Section 71:--Power to direct security to be taken:--**(1) Any Court issuing a warrant of arrest of any person may in its discretion direct by endorsement on the warrant that, if such person execute a bond with sufficient sureties for his attendance before the court at a specified time and thereafter until otherwise directed by the court, the officer to whom the warrant is directed, shall take such security and shall release such person from custody.

(2) The endorsement shall state--

(a) the number of sureties,

(b) the amount in which they and the person for whose arrest the warrant is issued, are to be respectively bound;

(c) the time at which he is to attend before the Court.

(3) Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

**Section 76:--Person arrested to be brought before Court without delay:--**The Police Officer or other person executing a warrant of arrest shall (subject to provisions of Section 71 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person;

Provided that such delay shall not, in any case, exceed 24 hours exclusive of time necessary for the journey from the place of arrest to the Magistrate's Court.

When the prisoner has been arrested by touching or by confining his body and is produced before the Court, then the warrant is exhausted. If the accused is to be detained further then a fresh warrant or remand order U/S. 309 etc. is essential. Detention by a Police Officer for over 24 hours is punishable U/S. 29 of Police Act V of 1861 or as per U/S. 41 of the Kerala Police Act 1960 (Act 5 of 1961) as a wilful breach of the rule laid down by Section 167 unless the detention is not continuous.<sup>30</sup>

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30. In re Indrobeer Thaba, 1 W.R. 5; *The Queen v. Basooram Dass*, 19 W.R. 36.

**Section 78:**--Deals with warrant forwarded for execution outside jurisdiction of the Court. Such Court may instead of directing the warrant to a Police Officer within its jurisdiction, 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.

**Section 79: Warrant directed to Police Officer for execution outside jurisdiction:**--  
(1) When a warrant directed to a Police Officer is to be executed beyond the local jurisdiction of the Court issuing the same, he shall ordinarily take it 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 the warrant is to be executed.

(2) Such Magistrate or Police Officer shall endorse his name thereon and such endorsement shall be sufficient authority to the Police Officer to whom the warrant is directed to execute the same, and the local police shall, if so required, assist such Officer in executing such warrant.

(3) Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or Police Officer within whose local jurisdiction the warrant is to be executed will prevent such execution; the Police Officer to whom it is directed may execute the same without such endorsement in any place beyond the local jurisdiction of the Court which issued it.

The Police Officer directed to execute a warrant is to execute it himself. But in order to get authority for the execution, he must obtain an endorsement from a Magistrate or a Police Officer not below the rank of Officer-in-charge of Police Station, within the local limits of whose jurisdiction the warrant is to be executed. But in special circumstances U/S. 79(3), he may directly execute the warrant.

**Section 80: Procedure on arrest of person against whom warrant is issued**--When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within thirty kilometers of the place of the arrest or is nearer than the Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction the arrest was made, or unless security is taken under S.71, be taken before such Magistrate or District Superintendent or Commissioner.

**Section 81:--Procedure by Magistrate before whom such person arrested is brought:**--(1) The Executive Magistrate or District Superintendent of Police or Commissioner of Police shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court:

Provided that, if the offence is bailable, and such person is ready and

Commissioner, or a direction has been endorsed under S. 71 on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate, District Superintendent or Commissioner shall take such bail or security as the case may be, and forward the bond, to the Court which issued the warrant:

Provided further that if the offence is a non-bailable one, it shall be lawful for the Chief Judicial Magistrate (subject to the provisions of S.437), or the Sessions Judge, of the District in which the arrest is made on consideration of the information and the documents referred to in sub-section (2) of S.78, to release such person on bail.

(2) Nothing in the section shall be deemed to prevent a Police Officer from taking security under Section 71.

When any person arrested on a warrant issued by an outside Court is produced before the Executive Magistrate, then--

- (a) he should first check up, whether the person arrested appears to be the same person intended by court, which issued the warrant.
- (b) On satisfaction, he is bound to direct the arrested person to that Court, unless the offence is bailable etc.
- (c) If offence is bailable, he shall release the person on bail provided the person has furnished security to his satisfaction.

**Section 91:--Summons to produce document or other thing:--**(1) Whenever any Court or any Officer-in-charge of a Police Station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or Officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce, it, at the time and place stated in the summons or order.

(2) Any person requiring under this Section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this Section shall be--

- (a) to affect Ss. 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891); or

**Section 92:--Procedure as to letters and telegrams:--**(1) If any document, parcel or thing in the custody of a postal or telegraph authority is, in the opinion of the District Magistrate, Chief Judicial Magistrate, Court of Session or High Court wanted for the purpose of any investigation, inquiry, trial or other proceeding under this Code, such Magistrate or court may require the postal or telegraph authority, as the case may be, to deliver the document, parcel or thing to such person as the Magistrate or Court directs.

(2) If any such document, parcel or thing is in the opinion of any other Magistrate, whether Executive or Judicial, or of any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the postal or telegraph authority, as the case may be, to cause search to be made for and to detain such document, parcel or thing pending the order of a District Magistrate, Chief Judicial Magistrate or court under sub-section (1).

Power to require search to be made for letters and telegrams is common to all Magistrates, Executive and Judicial.

**Section 93:--When search warrant may be issued:--**(1) (a) Where any Court has reason to believe that a person to whom a summons or order under S. 91 or a requisition under sub-section (1) of S. 92 has been, or might be addressed, will not or would not produce the document or thing as required by such summons or requisitions; or

(b) Where such document or thing is not known to the Court to be in the possession of any person, or

(c) Where the court considers that the purposes of any inquiry, trial or other proceeding under this code will be served by a general search or inspection.

It may issue a search-warrant, and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained.

2. The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.

3. Nothing contained in this section shall authorize any Magistrate other than a District Magistrate or Chief Judicial Magistrate to grant a warrant to search for a document, parcel or other thing in the custody of the postal or telegraph authority.

**Section 93(1):--**Authorises any Court to issue search warrant for document or thing. An Executive Magistrate while acting as Court may also issue search warrant U/S. 93(1) in appropriate cases after due enquiry and upon proper material.

This section provides for two kinds of searches i.e., Section [91 (1)(a) and (1)(b)] provides for a particular search and clause (1)(c) for a general search. A "General search" means a search not in respect of specific document or thing but a roving inquiry for the purpose of discovering documents or things, which might involve persons in criminal liability.<sup>31</sup>

**Which Court can issue search warrant:**--Only the Court, which has jurisdiction to try the case, can issue search warrant U/S. 93,<sup>32</sup> and it can be issued before as well as after taking cognizance of offences. A clear application of mind by the learned Magistrate must be discernible in the order granting search warrant.

It is not obligatory for the Magistrate to record reasons for issuing search warrant. But it is desirable that he should state briefly the reasons in justification for this. This section does not provide that notice should be given to person or persons complained against before issuing the search warrant. Hence search warrant will not be invalid merely because it was issued ex-parte without any notice to the party concerned.<sup>33</sup>

**Section 94:--Search of place suspected to contain stolen property, forged documents etc.--**(1) If a District Magistrate, Sub Divisional Magistrate, or Magistrate [of the first class], upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property, or for the deposit, sale or production of any objectionable article to which this section applies, or that any such objectionable article is deposited in any place, he may by warrant authorize any Police Officer above the rank of a constable.

- (a) to enter, with such assistance as may be required, such place;
- (b) to search the same in the manner specified in the warrant;
- (c) to take possession of any property or article therein found which he reasonably suspects to be stolen property or objectionable article to which this section applies;
- (d) to convey such property or article before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose of it in some place of safety;
- (e) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale or production of any such property or article knowing or having reasonable cause to suspect it to

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31. *Paresh Chandra v. Jogendranath*, AIR 1927 Cal. 93 at p. 95: 97 IC 955.

32. *J.R. Taneja v. State*, 1974 Chand LR 630.

33. *Sri. Melicio Fernandus v. Sri. Mohan Nair* AIR 1966 Goa 23: 1966 Cr. LJ 1258 (SB)

be stolen property or, as the case may be, objectionable article to which this section applies.

2. The objectionable articles to which this section applies are--

- (a) Counterfeit coin;
- (b) Pieces of a metal made in contravention of the Metal Tokens Act, 1889 (1 of 1889), or brought into India in contravention of any notification for the time being in force under S.11 of the Customs Act, 1962 (52 of 1962);
- (c) Counterfeit currency note; counterfeit stamps;
- (d) Forged documents;
- (e) False seals;
- (f) Obscene objects referred to in S.292 of the Indian Penal Code (45 of 1860);
- (g) Instruments or materials used for the production of any of the articles mentioned in clauses (a) to (f).

**Section 97:--Search for persons wrongfully confined:--**If any District Magistrate, Sub Divisional Magistrate, or Magistrate [of the first Class] has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate who shall make such order as in the circumstances of the case seems proper.

**Powers of the District Magistrate and the Sub Divisional Magistrate to issue search warrants or to make orders:**

- (a) U/S.94 for search of places suspected to contain stolen property, forged documents etc.
- (b) U/S. 97 for search of persons wrongfully confined.
- (c) U/S. 98 for restoration of abducted females etc.

**Section 98:--Power to compel restoration of abducted females etc.:**--Upon complaint made on oath of the abduction or unlawful detention of a woman, or a

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Magistrate, Sub Divisional Magistrate or Magistrate [of the first class] may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using force as may be necessary.

**Section 103:--Magistrate may direct search in his presence:--**Any Magistrate may 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.

**Presence of respectable persons of the locality at the time of search:--**It is expected to take steps to associate respectable people belonging to the locality with the investigation so that its conduct at the stage of trial may not be criticised.<sup>34</sup>

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