



LEGALEAGLE
LAW FORUM

Review Document

CODE OF CRIMINAL PROCEDURE (Cr.P.C.), 1973

PART-1 (ARREST, SEARCH AND INVESTIGATION)

Author- Ms. Pritika Nagpal

CODE OF CRIMINAL PROCEDURE (Cr.P.C), 1973

Significance

The act contains elaborate details about the procedures to be followed in every investigation, inquiry, trial for every offence under IPC or any other law. It also provides machinery for punishments of offences under other acts.

Objective

The basic purpose of the Cr.P.C, among other things, is to ensure a fair trial where none of the rights of the accused are accompanied nor are they unjustifiably favoured.

Important Provisions (Relating to Arrest, search and investigation)

Section- 2 Definitions

(c) 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;

(h) Investigation include all the proceedings under it for the collection of evidence conducted by a Police Officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf.

(l) 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

The general powers of arrest are given to the following persons

Section 41- Police can arrest without warrant or without the permission of the Magistrate in

- cases of cognizable offence or
- Person with house breaking tool or stolen property
- where he is a habitual offender or

- who has escaped or attempts to escape from lawful custody
- who is suspected of being a deserter of army
- who has done extraditable offence
- who being a released convict commits a breach of any rule
- where he refuses to give his name, residence etc. in case of non-cognizable offence as provided under **section 42**.

Section 43- Arrest can even be made by a private person in case of non-cognizable offence or against any proclaimed offender.

Section 44- Arrest can be done by Magistrate (both executive and judicial magistrate) if he himself finds that a person has committed a cognizable offence within his local jurisdiction.

Section 45- This section is an exception that the members of the armed forces are protected from arrest.

Section 46- Arrest how made: The person or the police officer making the arrest shall touch or confine the body of the person arrested. In case of women, her submission to the custody shall be presumed and she shall not be touched by the police officer at that time, unless the police officer is female. Furthermore, the police is authorized to use reasonable amount of force in case the person resists or attempts to evade arrest.

Procedure relating to search and seizure

Section 91 states that the Court may issue a summon or the officer in charge may give a written order stating that the person has to produce the document or anything which is believed to have importance in order to carry out investigation, inquiry or proceedings. The person who is in possession of that particular document or thing has to comply with the request and produce it at the time and place prescribed by summon or order.

Section 92 states that If the law enforcement agencies including the District Magistrate and the High Court are of the opinion that a document, parcel or anything which is in the custody of postal or telegraph authority is essential for the investigation, trial or the proceedings, then the Postal or telegraph authority has to adhere to the directions given by the court and deliver the

document as per the instructions. The Court may allow the postal or telegraph authority to conduct searches for any document, parcel or item because of which the order of the Court is pending.

Section 93 prescribes when a search warrant can be issued. First of all, if the Court believes that the person to whom summon or order has been addressed, will not bring the document or the thing which is essential to the proceedings, a warrant can be issued against that person. It can also be issued if the Court does not know the person who may be having the document. The Court may specify the particular place or part till which the inspection will extend and the person in charge of the inspection will follow the order of the Court as given and not extend the limit of inspection. Only the District Magistrate or Chief Judicial Magistrate can grant the search of a document which is in the custody of postal or telegraph authority.

Section 94 deals with the search carried out at places that are suspected to contain properties that might be stolen or might also hold the forged documents. After the inquiry or the information, if a District Magistrate, Sub-divisional Magistrate or a Magistrate of first-class is of an opinion that a place would have been used for deposit or sale of stolen property or if it would have been used for the production of objectionable articles as mentioned and prescribed in this section, he may authorize the Police Officer (above the rank of a constable) by warrant to enter such place with assistance if required.

Section 95 gives the power to the Court to declare some publications forfeited. The Court can issue search warrants for those publications and If the State Government finds that any article, newspaper, document or book may contain some matter which is punishable under the following sections that are 124A, 153A, 153B, 292, 293 or 295A of IPC, it can declare every copy of such material to be forfeited to the Government. The Magistrate can authorize any Police Officer to seize those documents. The Police Officer appointed for the search, cannot be below the rank of Sub-Inspector.

Section 97 is regarding the search of a person whose confinement amounts to an offence. If any District, Sub-Divisional, or a first-class Magistrate has a reason to believe the same, he may issue a search warrant. The person to whom the search warrant is addressed has to search the confined

person and if he finds the confined person, he has to take him immediately before the Magistrate for further proceedings.

Section 98 covers the aspects involved for the restoration of an abducted woman including a female child under the age of 18.

Section 99 covers the directions for search warrants. The provisions of Sections 38, 70, 72, 74, 77, 78 and 79 are applied to all the search warrants issued.

Procedure of investigation in criminal cases

Section 157 deals with the process of investigation. The police officer must satisfy about the certain grounds of the case that such case is cognizable non-bailable in nature, if satisfied the investigation shall begin immediately. The Police has the power to arrest without warrant as mentioned in section 41.

Section 159 directs the order of investigation by the magistrate into the case.

Section 168 requires the submission of a report from a subordinate officer to the officer in charge of the station.

Section 173 requires a final report to be submitted to the magistrate as soon as the investigation is completed.

Amendment

The amendment sought to be made by virtue of the 2008 amendment Bill, the police now have been entrusted with huge responsibilities to an extent where they would even be acting like Judicial authorities. They should have a reason to believe and should be satisfied that some offence has been committed and now they have to act upon.

Conclusion

The discretionary power so exercised the police is limited by the provisions of the CrPC but is not subject to exercise of judicial authority. Therefore, though the courts may direct the police that further investigation may be conducted in a case it cannot overstep this power to direct how the investigation has to be conducted, thereby it cannot ask the police to arrest an accused or search a place in a manner specified by it.

References

<http://blog.ipleaders.in>

<http://legislative.gov.in>



LEGALEAGLE
LAW FORUM

About the Author



I'm Pritika Nagpal from Jims School of Law, Greater Noida. It was an immense pleasure to work with LegalEagle Law Forum as a part of one month internship. I felt quite amazed after reviewing six different bare acts as a part of my task. I personally had gained a vast knowledge about the sections of the bare act. Indeed, it was such a good experience for me as I have seen a different scenario of work apart from my other previous online internships. Thanks to LegalEagle Law Forum for providing such a tremendous platform and giving me a wonderful opportunity to be a part of BARE ACT REVIEW PROGRAM INTERNSHIP.

LEGALEAGLE
LAW FORUM