

## **CHAPTER - XXXVIII (D)**

### **SEARCHES, PROPERTY AND SEIZURE**

#### **POWERS OF SEARCH**

1702. An officer in charge of a Police Station or an investigating officer, having reasonable grounds for believing that anything necessary for the purpose of investigation of any offence which he is authorized to investigate may be found in any place within the limits of the Police Station of which he is charge or to which he is attached and that such thing cannot in his opinion be otherwise obtained without undue delay, may search the place under section 165 of the Code of Criminal Procedure. Before making the search, the Police officer must record in writing the grounds of his behalf, specifying therein the thing for which the search is made. If the investigation officer is unable to conduct the search in person, he may require any officer subordinate to him to make the search, after recording in writing his reasons for so doing. The subordinate Police officer so deputed should be given an order in writing specifying the place where and the thing for which the search is to be made. Copies of records made above should be sent to the nearest Magistrate empowered to take cognizance of the offence. Form No. 64 should be used for the purpose.

1703. When a search has to be conducted in the jurisdiction of another station, whether in the same or a different district, an officer in charge of a Police Station making an investigation may require under Sub-section (1) of section 166 of the Code of Criminal Procedure, the officer in charge of the former station to make a search or cause search to be made. But, where there is reason to believe that the delay occasioned by such a procedure might result in evidence being concealed or destroyed, the investigating officer may, under sub-section (3) of section 166 of the Code of Criminal Procedure, make the search himself or cause the search to be made, in which case, he shall forthwith send a notice of the search together with a copy of the list prepared under section 100 of the Code of Criminal Procedure to the Officer incharge of the Police Station, within the limits of which the place searched is situated and to the nearest Magistrate empowered to take cognizance of the offence.

1704. When a search is made under section 165 or section 166 of the Code of Criminal Procedure, a copy of the list prepared under section 100 of the Code of Criminal Procedure, signed by the witnesses, shall be delivered to the owner or occupier of the place searched.

1705. Under section 165 (2) of the Code of Criminal Procedure, the Station House Officer or investigating officer must, if practicable, perform the actual searching in person. If incapacitated from so doing he must comply with sub-section (3) of that section and deliver to his subordinate the prescribed order in writing. A verbal order given on the spot will not fulfill the requirements of the section. The investigating officer should use Form 64 when conducting a search.

## 1706. **PROCEDURE FOR SEARCH**

- (1). At least two respectable witnesses of the locality shall be asked to be present at a search.
- (2). The search shall be conducted in their presence and the list of things seized should be signed by witnesses.
- (3). The occupant of the place or his representative shall be allowed to be present during the search and a copy of the search list signed by the witnesses shall be given to him.
- (4). When any person is searched under sub-section (3) of section 100 of the Code of Criminal Procedure, a copy of the list of things taken possession of shall be given to him.
- (5). Before the commencement of the search, the person of the Police officer and the witnesses should be searched, so that there may not be suspicion of something extraneous being planted in the house or the place to be searched.
- (6). The law does not require a search under the Code of Criminal Procedure to be made only by daylight, but, normally, daylight should be awaited. If information is received after dusk necessitating the immediate search of house and if it is apprehended that delay till daybreak might result in evidence being concealed or destroyed, the house should be sealed and guarded and if that is not possible, search should be conducted during the night itself.
- (7). Before entering the premises to be searched, the exterior of the place shall be inspected to see whether facilities exist for introducing property from outside.
- (8). Search must be systematic and thorough.
- (9). Women should be allowed to withdraw.
- (10). Indiscriminate search and damage to property should be avoided.
- (11). A search list shall be prepared on the completion of the search in quadruplicate, all the copies being signed by the Police officer making the search and the witnesses to the search. One copy will be handed over to the owner or occupant of the house, the second copy should be sent to the Magistrate and the third copy should be sent with the case diary to the superior officer to whom case diaries are sent. The fourth copy will form the station record. If blank paper has unavoidably to be used, four copies of the list should be made and dealt with as above affixing the fourth copy to search list book, on return to the station.

## **SALIENT POINTS TO BE REMEMBERED WHILE CONDUCTING SEARCHES**

1707. The following are the salient points which should be borne in mind by officers while conducting searches;

- (1). Conduct searches, as far as possible during daytime, except when circumstances otherwise warrant.
- (2). Before proceeding to conduct a search, prepare a record in Form 64 (triplicate) indicating
  - (a). reasonable grounds for making the search;
  - (b). the place to be searched;
  - (c). the thing or things for which search is to be made, and
  - (d). why such thing or things cannot otherwise be obtained without undue delay.
- (3). Send:
  - (a). one copy of the record so prepared without delay to the jurisdiction Magistrate
  - (b). attach the duplicate to the case diary to be submitted to your officer; and
  - (c). file the triplicate in your case diary file.
- (4). Before selecting search witnesses, ensure that they are –
  - (a). respectable and
  - (b). inhabitants of the locality
- (5). As far as practicable, select witnesses from the neighbourhood of the place to be searched.
- (6). When it is not practicable to do so and witnesses have to be selected from any other place, make a record of the reasons in your case diary and search list.
- (7). Avoid calling the same witnesses to witness several searches.
- (8). If, for any reasons, the same witnesses have witnessed more than one search, make a record of those reasons in your case diary.
- (9). When the witnesses are selected, serve an order on each of them requesting them to attend and witness the search.
- (10). Commence the search only after securing the presence of witnesses and explaining to them the object of the search and the articles for which it is made.
- (11). Before commencing the search, request the occupants of the place to be searched to be present and to attend the search.
- (12). Before commencing the search, request the occupants of the place to be searched to be present and to attend the search.

- (13). When the occupant deposes another person on his behalf, allow the depositee to be present and to attend the search.
- (14). If the occupant is not willing or fails to be present to attend the search, make a record of it in the search list and the case diary.
- (15). If you reasonably apprehend that the delay caused in securing the attendance of the occupant frustrates the very object of search, proceed with the search in the presence of whosoever present on his behalf and record the reasons for so proceeding, in your case diary and search list.
- (16). Get yourself and the witnesses searched in the presence of the owner or occupier or any other adult male member of the house, if available, before the commencement of the search.
- (17). When once the search is started, do not allow persons inside the house to go out or those outside to come in.
- (18). Conduct the search in each room in the actual presence of the witnesses.
- (19). After the search is completed and the thing or things for which the search was conducted and any other incriminating articles are found or brought out, get yourself and the witnesses again searched and make a record of it in the search list.
- (20). Mention clearly in the search list every item of property seized, the exact place where it was found and how and by what means it was taken out from that place.
- (21). Note in the search list the descriptive particulars and identification marks of the incriminating articles recovered.
- (22). Make out the search list on the spot even if no articles are seized.
- (23). Record the number of the house and other particulars including the occupant's name parentage and occupation.
- (24). Recover documents, if any, to prove the ownership or occupancy of the person from the place where incriminating articles are recovered and record such recovery in the search list.
- (25). Sign with date on all pages of all copies of the search list and obtain the signatures of the witnesses on all pages of all the copies.
- (26). Give under acknowledgement a copy of the search list immediately to the occupant of the house searched.
- (27). On completion of the proceedings –

- (a). send without delay one copy of the search list to the jurisdiction Magistrate;
- (b). attach another copy to the case diary of the relevant date to be sent to your officer;
- (c). file the third copy in your case diary file; and
- (d). attach the fourth copy to the final report to be sent to the court.

### **PROPERTY COMING INTO THE HANDS OF THE POLICE DISPOSAL**

1708. Form No. 95 is used for sending property to the Magistrate. Three copies of the form should be prepared. The triplicate should be retained in the station and the remaining two copies sent to the Magistrate with the property. When the duplicate copy is received back from the Magistrate with his orders thereon, it should be pasted in the book and the triplicate copy removed and filed with the case diary.

1709. If, while acting strictly within the limits of the authority to search for specified articles conferred by Section 165 of the Criminal Procedure Code, a Police officer happens to notice or comes across, without effecting a general or roving search, any property which is alleged or suspected to have been stolen, which may be found under circumstances which create a suspicion of any offence, he would be entitled to seize it in pursuance of his powers under Section 102 of the Criminal Procedure Code.

### **CUSTODY OF PROPERTY**

1710. According to Section 451 of the Code of Criminal Procedure, when any property regarding which any offence appears to have been committed or which appears to have been used for the commission of any offence is produced before any criminal court during any inquiry or trial, the court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial. If the property is subject to speedy or natural decay or if it is otherwise expedient so to do, the court may, after recording such evidence as it thinks necessary order it to be sold or otherwise disposed of. Thus, this section provides for the interim custody of property.

1711. The Magistrate, as a rule, will provide a place for the safe custody of property seized in cases. If however, he refuses to take charge of it, the Police must be responsible for it. Such property should be kept under lock and key in a lock-up cell or in an iron clamped box in custody in the Police Station.

### **DISPOSAL OF PROPERTY WHICH COURT DECLINES TO TAKE POSSESSION**

1712. When a court or a Magistrate refuses to receive any property from the Police or pass any order under section 452 of the Code of Criminal Procedure regarding its disposal on the ground that he does not believe that an offence has been committed in regard to it the following instructions should be followed:

- (1). The Police shall retain the property sufficiently long to enable the parties to appeal to a higher court against the court's or Magistrate's procedure.

- (2). If no application for revision is made nor order passed on revision, the Police shall return the property to the person from whom it was taken, unless there is obvious objection to so doing.
- (3). In doubtful cases the Police may apply for an order under section 457 of the Code of Criminal Procedure to the Magistrate having jurisdiction.
- (4). When no order can be obtained from a Magistrate or court and the ownership of the property is in dispute or difficult of determination, the safest course will be for the Police to retain the property until one of the parties obtains the order of a court. Such case shall be reported to the Inspector General for orders.
- (5). The Police shall not hand over property seized in a criminal case to a person, other than the one from whom it was taken, without the orders of a court or Magistrate. Return of property to the person shall be done only on the orders of the Magistrate.

### **LIVE-STOCK**

1713. The seizure of live-stock by the Police in criminal cases shall be forthwith reported to the Magistrate for orders under section 457 of the Code of Criminal Procedure. Pending the orders of the Magistrate regarding its disposal, the live-stock shall remain in the custody of the Police, but they may deliver it to the charge of the cattle pound or its owner to be produced when required. The Magistrate having jurisdiction will be responsible for the cost of its feeding in cases other than those in which it is handed over to the owner.

### **UNCLAIMED PROPERTY**

1714. The receipt of any unclaimed property should be entered in the station house diary and the property forwarded to the Magistrate with Form No. 95 as soon as possible.

### **PROPERTY ON UNCLAIMED BODIES**

1715. The property found with the corpses of unidentified persons who have died of natural causes shall be sent to the court of the sub-divisional Magistrate by the Station House Officer with a special report accompanied by a seizure memo attested by two witnesses. These facts shall be entered in the general diary of the station.

### **CONVEYANCE CHARGES OF PROPERTY TO BE MET BY COURT**

1716. When the articles connected with criminal case are easily portable, the practice of making parties interested or the Police to convey them to the court may be continued.

1717. When they are bulky and it is found necessary to engage a cart or vehicle to convey them to the court and the party interested is unable to make the necessary arrangements, the hire should be paid by the Magistrate out of his office contingencies on a bill to be presented by the Police supported by vouchers and a certificate showing the necessity for incurring the charge.

1718. Cost of conveying bulky articles concerned in criminal cases from court to court should be paid by the court sending such articles, out of its office contingencies, each charge being supported by a voucher and a certificate showing the necessity for incurring the charge.

1719. **POWER OF POLICE OFFICER TO SEIZE PROPERTY**

- (i). Any Police officer may seize any property which may be alleged on suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.
- (ii). Every Police officer shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the court, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the court as and when required. (S 102 Cr.P.C.)

**NO DELAY IN SENDING SEIZED ARTICLES**

1720. The seized articles should be sent to the court without delay within the reasonably acceptable time.

1721. **PREPARATION OF PROPERTY SEIZURE MEMO**

- (1). All properties, articles, weapons of offence, material objects, etc., concerned in a case and seized under Form I F. 4 should be without delay sent to the court under Form 95.
- (2). All seizures shall be effected in the presence of two respectable witnesses who have to attest the seizure memo (IF 4).
- (3). The investigating officers shall remember the following points, while preparing the seizure memo:
  - (i). Care should be taken while packing the seized materials, as they have to be subsequently referred to the CFSL (Central Forensic Science Laboratory) for expert opinion.
  - (ii). The names and types of properties as mentioned in Form I. F 4 do not in any way contradict the descriptions to be given in Form 95. (same words shall be used in both the forms)
  - (iii). The nature of property such as seized, received, stolen, unclaimed, etc., shall be specified.
  - (iv). While automobiles are seized, all details like type, value, make, colour, model, registration no., chassis no., engine no., etc shall be verified and notified.

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