

**All About Process to Compel the Production of Things**  
**Under Chapter VII of Code of Criminal Procedure,1973**

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**Part A- ( Summons to Produce )**

The law regarding processes to compel the production of documents and other movable property is laid down in Sections 91 to 94 of the Code of Criminal Procedure. Such processes are of two kinds, viz., a summons and a search warrant.

**Q1: How and when summons are to produce document or other thing may be issued by Court?**

Ans- If a court or any officer in charge of a police station is of the opinion that the production of any document or other thing is necessary for the purposes of the investigation, inquiry, trial of the case or other proceeding before such Court or Officer, Such Court may issue summons, or such Officer a written order, under section 91 to the person in whose possession such document or thing is believed to be, requiring him to attend and produce the same before the court at the time and place mentioned in the summons.

- Such person is not under an obligation to attend personally. He may send the same through some other person.

**Q2: Can Court compel postal or telegraph authority to produce letters and telegrams?**

Ans- Section 92 of The Code of Criminal Procedure,1973 empowers District Magistrate, Chief Judicial Magistrate, Court of Session or High Court can compel telegraph or postal authority to produce any document, parcel or thing over which authority is having custody. Under this Code, Magistrate or Court for the purpose of any investigation, inquiry, trial or other proceeding may

require the postal or telegraph authority to deliver those documents, parcel or thing to such person as per the direction given.

- Magistrate, whether Executive or Judicial, or of any Commissioner of police or District Superintendent of Police may require the postal or telegraph authority to search and detain such document, parcel or thing pending the order of a District Magistrate, Chief Judicial Magistrate or Court under sub-section (1).

### **Part B – ( Search Warrants )**

**Q3: When search-warrant is issued? How search-warrant is issued by the Court? What are essentials of a warrant?**

Ans- The court may issue search warrant if:

- If Court has reason to believe that a person to whom a summons or order given will not or would not produce the documents or things as required by such summons or requisition,
- where such document or things in the possession of any person and also not known to the Court, or
- where the Court considers that general search and inspection is required for purposes of any inquiry, trial or other proceeding under this Code,

The search warrant is directed to a person. He may search or inspect in accordance therewith and the provisions hereinafter contained.

- The Court should specify in the warrant the particular place and till what part to which search and also inspection extends. The person charged with the execution of such warrant, then search or inspect as specified.
- Any Magistrate other than a District Magistrate or Chief Judicial Magistrate is authorized to grant a warrant to search for document, parcel or other thing which is in custody of the postal or telegraph authority.

**The warrant must:**

- Be in writing
- Contain all the matters that the law requires it to stated therein.

**Q4: What procedure is followed for searching suspicious places containing stolen property, forged documents are done by Court?**

Ans- According to Section 94 of The Code of Criminal Procedure,1973 If a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class, upon information received and also after such inquiry has reason to believe that any place used :

- for the deposit or
- sale of stolen property, or
- for the deposit, sale or production of any objectionable article, or
- for the deposit of any such objectionable article.

The Magistrate may by warrant authorize any police officer above the rank of a constable to:

- To enter such place with assistance as required,
- To search the place in the manner specified in the warrant,
- To take possession of any property or article therein found which he reasonably suspects as stolen property or also objectionable article,
- To convey such property or article before a Magistrate or guard the same on the spot until the offender presented before a Magistrate, or otherwise to dispose of it in some place of safely,
- To take into custody and also present 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 be stolen property or, as the case may be, objectionable article to which this section applies.

The objectionable articles to which this section applies are-

- counterfeit coin;

- pieces of 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 section 11 of the Customs Act, 1962 (52 of 1962);
- counterfeit currency note; counterfeit stamps;
- forged documents;
- false seals;
- obscene objects referred to in section 292 of the Indian Penal Code (45 of 1860);
- instruments or materials used for the production of any of the articles mentioned in clauses (a) to (f).

**Q5: Who is having power to declare certain publications forfeited and how search-warrants are issued for the same?**

Ans- As per Section 95 of The Code of Criminal Procedure,1973 – If State government is of opinion that any newspaper, or book or any document, wherever printed whose publication does contain matters which are punishable under Section 124A or Section 153A or Section 153B or Section 292 or Section 293 or Section 295A of Indian Penal Code then State government can forfeit such matters by issuing notification stating the grounds to declare every copy of issue of newspaper and every copy of such book or other document. And as result any Police Officer can seize the same wherever it is found in India and Magistrate can authorize through a warrant any police officer not below the rank of sub-inspector to enter and search those premises where any copy of such issue or any such book or other document can be found or is reasonably suspected to be found.

- As Sub-section (3) no action or order can be passed under this section or can be questioned in any Court otherwise in accordance with the provisions of Section 96.

**Q6: Who can file an application to High Court to set aside declaration of forfeiture? How application is set aside in High Court regarding declaration of forfeiture?**

Ans- According to Section 96 of The Code of Criminal Procedure,1973 Any person can file an application in High Court who is having any interest in any newspaper, book or other document regarding which declaration of forfeiture has been made under Section 95 to set aside such

declaration on a ground that it does not contain any matter as per sub-section (1) of section 95. Time period is of two months from the date of publication of such declaration in Official Gazette.

**Procedure for setting aside such declaration:**

- Every such application shall be heard by High Court consisting three or more judges, and will be determined by Special bench of High Court composing three judges and where High Court consists less than three judges then such Special bench shall be composed of all the judges of that High Court.
- During hearing of such application reference must be made by any newspaper, any copy of such newspaper to give as an evidence in aid to prove nature or tendency of the words, signs or visible representations which are there in newspaper against whom declaration of forfeiture was made.
- The High Court shall set aside the order if it is not satisfied that the issue of newspaper or the book or other document does contain such matter mentioned under sub-section (1) of section 95 in respect of which application was made.
- When there is difference on opinion among the Judges of Special bench , then decision shall be done with majority opinion of those Judges.

**Q7: How wrongfully confined persons are searched? Who can issue search-warrant regarding persons wrongfully confined?**

Ans- Section 97 of The Code of Criminal Procedure,1973 empowers any District Magistrate, Sub-divisional Magistrate or Magistrate of first class to issue a search-warrant when there is a reason to believe that any person is wrongfully confined. The person upon whom warrant is directed will search such person and if found he shall be immediately taken before a Magistrate. Then Magistrate will make order as per the circumstances of case which seems to be proper in nature.

**Q8: How restoration of abducted females are done? Who is having the power to compel?**

Ans- According to Section 98 of The Code of Criminal Procedure,1973 a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class are empowered to pass an immediate restoration order upon a complaint made and on which oath of abduction or unlawful detention of a woman, or a female child of less than eighteen years is abducted for any unlawful purpose. Magistrate will order to restore liberty of such woman or of such female child to her husband, parent, guardian or other person having lawful charge of such child and also has power to compel compliance of such order even using force as it may be necessary to do so.

### **Part C – ( General Provisions relating to searches )**

#### **Q9: What are search-warrants? And which provision empowers Court to give directions?**

Ans- Search-warrant is a legal document issued by a competent Court to a police officer giving permission to search any person or a thing or seize specific items. Court is empowered as per provisions of sections Section 93,94,95 or 97 to issue search-warrant which will apply to all these provisions under Section 38,70,72,74,77,78 and 79 of The Code of Criminal Procedure,1973.

#### **Q10: How permission to search is granted to a person in charge of a closed place?**

Ans- According to Section 100 of The Code of Criminal Procedure,1973 permission regarding search or inspection of a place is granted which is closed as per the Chapter VII. This section applies to both the kinds of searches- with and without warrant.

- Sub-section (1) states person in charge of a closed place shall allow on demand of Officer or other person for execution of warrant and after showing such warrant to enter any place which is liable to be searched or to be inspected and he should be given all reasonable facilities for a search.
- Sub-section (2) gives power to Officer or other person under sub-section (2) of section 47 to execute the warrant in a manner prescribed, when right to entrance is not obtained.

- Sub-section (3) provides power to search any person in or about any place who is suspected to be concealing about his person any article. In case of a woman, the search will be made by another woman with strict regard to decency.
- Sub-section (4) provides that before making a search the officer or other person shall call upon two or more independent and respectable inhabitants of the locality. If no such inhabitant of said locality is not available or is willing to be witness and to attend search process then Officer can issue an order in writing to them or any of them to do so.
- Sub-section (5) provides that the police officer or other person making the search shall prepare a list of articles and things seized in the course of the search and it shall be signed by the witnesses but they are not required to attend the Court as a witness unless specially summoned by it.
- Sub-section (6) provides that occupant of some other person on his behalf shall be given permission to attend the search and a copy of list signed by said witnesses shall be delivered to him or person.
- Sub-section (7) provides that any person who is searched under sub-section (3), list of all things taken into possession shall be done and a copy shall be delivered to such person.
- Sub-section (8) provides that any person who without reasonable cause refuses or neglects to attend and witness a search even after order in writing is tendered to him then he shall be deemed to have committed an offence under section 187 of The Indian Penal Code.

**Q11: What is the criteria of disposing off things which are found beyond jurisdiction?**

Ans- Under Section 101 of The Code of Criminal Procedure,1973 searched things and list of the same shall be immediately taken before the Court who has issued warrant to search a place beyond the local jurisdiction or it will be taken to other Court which is nearer having jurisdiction, than such Magistrate unless there be a good cause shall make an order authorizing them to be taken to such court.

**Part D – ( Miscellaneous )**

**Q12: What are the powers given to a police officer to seize a certain property? Who has the power to seize property?**

Ans- According to Section 102 of the Code of Criminal Procedure, 1973 Any police officer is empowered to seize any property which has been alleged or suspected to have been stolen or which is found in such circumstances that creates suspicion of commission of any offence.

- If such police officer is subordinate to the officer in charge of a police station then he shall forward report of seizure to that officer.
- Every police officer who is acting under sub-section (1) shall forward report of seizure to the Magistrate, who is having jurisdiction and where the property is seized is such that it cannot be conveniently transported to the Court, or where difficulty is there in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody is not considered necessary for the purpose of investigation, he may give custody to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same.
- Provided that when seized property is perishable in nature and the person entitled to the possession of such property is unknown or absent, in that situation property having less than 500 rupees value will be sold by auction under the orders of the Superintendent of Police and the provisions of section 457 and 458 will be applicable nearly and also apply to the net proceeds of such sale.

**Q13: Who has the power to give directions regarding search in his presence?**

Ans- Under Section 103 of The Code of Criminal Procedure, 1973 Any Magistrate can direct a search to be made in his presence regarding any place of which he is competent to issue a search-warrant.

**Q14: Who has the power to impound produced documents?**

Ans- As per Section 104 of The Code of Criminal Procedure, 1973 Any Court can impound any document or thing produced before the court as it thinks fit to do so.

**Q15: What reciprocal arrangements are taken by Court regarding processes?**

Ans- Section 105 of The Code of Criminal Procedure, 1973 speaks of reciprocal arrangements to be made by central government with foreign governments in regards to the service of summons or warrants or judicial processes.

- Sub-section (1) provides that a Court can exercise its power where the Code extends by issuing following that will be served or will be executed at any place-
  1. A summon to an accused person
  2. A warrant for the arrest of an accused person
  3. A summons to any person requiring him to attend and produce such document or other thing or to produce it
  4. A search warrant,
- A Court having local jurisdiction is also empowered in any state or area in India outside the said territories to send summons or warrants in duplicate form through post or otherwise, to the presiding officer of that Court to serve or execute; and where any summons referred to clause (a) or clause (c) has been so served, the provisions of the section 68 shall apply to all those summons as if the presiding officer of the Court to whom it has been sent was a Magistrate in that said territory.
- Central government with the Government of any country or place outside India can make arrangements for the service or execution of summons or warrant in relation to criminal matters, it can summons or warrant in duplicate form directed to such Court, Judge or Magistrate and Central Government can also send notification on his behalf to search authority for transmission.
- Sub-section (2) provides the procedure when the Court in the said territories has received notification issued by (i) a Court in any state or any area in India outside the said territories, (ii) a Court, Judge or Magistrate in a contracting state, regarding service or execution containing following things:
  1. A summons to an excused person,
  2. A warrant for the arrest of an accused person,
  3. A summons to any person requiring him to attend and produce such document or other thing or to produce it,

4. A search warrant,

Then it shall serve or execute the same as if it were issued from another Court in the said territories for service or execution within its local jurisdiction.

- Accordingly where a warrant of arrest has been executed, the arrested person shall be dealt with in accordance with the procedure prescribed under Section 80 and 81 so far as possible,
- Or where search warrant has been executed the things found during the course shall be dealt with in accordance with the procedure prescribed by section 101 so per as possible.
- Proviso to Section 105 provides that in a case where summons or search warrant has been received from a contracting state which has been duly executed and the documents or things produced or things found in the search shall be forwarded to the Court who has issued the summons or search warrant through such authority as per the notification on the behalf of Central Government.

