



POWERS OF INVESTIGATION OFFICER DURING SEARCH & SEIZURE OF MATERIAL EVIDENCE INCLUDING PROPERTY - A CRIMINAL LAW PERSPECTIVE

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In India, search and seizure laws are concerned principally with the activities of police, engaged in the investigation of prevention of crime.

The principal sources of Law governing searches and seizures in India like the Fourth Amendment in America are Art 20(3) and Art. 21 of the Indian Constitution. The other bodies of Law that also deal with search and seizure include criminal proceedings documents and other material objects relevant for any investigations, inquiry or trial. It should be available to the agencies conducting such proceedings. Search and seizure procedures are laid down under Criminal Procedure Code (Cr. P.C.) in this regard.

Search by police officers

Section 165 empowers the police officers to make a general search. It provides that whenever an officer-in-charge of a police station or a police officer making an investigation has reasonable grounds to believe that anything necessary for the purpose of investigation may be found in any place within the limits of his police station, and that such thing cannot in

his opinion be otherwise obtained without undue delay, such after recording the grounds of his belief in writing, search or cause a search to be made for such thing in any place within the limits of such police station. If practicable, he conduct the search personally. However, if he is unable to conduct the search personally, he may depute a subordinate officer to conduct the search to be made after recording reasons for doing so, specifying the place to be searched and the thing for which search is to be made.

Nature and scope

While Sections 93 to 98 deal with searches under a warrant from a magistrate, Section 165 empowers the officer-in-charge of a police station or a police officer making investigation to make a search without obtaining a search warrant from a magistrate. The power of search is incidental to the investigation of offence which a police officer is authorised to make." This provision is meant to be used in cases where a search warrant sued in ordinary course but on account of lack of time, it is considered impolitic to



resort to somewhat lengthy process of securing search warrant.¹

(c) Conditions

As search is a process exceedingly arbitrary in character, stringent are imposed for the exercise of the power. Therefore, before a can be exercised, the following conditions must be satisfied.²

The police officer must have reasonable grounds to essay for the purpose of investigation of an offence obtained otherwise than by making a search without undue delay;

He must record in writing the grounds of his belief;

He must conduct the search, if practicable, personally; and

(iv) If it is not practicable to make the search himself, he must record in writing the reasons for his inability and authorise a subordinate officer to conduct the search.

(d) Recording of reasons

Recording of reasons is an important step in the matter of search and to ignore it is to ignore the material part of the provisions governing said to searches. If reasons in support of search are not recorded, the search cannot be said to be carried out in accordance with law. Such search, however, would not be illegal only on that ground.

¹ State v. Nalini, AIR 1999 SC 2640 ; (1999) 5 SCC 253 : 1999

(e) Non-compliance with requirements of law: Effect

Each and every deviation from procedure prescribed under the section does not vitiate search or seizure. For instance, failure to record reasons for a search is a mere irregularity which does not render the search illegal nor the evidence relating to it inadmissible. Failure to comply with the provisions regulating searches may cast doubts upon the bona fides of the officers conducting the search, and the court may examine the evidence closely and carefully, but it would not make the evidence relating to an irregular search inadmissible. The principle of law has been succinctly laid down by the *Privy Council in Kuruma v. Queen*, thus:

The test to be applied, both in civil and in criminal cases, in considering whether evidence is admissible is whether it is relevant to the matters in issue. If it is, it is admissible and the court is not concerned with how it was obtained.'

Illegal search: Remedies

Seizure memo

Sub-section (5) of Section 165 confers an additional safeguard to protect individuals against general or roving searches. It enacts that copies of record of search should forthwith be sent to the nearest magistrate

² Gurdeep Singh v. state, AIR 1999 SC 3646



empowered to take cognizance of the offence. They will also be furnished to the owner or occupier of the place searched free of cost if demanded by him.

(h) Search within limits of another police station

Section 166 empowers a police officer to conduct a search of a place situated within the limits of another police station by an officer-in-charge of that police station. It also enables the officer-in-charge of one police station to conduct search within the limits of another police station in urgent cases when delay is likely to result in evidence of the commission of the offence being concealed or destroyed.

The above discussion shows that the search and Seizure provision are very important in criminal investigation system. Without violating the rights of the accused, the arrest and Seizure procedures are to be followed very carefully. Right to privacy of an individual is very very important to protect and honor the human dignity.