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CONSTITUTIONAL ASPECTS OF VALIDITY OF SEARCH AND SEIZURE PROCEEDINGS

Author –

Pooja Kriplani

Student BBA LLB(H)
Amity University Rajasthan

ABSTRACT

The term search denotes the action of government machinery which includes Looking through and examine carefully anyplace, area, person, and object access to find something constant to discover evidence of a crime. Such search of a person or physical or premises of any other things can only be done by taking proper and valid permission of law. The act of seizing is well known as seizure it comes into existence when the object of a person is suddenly taken over graft removed on overwhelmed. The power of search and seizure of the court and police authority particularly the power of issue someone on notice by a court or officer in charge of the police station under section 91 (1) of Crpc¹. The issue has been dealt with in detail by the apex court of the country same held in the case of V. S. Kuttan Pillai v. Ramakrishnan, M.P Sharma and Others v Satish Chandra, District Magistrate, Dinesh Auto Finance v. State, Equivalent citations: 1988 CriLJ 1876 Delhi and Others after going through all the three cases law it is felt that the matter has been wrongfully taken up by the court. The Supreme Court In cases has narrowly integrity the expression to be the witness which has created a situation where a very narrow space is available for the actual protection of the right in respect of production of documents which will be described in this article.

Keywords - power of search and seizure of the court, Section 91 – 102 of Crpc

INTRODUCTION

Section 91 – 102 of Crpc provides for when can the summons/orders be issued to produce documents or other things². Under this section, the court has the right to issue summon, and an officer in charge of a police station issues an order. it issues in written form and whenever any court or an officer in charge of a police station considers that the production of any document or other thing is essential or desirable for investigation inquiry, trial, or other proceedings under this code, Such Court or officer issue summons or order to the person who has the position or power

¹ Section 91 (1) of Crpc

² Section 91 – 102 of Crpc provides for when can the summons/orders be issued to produce documents or other things.

of such documents or things is believing that he or she to be in possession. Moreover, it did not apply if it was in the form of any letter, postcard, telegram, or other document or any parcel or thing in the custody of the postal or telegraph authority. Any person who is called by the court regarding a summons under this does not become a witness and cannot be examined thereafter.

THE VALIDITY OF SEARCH PROCEEDINGS

Under section 91 court state may issue summon or the officer in charge may give a written order stating that the person has to produce the document or anything which and was believed to have some important function to carry out investigation, inquiry, or proceedings, The person may request and produce it at any time and place prescribed by summon or order.

Under section 94 the search carried out at a place that is suspected to contain properties that might be stolen or might hold for default document after the inquiry Mein district magistrate if sub-divisional magistrate and magistrate of first-class is of an opinion that a place would have been used for the deposit on sale of stolen property or if it would have been used for the production of objectionable articles as mentioned and prescribed in this section, They can authorize the Police Officer by warrant to enter such place with assistance if required.

The Police have to search the place in the manner specified in the given warrant, taking possession of property that could be objectionable or stolen. And then the same conveys to the Magistrate or has to guard the same until the offender is taken to the Magistrate. they have power to dispose of or objectionable article in some safe place and if you find any persons who also involved in the deposit sale of production of the objectionable of the article of Stolen thing also such person take and let the custody and letter carry him before the magistrate.

Under Section 95 it provides power to the Court to declare some publications forfeited and court issue search warrants for those publications and If the state government find out that if any articles, newspaper, document, or book contains some matter which is punishable under Section 124A, 153A, 153B, 292, 293 or 295A of Indian panel code³. it can be declared that every copy of such document or material to the governments and the magistrate also have authorized any police officer

³ Section 124A, 153A, 153B, 292, 293 or 295A of Indian panel code.

to see those document as per the warrant the police may enter and search respect document or any premises. hat 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, and that time it was declared that every copy of such material to be forfeited to the government the magistrate can authorize any police officer to see those document according to the warrant the police may enter and search the suspected document on any promises or place. The point to note here is, the Police Officer appointed for the search, cannot be below the rank of Sub-Inspector.

In the case of **V. S. Kuttan Pillai v. Ramakrishnan**⁴, In this case, held that Supreme Court live are search warrant of the premises occupied by the at used without the accused being compelled to the party to search would not be violative of the constitutional guarantee in article 20(3), the procedural validity of search warrants was upheld, in which it was held that a search for their in which it was held that start for premises occupied by accused did not in any way for him to provide evidence against himself and also it not in violation of Article 20(3)of Indian Constitution.

THE CONSTITUTIONAL VALIDITY OF SEARCH WARRANTS

The whole procedure specifies that the code of criminal procedure is based on the principle of justice and fairness also it is compatible with the theory only that there is a provision under Crpc related to the issue of section 161(3). One of the basic principles of legal jurisprudence is that a person accused of any offense should be given an equal chance to be heard and to defend himself. In this case, held the Supreme Court live is search warrant of the premises occupied by the use without the accused being compelled to the party to search would not be violative of the constitutional guarantee in article 20(3).

In section 162 of the court that any statement recorded during the course of Investigation shall not be signed by the person making the statement has been specified similarly it was held that the protection against self-incrimination has been provided as a special fundamental right under Article 20(3) of the Constitution of India. It provides that no person who is accused of an offense can be compelled to be a witness against himself.

⁴ S. Kuttan Pillai v. Ramakrishnan

In case of MP Sharma and others vs State Chandra district magistrate Delhi and other⁵ In this case it was mentioned in passing that the provision for the issuing of general search warrant appeared for the first time in the procedure of 1882, and even there the issue of the general warrant is not based on non-compliance with the previous summons for production. It is, therefore., there that there is no basis in the Indian law for the other functions that a search and seizure of the things or document is in itself to be treated as compared production of the same a notice to produce his address to the party concerned and his production is compliance therewith constitutes a testimonial by him within the meaning as explained above but search warrant is addressed to an officer on the government generally a police officer night neither search or not Caesar is to occupy of searched premises the act of another to which is an obliged to submit and are therefore not his testimonial act in any sense.

This is whole means that the search conducted by the police officer or any investigating officer will be valid only if it has been conducted without any help (involuntary help) from the person, only if any formal accusation has been levelled against the person.

Validly of seizure proceedings

It is an action coupled with force in which an object of person is suddenly takeover, grabbed, remove the role when a crime is committed and the place the police officer arrived at the same time of the crime according to the golden rule he should not have power to Alter the position of the Crime Scene pick-up or even touch anything without being properly described in official loads and photographs and the procedure to be followed and the time of Caesar in is the same that is to be followed in the case of that under section 100 of crpc.

Validity according to provisions

The Sub-section (1) empowers a police officer to seize any property which is alleged or suspected to have been stolen or which is found in such circumstances that it may create suspicion of commission of an offense

The Sub-section (2) states that a subordinate, who works under a police officer in charge of a police station, shall report the seizure to that officer

⁵ In case of MP Sharma and others vs State Chandra district magistrate Delhi and other

Subsection (3) provides that every police officer exercising his duty under sub-section (1) is required to report the seizure to the nearest Magistrate falling within his jurisdiction and in a case under which property and object seized is that it cannot be taken to the courts him give custody of that property to any person after executing a born undertaking to produce the property before the court as and when is required to give effect to the further orders of the court regarding its disposal.

In R.S. Jhaver v. Commissioner of Commercial Taxes, the court held: Equivalent citations: 1968 AIR 59, 1968 SCR (1) 148⁶ In this Case the contention on behalf of the respondents is that that provision did not authorize a search of premises but merely provided for inspection thereof it all reasonable times by the empowered officer. it was observed that it was necessary therefore it that there should be and islands and equitable in all circumstances between the sensitivity of the property or individual rights and interests of the format in the law and put the header regarding text selection of the fraction of the crimes or any other insistence upon proper safeguards against operations for violations of the guarantee it basic rights under the constitution.

Judgment - the final judgment and order by the high court align the writ petition much distance do we do not agree with the interpretation of High Court that come under subsection (2) and (3) are unconstitutional for being an unreasonable restriction on the right to hold property and carry on the trade. The appeals therefore fail and are hereby dismissed. Given our decision on the main question of law, we order parties to bear their own costs in all the appeals.

Dinesh Auto Finance v. State, Equivalent citations: 1988 CriLJ 1876⁷

In this case, held that a search warrant under Section 94 can be issued only by District Magistrate, Sub- Divisional Magistrate or magistrate of first-class and the persons who have authority to search must be a police officer about the rank of the constable also before issuing the war and the magistrate and concerned authority must have reason to believe that the place is used for deposit or sale of Solan property or forged document, etc. later all the facts clearly show that the matter is

⁶ In R.S. Jhaver v. Commissioner of Commercial Taxes, the court held: Equivalent citations: 1968 AIR 59, 1968 SCR (1) 148

⁷ **Dinesh Auto Finance v. State, Equivalent citations: 1988 CriLJ 1876**

of a civil nature and the financiers were bona fide exercising their rights under the agreement. There is no question of any theft of the property warranting as under section 194 of crpc.

In the case of the state of Maharashtra versus Natwarlal Damodar Das Sone Supreme Court, 1979⁸

The facts of the case are that the Anti Corruption Bureau of the police raided the house of the respondent and recovered a gold biscuit with collagen marketing switch in a jacket lying in a steel trunk under need some clothes at the time of the rate the respondent was not at the house but his wife and mother were present and thus in this situation same time the custom authority also read it is house and to proceed under customs act 1962.

The respondent after that absconding surrendered to police a week thereafter at the trial. The respondent contended that gold was brought into his house by someone and left there in his absence and that Therefore he had no connection with the gold only Appeal of the court.

It was contained on behalf of respondents that the search of his house and seizure of gold by police was illegal.

The issue is in this case whether and the legal search will while we create the elements of the trial action of the crpc 103,105 and 166, in this case, has that taking first contents and the court of the day police had power under CPC to search and seize if they have reason to believe that the cognizable offense was team comity even if the search was still legal then also it will not affect the validity of seizure and further investigation by the customs authority is called the validity of the trial which followed on me complain of the assistant collector of customs.

CONCLUSION

According to my opinion during the time of research authorities to search and seizure have an essential power for the betterment of society. Search and seizure is an extremely subjective metabolism by nature and specific procedural limitations have been placed on the exercise of power the authority to search and seizure, it was also specifically described in-laws and the officers in questions must act in compliance with the specified rules and procedures laid down by police

⁸ In the case of the state of Maharashtra versus Natwarlal Damodar Das Sone Supreme Court, 1979

officers are provided with the authority to conduct inquiry arrest people, conduct search, conduct seizure of person and their property even use appropriate force the line of Duty yet according to the power must be accepted within the limits of the law and when officer accepts those limits their jeopardize the and admissibility of any information third prosecution.

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