

E Lectures.

9th Semester (Code of Criminal Procedure)

Unit -II :-

SECTION 36. Powers of superior officers of police.

Police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

SECTION 41. When police may arrest without warrant.

(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person- (a) who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; or (b) who has in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking; or (c) who has been proclaimed as an offender either under this Code or by order of the State Government; or (d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or (e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody ; or (f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or (g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or (h) who, being a released convict, commits a breach of any

rule made under sub-section (5) of section 356; or (i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears there from that the person might lawfully be arrested without a warrant by the officer who issued the requisition. (2) Any officer in charge of a police station may, in like manner, arrest or cause to be arrested any person, belonging to one or more of the categories of persons specified in section 109 or section 110.

(Note:- this chapter deals with the arrests and they may be classified into two groups ie arrests under warrants issued by the court and arrests otherwise than under such warrants. The several sections collected under this chapter deal with the arrests made otherwise than under the warrants issued by the court under this code. This section sets out nine different circumstances in which a police officer may, without an order of a magistrate and without a warrant, arrest a person. This section does not purport to be exhaustive or unqualified and various provisions for arrest without warrant are to be found in other acts like Police act, Arms act, Explosives act, Indian railways act etc and section 5 of this code expressly lays down that the procedure of the code would not affect any special form of procedure prescribed by any law for the time being in force. It is clear from section 41 first, that a cognizable offence must be committed and the person sought to be arrested must have been concerned in the said offence or least reasonable suspicion existed of his been so concerned. It is not enough to arrest a person under this section that there was likelihood of a cognizable offence being committed in future)

SECTION 42. Arrest on refusal to give name and residence.

(1) When any person who, in the presence of a police officer, has committed or has been accused of committing a non-cognizable offence refuses, on demand of such officer, to give his name and residence or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained. (2) When the true name and residence of such person have been

ascertained he shall be released on his executing a bond, with or without sureties, to appear before a Magistrate if so required: Provided that, if such person is not resident in India, the bond shall be secured by a surety or sureties resident in India. (3) Should the true name and residence of such person not be ascertained within twenty-four hours from the time of arrest or should he fail to execute the bond, or, if so required, to furnish sufficient sureties. he shall forthwith be forwarded to the nearest Magistrate having jurisdiction.

SECTION 43. Arrest by private person and procedure on such arrest

(1) Any private person may arrest or cause to be arrested any person who in his presence commits a non-bailable and cognizable offence, or any proclaimed offender, and, without unnecessary delay, shall make over or cause to be made over any person so arrested to a police officer, or, in the absence of a police officer, take such person or cause him to be taken in custody to the nearest police station. (2) If there is reason to believe that such person comes under the provisions of section 41, a police officer shall re-arrest him. (3) If there is reason to believe that he has committed a noncognizable offence, and he refuses on the demand of a police officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 42 ; but if there is no sufficient reason to believe that he has committed any offence, he shall be at once released.

(Note:- the provision of this section are extraordinary in the sense that they enable a private person to arrest a person in certain circumstances and therefore the section must be construed in a manner so as not to enlarge the power of private individuals to arrest a person. Further it is the intention of the legislature to prevent arrests by private persons on mere suspicion or information. Hence the limitation as to the persons who could be arrested by the words ' in his presence commits a non bailable and cognizable offence or any proclaimed offender.)

SECTION 44. Arrest by Magistrate.

(1) When any offence is committed in the presence of a Magistrate, whether Executive or Judicial, within his local jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody. (2) Any Magistrate, whether Executive or Judicial, may at any time arrest or direct the arrest, in his presence, within his local jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

SECTION 45. Protection of members of the Armed Forces from arrest.

. (1) Notwithstanding anything contained in sections 41 to 44 (both inclusive), no member of the Armed Forces of the Union shall be arrested for anything done or purported to be done by him in the discharge of his official duties except after obtaining the consent of the Central Government. (2) The State Government may, by notification, direct that the provisions of sub-section (1) shall apply to such class or category of the members of the Force charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section shall apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

(Note:- when a member of the armed forces of the union is deputed for the purpose of the protection of the public property in a state or for other such purposes, it may happen that one or more persons may do or attempt to do something in regard to which such member may be called upon to take action in good faith. Such action may expose him to the possibility of being arrested and prosecuted by the police. To meet such or similar situations, a qualified protection is being given to such members requiring the previous consent of the central government or the state government, as the case may be, for the arrest of any such member and for the previous sanction of such government for taking cognizance of any case against any such member.)

SECTION 46. Arrest how made.

(1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action. (2) If such person forcibly resists the endeavor to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest. (3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life. 47. Search of place entered by person sought to be arrested.

(Note:- arrest consists of actual seizure or touching of a person's body with a view to his detention. This section applies to all the arrests, whether made under a warrant or without it. Confinement and rough handling are not permissible and are contrary to law, when a person to be arrested submits to the custody, that is, to the restraint which is necessary and sufficient for the purpose of the arrest. Every police officer knows that in making an arrest he must not subject the person to be arrested to unnecessary brutality and that he cannot confine any person unless the person refuses to submit to custody and it becomes necessary to confine him. Further we may also note down that an arrest can be effected by an order of either a police officer, police officer in charge of a police station, a magistrate; verbally or by order and a High court).

SECTION 47. Search of place entered by person sought to be arrested.

(1) If any person acting under a warrant of arrest, or any police officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, any person residing in, or being in charge of, such place shall, on demand of such person acting as aforesaid or such police officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein. (2) If ingress to such place cannot be obtained under subsection (1), it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police officer to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of

any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance: Provided that, if any such place is an apartment in the actual occupancy of a female (not being the person to be arrested) who, according to custom, does not appear in public, such person or police officer shall, before entering such apartment, give notice to such female that she is at liberty to withdraw and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it. (3) Any police officer or other person authorised to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

SECTION 48. Pursuit of offenders into other jurisdictions.

A police officer may, for the purpose of arresting without warrant any person whom he is authorised to arrest, pursue such person into any place in India.

SECTION 49. No unnecessary restraint.

The person arrested shall not be subjected to more restraint than is necessary to prevent his escape..

SECTION 50. Person arrested to be informed of grounds of arrest and of right to bail.

(1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest. (2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

(Note:- every person arrested without a warrant has to be informed under this section of the grounds of his arrest with full particulars of the offence for which he may have been arrested. Non compliance of this section cannot be presumed and it has to be proved by the person who alleges such non

compliance. Same holds true about the fact that the arrested person be told about his right to be released on bail. The essence of this section also finds its place in the constitution.

PROCESS TO COMPEL APPEARANCE

SECTION 61. Form of summons.

Every summons issued by a Court under this Code shall be in writing, in duplicate, signed by the presiding officer of such Court or by such other officer as the High Court may, from time to time, by rule direct, and shall bear the seal of the Court.

SECTION 62. Summons how served.

(1) Every summons shall be served by a police officer, or subject to such rules as the State Government may make in this behalf, by an officer of the Court issuing it or other public servant. (2) The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons. (3) Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate. 63. Service of summons on corporate bodies and societies.

SECTION 63. Service of summons on corporate bodies and societies.

Service of a summons on a corporation may be effected by serving it on the secretary, local manager or other principal officer of the corporation, or by letter sent by registered post, addressed to the chief officer of the corporation in India, in which case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post. Explanation.-In this section "corporation" means an incorporated company or other body corporate and includes a society registered under the Societies Registration Act, 1860 (21 of 1860). 64. Service when persons summoned cannot be found.

SECTION 64. Service when persons summoned cannot be found.

Where the person summoned cannot, by the exercise of due diligence, be found, the summons may be served by leaving one of the duplicates for him

with some adult male member of his family residing with him, and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate. Explanation.-A servant is not a member of the family within the meaning of this section.

SECTION 65. Procedure when service cannot be effected as before provided.

If service cannot by the exercise of due diligence be effected as provided in section 62, section 63 or section 64, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the Court, after making such inquiries as it thinks fit, may either declare that the summons has been duly served or order fresh service in such manner as it considers proper.

SECTION 66. Service on Government servant.

(1) Service on Government servant. Where the person summoned is in the active service of the Government the Court issuing the summons shall ordinarily send it in 839 duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in the manner provided by section 62, and shall return it to the Court under his signature with the endorsement required by that section. (2) Such signature shall be evidence of due service. 67. Service of summons outside local limits.

SECTION 67. Service of summons outside local limits.

When a Court desires that a summons issued by it shall be served at any place outside its local jurisdiction, it shall ordinarily send such summons in duplicate to a Magistrate within whose local jurisdiction the person summoned resides, or is, to be there served. 68. Proof of service in such cases and when serving officer not present.

SECTION 68. Proof of service in such cases and when serving officer not present.

(1) When a summons issued by a Court is served outside its local jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in the manner provided by section 62 or section 64) by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved. (2) The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the Court.

SECTION 69. Service of summons on witness by post.

(1) Service of summons on witness by post. (1) Notwithstanding anything contained in the preceding sections of this Chapter, a Court issuing a summons to a witness may, in addition to and simultaneously with the issue of such summons, direct a copy of the summons to be served by registered post addressed to the witness at the place where he ordinarily resides or carries on business or personally works for gain. (2) When an acknowledgment purporting to be signed by the witness or an endorsement purporting to be made by a postal employee that the witness refused to take delivery of the summons has been received, the Court issuing the summons may declare that the summons has been duly served.

SECTION 70. Form of warrant of arrest and duration.

(1) Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer of such Court and shall bear the seal of the Court. (2) Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

SECTION 71. Power to direct security to be taken.

(1) Any Court issuing a warrant for the arrest of any person may be in its discretion direct by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer

to whom the warrant is directed shall take such security and shall release such person from custody. (2) The endorsement shall state- (a) the number of sureties; (b) the amount in which they and the person for whose arrest the warrant is issued, are to be respectively bound; (c) the time at which he is to attend before the Court. (3) Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

SECTION 72. Warrants to whom directed.

. (1) A warrant of arrest shall ordinarily be directed to one or more police officers; but the Court issuing such a warrant may, if its immediate execution is necessary and no police officer is immediately available, direct it to any other person or persons, and such person or persons shall execute the same. (2) When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more of them.

SECTION 73. Warrant may be directed any person.

(1) The Chief Judicial Magistrate or a Magistrate of the first class may direct a warrant to any person within his local jurisdiction for the arrest of any escaped convict, proclaimed offender or of any person who is accused of a nonbailable, offence and is evading arrest. (2) Such person shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued, is in, or enters on, any land or other property under his charge. (3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 71.

SECTION 74. Warrant directed to police officer.

A warrant directed to any police officer may also be executed by any other police officer whose name is endorsed upon, the warrant by the officer to whom it is directed or endorsed.

SECTION 75. Notification of substance of warrant.

The police officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant. 76. Person arrested to be brought before Court without delay.

SECTION 76. Person arrested to be brought before Court without delay.

The police officer or other person executing a warrant of arrest shall (subject to the provisions of section 71 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person: Provided that such delay shall not, in any case, exceed twentyfour hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

SECTION 77. Where warrant may be executed.

A warrant of arrest may be executed at any place in India.

SECTION 78. Warrant forwarded for execution outside jurisdiction.

(1) When a warrant is to be executed outside the local jurisdiction of the Court issuing it, such Court may, instead of directing the warrant to a police officer within its jurisdiction, forward it by post or otherwise to any Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction it is to be executed ; and the Executive Magistrate or District Superintendent or Commissioner shall endorse his name thereon, and if practicable, cause it to be executed in the manner hereinbefore provided. (2) The Court issuing a warrant under subsection (1) shall forward, along with the warrant, the substance of the information against the person to be arrested together with such documents, if any, as may be sufficient to enable the Court acting under section 81 to decide whether bail should or should not be granted to the person.

SECTION 79. Warrant directed to police officer for execution outside jurisdiction.

. (1) When a warrant directed to a police officer is to be executed beyond the local jurisdiction of the Court issuing the same, he. shall ordinarily take it for

endorsement either to an Executive Magistrate or to a police officer not below the rank of an officer in charge of a police station, within the local limits of whose jurisdiction the warrant is to be executed. (2) Such Magistrate or police officer shall endorse his name thereon and such endorsement shall be sufficient authority to the police officer to whom the warrant is directed to execute the same, and the local police shall, if so required, assist such officer in executing such warrant. (3) Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police officer within whose local jurisdiction the warrant is to be executed will prevent such execution, the police officer to whom it is directed may execute the same without such endorsement in any place beyond the local jurisdiction of the Court which issued it.

Section 80. Procedure on arrest of person against whom warrant issued.

. When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within thirty kilometres of the place of arrest or is nearer than the Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 71, be taken before such Magistrate or District Superintendent or Commissioner.

SECTION 81. Procedure by Magistrate before whom such person arrested is brought.

. (1) The Executive Magistrate or District Superintendent of Police or Commissioner of Police shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court : Provided that, if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate, District Superintendent or Commissioner, or a direction has been endorsed under section 71 on the warrant and such person is ready and willing to give the security required by such directions the Magistrate, District Superintendent or Commissioner shall take such bail or security, as the case may be, and forward the bond, to the Court which issued the warrant : Provided further

that if the offence is a non-bailable one, it shall be lawful for the Chief Judicial Magistrate (subject to the provisions of section 437), or the Sessions Judge, of the district in which the arrest is made on consideration of the information and the documents referred to in sub-section (2) of section 78, to release such person on bail. (2) Nothing in this section shall be deemed to prevent a police officer from taking security under section 71,

SECTION 82. Proclamation for person absconding.

(1) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation. (2) The proclamation shall be published as follows: - (i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides; (b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village; (c) a copy thereof shall be affixed to some conspicuous part of the Court-house; (ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides. (3) A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in clause (i) of sub-section (2), shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

(Note:- this section provides that if a court has reasons to believe that any person against whom a warrant has been issued had absconded or was concealing himself so that such warrant could not be executed, such court might publish a written proclamation requiring him to appear at a specified place at a specified time not less than 30 days from the date of publication of such proclamation. But the processes of attachment and proclamation should not be issued whenever a warrant fails of its effect. The officer sent to serve

the warrant should be examined as to the measures adopted by him to serve it, and if on his evidence, or in any other manner the magistrate is satisfied that the accused is evading the justice, then and then only can be processes of proclamation and attachment be issued. The magistrate must record the reasons which satisfied him that the accused was absconding or concealing himself to evade justice. Further the word absconding does not mean absence from one residence on a day but remaining out for some days thus if a police officer goes to the house and does not find the occupant there it cannot necessarily be said that the man was absconding.)

SECTION 83. Attachment of Property of person absconding.

(1) The Court issuing a proclamation under section 82 may, for reasons to be recorded in writing, at any time after the issue of the proclamation, order the attachment of any property, movable or immovable, or both, belonging to the proclaimed person: Provided that where at the time of the issue of the proclamation the Court is satisfied, by affidavit or otherwise, that the person in relation to whom the proclamation is to, be issued,- (a) is about to dispose of the whole or any part of his property, or (b) is about to remove, the whole or any part of his property from the local jurisdiction of the Court, it may order the attachment simultaneously with the issue of the proclamation. (2) Such order shall authorise the attachment of any property belonging to such person within the district in which it is made; and it shall authorise the attachment of any property belonging to such person without such district when endorsed by the District Magistrate within whose district such property is situate. (3) If the property ordered to be attached is a debt or other movable property, the attachment under this section shall be made- (a) by seizure ; or (b) by the appointment of a receiver ; or (c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf ; or (d) by all or any two of such methods, as the Court thinks fit. (4) If the property ordered to be attached is immovable, the attachment under this section shall, in the case of land paying revenue to the State Government, be made through the Collector of the district which the land is situate, and in all other cases- (a) by taking possession ; or (b) by the appointment of a receiver ; or (c) by an order in writing prohibiting the payment of rent on delivery of

property to the proclaimed person or to any one on his behalf ; or (d) by all or any two of such methods, as the Court thinks fit. (5) If the property ordered to be attached consists of livestock or is of a perishable nature, the Court may, if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the Court. (6) The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908).

(Note:- this section can be resorted to or processes under this section can be issued only after the issue of proclamation and that too for the reasons to be recorded in writing. Before passing any order under this section, the court should thoroughly apply its judicial mind to all the facts authorizing it to issue the proclamation under section 82 and specially the fact that the notice of proclamation was served upon the accused within such time so as to enable the accused to attend the court on the fixed date of hearing. If the order of attachment is passed without satisfying these requirements , the order would be invalid liable to be quashed by the High Court under its inherent jurisdiction.)

SECTION 84. Claims and objections to attachment.

(1) If any claim is preferred to, or objection made to the attachment of, any property attached under section 83, within six months from the date of such attachment, by any person other than the proclaimed person, on the ground that the claimant or objector has an interest in such property, and that such interest is not liable to attachment under section 83, the claim or objection shall be inquired into, and may be allowed or disallowed in whole or in part: Provided that any claim preferred or objection made within the period allowed by this-sub-section may, in the event of the death of the claimant or objector, be continued by his legal representative. (2) Claims or objections under sub-section (1) may be preferred or made in the Court by which the order of attachment is issued, or, if the claim or objection is in respect of property attached under an order endorsed under sub-section (2) of section

83, in the Court of the Chief Judicial Magistrate of the district in which the attachment is made. (3) Every such claim or objection shall be inquired into by the Court in which it is preferred or made: Provided that, if it is preferred or made in the Court of a Chief Judicial Magistrate, he may make it over for disposal to any Magistrate subordinate to him. (4) Any person whose claim or objection has been disallowed in whole or in part by an order under sub-section (1) may, within a period of one year from the date of such order, institute a suit to establish the right which he claims in respect of the property in dispute ; but subject to the result of such suit, if any, the order shall be conclusive.

SECTION 85. Release, sale and restoration of attached property.

(1) If the proclaimed person appears within the time specified in the proclamation, the Court shall make an order releasing the property from the attachment. (2) If the proclaimed person does not appear within the time specified in the proclamation, the property under the attachment shall be at the disposal of the State Government; but it shall not be sold until the expiration of six months from the date of the attachment and until any claim preferred or objection made under section 84 has been disposed under that section, unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner ; in either of which cases the Court may cause it to be sold whenever it thinks fit. (3) If, within two years from the date of the attachment, any person whose property is or has been at the disposal of the State Government, under sub-section (2), appears voluntarily or is apprehended and brought before the Court by whose order the property was attached, or the Court to which such Court is subordinate, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the net proceeds of the sale, or, if part only thereof has been sold, the net proceeds of the sale and the residue of the property, shall, after satisfying therefrom all costs incurred in consequence of the attachment, be delivered to him.

SECTION 86. Appeal from order rejecting application for restoration of attached property.

Any person referred to in sub-section (3) of section 85, who is aggrieved by any refusal to deliver property or the proceeds of the sale thereof may appeal to the Court to which appeals ordinarily lie from the sentences of the first-mentioned Court. D.-Other rules regarding processes

SECTION. 87. Issue of warrant in lieu of, or in addition to, summons.

A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person, issue, after recording its reasons in writing, a warrant for his arrest- (a) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons ; or (b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

SECTION 88. Power to take bond for appearance.

When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant, is present in such Court, such officer may require such person to execute a bond, with or without sureties, for his appearance in such Court, or any other Court to which the case may be transferred for trial. 89. Arrest on breach of bond for appearance. 89. Arrest on breach of bond for appearance. When any person who is bound by any bond taken under this Code to appear before a Court, does not appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him.

SECTION. 90. Provisions of this Chapter generally applicable to summonses and warrants of arrest.

The provisions contained in this Chapter relating to a summons and warrant, and their issue, service and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

SECTION 91. Summons to produce document or other thing.

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order. (2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same. (3) Nothing in this section shall be deemed- (a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891) or (b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

SECTION 92. Procedure as to letters and telegrams.

(1) If any document, parcel or thing In the custody of a postal or telegraph authority is, in the opinion of the District Magistrate, Chief Judicial Magistrate, Court of Session or High Court wanted for the purpose of any investigation, inquiry, trial or other proceeding under this Code, such Magistrate or Court may require the postal or telegraph authority, as the case may be, to deliver the document, parcel or thing to such person as the Magistrate or Court directs. (2) If any such document, parcel or thing is, in the opinion of any other Magistrate, whether Executive or Judicial, or of any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the postal or telegraph authority, as the case may be, to cause search to be made for and to detail such document, parcel or thing pending the order of a District Magistrate, Chief Judicial Magistrate or Court under sub-section (1).

93. When search warrant may be issued.

(1)(a) Where any Court has reason to believe that a person to whom a summons or order under section 91 or a requisition under sub-section (1) of section 92 has been, or might be, addressed, will not or would not produce the document or thing as required by such summons or requisition, or (b) where such document or thing is not known to the Court to be the possession of any person, or (c) where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection, it may issue a search-warrant; and the person to whom such warrant is directed, may search or inspect in accordance therewith and the provisions hereinafter contained. (2)The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified. (3)Nothing contained in this section shall authorise any Magistrate other than a District Magistrate or Chief Judicial Magistrate to grant a warrant to search for a document, parcel or other thing in the custody of the postal or telegraph authority.

SECTION. 94. Search of place suspected to contain stolen property, forged documents, etc.

(1) If a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property, or for the deposit, sale or production of any objectionable article to which this section applies, or that only such objectionable article is deposited in any place, he may by warrant authorise any police officer above the rank of a constable- (a) to enter, with such assistance as may be required, such place, (b) to search the same in the manner specified in the warrant, (c) to take possession of any property or article therein found which he reasonably suspects to be stolen property or objectionable article to which this section applies, (d) to convey such property or article before a Magistrate, or to guard the same on the spot until the offender is taken before 849 a Magistrate, or otherwise to dispose of it in some place of safety, (e) to take into custody and carry 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. (2) The objectionable articles to which this section applies are- (a) counterfeit coin; (b) 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); (c) counterfeit currency note; counterfeit stamps; (d) forged documents; (e) false seals ; (f) obscene objects referred to in section 292 of the Indian Penal Code (45 of 1860); (g) instruments or materials used for the production of any of the articles mentioned in clauses (a) to (f).

SECTION 95. Power to declare certain publications forfeited and to issue search warrants for the same.

Where- (a) any newspaper, or book, or (b) any document, wherever printed, appears to the State Government to contain any matter the publication of which is punishable under section 124A or section 153A or section 153B or section 292 or section 293 or section 295A of the Indian Penal Code(45 of 1860), the State Government may,by notification, stating the grounds of its opinion, declare every copy of the issue of the newspaper containing such matter, and every copy of such book or other document to be forfeited to Government, and thereupon any police officer may seize the same wherever found in India and any Magistrate may by warrant authorise any police officer not below the rank of sub-inspector to enter upon and search for the same in any premises where any copy of such issue or any such book or other document may be or may be reasonably suspected to be. 850 (2) In this section and in section 96,- (a) "newspaper" and "book" have the same meaning as in the Press and Registration of Books Act, 1867 (25 of 1867); (b) "document" includes any painting, drawing or photograph, or other visible representation. (3) No order passed or action taken under this section shall be called in question in any Court otherwise than in accordance with the provisions of section 96.

SECTION 96. Application to High Court to set aside declaration of forfeiture.

(1) Any person having any interest in any newspaper, book or other document, in respect of which a declaration of forfeiture has been made under section 95, may, within two months from the date of publication in the Official Gazette of such declaration, apply to the High Court to set aside such declaration on the ground that the issue of the newspaper, or the book or other document, in respect of which the declaration was made, did not contain any such matter as is referred to in sub-section (1) of section 95. (2) Every such application shall, where the High Court consists of three or more Judges, be heard and determined by a Special Bench of the High Court composed of three Judges and where the High Court consists of less than three Judges, such Special Bench shall be composed of all the Judges of that High Court. (3) On the hearing of any such application with reference to any newspaper, any copy of such newspaper may be given in evidence in aid of the proof of the nature or tendency of the words, signs or visible representations contained in such newspaper, in respect of which the declaration of forfeiture was made. (4) The High Court shall, if it is not satisfied that the issue of the newspaper, or the book or other document, in respect of which the application has been made, contained any such matter as is referred to in sub-section (1) of section 95, set aside the declaration of forfeiture. (5) Where there is a difference of opinion among the Judges forming the Special Bench, the decision shall be in accordance with the opinion of the majority of those Judges.

SECTION 97. Search for persons wrongfully confined.

If any District Magistrate, Sub-divisional Magistrate or Magistrate of the first class has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.

SECTION 98. Power to compel restoration of abducted females.

Upon complaint made on oath of the abduction or unlawful detention of a woman, or a female child under the age of eighteen years, for any unlawful purpose, a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class may make an order for the immediate restoration of such woman to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary. C.-General provisions relating to searches

SECTION 99. Direction, etc., of search warrants.

The provisions of sections 38, 70, 72, 74, 77, 78 and 79 shall, so far as may be, apply to all search-warrants issued under section 93, section 94, section 95 or section 97.

SECTION 100. Persons in charge of closed place to allow search.

(1) Whenever any place liable to search or inspection under this Chapter is closed, any person residing in, or being in charge of, such place, shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein. (2) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in the manner provided by sub-section (2) of section 47. (3) Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency. (4) Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do. (5) The search shall be made in their presence, and a

list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it. (6) The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search. and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person. (7) When any person is searched under sub-section (3), a list of all things taken possession of shall be prepared, and a copy thereof shall be delivered to such person. (8) Any person who, without reasonable cause, refuses or neglects to attend and witness a search under this section, when called upon to do so by an order in writing delivered or tendered to him, shall be deemed to have committed an offence under section 187 of the Indian Penal Code (45 of 1860)

SECTION 101. Disposal of things found in search beyond jurisdiction.

When, in the execution of a search-warrant at any place beyond the local jurisdiction of the Court which issued the same, any of the things for which search is made, are found, such things, together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Court issuing the warrant, unless such place is nearer to the Magistrate having jurisdiction therein than to such Court, in which case the list and things shall be immediately taken before such Magistrate ; and, unless there be good cause to the contrary, such Magistrate shall make an order authorizing them to be taken to such Court.