

## **BNSS 2023 – LECTURE 14**

### **Notes - Search warrants, general provisions relating to searches**

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#### **When search warrant may be issued**

##### **Section 96: When search warrants may be issued.**

As we had seen in the last class, Section 96(1) talks about three circumstances when search-warrant can be issued by a Court.

##### **Section 96(1)(a) - Person ordered or requested to produce document or thing**

When any Court has reason to believe that

- I. a person who has been requested to produce something that is necessary for the purpose of investigation, inquiry or trial, or
- II. the postal authority when it has been requisitioned by District Magistrate, CJM or the Court of Session would not produce such thing as required by the summons,

the Court can issue a search warrant

##### **Section 96(1)(b) - Person in possession of thing or document not known**

When the court does not know who has the thing, it may order the search of a certain place where it believes the things might be. For example, the police are looking for arms that were used in a robbery but do not know the suspect has the weapon hidden in which part of his property which consists of 3 buildings. For this, the court might grant a search warrant to search all the three buildings to extract that thing.

Section 96(2) also tells us that the police may only be asked to search or inspect only a specific part of the whole property or place, i.e. only one of the buildings or only one of the floors may be authorised for search by the warrant if the court has enough reason to believe that the thing might be present only in that part of the house.

##### **Section 96(1)(c) - When the court thinks that a general search or inspection is necessary**

A search-warrant for general search and inspection can be issued by a court when it feels that the purposes of the inquiry or trial or other proceedings would be served by such search and inspection. The

necessity in such cases is that the court is reasonably satisfied that the search will lead to the finding of expected material which would be necessary in conduct of proceedings.

Section 96(3) gives exclusive authority to the District Magistrate and CJM and the Sessions judge to call for requisition of documents or things from the postal authority.

## **How to execute search warrant**

Section 97 of the BNSS, 2023, previously Section 94 of the Cr.P.C., titled ‘Search of place suspected to contain stolen property, forged documents, etc.’ talks about how a search warrant is issued and how is it executed. But before entering the section, a few terms need to be learnt

### **Stolen property**

Stolen property is the property that has been acquired through illegal means such as theft, robbery, extortion or criminal misappropriation.

### **Objectionable articles**

In layman’s terms, an objectionable article is an item or publication which is inappropriate, offensive or upsetting to general public good. Section 97(2) contains 7 headings as to the items which come under objectionable articles for which search-warrant can be issued. They are:-

1. counterfeit coin,
2. piece of metal made in contravention of Coinage Act, 2011 or Customs Act, 1962
3. counterfeit currency notes, counterfeit stamps
4. forged documents
5. false seals
6. obscene objects as defined in S. 294 BNS, 2023
7. instruments or materials used for the production of any of the above articles

### **Who can give order?**

According to Section 97(1), a District magistrate, Sub-divisional magistrate or magistrate of first class can only issue a search warrant.

They may issue such a warrant after conducting such inquiry they think is necessary to believe information that a search-warrant is needed to search and inspect a place where the sale, production or deposit of stolen items or objectionable articles.

The order must show that application of mind through suitable inquiry by the magistrate.

### **To whom**

A District Magistrate, Sub-divisional Magistrate or Magistrate of first class may authorise any police officer above the rank of a constable.

### **What directions can be given?**

**Section 97(1)(a) - (e)** talk about the directions that can be issued in a search warrant

1. The police officer may enter a place with assistance if needed.
2. The search of the place shall only be carried out in the manner specified in the warrant. Any other search apart from what the warrant says would be illegal.
3. The police officer may take possession of the property or article which has been mentioned in the warrant.
4. After taking possession, the officer can either
  - I. convey the property to a magistrate, or
  - II. guard the property where it was found till the offender is taken before a magistrate.
- III. If the warrant requires the officer to dispose of the property, he would dispose of it in a place of safety.
5. Apart from holding, conveying or disposing of the property, the officer can also take into custody and produce before a magistrate any person from the place of search.

The requirement for taking into custody is that the person should have been privy to the sale, deposit or production of, or he had reasonable cause to suspect that the property was stolen or objectionable.

### **Forfeiture of articles**

When any newspaper, book or document appears to the State government to contain materials which would come under offences which are mentioned under Section 98 of BNSS, it may by a notification, be forfeited to the State government. Upon such notification the magistrate may by warrant authorise police officers to enter and search a place where such newspaper, book or document may be.

### **What can be searched, and when**

Any book and newspaper (as defined in the Press and Registration of Books act, 1867) and document (which includes drawing, painting, photograph or visual representation) printed anywhere can be forfeited.

When such document, newspaper or book appears to the State government to contain matter punishable under :-

1. Section 152 -Act endangering safety security and integrity of India
2. Section 196 - Promoting enmity between groups and acts prejudicial to harmony
3. Section 197 - Imputations, assertions prejudicial to national integration
4. Section 294 - Sale of obscene books
5. Section 295 - Sale of obscene objects to child
6. Section 299 - Deliberate and malicious acts intended to outrage religious feelings

### **How forfeited**

The procedure for forfeiture is also mentioned under Section 98(1). The State government by notification in which it shall declare its reasons for doing so, declare all issues and copies of the books, newspaper or document to be forfeited to the government.

On the release of such notification, any such copy can be seized and every magistrate can authorise any police officer not below the rank of sub-inspector to enter and search for such things in any premises where it is reasonably suspected to be.

### **Appeal against forfeiture**

**Section 98(3)** tells us that the declaration of forfeiture shall be appealed through the procedure laid out in Section 99.

**Section 99** of BNSS, previously 96 in Cr.P.C. is titled ‘Application to High Court to set aside the declaration of forfeiture’.

### **When to apply**

Any person who has an interest in the items forfeited may apply to the High Court within 2 months of the publication of the notification of forfeiture in the official gazette to show that the documents or books did not have any material punishable under Section 98.

### **Adjudgement**

- I. If the High court has more than three judges, a special bench of 3 judges will be made for hearing the application.
- II. If the HC has less than three judges, all the judges shall form that special bench.

The judges will go by the majority opinion and if not satisfied with the reasons of the State government’s declaration can set aside that judgement.

## **Other provisions for search**

### **Section 100. Search for persons wrongfully confined (Section 97 of Cr.P.C.)**

This search warrant is of the nature of the writ of *habeas corpus* for the rescue of any person who has been wrongfully confined by anyone, including the police, by the intervention of police by a magisterial order. It can be issued by any District Magistrate, Sub-divisional magistrate or Magistrate of first class.

Before a warrant is issued under Section 100, the District Magistrate, Sub-divisional Magistrate or Magistrate of first class must have reason to believe that the person is wrongfully confined. When the confined person is found through search, he will be produced before a Magistrate (not necessarily the one issuing the warrant) who shall make such order he deems proper in such circumstances.

### **Section 101. Power to compel restoration of abducted females**

This is a special provision having similar nature as that of Section 100. It gives immediate relief to a woman or girl abducted or detained for an unlawful purpose.

Under this section, the District Magistrate, Sub-divisional magistrate or Magistrate of first class may make an order to restore such detained woman to her liberty or restore a girl to her parents or her guardian with. Such order can also authorise force, if necessary for achieving the object of the section.

## **General provisions relating to searches**

### **Section 103. Persons in charge of closed place to allow search**

Section 103 of BNSS, corresponding to Section 100 of Cr.P.C. is similar to that of Section 44 of BNSS (search of place entered by person sought to be arrested). The processes in these steps have been designed to obtain reliable evidence and exclude possibility of malpractice. It contains 8 sub sections which are explained below

1. **Allow free ingress** - Any person residing or having charge of a place must allow ingress and provide reasonable facilities to the police officer on the production of the warrant.
2. **Ingress by force** - If free entry cannot be obtained, the police officer executing the warrant can break open any door or window to gain entrance, similar to Section 44(2).
3. **Person may be searched** - When the police officer suspects someone from that place to be concealing what is being searched, he can be searched. A woman shall be searched by another woman with strict regard to her decency.

Also according to Section 103(7), when a person is searched, all things taken from him shall be itemised in a list whose copy shall be provided to the searched person.

4. **Witness to attend the search** - The officer searching can call upon two witnesses to attend and witness the search. The two persons should be from the same locality of the place to be searched. If not available, two persons from another locality can be called. This order to attend and witness can also be given in writing.

Every witness has to attend the search and then sign on the list. The police officer shall prepare a list of all things seized and where they were seized in the search and the witness shall sign on it as per Section 103(5). Such witness can only be summoned to the court specially. (Section 144 of BSA, corresponding to Section 139 of IEA)

Also according to Section 103(8), any person who refuses or ignores the order to witness in writing, shall be liable for prosecution under Section 222 of the BNS (Omission to assist public servant when bound by law to give assistance).

5. **Occupant to attend the search** - According to Section 103(6), the occupant of the place searched or someone on behalf of him will attend the search and they shall also get a copy of the list of items searched and seized after signature by the witnesses.

### **Section 105. Recording of search and seizure through audio-video electronic means**

This is a new section added to BNSS which was not present in Cr.P.C. to bring the act to its times. It provides that the conduct of search and seizure and signing of the list of such items by witnesses shall be recorded through audio-video means, preferably through the mobile phone of the police officer. This video recording should be immediately forwarded to the District Magistrate, Sub-divisional Magistrate or Magistrate of first class.

### **Section 108. Magistrate may direct search in his presence**

This section corresponds to Section 103 of Cr.P.C.. Similar to Section 41(2) of BNSS, it says that any Magistrate may direct a search to be taken in his presence too if he is competent to issue a search warrant for the search of that place.

### **Section 109. Power to impound a document, etc. produced**

This section corresponds to Section 105 of the Cr.P.C. Through this section, the Court is empowered to impound any document or thing produced before it under the Sanhita.

In the case of *Chennupati Kranthi Kumar v The State of Andhra Pradesh (2023)*, it was ruled that the search and seizure of the passport of the complainant was not needed and thus the impounding of it could not be done by the Court. Only the issuing authority, i.e. the Passport department had the right to impound the passport authority.

### **Difference between seize and impound**

Seizing is the taking into possession of something that was in the possession of someone else whereas impounding involves retaining such possession for a longer period of time. For example the police can seize the passport under Section 106 of the BNSS but the Passport authority can impound the passport under Section 10(3) of the Passports Act.

### **Section 107. Attachment, forfeiture or restoration of property**

This section is also a new section in the BNSS. It talks about the attachment of any property found in the search for a crime which may also be the proceeds of crime, but some other crime. In this case after some preliminary inquiry, the property may be attached and proceeds from that may be distributed to the persons affected by such crime.

This section has been considered to give wide powers to the police and magistrates to attach property with and without notice and it has been challenged in the Supreme Court.