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Search warrant under Chapter VIII of CrPC

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Search warrant under chapter VIII A of CrPc falls under various sections from 106 to 122. A search warrant in general or in layman's terms is a document where the court considers that any purposes of the inquiry or any other proceedings under this code shall be served by a general search or inspection and it may issue a "Search Warrant". Sections under Chapter VIII A deeply emphasize on all the securities as provided in case of happening of unforeseen circumstances. Section 106 provides security for keeping the peace on conviction', Section 107 provides 'security for keeping the peace in other cases, Section 108 provides 'security for good behaviour from persons disseminating seditious matters', Section 109 elucidates 'good behaviour from suspected persons, Section 110 briefs about 'security for good behaviour from habitual offenders, which tunes with the previous section but on different grounds, Section 111 is 'order to be made', Section 112, is a procedure in respect of person present in court, Section 113 construes, Summons or warrants in case of a person not present, Section 114, Copy of order to accompany Search or Warrant, Section 115 gives clarity on the power to dispense with personal attendance, Section 116 to Section 123 is the procedure to inquire the truth of information and cause Imprisonment in case of any default of security. The Author has explained and guided through each section in precise detail with the help of all recent case laws in the given Article.

Keywords: *search warrant, peace, security.*

INTRODUCTION

A search warrant in general layman's point of view is an official document that gives police officers the authority to search a building for stolen property, illegal goods, or information that

might help to solve a crime. A search warrant is a right of the police that will give them more authority in order to take the procedure ahead and look into the situation legally and rightfully. Under the Code of Criminal Procedure, 1973 in order to conduct and ensure fair investigation, inquiry, trial, or any other proceedings it becomes necessary to require a person to produce a document or thing which may be in his possession and this can be secured by 1. Summons (section 91 and 92)¹ and Warrants (section 93-98).²

There may be quite a few reasons why the court may be of the opinion to issue a Search Warrant, firstly, where a court has a reason to believe that the person to whom summons are issued will not or may not produce the document or thing as required. Secondly, where the document or the thing is not known to the court to be in possession of any person. Lastly, where the court considers that any purpose under the code is served by a general inspection or search. With reference to the above introduction to the Chapter, we can hereby gather that the main object of this chapter VIII of CrPc is 'Prevention is better than cure'. All the sections under this chapter are clearly termed as providing 'Security' under various situations and also following procedural requirements keeping in view the laws, rules, and regulations as laid down by the court of sessions along with the prescribed and appropriate punishments/imprisonment.

PART 1: SECTION 106 UNDER CHAPTER VIII OF CRPC

Chapter VIII of the Criminal procedure code discusses the provisions related to the security for keeping the peace and good behaviour. In the context of this code, security means to furnish a guarantee to the satisfaction of the court that certain conduct is important to be maintained for a certain period.

In *Madhu Limaye & Ors v Sub-divisional Magistrate, Monghyr & Ors.*, the constitutional validity of Chapter VIII was challenged and the gist of the chapter is the prevention of crimes and public tranquillity and curbing breach of the peace was held.³

¹ Code of Criminal Procedure, 1973, ss 91 and 92

² Code of Criminal Procedure, 1973, ss 93-98

³ *Madhu Limaye v Subdivisional Magistrate Monghyr & Ors.*, (1971), AIR 2486

- **Section 106**

Section 106⁴ of CrPc under Chapter VIII talks about ‘Security for keeping the peace and conviction’. There are specific offences under this section for which the Court of Session or Court of a Magistrate of the first class may convict a person or of abetting any such offence, such as-

- a. Any offence that is punishable under chapter VIII of the IPC other than an offence punishable under section 153A or 154⁵ thereof;
- b. Any offence which consists of or includes assault or using criminal force or committing any mischief
- c. Any offence of criminal intimidation
- d. Any other offence which caused, or was intended or known to likely cause any breach of peace.

If any of the above offences are committed, and if the court of session or magistrate of first class is of the opinion that it would be necessary to take security from such person for keeping the peace, the court may at the time of passing sentence on such person, order him to execute a bond, with or without sureties for keeping the peace for a period not exceeding 3 years as it thinks fit.

- **Section 107**

Under section 107⁶ of chapter VIII, it is observed that whenever the Magistrate receives any information on the commission of a breach of the peace or disturb the public tranquillity or to do any such wrongful act that may disrupt the peace of the public in any manner and if the Magistrate is of the opinion that there are reasonable grounds under which the proceedings may be initiated then the person against whom the order has been passed needs to show cause as to why he should not be ordered to execute a bond with or without sureties. This section basically

⁴ Code of Criminal Procedure, 1973, s 106

⁵ Indian Penal Code, 1860, ss 153A or 154

⁶ Code of Criminal Procedure, 1973, s 107

follows a manner in which such situations require proper evidence that may be in the form of oral, documentary, acquainted with the circumstances of the case which may be-

1. Any specific occasion under which there is a breach of peace anticipated/predicted/likely to occur;
2. Any form of quarrel, or any such circumstance which would result in a breach;
3. Any attempts made for conciliation and results.

This section covers and requires security that disrupts the peace or prevents it in any form and it is not likely to be between the two parties who are against one another, however, it is clearly important that the breach of the peace is imminent unless averted by proceedings. Such violation of peace could be due to any reason which may be beyond the jurisdiction's control or power.

In the case of *A. Ravichandran v The Sub Divisional Executive* 24th march, 2017 it was held that there is a power that is given to the Executive Magistrate that needs to be exercised with great caution, that is to receive information that it is a fit case that the person should be asked to execute a bond to keep the peace and non-performance of which would lead to jail but without charge or trial. Thus, section 107 acts as a check of powers, and the magistrate is required to record his subjective satisfaction and hence cannot pass orders under this section in accordance with its whims and fancies.⁷

- **Section 108**

Section 108⁸ provides 'Security for good behaviour from disseminating seditious matters.' Proceedings under this section maybe taken against a person who-

- a. Intentionally disseminates the following matters-
 1. Any matter the publication of which is punishable under
 - Section 124A IPC⁹

⁷ *A. Ravichandran v The Sub Divisional Executive* (2017) CRL.O.P. No. 18750/2010

⁸ Code of Criminal Procedure, 1973, s 108

⁹ Indian Penal Code, 1860, s 124A

- Section 153 A¹⁰, that is promoting enmity between classes under IPC
- Section 295A¹¹, that is maliciously insulting the religious beliefs

Any matter concerning a judge which involves or amounts to defamation

- b. Makes produces, publishes, any matter that is referred to as obscene in section 292¹² IPC and where the magistrate is of the opinion that this involves sufficient grounds for proceedings.
- c. It is important to keep in view that under this section no proceedings shall be taken against the editor, proprietor, printer, or publisher of any publication that is registered under and published in conformity with the rules as laid down under Press and Registration of Books Act, 1867 unless otherwise by the order of the state government or some other officer empowered in this behalf.

- **Section 109**

Section 109¹³ under chapter VIII elucidates providing ‘Security for good behaviour from suspected persons’. It explains that when an Executive Magistrate receives information that there is within his local jurisdiction a person taking precautions to conceal his presence and that there is a reason to believe that he is doing so with a view of committing any cognizable offence, then the Magistrate may, in the manner as provided require such a person to show as to why he should be ordered to execute a bond with or without sureties for a period not exceeding 1 year or as it thinks fit.

Under this section, before a person can be proceeded against, he must be found to have been taking precautions to conceal his presence and there must be the reason to believe that he is taking precautions with of committing any offence. Reports to be submitted under this section before Magistrate, observing the following principles-

¹⁰ Indian Penal Code, 1860, s 153A

¹¹ Indian Penal Code, 1860, s 295A

¹² Indian Penal Code, 1860, s 292

¹³ Code of Criminal Procedure, 1973, s 109

1. Once the information has been laid before the magistrate, it cannot be withdrawn
2. Copies of the statement of a witness recorded by the police officer need not be provided to the respondent, as the information before the magistrate is not a police report.

- **Section 110**

Section 110¹⁴ provides 'security for good behaviour from habitual offender'. Such cases under this section should be built up on details on the basis of careful watching by the Police. It has to be very exceptional for a local criminal for whom a history sheet has not been opened and such matters shall then be put up under these sections. Habitual offenders under this section mean any person who performs or does any such act on a habitual basis or as it's routine and is within the local limits of the jurisdiction when proceedings are taken against him. Temporary presence is also regarded as sufficient but it must be at the time when the proceedings are initiated.

A magistrate may receive information from any of the following persons-

1. Habitual robber, house breaker, thief
2. Habitual receive of stolen property
3. Habitual protectors or harbors of thieves
4. Habitual kidnapper abductor. Cheat or a person committing mischief, offences

- **Section 111: Order to be made**

When a magistrate acting under sections 107, 108, 109, or 110¹⁵ deems it necessary to require any person to show cause under this section, he shall make an order in writing setting forth the substance of the information received, the amount of bond to be executed, the term for which it has to be in force and the number and class of sureties if in case required. ¹⁶ In the case of *Zahir*

¹⁴ Code of Criminal Procedure, 1973, s 110

¹⁵ Code of Criminal Procedure, 1973, ss 107-110

¹⁶ Code of Criminal Procedure, 1973, s 111

Ahmad v Ganga Prasad AIR 1974 ¹⁷it was held that section 111 is mandatory and non-compliance of which will not be treated as irregularity.

- *Section 112 to Section 115*

Section 112¹⁸ begins with the proceeding under Chapter VIII and the author has hence combined the sections in order to keep the flow of sections for a better and clear understanding of the same. Under section 112, if the person in respect of whom such order is made is present in the court, it shall be read over to him, or if he so desires, the substance shall be explained to him.

Section 113¹⁹, in case the person is not present, Summons or warrants to be issued. If the person is not present in the court, the Magistrate shall issue a summons requiring him to appear or when such a person is in custody, a warrant directing the officer to bring him before the court.

In *Dibakar Naik v Pushpalata Patel*, 1997, it was held that it must be clear to the Magistrate before going ahead with the decision of arresting and must appear to him that such breach of the peace cannot be otherwise prevented other than proceeding with the immediate arrest of the alleged person.²⁰ Section 114²¹ tells us about the 'Copy of Order to accompany Summons or warrant'. Every summons or warrant that is issued in the former section shall be accompanied by a copy of the order and such a copy shall be delivered by the officer serving or executing such summons or warrants to the person arrested under the same.

Section 115, 'Power to dispense with personal attendance' the Magistrate may, if he sees sufficient cause, dispense with the personal attendance any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace or for good behaviour.²²

¹⁷ (*Sahai*)*Zahir Ahmed v Ganga Prasad* AIR 1963 All 4

¹⁸ Code of Criminal Procedure, 1973, s 112

¹⁹ Code of Criminal Procedure, 1973, s 113

²⁰ *Dibakar Naik v Pushpalata Patel* (1997) 1 OLR 579

²¹ Code of Criminal Procedure, 1973, s 114

²² Code of Criminal Procedure, 1973, s 115

- **Section 116**

Section 116²³ provides 'Inquiry as to the truth of information'. Under this section when any order under section 111²⁴ is read or explained under section 112²⁵ to the court or if any Warrant or Summon is issued under section 113²⁶, then the Magistrate shall proceed to inquire the truth of information upon which the action has been taken and seek further such evidence as may be required. Such an inquiry made under this section shall be much practicable in the manner as prescribed for conducting a trial. Upon receiving such information and knowing it to be true to nature, the Magistrate is required to take immediate measures for the execution of bonds, with or without sureties, and shall detain such a person in custody unless the same has been executed.

In the recent case of *Parmatma Prasad Mishra and 10 others v State of UP and Another*, it was held that an inquiry under Section 116 of CrPc is necessary before any order can be passed under section 117.

- **Section 117 and Section 118**

Section 117 is the 'Order to give security' and Section 118 tells us about 'Discharge of person informed against.' Under section 117²⁷, if upon the inquiry it is considered necessary that for keeping good behaviour and maintaining the same, the person against whom the order is made should execute a bond then the Magistrate shall make such orders as deemed to be necessary, provided if any person is minor against whom the inquiry is made, then such a bond shall only be executed by his sureties. Similarly, under Section 118²⁸, if the result comes in favour of the person then the person detained in custody shall be released/discharged.

²³ Code of Criminal Procedure, 1973, s 116

²⁴ Code of Criminal Procedure, 1973, s 111

²⁵ Code of Criminal Procedure, 1973, s 112

²⁶ Code of Criminal Procedure, 1973, s 113

²⁷ Code of Criminal Procedure, 1973, s 117

²⁸ Code of Criminal Procedure, 1973, s 118

- **Section 119**

Section 119²⁹ of Chapter VIII, briefs about 'Commencement of period for which security is required. This section tells us about the period for which the security depending upon the case to case shall be required. If any person, in respect of whom an order under section 106 or section 117³⁰ is made or is undergoing then the period for which security shall commence should be from the expiration of such sentence. In other cases, the period commences on the date of the order of the Magistrate, unless any later fixed date has been otherwise provided.

- **Section 120**

'Content of bond', any person who executes any bond with or without sureties shall bind him to keep the peace or to act in good behaviour as the case may be. If in case any person otherwise attempts to commit or commits any offence shall be punishable with imprisonment, reason being 'Breach of Bond'³¹

- **Section 121**

Section 121³² gives the 'Power to Reject Sureties'. In case Magistrate is of the opinion that the sureties which were previously accepted, should now be rejected on the grounds that the same is the unfit person for the purposes of a bond. It is absolutely necessary to conduct/hold an enquiry on oath into the fitness of the security, in order to make the right decision of either accepting or rejecting any such surety. It is also important to give reasonable notice to the surety and to the person by whom such surety was offered.

- **Section 122**

In brief detailing of this section, this section gives 'Imprisonment in default of security'³³. Whenever any person who is required to give security and fails to do so then he shall be

²⁹ Code of Criminal Procedure, 1973, s 119

³⁰ Code of Criminal Procedure, 1973, ss 106 or 117

³¹ Code of Criminal Procedure, 1973, s 120

³² Code of Criminal Procedure, 1973, s 121

³³ Code of Criminal Procedure, 1973, s 122

committed to prison or if he is already confined then he shall be detained unless such a security period expires or until, within such period, he gives the security.

- *Section 123 and 124*

Section 123³⁴ gives 'Power to release persons imprisoned for failing to give security. This section is in connectivity to the former Section 122 which talks about the Default in security which would also result in Imprisonment of the person unless the such person provides the same. Hence this section explains the "Release" of such persons who fails to provide security. The district Magistrate and Chief Judicial Magistrate have power that, such persons can be released for failing to give security if it thinks fit that it can be done without hazard to the community or to reduce the amount of security.

Section 124 is the last section under Chapter VIII of CrPc, which explains 'Security for the unexpired period of bond'.³⁵ When a person whose appearance a summons or warrant has been issued, appears or is brought before the Magistrate or court, the Magistrate or court shall cancel the bond executed by such person and shall order such person to give bond for the unexpired portion of the term of such bond that is fresh security of the same person.

CONCLUSION

The entire study helps us to conclude that Section 106 to 124³⁶ of Chapter VIII talks about providing 'Security' and 'Power' to the common public for the maintenance of Peace and Good Behaviour and keeping a regular check on any non-compliance with the laid down rules and procedures to have an effective result of the same. Every section has its own rules and procedure to be followed and importance, without which the progression of the sections may be disrupted and may result in severe punishments which may be in the form of imprisonments. The importance of such sections is that it gives Powers to the Magistrate to corroborate that under no circumstances any person shall cause any havoc or turn upside down the maintenance of

³⁴ Code of Criminal Procedure, 1973, s Code of Criminal Procedure, 1973, s 123

³⁵ Code of Criminal Procedure, 1973, s 124

³⁶ Code of Criminal Procedure, 1973, ss 106-124

‘Peace and Good behaviour” which can only be if all the rules and orders are made by the Sessions Court and Magistrate are conformed with.