

65. Reward by State Government to informer and police personnel for capturing of notorious forest brigand and his associates.	88
66. Sanction for prosecution of petitioner accorded by Deputy Inspector General Police.	88
67. Selection of Sub-Inspectors for promotion to rank of Inspectors.	89
68. State Government may prescribe form of returns.	89
69. Entry of name in history sheet and Surveillance Register.	89
70. Surrender of certificate.	89
71. Transfer simpliciter is not punishment.	89

1. **"Police Officer"—Meaning of.**—The words "a Police Officer" in the provision which defines cognizable offence, do not mean "each and every Police Officer". It is sufficient if the power to arrest without a warrant is limited by provisions of law to a class of Police Officers and the offences in such cases fall within purview of Section 2(c).¹

2. **Police report—What is?**—The words "police report" used in a generic sense including both police report under the Code and also general report by the police.²

3. **"Inquiry"—Meaning of.**—The definition of 'inquiry' is every inquiry other than a trial conducted under this Code by a Magistrate or Court. The definitive intent is thus manifests to exclude 'trial' from the expression 'inquiry'.³

—*Enquiry report by Judicial Magistrate.*—There is no procedure prescribed for the enquiry when it is ordered by a Court and so it remains in the discretion of the Inquiry Officer to submit his report after inquiry in a manner which is required under the circumstances. It is not like an investigation under Section 173 of the Code of Criminal Procedure. Under Section 202 of the Code of Criminal Procedure the enquiry report by a Judicial Magistrate can be not like police investigation. Similarly when a Superintendent of Police is directed to submit a report, it is not always an investigation but it can be a report, if directed to do so. In this case the Superintendent of Police was not directed to make an investigation but to submit report, which order he has complied with. An enquiry and the investigation are not synonymous but different. The Judicial Magistrate can take cognizance, call for a police report even from any other person or by a Police Officer and that a Magistrate cannot make investigation. The Police Officer is to make investigation but if the Police Officer is asked to submit a report then it does not mean that it is always like an investigation under Section 173, Cr PC.⁴

—*Release on bail on ground of illegality or irregularity in remand order.*—The Magistrate has the power to remand the accused to custody under Sections 209 and 309(2) of Cr PC till the committal order and after passing committal

1. *State of Gujarat v. Lal Singh*, 1980 Cri LJ 1413 at 1414, 1415 : AIR 1981 SC 368.
2. *Malay Banerji v. State*, AIR 1967 Cal 352.
3. *Bandela Ailalah v. State of A.P.*, 1995 Cri LJ 1083 at 1091 (AP).
4. *T.N. Ojha v. Haji Nasiruddin Khan*, 1989 Cri LJ 1846 (Pat).

the Court, however, it is subject to the limitation specified under the provisions of the Code of Criminal Procedure, 1973.¹

4. Arrest—What amounts to?—It cannot be said to have been arrested or taken into custody when a person detained by customs officer for investigation or inquiry.²

5. "Arrest"—When can be justified?—The Bombay High Court observed that no arrest can be made in a routine manner on mere allegation of commission of a cognizable offence. According to the Court a person is not liable to be arrested merely on suspicion of complicity in an offence. There must be some, reasonable justification in the opinion of the arresting police officer that such arrest is necessary and justified and except in heinous offences.³

6. Arrest made on the basis of chapter proceedings is illegal.—No evidence to show fear of problems for security of community and no possibility of extortion, it was held that arresting an applicant on the basis of chapter proceedings is illegal.⁴

7. Arrest of a female person—Presence of lady constable not necessary.—The object will be served if a direction is issued to the arresting authority that while arresting a female person, all efforts should be made to keep a lady constable present but in circumstances where the arresting authority is reasonably satisfied that such presence of lady constable is not available or possible and for the delay in arresting caused by securing the presence of a lady constable would impede the cause of investigation, such arresting officer may arrest a female while recording reason for doing so.⁵

8. Complaint case—Arrest of accused therein.—The Bombay High Court in *Jagannath Singh v. Dr. Shri Ajay Upadhyay*⁶ ruled that if in complaint case Magistrate passes an order under Section 156(3) of Cr PC and police register an FIR then before arresting the accused, the police has to approach the Magistrate.

9. Power of arrest—Guidelines to be followed.—It was held that while making arrest a police officer is required to follow the guidelines laid down by the Supreme Court in *Joginder Singh* case.⁷

10. Power to arrest—To be exercised judiciously.—The Rajasthan High Court has held that power to arrest must be exercised by police judiciously.⁸

1. *Laxminarayan Vishawanath Arya v. State of Maharashtra*, 2008 Cri LJ 1 (FB) (Bom).
2. *Niranjan Prabhakar v. State*, AIR 1980 SC 785.
3. *Dinkarrao Rajaram Pantpole v. State*, 2004 (1) Crimes 1 (Bom).
4. *Shyam Dattatray Beturkan v. Special Executive Magistrate, Kalyan*, 1999 Cri LJ 2676 (Bom).
5. *State of Maharashtra v. Christian Community Welfare Counsel of India*, AIR 2004 SC 7.
6. 2006 Cri LJ 4274 (Bom).
7. *V.S. Krishnan v. State of U.P.*, 2000 Cri LJ 4498 (All); see also *Joginder Singh v. State of U.P.*, 1994 Cri LJ 1984 : AIR 1994 SC 1349.
8. *State of Rajasthan v. Bhera*, 1997 Cri LJ 1237 (Raj).

long before the authorisation by the Reserve Bank of India and the actual filing of the complaint, the entire proceeding were illegal.

The Supreme Court held that the cognizance cannot be said to have been taken either by the arrest or the issue of the search warrant.

In the instant case the Magistrate cannot be said to have taken cognizance of the case either by ordering the arrest of the petitioner or by sending the report to the office-in-charge Kotwali Police Station or by remanding the petitioner.¹

103. Identification of person arrested.—Where a person is arrested on a charge of committing an offence and his identification by any other person or persons is considered necessary for the purpose of investigation of such offence, the Court, having jurisdiction, may on the request of the officer in charge of a police station, direct the person so arrested to subject himself to identification by any person or persons in such manner as the Court may deem fit. [See Cr PC, 1973, Sec. 54-A].

104. Procedure when Police Officer deposes subordinate to arrest without warrant.—(1) When any officer-in-charge of a police station or any Police Officer making an investigation under Chapter XII requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence or other cause for which the arrest is to be made and the officer so required shall, before making the arrest, notify to the person to be arrested the substance of the order and, if so required by such person, shall show him the order.

(2) Nothing in sub-section (1) shall affect the power of a Police Officer to arrest a person under Section 41. [See Cr PC, 1973, Sec. 55].

(1) *Scope of.*—It is evident that this section comes into operation only after a person has been arrested either under a warrant or without a warrant. In the present case there is not the slightest suggestion in the evidence that Sub-Inspector ever arrested the applicant. If fact the evidence is quite clear that all that Sub-Inspector wanted was to search the person to the applicant and for that the law gave him no authority whatsoever until he had arrested the applicant.²

(2) *Power of.*—The sub-rule (4) of Rule 129 of the Defence of India Rules is so framed as to suggest that what is really being conferred on Government is power to make a final order, power to make an order for temporary custody being expressed parenthetically. But when the language is looked at carefully, it is plain that the sub-rule (4) does not purport to enlarge the powers which Government may possess under any law for the time being in force, and this part of the rule seems designees only to indicate that Government can take advantage of a person being in temporary custody when making a final order

1. *Moha Choudhury v. State*, AIR 1964 Tri 65 at 67.

2. *R. Rai v. Emperor*, AIR 1942 All 424 at 425.

and, therefore, under circumstances the police officers can investigate such offence with the same powers as he has while investigating a cognizable offence.¹

3. Complaint before Magistrate.—In the case at hand a complaint was made before the Magistrate for offences under Sections 78 and 79 of the Trade and Merchandise Marks Act, 1958 and the Magistrate has ordered investigation under Section 202, considering the fact that both these offences are non-cognizable police get power to investigate under Section 155 (3), in particular and in view of the decision of the Supreme Court, the Police get power to search and seize the articles and no restraints can be put on the powers of the police on the ground that they were acting under the orders of the Magistrate and had no independent power of search and seizure.²

4. Course of investigation.—There police officer is required to comply rules mentioned in police manual and doctor should also comply with principle of medical practice during course of investigation of the case.³

5. Investigation by CBI.—The members of the CBI have to investigate as if they are the members of the Police force of the State of Nagaland in accordance with the notifications or the rules applicable in the State of Nagaland. However, the principles of the Code of Criminal Procedure would be applicable. The CBI has only limited job to be performed *i.e.*, the investigation. Powers and jurisdiction have been conferred on the members of the DSPE only for the purpose of investigation.⁴

6. Investigation in non-cognizable case—Application for.—The Allahabad High Court ruled that there is nothing in Section 155(2) of the Code to disentitle the complainant to approach the Court with the prayer seeking its direction to the police to make investigation into non-cognizable case since the section does not provide that but for the police officer no other person can approach the Magistrate for seeking his direction for said purpose.⁵

7. Investigation of a non-cognizable offence by police.—Under Section 155(2) of the Code of Criminal Procedure, 1973 upon information in respect of a non-cognizable offence, the police is duty bound to secure permission of the concerned Magistrate if they desire to investigate the offence. Once the permission to investigate a non-cognizable offence is granted by the

1. *State of Haryana v. Ch. Bhajan Lal*, 1992 Cri LJ 527 : AIR 1992 SC 604 : 1992 SCC (Cri) 426; see also *Pravin Chandra v. State of A.P.*, 1965 (2) Cri LJ 250 : AIR 1965 SC 1185; *M.N.A. Achar v. D.L. Raja Gopal*, 1977 Cri LJ (NOC) 228; *Badri Prasad Gupta v. Kripashankar*, 1967 Cri LJ 1255 : AIR 1967 All 468.
2. *Sim Sim Trading Company v. Cream Creation*, (1999) 101 (2) Bom LR 513 at 517 : 1999 (5) Bom CR 437.
3. *Dayal Singh v. State of Uttaranchal*, 2012 Cri LJ 4323 (SC) : AIR 2012 SC 3046 : 2012 (7) Scale 165 : 2012 (8) SCC 263 : 2012 (6) SCJ 283.
4. *Surinder Singh Ahluwalia v. Delhi Special Police Establishment*, 1991 Cri LJ 2583 at 2590 (Del).
5. *Kumwan Singh v. State*, 2007 Cri LJ 1364 (All); see also, *Md. Makfur Rahman v. Md. Kajmul Hussain Baruah*, 2007 Cri LJ 1536 (Gau).

22. Home food to accused in jail custody—Magisterial order for.—According to Bombay High Court the power to order home food to the under trial prisoner vests in the Magistrate or the trial Court under Section 167 of Cr PC and the same is not controlled by Sections 31 and 32 of the Prisons Act.¹

23. Incomplete charge filed within statutory period—Effect of.—In the present case the charge-sheet which was filed in time was self contained and on the basis of the charge-sheet the cognizance was taken by the Magistrate. The Gujarat High Court ruled that it cannot be said that the charge-sheet was 'piecemeal' and 'during' or that investigation was not complete, hence, bail application was rightly rejected by the special Judge.²

24. "Investigation"—When amount to abuse of process.—In present case Investigating Officer did not show any reason to continue investigation after six months and he did not satisfy the Magistrate in terms of Section 167(5) of the Code, it was held by the Madras High Court that the proceedings liable to be quashed as it amounts to abuse of process.³

25. Judicial confession—Non-certification of.—In this case the Magistrate has recorded the confessional statement given by the accused, but he has not given a certificate as to the voluntariness of confession as one required under Section 164(4) of the Code which is mandatory. Hence, the document in question containing the statement of the accused falls short of judicial confession.⁴

26. Judicial inquiry—Application of mind necessary.—The Bombay High Court observed that the Magistrate has to apply his judicial mind to find out whether an offence under the provisions of the Indian Penal Code, 1860 has been spelt out *prima facie* or not. The Magistrate is required to discharge the functions as contemplated under Section 207 of Cr PC, read with Section 167(2) of Cr PC. However, this inquiry by no stretch of imagination can be said to be administrative. It was held that it is nothing but a judicial inquiry requiring application of judicial mind.⁵

27. Judicial remand—Court is not expected to pass detailed order.—The Delhi High Court in *Vinod Kumar Gupta v. Commissioner of Customs*,⁶ ruled that since, requirement of sending case diary along with remand application is mandatory. where there is nothing in order of the Court to show that the hearing on the question of remand was without copies of the case diary, the judicial acts are presumed to be rightly and regularly performed. Hence, the Court is expected to pass detailed order in authorizing remand of accused.

28. Judicial remand—Magistrate has not exceeded its jurisdiction.—In the instant case the Magistrate perused the relevant police papers and came

1. *Asgar Yusuf Mukadam v. State*, 2004 (4) Crimes 418 (Bom).

2. *Mohammad Ansar Kutubuddin Ansari v. State*, 2005 (2) Crimes 261 (Guj).

3. *Azalea Veronica v. State*, 2007 Cri LJ 3038 (Mad).

4. *Marimathu v. State*, 2005 (3) Crimes 732 (Mad); see also *Murugan v. State*, 2006 Cri LJ 1085 (Mad).

5. *Gulam Mohd. Kabir Mohd. Mir v. State of Maharashtra*, 2008 Cri LJ 2426 (Bom).

6. 2006 (2) Crimes 18 (Del).