

1. **Arrest and abscondence.**

Arrest according to Black's Law Dictionary means "to deprive a person of his liberty by legal authority. Taking, under real or assumed authority, custody of another for the purpose of holding or detaining him to answer a criminal charge or civil demand"

2. **Relevant provisions of law.**

Sections 42 to 105 of Cr.P.C. relate to arrest, summons, warrants and abscondence of an accused person.

3. **Arrest how made.**

Chapter V of Part III, Cr.P.C. contains provision as to arrest escape and re-taking of a person to be arrested. Section 46 empowers the police officer to actually touch or confine the body of the person to be arrested. In case of forcible resistance, to use all necessary force to effect the arrest which means and includes employment of other persons to effect arrest, but the

suspect cannot be killed if he is not accused of an offence punishable with death or imprisonment of life. (PLD 1954 Lah 45).

The formal registration of a case is not a sine qua non for arrest of an accused and/or for investigation of a cognizable case. (PLD 1974 Lah 256). Section 46 does not contemplate any formality before a person can be said to be taken in custody; submission to the custody by word or action by a person is sufficient. (AIR 1960 SC 1125).

According to section 62 officer incharge of the police station is required to report apprehensions to the District Magistrate (now Zila Nazim, District Superintendent of Police and District Public Safety Commission). Section 63 empowers Magistrate to discharge person apprehended, however, Magistrate should not proceed in such a case on the basis of his own conclusion on extraneous and irrelevant consideration without appreciating that the police had applied for remand of accused. (NLR 1999 Cr. (Lah) 209).

**4. Search of place entered by person sought to be arrested.**

Section 47 empowers a person acting under a warrant of arrest or any police officer having authority to arrest, to make ingress of a place, where such person is suspected to have entered or residing in without complying the provision of section 103, Cr.P.C. This section does not make it necessary that a search under the circumstances be witnessed by respectable persons from the locality. (PLD 1967 Pesh 376).

**5. Procedure where ingress not obtainable.**

Section 47 and 48 Cr.P.C. which relate to search of police to effect arrest, postulates that police officer even armed with warrant cannot enter into residential house without first seeking permission to enter. If place sought to be searched is being occupied by women, such police officer is under duty to give prior notice to them to withdraw and also provide them every facility in this behalf before entering premises. Section 165, Cr.P.C. is another provision, which empowers police officer to

make search without warrant. Herein also strict safeguards are provided i.e. search can be made pursuant to and in aid of investigation. Pre-condition to be satisfied is that articles searched for must be specified as far as possible in record and reasonable grounds should be shown to exist for believing that things required would be found in such place.

Section 48 detailed procedure where ingress is not obtainable under section 47. It authorizes a person acting under warrant to break upon any outer or inner door or window of any house or place if after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance. In case of Zanan Khana he is to give notice to the woman in occupation that she is at liberty to withdraw. Constitutional guarantee/protection set out in Art. 14 which renders human dignity and privacy of house as inviolable fundamental right, hold field with full authority. Official intrusion, as long as this right exists, cannot be countenanced unless there exists very strong and reasonable basis for such intrusion. Entry of police party into premises of a citizen in illegal manner and seizing of house hold effects is un-warranted and unlawful. (PLJ 1998 Lah. 1158).

#### **6. Search of arrested person.**

Police is competent to make search of the person of an accused but only once. Search for the second time is an over-doing on the part of police. (1997 MLD 1463). If sections 51 and 102 Cr.P.C. are read together, the position will be that if the seized property is alleged or suspected to be stolen one, which creates suspicion of any offence, the seizure must be reported to the Magistrate as required under section 102 Cr.P.C. (1993 Cri.L.J. 956 (Mad)).

7. **Power to seize offensive weapons.**

The officer or other person making any arrest under this code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the court or officer before which or whom the officer or person making the arrest is required by this code to produce the person arrested. (Section 53 Cr.P.C.).

The seizure of property belonging to a citizen by the police in contravention of sections 51, 96, 98, 165 of the Cr.P.C. or without the authority of any other law infringes fundamental rights. Even goods in the possession of a person who is not lawfully in possession of them cannot be seized except under authority of law and in absence of such authority, if the goods are illegally seized an appropriate writ under the constitution can be issued directing the restoration of the goods seized. (PLD 1956 SC (Ind) 210).

Law makes, taking of action under section 550, Cr.P.C. contingent on compliance with section 523 Cr.P.C. which provides that seizure by police officer of property alleged or suspected to have been stolen or found under such circumstances which creates suspicion of commission of any offence shall, forthwith, be reported to Magistrate who shall make such order as he thinks fit relating to disposal of such property or delivery of same to person entitled to. Even if the police officer rightly takes property into possession under section 550 Cr.P.C. he is bound to apprise Magistrate about same. Failure on the part of police officer would render the seizure illegal and without lawful authority. Keeping seized goods in malkhana without having recourse to section 523, Cr.P.C. would amount to have converted the property to his own use. (PLJ 1998 Lah 1158).

8. **When police may arrest without warrant.**

Any police officer may, without a warrant, arrest:

- (1) Any person concerned in a cognizable offence, or against whom a complaint has been made, or

credible information has been received, or a suspicion exists, of his having been so concerned;

- (2) Any person in possession of any implement of house breaking;
- (3) Any proclaimed offender;
- (4) Any person in possession of anything suspected to be stolen property;
- (5) Any person obstructing a police officer in his duty or escaping from lawful custody;
- (6) Any deserter from the Pakistan Army, Navy or Air Force;
- (7) Any person concerned in an offence committed outside Pakistan for which he is liable to be apprehended under any extradition law or the Fugitive Offenders Act;
- (8) Any released convict committing a breach of any rule made under section 565 (3) Cr.P.C.
- (9) Any person for whose arrest a requisition has been received from another police officer authorized to arrest him without a warrant. (Section 54);
- (10) Any person who has committed a non-cognizable offence in the presence of the police officer and refuses to give his name and residence or gives a false name or residence. (Section 56);
- (11) Any person designing to commit a cognizable offence which cannot be otherwise prevented. (Section 151 Cr.P.C.);
- (12) Any person whose suspension or remission of sentence has been cancelled by the Provincial Government. (Section 401 (3));

**Arrest without warrant may be effected.**

- (a) By a Police Officer; (Section 54 Cr.P.C.).

- (b) By a private person; (Section 59 Cr.P.C.).
- (c) By a Magistrate. (Section 65 Cr.P.C.).

An arrest without warrant is regulated by sections 54 to 67, Cr.P.C. According

to section 54 any police officer may, without an order from a Magistrate and without a warrant, arrest, any person 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 exist of his having been so concerned. (1970 SCMR 7).

#### 10. **Arrest of vagabonds, habitual robbers etc.**

Section 55, Cr.P.C. deals with arrest of vagabonds, habitual robbers etc. and empowers an officer in charge of a police station to arrest any person found taking precaution to conceal his presence or any person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself or a person who is by repute habitual offender. The police officer is supposed to take all the pre-requisites provided under the law e.g. section 103, 110, 112, Cr.P.C. before taking any proceeding under this section. A Magistrate before issuing notice to show cause under section 110, Cr.P.C. has to comply with the mandatory requirement of making an order under section 112 Cr.P.C. Setting forth the substance of the information received, the amount of bond to be executed, the terms for which it had to remain in force and the Member, character and class of sureties required, which had vitiated the entire proceedings. This section does not cover the mala fide acts of the police or the complainants. (1997 MLD 2294).

Officer in charge of police stations are to report to the District Magistrate or to the Sub-divisional Magistrate (now Zila Nazim, District Superintendent of Police and District Public Safety Commission) the cases of all persons arrested without warrant. (Section 62 Cr.P.C.).

**11. Refusal to give name and residence.**

A perusal of the section 57, Cr.P.C. would show that the section is applicable to a person:

- (1) Who has committed a non-cognizable offence in the presence of a police officer; or
- (2) Refuses to give his name and residence on demand; or
- (3) Gives a name or residence which the police officer has reason to believe to be false.

Such a person is liable to be arrested in order that his name or residence may be

ascertained as soon as the needful is done he is to be released on execution of a bond for appearance. In case of non-disclosure or non-furnishing bond, the suspect must not be kept under arrest beyond 24 hours but should be forwarded to the nearest Magistrate having jurisdiction. (See Section 57 Cr.P.C.).

**12. Arrest by a private persons and procedure on such arrest.**

A private person may arrest:

- (1) A person committing a non-bailable and cognizable offence in his view, or
- (2) Any proclaimed offender.

He must without delay make over such person to a police officer or to the

nearest police station. (Section 59 Cr.P.C.).

**13. Persons arrested not to be detained more than twenty four hours.**

Section 60 provides that person arrested by police should be taken before Magistrate without unnecessary delay. According to section 61, no police officer is authorized to detain in custody a person arrested without warrant for a longer period

exceeding 24 hours. Person arrested cannot be detained by police for more than 24 hours without a special order of a Magistrate under section 167, Cr.P.C. (2000 P.Cr.L.J. 1411).

Section 65 empowers the Magistrate to arrest or direct arrest in his presence any person for whose arrest he is competent at the time and in the circumstances to issue a warrant. This section proceeds on the principle that an officer empowered to authorize another to do an act can himself do the same.

**14. Arrest by or in presence of Magistrate.**

A Magistrate may arrest within the local limits of the jurisdiction

- (1) Any person who commits an offence in his presence. (Section 64 Cr.P.C.).
- (2) Any person for whose arrest he is competent at the time and in the circumstances to issue a warrant. (Section 65 Cr.P.C.).

**15. Warrant of arrest to whom directed.**

Section 77 merely directs that a warrant shall be ordinarily directed to one or more police officers. It does not say that the name of that police officer as well as his designation is to be inserted in the warrant. (AIR 1918 Pat 613). A warrant addressed to the Sub-Inspector of Police is perfectly legal. The section is directory and not mandatory in nature and a substantial compliance with its provision is sufficient. (1896 Pun Re No.1 Cr.p.1 (DB) ). A warrant may be directed to persons other than police officer, if the following conditions are fulfilled.

- (a) There must be necessity to arrest;
- (b) The necessity must be for immediate arrest; and
- (c) No police officer should be immediately available. (See Section 77 Cr.P.C.).



Section 78 empowers the Magistrate 1st class to direct a warrant to any land holder, farmer or manager of land within his local jurisdiction for the arrest of:

- (1) Any escaped convict;
- (2) Proclaimed offender, or
- (3) Person who has been accused of non-bailable offence and who has been avoiding arrest.

The person so authorized shall acknowledge in writing the receipt of having

received the warrant, and shall execute the same if the person sought to be arrested is in, or enters on, his land, from or the land under his charge as the case may be. The person arrested should be made over with the warrant to the nearest Presiding Officer for causing the person arrested to be taken before Magistrate having jurisdiction. This is however, subject to taking of security under section 76 in which case the person to whom the warrant is addressed shall take such security and release such person from custody. A person living abroad neither escaped convict nor proclaimed offender but required for only interrogation, issuance of warrant for his arrest is without jurisdiction. (1993 Cri.L.J. 3214 (Dehli)).

Section 79 relates to delegation of power of arrest. No other person except a

police officer is competent to execute a warrant of arrest under an endorsement from another police officer. ((1900) 27 Cal 457). In the absence of endorsement, the arrest is illegal. ((1962) 2 Cr.L.J. 437).

#### **16. Warrant of arrest directed to Police Officer for execution outside jurisdiction.**

Section 66 empowers the person in lawful custody of an accused to pursue an escaped person and arrest him in any place Pakistan. Section 67 provides that provisions of sections 47, 48

and 49 applies to arrest under section 66. An arrest with a warrant is regulated by sections 75 to 86 Cr.P.C. Section 80 provides that police officer or any 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. (Also see Section 84 Cr.P.C.).

**17. Procedure by Magistrate before whom person arrested is brought.**

Section 86 prescribes procedure by Magistrate before whom the person arrested is brought before the court which issued the warrant. Section 86 does not contemplate an elaborate inquiry of the person arrested. The Magistrate before whom the person arrested is brought if prima facie is satisfied that he is the same person which was intended by the court issuing warrant, shall direct his removal in custody to such court. The word "shall" is mandatory and not directory. (1971 Cr.L.J. 149 (India)).

However, if the offence is bailable and the person sought to be arrested is ready to give bail to the satisfaction of the Magistrate or direction as to furnishing of security as per terms of section 76 is endorsed on the warrant, the Magistrate is bound to take bail or security as the case may be. If the offence is not bailable under second proviso to section 86(1) an accused can be admitted to interim post arrest bail by Sessions Judge of the Sessions Division in which accused is arrested, by making accused bound to appear before Court in other District of same Province or Court of District of other Province. However, it is the trial court alone and not the court granting interim bail which can proceed against surety under section 514. (NLR 2000 CrL. (Lah) 526).

**18. Proclamation and attachment on abscondence.**

The term "abscond" with its derivatives is not defined in the code of criminal procedure, although it occurs in sections 87, 90-A and 512 of the code and also in section 172 of the Penal Code. In this connection section 87(1) of the Code lays down that if any court has reason to believe 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 time before it. From this it is evident the proclamation is issued only after the court has reasons to believe, whether after taking evidence or not, that any person against whom a warrant has been issued by it has absconded was concealing himself with a view to avoid the service of the warrant on him.

In other words the opinion thus formed by the court that person wanted by it is an absconder must proceed before any such proclamation is issued against him. Similarly under section 90(a) a court may in lieu of the summons for the appearance of any person issued a warrant for his arrest if it sees reasons to believe that he has "absconded" or will not obey the summons. In this behalf section 512(1) also lays down that if it is proved that an accused person has "absconded" and that there is no immediate prospect of arresting him, the court competent to try or commit for trial such person for the offence complained of may, in his absence, examine the witnesses produced on behalf of the prosecution, and record their depositions. (PLD 1978 SC 02; 1984 P.Cr.L.J. 3015).

**9. Procedure for proclamation and attachment.**

The proclamation issued under this section should fix a date not less than 30 days from the date of publication for the appearance of the absconder. Otherwise, the proclamation is illegal. (1969 Cri.L.J. 826).

- (1) The court issuing a proclamation under section 87 may at any time order the attachment of any property, movable or immovable or both, belonging to the proclaimed person.
- (2) Such order shall authorize the attachment of any property belonging to such person within the district in which it is made; and it shall authorize the attachment of any property belonging to such

person without such district when endorsed by the Sessions Judge 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 Provincial Government be made through the District Officer (Revenue) in which the land is situate, and in all other case;
  - (e) By taking possession; or
  - (f) By the appointment of a receiver; or
  - (g) By an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf; or
  - (h) By all or any two of such methods, as the court thinks fit.
  
- (5) If the property ordered to be attached consists of live stock 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) Act V of 1908. The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under Order XL of the Code of Civil Procedure, 1908). (Section 88 Cr.P.C.).

If the property is attached under this section, a person removing would be guilty

of theft, under section 379 PPC. (AIR 1940 Cal 163). Property attached under section 88 cannot be attached by the civil court so long as the attachment by Magistrate continues, no title can be conferred by any attachment subsequently made. (9 C 861). Where the actual attachment by the criminal court is subsequent to an attachment made by the civil court, a sale held in pursuance of the former cannot affect the rights of the attaching decree holder under the latter. (AIR 1929 Bom 200).

The provision to sub-section 7 of section 88 Cr.P.C. provides that if the proclaimed person does not appear within time specified in the proclamation, the property attachment shall be put at the disposal of Provincial Government however, it would not be attached until the expiration of six months from the date of attachment or until any claim preferred or objection made under previous sub section is disposed of meaning thereby that the sale is to be subjected to rights of any person interested if such rights are established by a decree. If so, why should such rights be not enforceable even if they are obtained by a decree without going before any Magistrate under sub section 6-A so long as the property has not been sold by Government? Such a suit is maintainable inspite of the fact that the plaintiff did not go to the Magistrate under sub section 6-A and that the decree would be binding on the Government. (AIR 1938 Bom 321).

the person without an order of the Magistrate concerned. It is for the Magistrate in such circumstances to consider whether the accused should continue to remain in the custody of the court or be delivered over to the police for the purpose of completing the investigation. Where a Magistrate in the exercise of the discretion allowed to him under the law hands over the custody of a person to the Police for a limited time and for a particular purpose, he is legally competent to do so. (1972 SCMR 182; PLD 1972 Lah, 359; 1969 P.Cr.L.J. 786)

**27. Procedure for declaring accused as proclaimed offender.**

- (1) If any court is satisfied after taking evidence 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.
  - (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 home-stead in which such person ordinarily resides or to some conspicuous place of such town or village; and
  - (c) A copy thereof shall be affixed to some conspicuous part of the court house.
- (3) A statement in writing by the court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that requirements of this section have been complied with, and that the

proclamation was published on such day. (Section 87 Cr.P.C.).

**28. Remedies available.**

Court is obliged to inquiry into the matter if some property which is to be

attached, an objection is preferred in terms of section 88. Such objection would essentially entail the judicial inquiry. Mere arguments of competitors would not be sufficient for purpose of formulating a sound opinion. (NLR 2002 Cr. (Lah) 358). Attachment is matter between the state and the absconding accused and the person having any right or interest in the attached property. Father of the accused has no locus standi to challenge for recalling the order as he has no interest or right in the attached property. (2001 SCMR 383).

The criminal Procedure Code provides suitable remedies to a person aggrieved by proceedings under section 87 and 88 and section 89 is the only section under which an absconder can proceed to have his property restored. From the perusal of these sections it is clear that the intention of the legislature is to lay down that a sale, if once effected, cannot be set aside even if the proclaimed offender appears within two years and satisfied the conditions laid down in section 89 Cr.P.C. However, it would be wrong to suppose that the legislature intended to allow the same person to institute a civil suit for possession of the property against the auction purchaser. (PLD 1958 AJ & K 50).

**29. Arrest of person already in jail.**

Arrest of under trial prisoner lodged in jail in another case cannot be effected by Police Officers without observing provisions of Cr.P.C. relating to arrest, mutatis mutandis however, in so far as second and third methods of confining body of person to be arrested and submission of accused are by word or action concerned. Fresh arrest cannot thus be effected by Police unless specific court order obtained in such behalf and jail authorities not competent to hand over custody of accused to police for any period of time whatever. (PLD 1977 Lah 1400).