

SUMMARY OF ALL PAPERS ON TOPIC “B”
“WARRANTS – ARREST, REMAND AND COMMITTAL”.

WARRANTS

Introduction:-

1. The term warrant is not defined in the Code of Criminal Procedure. As per concise Oxford dictionary, “Warrant is an official authorization enabling the police or some other body to make an arrest, search premises etc”. Thus it is an order or writ of the Court directing and empowering a particular person/authority to execute the directions in the warrant. Such direction may be of several kinds such as to arrest, to search, to receive an accused into custody, to direct to produce an accused/prisoner before the Court issuing the directions or before the superior court for trial.

2. **Legal Provisions relating to Warrant:-** Chapter-VI of Code of Criminal Procedure deals with process to compel appearance. The warrant may be issued to Police Officer or any other person to execute the same. As per Sec. 70 of Cr.PC., every warrant of arrest issued by the court shall be signed by the Presiding Officer of such court and shall bear seal of the court and every such warrant shall remain in force until it is canceled by the court which issued or until it is executed. The Hon'ble Apex Court in case of **State Vs. Dawood Ibrahim Kaskar, AIR 1997 S.C. 2494** has held that, even in the course of investigation and before taking the cognizance of the case warrant can be issued.

3. **Types of Warrant :-**

In Criminal Procedure Code there is no description of types of warrant. In day to day business we find that, there are two types of warrant those are Bailable and Non-bailable. Sec. 71 deals with bailable warrants. As per Sec. 71 any court issuing a warrant for the arrest of any person may in its discretion direct by an 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. The endorsement shall state the number of sureties, amount in which they and the person for whose arrest warrant issued, are to be respectively bound, the time at which he is to attend before the court. Whenever security is taken under this section, the officer whom warrant is directed shall forward the bond to the court.

4. Non-bailable warrant is other than the bailable warrant. Section 73, which appears in the said Chapter, deals with issue of warrants against persons. Sub-section (1) of Section 73 provides that 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 non-bailable offence and is evading arrest. Sub-section (3) of Section 73 provides that, 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.

5. In a reported judgment *Inder Mohan Gowswamy and Anr. Vs. State of Uttaranchal and others reported in (2007)12 SCC 1*, the Hon'ble Apex court held that Non-bailable warrant normally not to be issued if presence of accused could be secured. It is further held that, issuance of Non-bailable warrant involves interference with personal liberty. Arrest and Imprisonment means deprivation of the most precious right of an individual. Therefore the courts have to be extremely careful before issuing non- bailable warrants. The Hon'ble Apex court further held that non-bailable warrant should be issued to bring the person to court when summons and bailable warrant would be unlikely to have the desired result. This could be reasonable to believe that the person willing to appear in court or the Police authorities are unable to find the person to serve him with summons or it is considered that the person could harm some one if not placed into custody immediately. The Hon'ble Apex court held that some times in the larger interest of the public and the State it becomes absolutely imperative to curtail the freedom of individual for a certain period, only then non-bailable warrants should be issued.

6. The Hon'ble Bombay High Court in *Writ Petition no. 4429/2013 ArunKumar V/s State of Maharashtra* held that, the appearance of the applicant / accused is not necessary for cancellation of warrant. It is held that there is no law that the accused shall personally remain present for cancellation of warrant. When an application is made for cancellation of warrant, the same needs to be considered on merits without insisting for appearance of the accused.

7. **Duties of Officer executing warrants:-**

Sec.76 provides the Police Officer executing the warrant shall produce the arrested person immediately not exceeding 24 hours before the Magistrate. The Police Officer executing the warrants shall communicate the substance of warrant to the said person or show warrant to him. The warrants are executable through out the India.

8. **Execution of Warrants outside Jurisdiction:-**

As per sec. 78(1) it may be sent by post, to the Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction it is to be executed. When the warrant executed beyond the local limits of the Court issuing warrant, Executive Magistrate or police officer in charge of a police station, within the local limits of whose jurisdiction the warrant is to be executed shall endorse his name thereon. When the warrant of arrest executed outside the district, the person arrested shall be taken before the Magistrate or DSP within whose jurisdiction arrest is made. As per sec. 78(2) the court while issuing warrant 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 u/s. 81 to decide whether the bail should or should not be granted to the person.

9. In **Raghuvansh Dewanchand BhasinVs. State of Maharashtra and another (2012) 9 SCC 791** the Hon'ble Apex court issued guidelines to the subordinate courts to be adopted while issuing Nonailable Warrants.

- (a) All the High Courts shall ensure that the Subordinate Courts use printed and machine numbered Form No. 2 for issuing warrant of arrest and each such form is duly accounted for;

- (b) Before authenticating, the court must ensure that complete particulars of the case are mentioned on the warrant;
- (c) The presiding Judge of the court (or responsible officer specially authorized for the purpose in case of High Courts) issuing the warrant should put his full and legible signatures on the process also ensuring that Court seal bearing complete particulars of the Court is prominently endorsed thereon;
- (d) The Court must ensure that warrant is directed to a particular police officer (or authority) and, unless intended to be open-ended, it must be returnable whether executed or unexecuted, on or before the date specified therein;
- (e) Every Court must maintain a register (in the format given below), in which each warrant of arrest issued must be entered chronologically and the serial number of such entry reflected on the top right hand of the process;
- (f) No. warrant of arrest shall be issued without being entered in the register mentioned above and the concerned court shall periodically check/monitor the same to confirm that every such process is always returned to the court with due report and placed on the record of the concerned case;
- (g) A register similar to the one in Clause (e) supra shall be

maintained at the concerned police station. The Station House Officer of the concerned Police Station shall ensure that each warrant of arrest issued by the Court, when received is duly entered in the said register and is formally entrusted to a responsible officer for execution;

- (h) Ordinarily, the Courts should not give a long time for return or execution of warrants, as experience has shown that warrants are prone to misuse if they remain in control of executing agencies for long;
- (i) On the date fixed for the return of the warrant, the Court must insist upon a compliance report on the action taken thereon by the Station House Officer of the concerned Police Station or the Officer In-charge of the concerned agency;
- (j) The report on such warrants must be clear, cogent and legible and duly forwarded by a superior police officer, so as to facilitate fixing of responsibility in case of misuse;
- (k) In the event of warrant for execution beyond jurisdiction of the Court issuing it, procedure laid down in Sections 78 and 79 of the Code must be strictly and scrupulously followed; and
- (l) In the event of cancellation of the arrest warrant by the Court, the order canceling warrant shall be recorded in the case file and the register maintained. A copy thereof shall be sent to the concerned authority, requiring the process to be returned unexecuted forthwith. The date of receipt of the unexecuted warrant will be entered in the aforesaid registers. A copy of such order shall also be supplied to the accused.

ARREST

10. The word, 'arrest' has not been defined in an enactment dealing with the offences including Code of Criminal Procedure and Indian Penal Code. It is the word derived from the French word 'Arreter' which means to stop or stay. We can say that the arrest is physically restraining a person by the person authorized by Law or Court of Law. The Constitution of India guarantees every Citizen the right of liberty. As such liberty is a fundamental right of Human being, it shall not be curtailed without following due Procedure established by the Law.

11. **Statutory provisions governing Arrest:-**

Sec.41 to 60 of Cr.P.C. deal with various provisions regarding the arrest. Sec.41 provides for the situation when police may arrest without warrant. This section gives wide power to police officer to make an arrest without an order from the Magistrate and without warrant only in circumstances limited by the provisions contained in the section, and it is necessary in exercising such large powers to be cautious and circumspect. What is a reasonable complaint or suspicion must depend on the circumstances of each particular case, but it must be at least founded on some definite fact tending to throw suspicion on the person arrested, and not a mere vague surmise or information.

12. **Classification of arrest :-**

Broadly speaking arrest may be classified into two categories namely :-

- 1) Arrest made under warrant issued by Courts and..

2) Arrest made without such warrants.

13. **Proclaimed Offender :-**

A person who has been proclaimed as an offender either under Cr. P. C. or by order of the state Government, can be arrested by the police without warrant. If it is not proved that the proclamation published, mentioned in the section, is duly published then the arrest is illegal.

Who may be arrested without warrant by police :-

- 1) A person, who is possessing any implement of housebreaking.
- 2) A person having in his possession a property, which may reasonably be suspected to be stolen and who reasonably is suspected to have committed some offence P. U. Sec. 379, 380, 411, 412 of IPC.
- 3) A person, who is obstructing police officer in execution of his duties or who escapes or attempts to escape from lawful custody.
- 4) A person, who is reasonably suspected or having run away from armed forces of union.

14. **Offence committed outside India :-**

A police officer can arrest person without warrant, who has been concerned or against whom a reasonable complaint has been made of his having been concerned in any act committed out of India, which if committed in India, would have been an offence and or which he is under

the law of extradition or otherwise liable to be arrested or detained in custody in India.

15. **Arrest on the requisition from another police station:-**

Police officer may arrest a person without warrant when a written or verbal requisition is received by him from another police officer, but can do this only when the person to be arrested might have been arrested by the other police officer without warrant. The requisition must disclose the identity of the person to be arrested and the offence or the reason for which the arrest is to be made.

16. **Direction of The Hon'ble Supreme Court while arresting accused :-**

The Hon'ble Supreme Court in case of **D. K. Basu V/s. State of West Bengal AIR 1997 S.C. 610** issued following guidelines,

(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by atleast one witness, who may be either a member of the family of the arrestee or a respectable

person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation center or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in

whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any present on his/her body, must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a panel for all Tehsils and Districts as well.

(9) Copies of all the documents including the memo of arrest, referred to above, should be sent to the illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and state headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.

Failure to do so would cause necessary action against the erring officer. The guidelines of the Hon'ble Supreme Court in D.K.Basu's case are finding place in amended Cr.P.C. under Section 41-B, 41-C and 41-D.

17. **Procedure for arresting a female :-**

The Hon,ble Apex court in *State of Maharashtra V/s. CCW Council of India AIR 2004 S.C. 7* observed that , “While arresting a female person, all efforts should be made to keep a lady constable present, but in circumstance, where the arresting officers is reasonably satisfied that, such presence of a lady constable is not available or possible and or the delay in arresting caused by securing the presence of a lady constable would impede the course of investigation such arresting officer for reasons to be recorded either before the arrest or immediately after the arrest be permitted to arrest a female person for lawful reasons at any time of the day or night depending on circumstances of the case even without the presence of lady constable”.

18. In *Criminal Writ Petition No.-1849/2011, Sandip Sagar V/s. Sate of Maharashtra*, Hon'ble Bombay High Court held that, as per Section 202 of Motor Vehicle Act, a police officer in uniform may arrest an offender committing an offence P U. Sec. 184, 185 or 197 of Motor Vehicle Act.

19. **Arrest under the provision of section 42 of Cr. P. C. :-**

Section 42 lays down that a police officer can arrest a person if a person commits an offence in his presence or where he has been accused of committing a non-cognizable offence and refuses, on demand being made by a police officer to give his name and residence or gives false name or residence, such person may be arrested but such arrest shall be only for the limited purpose of ascertaining his true name and residence. After such ascertaining, he shall be released on executing a bond with or without sureties, to appear before a magistrate if so required. In case the name and residence of such person cannot be ascertained within 24 hours from the date of arrest or if such person fails to execute a bond as required, he shall be forwarded to the nearest magistrate having jurisdiction.

20. **Arrest under the provision of section 43 of Cr. P. C. :-**

A private person may arrest or cause to be arrested any person, who commits a non-bailable and cognizable offence in his presence or any proclaimed offender; and shall take person to the police officer or in absence of police officer, to the nearest police station.

21. **Arrest under the provision of section 44 of Cr. P. C.:-**

Section 44 of Cr. P. C. empowers Magistrate judicial or executive to arrest or to get arrested any person in two circumstances

- 1) When any offence cognizable or non-cognizable, bailable, non-bailable, is committed in his presence within his local jurisdiction.

2) 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.

22. **Arrest under the provision of section 45 of Cr. P. C.:-**

Section 45 of Cr. P. C. lays down that notwithstanding anything contained in section 41 to 44, a members of armed forces of the union shall not be arrested for anything done in discharge of his official duty except after obtaining consent of central government. The state government may also by notification grant similar exemption to such members of State forces.

23. **Arrest under the provision of section 47 of Cr. P. C.:-**

Section 47 of Cr. P. C. confers power to search of places in possession of third person for the arrest of person, who appears to have entered there. There are two sorts of persons who can make such a entry for search.

- 1) Any person (police or other persons) having warrant of arrest.
- 2) Any police officer though having no warrant but authority to arrest without warrant. (Section 41 of the Act.)

24. Section 48 of Cr. P. C. authorize a police officer to pursue the offender whom he is authorized to arrest to any place in India for the purpose of effecting his arrest.

25. **Mandatory provision :-**

Under section 50 of Cr. P. C. the police officer or any person arresting any person without warrant is bound to communicate him full particulars of offence for which he is arrested or any other ground for his arrest. Similarly if the arrest is for the bailable offence, the person effecting arrest shall inform the person arrested that he is entitled for bail. Provision of section 50 is mandatory, non compliance shall vitiate the arrest. Section 50A provides person making arrest shall forthwith give information regarding such arrest and place where arrested person is being held to any of his friends, relatives, or such other person nominated by the arrested person. Entry of same shall be made in book to be kept in the police station. It further cast duty on Magistrate before whom the arrested person is brought to satisfy himself that the requirements of sub-section (2) and (3) have been complied with.

26. Recently in *Arnesh Kumar V/s. State of Bihar (2014) 8 SCC 273* Hon'ble Supreme Court directed police machinery not to arrest accused unnecessarily. Hon'ble Apex Court has given following directions:

- 1) All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr. P. C;
- 2) All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);
- 3) The police officer shall forward the check list duly filed and

furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

- 4) The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;
- 5) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;
- 6) Notice of appearance in terms of Section 41(A) of Cr. P. C be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;
- 7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.
- 8) Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

27. **Arrest-Discretion of the police officer** :-

Arrest is not must in every cognizable case. It is the discretion of the police officer to arrest or not to arrest, and the discretion can not be arbitrary but it must be guided by the principles which laid down by Honble Supreme Court in case **Joginder Singh V/S. State of U. P. (1994). 4 S.C.C. 260.**

28. **Right of arrested person of medical examination** :-

Section 54 of Cr. P. C. provides for an examination of arrested person by a medical practitioner at the request of arrested person and it is the right conferred on the arrested person. Accused has right to get himself medically examined and it is the duty of Magistrate to inform him that he has such right of medical examination, if he has complaint of torture, ill-treatment. This is observation of Honourable Supreme Court in **Shila Barse V/S. State of Maharastra AIR 1983 S.C. Page 378.**

29. **Procedure after the arrest without warrant.** :-

Sections 56 and 57 of Cr. P. C. indicate the procedure that is to be followed after the arrest of person without warrant. Under Section 56 of Cr. P. C. a police officer making an arrest without warrant is required, without unnecessary delay and subject to provision, as to bail, to take or send person arrested before Magistrate having jurisdiction in the case or before the incharge of police station. The object of section is the accused person should be brought before Magistrate competent to try or commit the accused within as little delay as possible.

30. **Protection of the interest of the person arrested:-**

Section 56 and 57 of Cr. P. C. are meant for the protection of the interest of the person arrested and so they must be strictly followed. Under Article 22(2) of Constitution every person has fundamental rights guaranteeing his personal freedom and it is the duty of the Court to safe guard same. Article 22 (1) gives person arrested a twofold protection, viz. (1) that an arrested person shall not be detained in custody without being told the grounds of such an arrest and (2) that he shall be entitled to consult and to be defended by a legal practitioner of his choice.

31. It is held by Hon'ble Supreme Court in the case of **State of Punjab V/S. Ajab Singh AIR 1953 S. C. 10** that, the purpose of bringing an arrested person before Magistrate is the immediate application of judicial mind to the legal authority of the person making the arrest and the regularity of the procedure adopted by him and to ensure that, arrest and detention is justified.

32. Clause II of Article 22 provides the next and the most material safe guard that the arrested person must be produced before a Magistrate within 24 hours of a such arrest, so that the independent authority exercising the judicial powers may without delay apply his mind to case. Whenever it is not done the person arrested would be entitled to file the writ of habeas corpus directing his release. But it is observed by the Hon'ble Supreme Court in the famous case of **Madhu Limaye V/S. State reported in AIR 1969 S.C. 1014** that, before moving for Writ he has to seek remedy under section 482 and 439 of Cr. P. C.

REMAND

33. In order to avoid harassment to a person arrested by the Police to be produced before a Judicial Magistrate, a time schedule of 24 hours is fixed so that person detained shall be produced within that time and if any Police Officer does not adhere to the time schedule without a reasonable cause, action should be taken against him.

34. Whenever a person is arrested and it appears that the investigation as regards his involvement cannot be completed within the period of twenty-four hours provided in Section 57 of Cr.P.C., the Investigating Officer should produce him before the Magistrate with an application for Police custody remand as per the provisions of Section 167 Cr.P.C. The Magistrate may authorize detention of the accused in such custody for a term not exceeding 15 days and thereafter send the accused to judicial custody as per section 167 Cr.P.C.

35. The Magistrate must ensure that in every remand application, the date of arrest of the accused is recorded. It is the duty of the Magistrate to ensure that provisions of Section 167(2) Cr.PC are not violated.

36. Before a Magistrate authorises detention under Section 167, Cr.PC, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested are satisfied. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty bound not to

authorise his further detention and release the accused.

37. A careful reading of S. 167(1), Cr.P.C. would show that an investigating officer can ask for remand only when there are grounds for believing that the accusation or information is well founded and it appears that the investigation cannot be completed within the period of 24 hours fixed by S. 57. Therefore, it follows that a remand by a Magistrate is not an automatic act and sufficient grounds must exist for the Magistrate to exercise his powers of remand. Section 167 requires that a copy of the entries in the diary should be forwarded to the Magistrate along with the arrested persons. If the prima facie accusation or information is not well founded and sufficient grounds do not exist for the Magistrate to exercise his power of remand, in such cases, remand of accused can be refused.

38. The Hon'ble Supreme Court in case of *CBI Special Investigation Cell-1 New Delhi V/s. Anupam Kulkarni AIR 1992 SC 1768* decision dated 08/05/1992 as held that, the accused can be remanded to police custody within first 15 days and thereafter the accused cannot be remanded to police custody.

39. As per section 167 (2), if the investigation in respect of offence punishable with imprisonment up to 10 years is not completed within 60 days or if the investigation in respect of offence punishable with imprisonment for a period 10 years or more is not completed within 90 days, then the accused shall be released on bail if he is prepared to and does furnish the bail. In case of *Changat Satyanarayanam & Ors. V/s. State of Andhra Pradesh date of decision (1986) 3 SCC 141* the Honble

Supreme Court held that, for computing the period of 60 days or 90 days as the case may be the period is to be counted from the first date of remand and not from the date of arrest.

40. **Transit remand :-**

A transit remand is not specifically defined under the Code. However, when a warrant of arrest is executed outside the district in which it was issued, and the court which issued the warrant is not within 30 km of the place of arrest, then the person arrested may be produced before Executive Magistrate, District Superintendent of Police or Commissioner of Police who shall direct his removal in custody to such court. In case of bailable offence such Magistrate/ DSP/ CP shall release the accused on bail, and if the offence is non-bailable it shall be lawful for Chief Judicial Magistrate or Session Judge to release accused on bail, by invoking powers under Section 81 - proviso II, subject to the provision of Section 437 of Cr. P.C. In this regard judgment of Hon'ble High Court in **Criminal Application No. 402/2013, in Malti Ravindra Shah V/s. State of Maharashtra** may be referred regarding powers of granting transit remand.

41. **Remand under The Narcotic Drugs and Psychotropic Substances Act, 1985 -**

The N. D. P. S. Act, as it stands after the amendment of 2001 (w. e. f. 2/10/2001), provides for constitution of Special Court, for trying all offences under the Act which are punishable with imprisonment for a term of more than three years. Provisions of remand under the General

Code are modified by virtue of Section 36-A (1) (b) of this Act, which provides that a person accused of or suspected of the commission of an offence under the Act be forwarded to a Magistrate under sub Section 2 or sub Section 2-A of Section 167 of the Code. Whereupon, Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding 15 days and 7 days in a whole where such Magistrate is an Executive Magistrate. In case of offences triable by the Special Court, the proviso to the said sub section provides that when such person forwarded to him; or upon or at any time before the expiry of the period of detention authorised by him, the Magistrate considers the detention of such person is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction. When such person is so forwarded to the Special Court, the Special Court exercises all the powers of remand conferred on Magistrate under Section 167 of the Code.

42. Thus, under N. D. P. S. Act, for the offences triable by the Special Court, first remand is done by the Magistrate and subsequent orders of remand are passed by the Special Court. The offences for small quantity of contraband are punishable with imprisonment up to six months R. I. Or fine of Rs. 10,000/- or both, which offences are triable by the Magistrate and hence Magistrate exercises powers of remand under Section 167 and 309 (2) of the Code. The period of remand of 90 days under Section 167 of the Code is modified with a period of 180 days, only for the offences under Section 19 or Section 24 or Section 27-A or for offences involving commercial quantity.

43. **Remand under The Scheduled Caste and Scheduled Tribes**

(Prevention of Atrocities) Act 1989 :-

The controversy as to whether a Special Court designated under Section 14 of this Act could take cognizance of an offence, was set at rest by the Hon'ble Apex Court in case of **Gangula Ashok Vs. State of Andhra Pradesh reported in AIR 2000 Supreme Court 740**. It has been held that Special Court designated under Section 14 of the Act is essentially a Sessions Court and hence it cannot take cognizance of the offences under the Act as a Court of original jurisdiction without the case being committed to it by a Magistrate. The reason assigned is that neither in the Code nor in the Act, there is any provision to the effect that Special Court can take cognizance of the offence as a Court of original jurisdiction.

44. **Remand under The Prevention of Corruption Act, 1988 :-**

Sub Section 1 of Section 5 of this Act makes provision for taking cognizance of the offences under the Act by Special Judge without the accused being committed to him for trial. Hence, the Special Judge exercises powers of remand under Section 167 of the Code.

45. **Remand under the Maharashtra Control of Organised Crime Act, 1999 :-**

Powers of remand under MCOCA vest with Special Judge appointed under Section 5 (3) of the Act. The power of Special Judge may not be conferred on any Judge unless he has been appointed as a Special or Additional Special Judge by the State Government in consultation with the Chief Justice of the High Court.

46. **Remand under The Electricity Act, 2003 :-**

After the amendment done by State of Maharashtra in the year 2005, for the State of Maharashtra and after amendment of Central in the year 2007 (w. e. f. 15/06/2007), for whole of India, the Court can take cognizance of offences under the Act on police report filed under Section 173 of the Code. The provision is made for Constitution of Special Courts in Section 153 of the Act for the purposes of providing speedy trial of offences referred to in sections 135 to 140 and section 150. The second proviso to Section 151 provides that special court constituted under section 153 shall be competent to take cognizance of an offence without the accused being committed to it for trial. Thus, for the aforesaid offences the Special Court can exercise powers of remand under Section 167 of the Code.

47. **Remand under The Protection of Children From Sexual Offences Act, 2012 :-**

Power of remand under this Act vest with Special Judge appointed under Section 28 of the Act. It is imperative for all police officers to produce the accused for remand before the special Court and not before the court of the magistrate.

COMMITAL

48. The provisions regarding commitment of case are prescribed in section 209 of Cr. P. C. and Para 9 to 12 of Chapter 3 of Criminal Manual. In all cases instituted on Police Reports or otherwise, whenever the accused appears or is brought before the Magistrate, and it appears to the Magistrate that the offence is triable exclusively by the Court of Sessions, he shall commit the case to the Court of Sessions, send to that

Court the record of the case and the documents and articles, if any, which are to be produced in evidence and notify to the Public prosecutor of the commitment of the case to the Court of Sessions under Section 209 of the Code of Criminal Procedure, 1973.

49. The Magistrate should report to the Sessions Judge about such cases pending before him, stating therein reason or the reasons as to why it is pending and seeking extension time required by him for that purpose. In such case, the Court of Sessions should then satisfy itself as to whether the reasons stated are satisfactory and whether the Magistrate should be allowed extension of time. He should then issue such instructions to the Magistrate as he deems proper.

50. Whenever a Magistrate, acting under Section 333 of the Code of Criminal Procedure, 1973, sends for trial before Court of Session an accused person regarding whose sanity at the time of committing the offence he entertains any doubt, he shall at the same time inform the Jail Authorities of his opinion about the state of mind of the accused, and order that the accused may be placed under careful surveillance prior to his trial before the Court of Session.

51. When a Magistrate commits a person accused of an offence punishable with death, he should question the accused whether he desires to make his own arrangement for his defence in the Sessions Court, or whether arrangement should be made by the Sessions Court to engage a Lawyer on his behalf. In the latter case, the Magistrate should, when committing the case for trial, intimate the Sessions Court accordingly.

52. When two or more persons are accused of the same offence or offences arising out of the same transactions, the Magistrate should not convict some and commit others to the Court of Session. If any one of the accused is charged with an offence beyond the jurisdiction of the Magistrate, or with, one which in the opinion of the Magistrate ought to be tried by the Court of Session, all the accused persons implicated, against whom there is prima facie evidence should be committed for trial. While committing the case to Hon'ble Sessions Court the committing court shall satisfy itself that compliance to the provisions of section 207 of Cr. P. C. has been made.

53. The Form of warrant of commitment pending trial by the Court of Sessions is prescribed in Form No. III of Chapter 33 of Criminal Manual. That apart, there are also other warrants of commitment such as 1) Warrant of commitment on a sentence of imprisonment passed by Court of Session – section 235 of Cr. P. C.- as prescribed in Form No. V of Chapter 33 of Criminal Manual.; 2) Warrant of commitment to a certified School case as prescribed in Form No. XXX of Chapter 33 of Criminal Manual.

54. In *Kamal Krishna V/s. State 1976 Cri. L. J. 1492 (Calcutta)* it is held that, the word 'shall' used under section 208 is directory and the omission to supply copies in a Magistrate court does not vitiate order of commitment and the accused will not be prejudiced in any way if they are supplied with the copies of the paper before Sessions Court. In *B. J. Dhamankar V/s State of Maharashtra MANU/MH/0101/1994* The Hon'ble Bombay High Court held that the

committal order should be precise, clear and it must exhibit the application of mind to the facts that :

- (I) The Magistrate is satisfied that the offences are exclusively triable by the Sessions Court.
- (II) proper order remanding the accused to judicial custody pending trial has been made.
- (III) provisions of sections 207 and 208 have been complied with
- (IV) the rules and manuals framed by the Hon'ble High Court in this regard have been scrupulously followed.

55. The Magistrate is the first court to strike balance between the needs of law enforcement on the one hand and protection of the citizen from oppression and injustice at the hands of the law enforcement machinery on the other. He has to discharge this duty very carefully and cautiously by adhering provisions of law and secure the rights of accused.

With this I conclude the summary of all papers.

Dated : 15/11/2014.

Core Committee,
Constituted by Hon'ble C. M. M.,
Esplanade, Mumbai.