

POWER AND FUNCTIONS OF REVENUE OFFICERS AS EXECUTIVE MAGISTRATES

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CRIMINAL PROCEDURE CODE, 1973:

BACK GROUND: The law relating to Criminal Procedure applicable to all Criminal Proceedings in India (except those of state of Jammu & Kashmir and Nagaland and the tribal areas of Assam) is contained in the Criminal Procedure Code, 1898. This code has been amended from time to time by various Acts of the Central and State Legislatures. Apart from several Amendments, the provisions of the Code of 1898 have remained practically unchanged through the decades and no attempt was made to have a comprehensive revision of this old Code till the Central Law Commission was set up in 1955.

A comprehensive report for the revision of the Code, namely the Forty First Report, was presented by the Law Commission in the year 1969. One of the main recommendations of the Commission is to provide for the separation of the Judiciary from the Executive on all India basis in order to achieve the uniformity in this matter. Basing on the recommendations of Law Commission, the Code of Criminal Procedure 1973 was enacted extending to the whole of India except the State of Jammu & Kashmir. It came into force on the 1st day of April, 1974.

In the present Code, there is an allocation of magisterial functions between two categories of Magistrates, "Judicial" under the control of High Court and "Executive" under the control of State Government.

Following Sections deal with powers and functions of Executive Magistrates:

Section	Subject
20	- Appointment of Executive Magistrates by Govt.,
21	- Appointment of Special Executive Magistrates by Government for particular area or for the performance of particular functions.
22	- Local jurisdiction of Executive Magistrates
23	- Subordination of Executive Magistrates
37	- Public when to assist Magistrate
39	- Public to give information of certain offences like against public tranquility etc.,
44	- Arrest by Magistrate

Search Warrants :

- 94 - Authorizing Police Officer to search the place suspected to contain stolen property, forged documents etc.,
- 97 - Search for persons wrongfully confined.
- 98 - Power to compel restoration of abducted females.

Security for keeping peace and for good behaviour :

- 107 - Security for keeping the peace.
- 108 - Security for good behaviour from persons disseminating seditious matters.
- 109 - Security for good behaviour from suspected persons.
- 110 - Security for good behaviour from habitual offenders.
- 111 - Order to be made when Magistrate acting under Sections 107, 108, 109 & 110.
- 112
- To Procedure and implementation of Sections 107 to 110
- 124

Unlawful assemblies :

- 129 - Dispersal of unlawful assembly by use of civil force. (Police)
- 130 - Use of Armed Forces to disperse unlawful assembly.
- 131 - Power of certain armed force officers to disperse unlawful assembly.
- 132 - Protection against prosecution for acts done under Sections 129, 130 & 131.

Public nuisance:

- 133 - Conditional order for removal of nuisance.
- 134 - Service of notification or order.
- 135 - Person to whom order is addressed to obey or show cause.
- 136 - Consequences of his failing to do so.
- 137 - Procedure where existence of public right is denied.
- 138 - Procedure where he appears to show cause.
- 139 - Power to Magistrate to direct local investigation and examination of an expert.
- 140 - Power of Magistrate to furnish written instructions etc.,
- 141 - Procedure on order being made absolute and consequences of disobedience.
- 142 - Injunction pending inquiry.
- 143 - Magistrate may prohibit repetition or continuance of public nuisance.

Urgent Cases of Nuisance or Apprehended Danger:

- 144 - Power to issue order in urgent cases of nuisance or apprehended danger.

Disputes as to immovable property:

- 145 - Procedure where dispute concerning land or water is likely to cause breach of peace.
- 146 - Power to attach subject of dispute and to appoint receiver.
- 147 - Dispute concerning right of use of land or water.
- 148 - Local Inquiry.
- 151 -

Inquests and inquiries into unnatural deaths:

- 174 - Police to enquire and report on suicide etc., to the nearest Executive Magistrate.
- 175 - Powers to summon persons.
- 176 - Enquiry by Magistrate into cause of death.

Section 20 Cr.P.C. (Executive Magistrates) :

In every District, the following Officers are appointed as Executive Magistrates by the Government U/S 20 Cr.P.C.

1. Collector
2. Addl. Collector
4. S.D.O.
3. Tahsildar

The above Officers are appointed as Magistrates by virtue of the Offices held by them as noted against each.

Designation of the Officer	Appointed as	Local Jurisdiction
(1)	(2)	(3)
1. Collector	District Magistrate	Entire District
2. Addl. Collector	Addl. Dist. Magistrate	Entire District
3. S.D.O.	S.D.M.	Entire Sub-Division
4. Tahsildar	Executive Magistrate	Entire Tehsil

Additional District Magistrates shall have such of the powers of a District Magistrate under this code or under any other law for the time being in force.

All Executive Magistrates other than the Addl. District Magistrate shall be subordinate to the District Magistrate. And every executive Magistrate (other than S.D.M), exercising powers in a sub-division shall also be subordinate to the Sub-Divisional Magistrate, subject, however, to the general control of the District Magistrate.

District Magistrate may from time to time give special orders, consistent with this Code, as to the distribution of business among the Executive Magistrates subordinate to him and as to the allocation of business to an additional District Magistrate.

Section 21 Cr.P.C. (Special Executive Magistrates) :

Under Section 21 Cr.P.C. the State Government may appoint, for such term as they may think fit to be known as "Special Executive Magistrates" for particular areas or for performance of particular functions and confer on such Special Executive Magistrates, such of the powers as are conferable under the code. Generally, election, fair, law and order

Section 22 Cr.P.C. (Local Jurisdiction of the Executive Magistrate) :

Under Section 2 of the Cr.P.C. the local jurisdiction of the Executive Magistrate is determined by the District Magistrate, subject to the control of the State Government, within which the Executive Magistrate may exercise all or any of the powers invested under the code. Unless so determined, the jurisdiction and powers of every such Magistrate shall extend throughout the district.

OBJECT OF 107 Cr.P.C.:

The main object of this Section is "Preventive and not Punitive". This Section is to enable the Executive Magistrate to take measures with a view to prevent commission of offences, involving breach of the peace or disturbance to public tranquility.

PROCEDURE:

When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act that may probably occasion a breach of the peace or disturb the public tranquility, he should go through the FIR (First Information Report) along with the relevant material placed before him and if he is of the opinion that there are sufficient grounds to initiate action U/s 107 Cr.P.C., he should pass orders, record the same on the right side corner of the first page of FIR stating:

"I have perused the FIR along with the relevant material placed before me and I am satisfied that there are sufficient grounds to initiate action U/s 107 Cr.P.C. Taken on file. Issue Order U/s 111 Cr.P.C with summons U/s 113 Cr.P.C."

Before initiation of action U/s 107 Cr.P.C., it should be ensured that the FIR contains the brief facts of the case, persons involved, their addresses etc., along with the list of PWs and also the property particulars to decide the quantum of surety to be fixed. When all these things are available and on satisfaction by the Executive Magistrate as stated above, he shall make an order in writing U/s 111 Cr.P.C., setting forth the substance of the information received, the amount of the bond to be executed and directing the Respondents to show cause as to why they should not be ordered to execute a bond for of Rs. (amount to be specified herein) with or without sureties (to be decided and indicated herein) for like-sum each for keeping the peace for such

Period not exceeding one year.

Summons U/s 113 Cr.P.C., shall be accompanied by a copy of the order made U/s 111 Cr.P.C.

Appellate authority: Court of Sessions.

BREACH OF PEACE AND DISTURBANCE TO PUBLIC TRANQUILITY:

It arises due to:

1. Religious Processions
2. Festivals
3. Elections
4. Political Movements
5. Supremacy in the Village
6. Disputes due to factions
7. Group Rivalry etc.,

IMPORTANT POINTS TO BE KEPT IN MIND WHILE DEALING THE CASES U/S 107 Cr.P.C.

1. The information need not be from the Police only. It may be from the public also.
2. Only fresh incidents of breach of the peace or disturbance of public tranquility such as astray, hurt etc., should be taken into account. Old incidents are useful only to prove the existence of enmity between the opposite parties, but they do not give support to the theory that there is imminent danger to peace. Convictions on fresh incidents, strengthens the case U/s 107 Cr.P.C.

3. When FIR along with its enclosures are received, the Executive Magistrate has to put his initial with date and time of receipt and how it was received, i.e., either in person or in post. The FIR and enclosures,, received for action U/s 107 to 110, 145 to 147 should be examined immediately and if there are no defects, take it on file under the relevant provisions of Cr.P.C. If there are defects it may be returned for rectifications and re-submission.
4. Magisterial cases should be registered in register No. 6 and numbered serially and continued annually.
5. An order U/s 107 Cr.P.C. is passed when the Executive Magistrate is of the opinion that the information, received by him to the effect that any person was likely to commit breach of the peace or to disturb public tranquility is credible.

6. Summons U/s. 113 Cr.P.C. accompanied by order U/s. 111 Cr.P.C. should be got served through the concerned Police.
7. No person should be ordered to give security of a nature different from or of an amount larger than or for a period longer than that specified in the Order made U/s 111 Cr.P.C.
8. The amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive, Imposition of excessive amount is not justified and bad in law. For this purpose the property particulars statement should be insisted.

9.
 - a. It is desirable that instead of holding the case in the Headquarters, as far as practicable, to post it to interior places within his jurisdiction where there are no transport facilities available to make the Respondents realize their sufferings and readily come forward to execute bonds to keep the peace as directed.
 - b. While conducting the Court there is need for maintaining decency, decorum, discipline and strict silence.
 - c. The A.P.P Grade II or in his absence Police Officer not below the rank of S.I. should conduct the prosecution and examination of witnesses as is being done in judicial courts.

10. When all the Respondents are present, they should be examined U/s 112 Cr.P.C. and inquiry commenced. The case should not be casually treated and adjourned without any valid reasons.
11. When the inquiry is adjourned, an order of the court in writing giving the reasons therefor shall be recorded. The reason for which an adjournment can be granted may be either due to the absence of the witness or any other reasonable cause.
12. The case should not be adjourned for more than 14 days at a time.
13. Hearing Book should be maintained.
14. Defence Counsel should file Vakalathnama. One Vakalathnama is enough for all the Respondents. This Vakalathnama is to be signed by all the Respondents and accepted by the Defence Counsel.

15. The Executive Magistrate, if he sees sufficient cause, dispense with the personal attendance of any Respondent and may permit him to appear by a pleader.
16. The persons against whom the proceedings have been started are called "Respondents" and not "Accused".
17. The Proceedings before the Executive Magistrate are only "Inquiries" but not "Trials".

Thanks