

Who may arrest a Person?

Introduction

Three people have power under law to arrest a person. This includes a police officer that has power to arrest a person without warrant and order from magistrate; any private person and a magistrate (executive or judicial).

A. Police may arrest without a warrant or an order from a Magistrate

When any person:

(i) Concerned in any cognizable offence or

(a) Against whom a reasonable complaint has been made, or

(b) Credible information has been received, or

(c) A reasonable suspicion exists; or

for a person so concerned.

(ii) Implement of Housebreaking

Possession without lawful excuse (*the burden of proving which excuse shall lie on such person*)

(iii) Proclaimed Offender

Under this Code or by order of the State Government

(iv) Possession, which may reasonably be suspected to be stolen property

Who may reasonably be suspected of having committed an offence with reference to such thing; or

(v) Obstructs a police officer

(a) In the execution of his duty

(b) Escaped, or attempts to escape, from lawful custody

(vi) Deserter from any of the Armed Forces of the Union

Reasonably suspected of being so.

(vii) Concerned in, any act committed at any place out of India

Which, if committed in India who has been concerned in would have been punishable as an offence:

(a) Against whom a reasonable complaint has been made, or

(b) Credible information has been received, or

(c) A reasonable suspicion exists, of his having been, and

For which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(viii) Breach of any rule made under section 356 (5)

By a released convict; or

(ix) Whose arrest any requisition, written or oral, received from another police officer

Provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears there from that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

(x) Categories of persons specified in section 109 or section 110.

Any officer in charge of a police station may, in like manner, arrest or cause to be arrested any of such person

B. Arrest by Private person and procedure on such arrest

The private person can arrest or cause to be arrested any person without unnecessary delay, shall make over or cause to be made over any person so arrested to a police officer, or, in the absence of a police officer, take such person or cause him to be taken in custody to the nearest police station, if he in his presence commits:

- A non-bailable and cognizable offence, or
- Any proclaimed offender, and,

Power of Police Officer when a private person does arrest

- A police officer shall re-arrest him: on reasons to believe that such person comes under the provisions of section 41;
- If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a police officer to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 42;
- If there is no sufficient reason to believe that he has committed any offence, he shall be at once released.

C. Arrest by Magistrate

Ingredients of section to be satisfied:

- When any offence is committed in the presence of a Magistrate (Executive or Judicial) within his local jurisdiction,
- He may himself arrest or order any person to arrest the offender, and
- May thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.
- Any Magistrate, whether Executive or Judicial, may at any time arrest or direct the arrest, 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.

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