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Ques

Discuss the salient provisions related to arrest, search and seize under the Code of Criminal Procedure Act, 1973.

Ans

The Code of Criminal Procedure is mainly an adjective law of Procedure. The purpose of Code is to provide machinery for prosecution, trial and punishment of offenders under the substantive criminal law i.e Indian Penal Code and other law passed by the state from time to time. The substantive law defines the rights, duties and liabilities of the persons. The Code of Criminal procedure, ~~and meant to regulate~~ 1973, came into effect from April 01, 1974. The important objective of the Code of Criminal Procedure are: to provide an opportunity to the accused person to get a fair trial in accordance with the principal of natural justice and to make an effort to prevent delay in investigation and trial to ensure fair justice.

SALIENT FEATURES OF THE CODE OF CRIMINAL PROCEDURE, 1973

It describes that all offences in Indian Penal Code 1860 shall be investigated, inquired into, tried unless it is otherwise dealt. Some of basic features are:

- 1) Organisation of Criminal Courts: The CrPC provides a uniform set of Criminal Courts throughout the territory of India by conferring jurisdiction, powers and functions.
- 2) Fair Trial: The accused is presumed to be innocent, until the charges are proved. The accused has right to be represented by his counsel. The accused has a right to cross-examine the witnesses of the opposite party.
- 3) Protection to the accused party: Special provisions have been made to protect the interest of the accused person.
- 4) Duty of the police: If the police officer refuses to record information about commission of the crime the aggrieved person does have a right to send the information by post to the Superintendent of the police.

- 5) Special Provisions for the protection of the accused person: Free legal aid provision is made if the accused person is ~~not~~ poor and cannot afford the costs of litigation.
- 6) Trial Procedure: An appeal by the state against the order of the acquittal can be filed only after obtaining the leave of the High Court.

ARREST OF PERSONS. (Section 41-60)

Arrest means removal of a person's freedom by legal authority. It can be by touch of the body of a person or if any person resists, the police can also use legal force to effect the arrest. It can be made with or without warrant. Article 21 of Indian Constitution speaks that "No person shall be deprived of personal liberty except according to the procedure established by law". Therefore, the State, Courts & police should take ~~care~~ every care with regard to arrest of a person.

⇒ Rights of an arrested person in the Constitution

- ① Right to be informed the grounds of arrest.
- ② Right to be defended by a lawyer of his own choice.
- ③ Right to be produced before a Magistrate.
- ④ Right to Medical examination in deserving cases.
- ⑤ Right to have a woman police if the arrested person is a woman.

⇒ Powers of police to arrest a person without warrant.

- ① A person in possession of stolen property.
- ② A person who obstructs a police officer in the discharge of his duties.
- ③ A person concerned in any cognizable offence.
- ④ A person in the process of house-breaking.

⇒ Powers of Magistrate to arrest

- ① Any offence committed in his presence.
- ② Any person against whom the warrant can be issued.

The Court needs documents, materials & things because they need evidences. This can be secured by issue of summons or by search warrants.

⇒ According to CrPC a search warrant can be issued in the following circumstances:

- ① When a general inspection or search is important
- ② Search of a place without warrant conducted in presence of Magistrate.
- ③ Forms & duration of search warrants is explained.
- ④ Relevant document not known to the court and is in possession of any person.

⇒ Search by police without warrant

- ① Police officers must have reasonable grounds about search of specific things.
- ② Police officer must send a copy of findings of search to the nearest Magistrate.
- ③ Police officer must prepare a list of things seized.
- ④ Witnessed must accompany to search.
- ⑤ Search must be made in the presence of two independent and respectable inhabitants of the locality.