



**SYARIAH COURT  
CRIMINAL PROCEDURE  
ENACTMENT OF SELANGOR  
(AMENDMENT) 2003.**

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# REPORTED CASES IN CIVIL PROCEDURES

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- Joan Mary Sulaiman v Sulaiman Hj Musa (1995) 10 JH 86
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- Sukma Darmawan V Ketua Pengarah Penjara Malaysia (1999) 2 CLJ 707.

## Cont...

- Parties in Proceedings:
- Faridah Daud v Mhd Firdaus Abdullah (2002) 15 JH 25.
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- Sulh:-
- Semek bt Mamat v Siti Zubaidah Yasin (1997) 11 JH.
- Zaleha Zakaria v Shahbudin Ali (1995) 10 JH 79.
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- Siti Rohani v Mohd Sazali (1994) 9 JH 230.

# Reported cases for criminal procedure.

- Pre-trial procedure:
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- Pendakwa Mahkamah Perak v Jaffary dan Hasliza (1991) 8 JH 105.
- Investigation (search, seizure):
- Pendakwa Syarie Kelantan v Yusundy Josan (1994) 9 JH 206.
- Pendakwa Syarie Kelantan V Mat Rahim dan Nik Azimah (1994) 9 JH 195.

## Cont....

- Charge:-
- Pendakwa v Abd Talib Harun (1996) 10 JH 150.
- Rusidah Abdul Ghani v Pendakwa JAWI (1991) 7 JH 209.
- Pendakwa Syarie Perak v Shah Pandak Othman (1991) 8 JH 99.
- Trial:-Pendakwa Syarie N. 9 V Jaafar Sudin (1990) 7 JH 253.
- Pendakwa Syarie v Muhamad Sabu (1997) 11 JH 61
- Judgment: Mokhtar Pangat v Pendakwa JAWI (1990) 7 JH 203
- Appeal and Revision: Bashirah Abdullah v Pendakwa JAWI ( 1991) 7 JH 80.
- Ketua Pendakwa Syarie v Ahmad Rashid (1995) 10 JH 113.

# SEARCH WARRANT

- Power to do a search given to the PO or REO for the investigation of criminal offences.
- SW is a written document issued by a judge to do a search of :-
  - 1) the body of persons or
  - 2) premises.

## Section 44

- When SW may be issued. (1) if
- a) has reason to believe that a person to whom a summons under s 42 has been or might have been addressed will not or would not produce the property or documents as required.
- b) such property or document is not known to the court to be in the possession of any person.



## Cont...

- c) the Ct considers that the purposes of justice or of any inquiry, trial or other proceedings under this enactment will be served by a general search or inspection: or
- d) the Ct upon information and after such inquiry as he thinks necessary has reason to believe that an offence has been committed in any place.
- The Ct may issue SW and the person to whom such warrant is directed may search and inspect in accordance with the enactment.

## Cont.....

- (2) A SW shall ordinarily be directed to the CREO and to other REO to be designated by name therein and all or any of such officers may execute such warrant.
- (3) The Ct issuing SW may direct it to the IGP and to other PO to be designated by name therein and all or any of such officers may execute such warrant.

## Section 45

- The Ct may if it thinks fit specify in the SW the particular place or part thereof to which only the search or inspection shall extend and the person charged with the execution of such warrant shall then search or inspect only the place or that part so specified.

## Section 46

- Judge upon information and after such inquiry as he thinks necessary has reason to believe that any thing upon, by or in respect of which an offence has been committed
- Any evidence or thing which is necessary to the conduct of an investigation into any offence, may be found in any place,
- He may by warrant authorise the person to whom it is directed to enter, with such assistance as may be required and search the place for any such evidence or thing and,
- If anything searched for is found, to seize it and bring it b4 the judge issuing the warrant or other judge.

## Section 47

- Form of search warrant.
- In form 4 of the 2<sup>nd</sup> Schedule
- Signed by the judge
- Bear the seal of the court
- Such warrant shall remain in force for a reasonable number of days to be specified in the warrant.

# Section 48

- If any judge has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence,
- He may issue a search warrant and the person to whom such warrant is directed may search for the person confined,
- Such search shall be made in accordance therewith
- And the person if found shall be immediately taken b4 judge who shall make such order if it seems proper.

## Section 49

- **Person in charge of closed places to allow search.**
- **1) whenever any place liable to search or inspection any person residing in or being in charge of such place shall on demand of the officer or other person executing the warrant and on the production of the warrant allow him free ingress thereto reasonable facilities for a search**
- **2) If ingress cannot be obtained the officer executing the warrant may proceed in manner provided un s 11 (2).**

## SECTION 50

- Judge by whom a SW is issued may attend personally for the purpose of seeing that the warrant is duly executed.

## SECTION 51

- Any judge may orally direct a search to be made in his presence of any place for the search of which he is competent to issue SW.



## SECTION 52

- A list of all things seized in the course of a search made under chapter and of the place in which they are respectively found shall be prepared by the officer and signed by him.

## SECTION 53

- The occupant of the place searched or some person in his behalf shall in every instance be permitted to attend during the search, and a copy of the list prepared and signed under s 52 shall be delivered to such occupant or person at his request.

# Information to Religious Enforcement Officer

- S 54- Every information relating to the commission of an offence,
- If given orally to REO,
- Shall be reduced to writing by him or under his direction and read over to the informant.
- 2. Shall be entered in Form 5, shall append the date and hour information was given.
- Shall be signed by person giving it.

# Section 55-Procedures NSO

- 1. Commission of NSO the officer to whom it was given shall refer to the informant to a judge of sh. Sub ct.
- 2. No REO shall in case of NSO exercise any of the special powers in this chapter in relation to investigations without the order of CSP.
- 3. Any REO receiving such order may exercise the powers in this chapter in respect of investigation except the power to arrest without warrant.

## Section 56

- Admission of certified copy of information as evidence. Shall be admitted as evidence of the contents of the original and of the time, place and manner in which the information was so recorded.

# Section 57-Seizable offence suspected.

- 1. If from information received or otherwise a REO has reason to suspect the commission of SO he shall, unless the offence is of a character which the CSP has directed need not be reported to him, send a report of the information to the CSP,
- Shall proceed in person or shall depute one of his subordinate to proceed to the spot to inquire into the facts and cstances of the case and to take such measures as may be necessary for the discovery of the offender.

## Cont...

- Provided that:- 1. When any information (commission of the offence) is given against any person by name and the case is not of a serious nature, the REO receiving the information need not in person or depute a subordinate to make inquiry on the spot.
- 2. If it appears that the information –no sufficient ground for proceeding or further proceeding in the matter he shall not do so.
- Reasons for not fully complying in subs 1.

## Section 58- Power to require attendance of witnesses.

- 1. REO may by order in writing, require the attendance of any person being within the Selangor, from the information given or otherwise, appears to be acquainted with the circumstances of the case and such person shall attend as so required.
- 2. If refuse, such REO may report such refusal to a judge who may issue a warrant to secure the attendance of such person in his discretion.

## S 59-Examination of witnesses

- 1. REO may examine orally any person supposed to be acquainted with the facts and circumstances of the case and shall reduce into writing any statement made by the person so examined.
- 2. Such person shall be legally bound to answer all questions relating to such case put to him by such officer.
- 3. A person making statement shall be legally bound to state the truth.



## Cont.....

- 4. REO shall first inform that person of the provisions sub s 2 and 3.
- 4. A statement whenever possible be reduced into writing and signed by the person making it or affixed his thumbprint in the presence of 2 witnesses, as the case may be, after it has been read to him in the language in which he made it and after he has been given an opportunity to make any corrections he may wish.

## Section 60- Statements to REO not to be admitted in evidence.

- 1. No statement made to any REO in the course of investigation be used as evidence.
- 2. When witness is called for the prosecution or for the defence, other than the accused, the court shall on the request of the accused or the SP refer to any statement made by such witness to REO in the course of investigation, may then direct the accused to be furnished with a copy and such statement may be used to impeach the credit of witness.
- 3. When any person is charged with any offence in relation to false statement made by him to REO such statement may be used as evidence.

- Section 61- No inducement to be offered.
- Section 62- Power to record statements and confessions.
- Section 63- Search by REO. Provision on search warrant may be applied.
- Section 64- REO may require bond for appearance of complainant and witnesses.
- Section 65- Diary of proceedings in investigation. an accused shall not be entitled to call or inspect any such diary.
- Section 66- Report of REO.
- 1. Investigation shall be completed without unnecessary delay.

# Charge

- First step in the criminal prosecution process of an offence. Definite allegation.
- When “charged with an offence”- he is called to appear b4 judge and informed of the charge or complaint against him.
- Notice to the offender.

# Charge- must be precise

- S 78-Form of Charge- state the offence the accused is charged.
- If specific name- by that name only.
- If no specific name, definition of the offence must be stated.
- The law and provisions of the law- shall be mentioned.
- The fact that the charge is made equivalent to a statement that every legal condition required by law to constitute the offence charge was fulfilled.

## s 79- Particulars time, place and person

- Reasonably sufficient to give the accused notice of the matter with which he is charged.

## s 80-When manner committing offence must be stated.

- If no sufficient notice charge shall also contain such particulars of the manner in which the alleged offence was committed.

## S 81- Sense of words used in charge to describe offence

- Shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

## S 82- Effect of errors

- No error shall be regarded at any stage of the case as material unless the accused was in fact misled by such entry or omission.

- S 83- Ct may amend or add to charge S 84- When trial may proceed immediately after alteration or addition.
- Azizan & Norhayati v PSMelaka – khalwat and attempt to commit adultery.
- S 85- When new trial may be directed or trial adjourned
- S 86- Stay of proceedings if prosecution of offence in amended charge requires previous sanction
- S 87- Recall of witnesses when charge amended or added-



# General principle- S 88- Separate charges for distinct offences.

- Exceptions –
- S 89- Three offences of same kind within 12 months may be charges together- PSP V Shah Pandak Othman-Deviant teaching, do not perform prayer, spiritual marriage.
- PSK V Jaffary- 3 times committed adultery.

## Cont...

- S 90- Trial for more than one offence. Abu Talib Harun v PSJohor- married with 10 wives.
- S 91- Where it is doubtful what offence has been committed
- S 92- When a person charged with one offence can be convicted for another
- S 93- Person charged with an offence can be convicted of the attempt

- S 94- When offence proved is included in offence charged-
- 1. The lesser offence
  
- S 95- When persons may be charged jointly.
- Accused of the same offence or different offences committed in the same transaction or
- One person is accused and another of abetment or attempt.

# Thank You



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