Independent Witnesses and Seizure

Section 100(4), CrPC has postulated that

> "Before making a search under this Chapter, the officer or other person about to make it shall call upon two or more independent and respectable inhabitants of the locality in which the place to be searched is situate or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an order in writing to them or any of them so to do."

Thus, it is clear that Section 100(4), CrPC has mandated that seizure must be witnessed by at least 2 (two) independent witnesses. However, it has been a matter of common experience that the local populace is not interested to be made witnesses in criminal cases when they have no concern or interest in the outcome of the case. In the current days of deteriorating law and order situation, strict compliance of the rules regulating search and seizure demands a rational approach. Very few local witnesses have the courage to depose against their powerful neighbours or habitual miscreants obviously for fear of life and honour. In almost all cases local or public witnesses come to the court to say that they signed blank papers on the asking of the law enforcing agency and they did not see the recovery of incriminating articles. As such, a rigid view on the rules of search and seizure should not be blown too far, else we may stray into wilderness.

The Hon'ble Supreme Court in the case of **Appabhai and Anr. v. State of Gujarat** reported in **AIR 1988 SC 696** has also discussed this issue.

> "It is no doubt true that the prosecution has not been able to produce any independent witness to the incident that took place at the bus stand. There must have been several of such witnesses. But the prosecution case cannot be thrown out or doubted on that ground alone. Experience reminds us that civilized people are generally insensible when a crime is committed even in their presence. They withdraw both from the victim and the vigilant. They keep themselves away from the court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate but it is there, everywhere whether in village

life, towns or cities. One cannot ignore this handicap with which the investigation agency has to discharge its duties. The court, therefore, instead of doubting the prosecution case for want of independent witnesses must consider the broad spectrum or the prosecution version and search for the nugget of truth with due regard to probability if any, suggested by the accused."

Aher Raja Khima v. State of Saurashtra AIR 1956 SC 217, a judgment pronounced more than half a century ago noticed the principle that the presumption that a person acts honestly applies as much in favour of a police officer as of other persons and it is not a judicial approach to distrust and suspect him without good grounds therefor.

In Tahir v. State (Delhi) [(1996) 3 SCC 338], dealing with a similar question, the Supreme Court held as under:

"In our opinion no infirmity attaches to the testimony of the police officials, merely because they belong to the police force and there is no rule of law or evidence which lays down that conviction cannot be recorded on the evidence of the police officials, if found reliable, unless corroborated by some independent evidence. The Rule of Prudence, however, only requires a more careful scrutiny of their evidence, since they can be said to be interested in the result of the case projected by them. Where the evidence of the police officials, after careful scrutiny, inspires confidence and is found to be trustworthy and reliable, it can form basis of conviction and the absence of some independent witness of the locality to lend corroboration to their evidence, does not in any way affect the creditworthiness of the prosecution case. The obvious result of the above discussion is that the statement of a police officer can be relied upon and even form the basis of conviction when it is reliable, trustworthy and preferably corroborated by other evidence on record."

In **Sahib Singh -Vs.-State of Punjab**, reported in **AIR 1997 SC 2417,** the Supreme Court observed as follows.

"Before conducting a search the concerned police officer is required to call upon some independent and respectable people of the locality to witness the search. In a given case it may so happen that no such person is available or, even if available, is not willing to be a party to such search. It may also be that after joining the search, such persons later on turn hostile. In any of

> these eventualities the evidence of the police officers who conducted the search cannot be disbelieved solely on the ground that no independent and respectable witness was examined to prove the search but if it is found ---as in the present case ---that no attempt was even made by the concerned police officer to join with him some persons of the locality who were admittedly available to witness the recovery, it would affect the weight of evidence of the Police Officer, though not its admissibility."

In **Sama Alana Abdulla v. State of Gujarat, (1996) 1 SCC 427,** the Supreme Court has laid down the legal principle that merely because the police witnesses have spoken about the search and the seizure of documents, their version cannot be disbelieved even though the independent witnesses have not supported the search and the seizure of the documents.

In Madhu v. State of Karnataka, (2014) 12 SCC 419, the appellants raised the issue that in some of the recoveries, though a large number of people were available, only police personnel were made recovery witnesses creating doubt in the case of the prosecution.

The Supreme Court held as follows:

> "The term "witness" means a person who is capable of providing information by way of deposing as regards relevant facts, via an oral statement, or a statement in writing, made or given in court, or otherwise.
>
> In *Pradeep Narayan Madgaonkar* v. *State of Maharashtra* [(1995) 4 SCC 255 : 1995 SCC (Cri) 708 : AIR 1995 SC 1930] this Court dealt with the issue of the requirement of the examination of an independent witness, and whether the evidence of a police witness requires corroboration. The Court held that though the same must be subject to strict scrutiny, however, the evidence of police officials cannot be discarded merely on the ground that they belong to the police force and are either interested in the investigation or in the prosecution. However, as far as possible the corroboration of their evidence on material particulars should be sought. (See also *Paras Ram* v. *State of Haryana* [(1992) 4 SCC 662 : 1993 SCC (Cri) 13 : AIR 1993 SC 1212] ; *Balbir Singh* v. *State* [(1996) 11 SCC 139 : 1997 SCC (Cri) 134] ; *Kalpnath Rai* v. *State* [(1997) 8 SCC 732 : 1998 SCC (Cri) 134 : AIR 1998 SC 201] ; *M. Prabhulal* v. *Directorate of Revenue Intelligence* [(2003) 8 SCC 449 : 2003 SCC (Cri)

2024] and *Ravindran* v. *Supt. of Customs* [(2007) 6 SCC 410 : (2007) 3 SCC (Cri) 189] .)

Thus, a witness is normally considered to be independent unless he springs from sources which are likely to be tainted and this usually means that the said witness has cause to bear such enmity against the accused so as to implicate him falsely.

In view of the above, there can be no prohibition to the effect that a policeman cannot be a witness or that his deposition cannot be relied upon if it inspires confidence."

A conspectus of authorities referred to above would show that the principle is well settled that though ordinarily seizure is to be witnessed by two independent and respectable witnesses of the locality as mandated by Section 100(4), CrPC, the prosecution will not be vitiated if policemen witnessed the seizure unless of course it can be shown that they had a history of enmity towards the accused or were interested in seeing him getting convicted.