

PAPER PRESENTATION

ON

# **DISPOSAL OF CASE PROPERTY**

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## **“PROPERTY” as under Code Of Criminal Procedure**

The word “**Property**” as under section 451 Criminal Procedure Code, means and includes:

*a) property of any kind or document which is produced before the court or which is in its custody.*

*b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence*

**When such property is involved in commission of an offence, or is the subject matter of an offence, the same is known as case property.**

## **PROVISIONS FOR DEALING WITH THE PROPERTY**

### **UNDER CRIMINAL PROCEDURE CODE:**

Chapter 34 of the Criminal Procedure Code, 1973 explains the provisions relating to CASE PROPERTY under Sections 451 to 459. Besides these provisions, the Criminal Rules of Practice and Circular Orders provide Rules 220 to 234.

Sections 451 to 459 of the code of Criminal Procedure , 1973 deal with the powers of court in the matter of disposal of case property. Any order to be passed by a criminal court must come under these provisions. Which order should be passed by a court depends upon the circumstances in which the property was seized or produced before it.

### **SECTION 451:- ORDER FOR CUSTODY AND DISPOSAL OF THE PROPERTY**

#### **PENDING TRIAL IN CERTAIN CASES:**

(i) When any property is produced before any Criminal Court during any inquiry or trial, the Court may order such property for proper custody, pending the conclusion of the inquiry or trial.

(ii) If the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

### **SECTION 452:- ORDER FOR DISPOSAL OF PROPERTY AT THE CONCLUSION OF**

**TRIAL:**

- (i) Order under this section should be passed at conclusion of trial.
- (ii) The Court may make such order (with or without any condition) for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to.
- (iii) But, the Court has to make such order engaging that person to restore such property to the Court if the order made under sub- section (1) is modified or set aside on appeal or revision. However, if property is livestock or is subject to speedy and natural decay, this condition to wait until lapse of appeal time does not arise.
- (iv) While passing order under this section, ‘APPEAL TIME’ is to be kept in mind.
- (v) Under this section, a Court of Session may direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in sections 457, 458 and 459.
- (vi) It is pertinent to mention that Section 452 Criminal Procedure Code, property includes the same which is converted or exchanged, whether immediately or otherwise.

**SECTION 453 :- PAYMENT TO THE INNOCENT PURCHASER OF MONEY FOUND ON ACCUSED:**

- i) This section applies to Payment to innocent purchaser of money found on accused. (It applies to cases such as theft, and receiving or retaining stolen property).
- ii) Under this section, on application, the Court can order to make payment to innocent purchaser out of money found on accused.
- iii) If no money is found on accused, the court cannot order accused who is convicted or the owner to make payment of purchase money to the innocent purchaser. Of course, the innocent purchaser may approach civil court for such claim.

**SECTION 454:- APPEAL AGAINST ORDER PASSED UNDER SEC. 452 OR SEC. 453:**

An appeal against the orders of Section 452 and 453 shall ordinarily lie to the court to which appeals ordinarily lie from convictions by the former court. The appellate court may order stay of the disposal of the appeal, or modify, alter or orders.

**SECTION 455 :DESTRUCTION OF LIBELLOUS AND OTHER MATTERS:**

Under this section, when an accused is convicted for offences under sections 292, section 293, section 501 or section 502 IPC, the Court may order the destruction of all the copies of the thing. Similarly, on conviction of offences under sections 272 to 275 Indian Penal Code, the Court may order the food, drink drug or medical preparation in respect of which the conviction

was had, to be destroyed.

**SECTION 456: POWER TO RESTORE POSSESSION OF IMMOVABLE PROPERTY:**

The jurisdiction of criminal court under this section is quasi civil in nature. When a person is convicted of an offence by criminal intimidation and it appears to the court that, by force or show of force or intimidation, any person has been dispossessed of any immovable property, the court may order that the possession be restored to such person and that no such order shall be made by the court more than one month after the date of conviction.

**SECTION 457: PROCEDURE BY POLICE UPON SEIZURE OF PROPERTY:-**

- i) When case property is reported to Magistrate by police, this section applies.
- ii) Under this section, during an inquiry or trial, the Magistrate may order disposal of such property or the delivery of such property to the person entitled to.

**SECTION 458 : PROCEDURE WHEN NO CLAIMANT APPEARS WITHIN SIX MONTHS**

If the claimant fails to prove his ownership over the property, the Court has to draw presumption under section 110 of Indian evidence Act. Further, when proclamation issued under section 457 of Criminal Procedure Code and 6 months have been expired, Magistrate may order that such property shall be at the disposal of the State Government and may be sold by that Government and the proceeds of such sale shall be remitted to the State. However, it is an appealable order.

**SECTION 459: POWER TO SELL PERISHABLE PROPERTY**

In case of properties subject to speedy and natural decay, the Magistrate may pass an appropriate order under Section 459 Criminal Procedure Code for its disposal on such conditions as may be considered appropriate. If the person entitled to the possession is unknown or absent or the Magistrate is of the opinion that sale would be in the benefit of the owner, the Magistrate may direct the case property to be sold.

**PROPERTY SEIZED UNDER SECTION 41 R/W 102 OF CR.P.C:-**

When police seized any property under section 41 r/w section 102 of Criminal Procedure Code and produced before the court, such property should be received by the court. If there is no complaint/report by any person, police will file final report. The Presiding officer shall verify final report to know what steps had been taken by police as to such property. When it is satisfied that no complaint had been registered in any police station, such final report can be accepted and the Magistrate can take steps for disposal of such unclaimed property as per procedure contemplated under sections 458 and 459 of the Code of Criminal Procedure, 1973. If any crime had been registered as to such property seized under section 41 and section 102 of

Criminal Procedure Code, the property should be transferred to the court concerned.

## **OBJECT AND SCHEME OF PROVISIONS OF THE CODE AS TO DISPOSAL OF THE PROPERTY.**

The Hon'ble Apex Court, in SUNDERBHAI AMBALAL DESAI VS STATE OF GUJARAT<sup>1</sup>, succinctly explained the object and scheme of the various provisions of the Code as to disposal of case property. The Hon'ble Supreme Court, in the above case, observed as follows:

***“The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police, it ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary.”***

In view of the ratio-laid down by the Hon'ble Apex Court, it is clear that unless the case-property is necessary, court cannot retain the case property either in its custody or in the custody of police for any time longer. Therefore, it is the duty of court to pass appropriate property orders according to law without any delay.

The question of proper custody of the seized article is raised in number of matters. In SMT BASAWA KOM DYANMANGOUDA PATIL VS STATE OF MYSORE AND ANOTHER<sup>2</sup>, the Hon'ble Supreme Court dealt with a case where the seized articles were not available for being returned to the complainant. In that case, the recovered ornaments were kept in a trunk in the police station and later it was found missing. The question was with regard to payment of those articles. In that context, the Court observed at para no.4 as under-

***“4. The object and scheme of the various provisions of the code appear to be that where the property which has been the subject-matter of an offence is seized by the police, it ought not to be retained in the custody of the Court or of the police for any time longer than what is necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a Government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The***

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1 2002 Supp(3) SCR 39 = (2002) 10 SCC 283,

2 [1977] 4 SCC 358

***High Court and the Sessions Judge proceeded on the footing that one of the essential requirements of the code is that the articles concerned must be produced before the Court or should be in its custody. The object of the code seems to be that any property which is in the control of the Court either directly or indirectly should be disposed of by the Court and a just and proper order should be passed by the Court regarding its disposal. In a criminal case, the police always acts under the direct control of the Court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the Court exercises an overall control on the actions of the police officers in every case where it has taken cognizance."***

The Court further observed that where the property is stolen, lost or destroyed and there is no prima facie defence made out that the State or its officers had taken due care and caution to protect the property, the Magistrate may, in an appropriate case, where the ends of justice so require, order payment of the value of the property.

To avoid such a situation, the powers under Section 451 Criminal Procedure Code should be exercised promptly and at the earliest. In that regard, the observations of the Hon'ble Supreme Court in ***Sunderbhai Ambalal Desai vs State Of Gujarat*** (3<sup>rd</sup> supra) are very much relevant which read thus:

- 1) *Owner of the article would not suffer because of its remaining unused or by its misappropriation.*
- 2) *Court or the police would not be required to keep the article in safe custody;*
- 3) *If the proper Panchnama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and*
- 4) *This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.*

In case, where such articles are not handed over either to the complainant or to the person from whom such articles are seized or to its claimant, then the Court may direct that such articles be kept in bank lockers. Similarly, if articles are required to kept in police custody, it would be open to the Station House Officer that after preparing proper Panchnama to keep such articles in a bank locker. In any case, such articles should be produced before the Magistrate within a week of their seizure. If required, the Court may direct that such articles be handed over back to the Investigating Officer for further investigation and identification, However, in no set of circumstances, the Investigating Officer should keep such articles in custody for a longer period for the purpose of investigation and identification.

Important observations of the Hon'ble Supreme Court in the case of *Sundherbai Ambalal Desai* (3<sup>rd</sup> supra) with regard to the **VEHICLES SEIZED**: **“It is of no use to keep such-seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company then insurance company be informed by the Court to take possession of the vehicle which is not claimed by the owner or a third person. If Insurance company fails to take possession, the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.”**

#### **PRECAUTIONS WHILE TAKING PANCHNAMA**

- 1) Panchnama for return of the property shall be made taking all same precautions while preparing panchnama for seizure of property.
- 2) In addition to the same, photographs of the articles of the property shall also be taken.
- 3) A bond from the petitioner shall be undertaken stating that the property shall be produced at the time of the trial and a proper security shall also be taken. As observed by Hon'ble Apex Court in Sunderlal Ambalal's case that the bond and security should be taken so as to prevent the evidence being lost, altered or destroyed.
- 4) The photographs or such articles shall be attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over.
- 5) The court in the interest of justice and from circumstances of the case impose any other conditions as may find appropriate.
- 6) It is further clarified by Hon'ble Apex Court that if the accused disputes that he is not involved in the alleged incident and no article was found from him, such an endorsement to be taken on the photograph.
- 7) In respect to the vehicle, it was made clear that it is not necessary to produce the vehicle before the court during trial and that the seizure report may be sufficient.

**RULES COVERED UNDER CRIMINAL RULES OF PRACTICE WITH REGARD  
TO PROPERTIES**

Rule 230 to 234 of Criminal Rules of Practice deals with disposal of properties.

- 1) **Rule 230 (2) CrI.R.P:- Art objects and antiquity:** The Court shall send the art objects and Antiquity to the Director of archaeology and Museums, if he desires otherwise they should be confiscated to the state.
- 2) **Rule 230(3) CrI.R.P:- Gold ornaments:** The Court shall send the Gold Ornaments to Mint Master through a responsible Officer by pre-arrangement.
- 3) **Rule 234(1) CrI.R.P:- Counterfeit coins:** They shall be forwarded together with any dies, moulds etc., which may have been produced in the case to the nearest Treasury or Sub-Treasury, with request that they may be remitted to the Mint for examination. A concise and accurate report should also be sent containing a description of the case and the sentence imposed.
- 4) **Rule 234(2) CrI.R.P:- Forged Currency Notes:** It is a matter for the decision of the Court which tries the case. (1) deliver the same to police for destruction; or (2) If they are of special interest, police may make them over to the Criminal Investigation Department for this purpose; (3) All forged currency notes brought before the Court shall be handed over to the Police for being forwarded to the Issue Department of the Reserve Bank of India, with a brief report of the case.
- 5) **Rule 234(4) CrI.R.P: Arms and ammunitions:** They should be sent to the nearest Arsenal for disposal.

**DELIVERY OF CASE PROPERTY TO THE PERSON ENTITLED**

When any property is ordered to be delivered to a party, notice should be issued to him. He should also be informed that if he does not appear on the date specified in the notice, the property will either be destroyed or sold and the sale proceeds should be credited to the Government. If the Party appears after the sale of the property, the sale proceeds may be paid to him deducting expenses of the sale. (Rule 231).

**Sale of Case Property as per provisions of CPC:-** Sale of property should be conducted by an officer of the Court and should be public auction. It should be conducted and confirmed as far as may be in the manner prescribed for the sale of movable property by the Code of Civil Procedure and Civil Rules of Practice. (Rule 232).

**PROCEDURE FOR DISPOSAL OF PROPERTY AFTER EXPIRY OF APPEAL  
PERIOD**

1. If the property is still pending even after the expiry of appeal time, a notice as in the form

no 61, of Criminal Rules of Practice (The form shall contain the date of appearance and the next date of course of action) shall be served on the person to whom property is ordered to be returned.

2. Such notice shall indicate the date on or before which the person has to appear before the court and it shall also contain a warn to the claimant if he does not appear by the specified date, then the property shall be confiscated to the state.
3. The police shall be strictly directed to see that the notices are served at least one week in advance and file the reports before the court.
4. If no one appears before the court within the given date in notice to claim the property, then a note shall be put up by the clerk and a suitable order shall be passed by the concerned Magistrate.
5. In case of unclaimed property, the ownership or legal possession of it cannot be traced by the police and no complaint is received with regard to such property.
6. Such unclaimed property has to be disposed-off as per the procedure provided Under Section 457,458 and 459 Criminal Procedure Code.
7. Before disposing the unclaimed property the concerned Magistrate has to take the below steps:
  - i) The officer should see the steps taken by the police to trace any complaint regarding such property is satisfactory.
  - ii) he should also ascertain whether there is any person entitled to the possession of the property.
  - iii) he should issue a proclamation u/sec 457 Criminal Procedure Code as in Form No.62, If no person is ascertained with regard to unclaimed property.
  - iv) Such Proclamation may be carried on by affixture before the court by the police and the places where the property was seized and some conspicuous place of the town and by way of tomtom.
  - v) Such report of due proclamation shall be submitted by the police before the court and the court shall wait until six months from the date of proclamation actually made.
  - vi) After expiry of six months, no claimant appears ,then the court shall pass the orders for disposing such property in any one of the modes provided under the Criminal Procedure Code and Civil Rules of Practice.
  - vii) All such property orders passed from time to time have to be entered in the registers

concerned.

**HOW TO DEAL WITH THE CASE PROPERTY WHEN RIVAL CLAIM IS MADE:**

Sometimes we may notice that not only the victim but also the accused would claim right over the case property. Particularly, in theft cases, the accused after committing the theft of the property would pledge the same with any bank or financial institution. In those cases, the financial institution also claims the said property on the ground that it was not aware at the time of pledging the property that the said property was a theft property.

For that, the observations of the Hon'ble High Court in the case of RAJALINGAM V. VANGALA VENKATA RAMA CHARY ( 1996(2) ALD (Crl) 868) are very much relevant. The facts in the said judgment would disclose that both the accused and the complainant laid serious claim of ownership in respect of the seized property. In those circumstances, the Hon'ble High Court by relying on the judgment of the Hon'ble Madras High Court in the case of MUTHAIAH MUTHIRIAN V. VAIRAPERUMAL MUTHIRIAN (AIR 1954 MADRAS 214) observed that the parties would be directed to approach civil court to establish the claim of their right of ownership in respect of the said property. The observations of the Hon'ble High Court reads thus:

***“When there was rival claim as to the ownership of the property the learned Sessions Judge instead of embarking upon to decide it once for all and ordering to hand over the same to complainant, should have directed the parties to establish their claim before the competent Civil Court as to the ownership of the property”.***

**RELIED ON THE FOLLOWING JUDGEMENTS:**

1. ***Sunderbhai Ambalal Desai vs State Of Gujarat, 2002 Supp(3) SCR 39***
2. ***Smt Basawa Kom Dyanmangouda patil vs State of Mysore and another [1977] 4 SCC 358***
3. ***Rajalingam Vs. Vangala Venkata Rama Chary ( 1996(2) ALD (Crl) 868)***
4. ***Muthaiah Muthirian Vs. Vairaperumal Muthirian (AIR 1954 MADRAS 214)***