GRATITUDE

Invaluable guidance given by the **HON'BLE SHRI JUSTICE ATUL SREEDHARAN SIR** for preparing the reading material regarding the maintenance of the Malkhana Section and the disposal of the seized case property/Muddemal, and also encouraged me to prepare this book. I express my heartfelt gratitude to the HON'BLE JUSTICE for such precious enlightenment. This reading material has been prepared for future reference in order to smoothing the functioning of Malkhana Section and how unnecessary case property/muddemal shall be disposed off according to law. Hope that this reading study material will enlight, awake and guard the Judicial officers in Malkhana Section of their duties.

Irshad Ahmed IIIrd ADJ, Jabalpur
& OIC, Malkhana Section, Jabalpur

OUR EXPRESSIONS:

Language is a best mode of expression of our thoughts and feelings in a powerful mode and these thoughts and expression appears through words and articles published. Today I have also got an opportunity to express my feelings. Previously the Malkhana Prabhari was Chief Judicial Magistrate, but the then Respected District and Session Judge Shri Sanjay Shukla Ji, has given me the responsibility/charge of Malkhana vide order No.-70/11-12.13/1962 on 10th April 19 as a new experiment by making a committee headed under my Supervision. Previously Malkhana was considered to be a contagious disease, but my belief was that **through selfless work a person is also helped by God also**. I have taken the charge of the Malkhana section as OIC and after discussions with employees and suggestion given by employees, I started the work of Malkhana Section. From time to time through innovative ideas and various schemes, the proper functioning of Malkhana started. The old Malkhana was situated in the old court building, but it was transfered to the new court building which a mammoth task to be fulfilled and it was challenging also, but through the grace of God and valuable suggestions given by Respected District and Session Judge, Jabalpur Sh. Naveen Kumar Saxena and this task was completed.

Preparation of literature and study material was very challenging job. How much It was successful is to be decided by you. This reading material has been prepared in such a way that it can provide useful guidance in relation to the functioning of the Malkhana section and disposal of case property in future.

In my considered view, my selfless effort towords the Malkhana section as well as this written material would surely help the future generation and the officers posted in every District Establishment of the state to guide them as to how the work in Malkhana should be done, manner of use of the properties, disposal of properties. A brief guidance is provided in the study material.

I hope that this initiative shall overcome the inconvenience of officer posted in malkhana and shall also give specialization to officer for keeping the malkhana safe and disposal of case properties as per law. Any suggestion regarding the literature and study material is most welcome.

"To err is human" and change is a continuous process and it keeps us going in the right direction.

With best wishes

(Irshad Ahmad)

Irshad Ahmed IIIrd ADJ, Jabalpur
& OIC, Malkhana Section, Jabalpur

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HISTORY OF DISTRICT COURT JABALPUR AND MALKHANA SECTION.

The History of District Court goes back to the year 1915, where Jabalpur District was divided into four Divisions, Sagar, Damoh, Seoni and Mandala with its headquarter at Jabalpur. After independence, Jabalpur was the largest District and under the Jabalpur District, with its president ship of District Judge, Jabalpur, Sagar, Damoh and Mandla the Additional District Judge and Jabalpur, Sagar, Damoh, Mandla Sihora, Murwara, Khurai and Raheli Civil Judges used to come to Jabalpur. In the year 1961 Jabalpur Civil court was seperated from Sagar and Damoh. On the 1st November, 2018, Jabalpur District Court was transfered to the new building from the old one.

OLD MALKHANA SECTION

The old Malkhana section articles/properties were kept in three different places and in a unsystematic way in 16 nos of rooms. In the old Malkhana the case properties were spread all over in a haphazard manner and if a person sees them for the first time it is felt as if a earthquake has occurred and properties have fallen apart. If during trail, case properties was called, then search of the properties was a tedious job and it was considered as if a mountain has to be climbed. It has also noticed generally, if the witness appeared in the Court for deposition, which required identification of properties/muddemaal also, than, it took a whole day in search of muddemal and normally the witness was discharge unexamined in absence of production of case properties/ muddemal. The condition of the old Malkhana was very deteriorated which are reflecting in the following photographs:-


VIDEOCON

MODERN MALKHANA SECTION

Just as the legislature has categorized the Penal Code and other penal laws on the basis of the nature and severity of the crime, similarly the classification of properties kept in the Malkhana section is also necessary. Consequently the classification was done in the same way and the properties kept in the Malkhana section has classified. It is a trend that in the Sessions Court the cases to be considered is of serious nature and the appeal is also preferred before the Hon'ble High Court. So the case properties should be kept safe and intact so that it can be produced, identified and exhibited during trial and also be kept safe for future reference till concluding of the case/appeal. During trial of the case, the properties which are not produce and exhibit, its consequence has been explained in various judgments of Hon'ble Madhya Pradesh High Court. In order to overcome these difficulties the case properties classified on the basis of Session Triable cases and Magistrate Triable cases and kept in seperate rooms.

The New building Malkhana is having three different rooms, out of which racks are kept in two rooms. According to classification of Sessions Trial and Magistrate trial, the cases to be considered and articles/properties of Sessions and Magisterial courts are kept in different rooms and on racks are classified as **A, B, C** ... and their Block section **1,2,3 ...** accordingly on yearly basis. Computer entries are being made on yearly basis on Excel Spread sheet, with particulars i.e. Malkhana Number, FIR Number, Police station, Name of the Court, Case No, Name of the accused, Sections applied and details of the seized case property. Each and every property has identified and accordingly through the details the properties can be searched and identified easily which in turn can save time and energy. The Photographs enclosed herewith showing the Modern Malkhana and perfect maintenance of the case properties :-


C
B
A


E
D
C

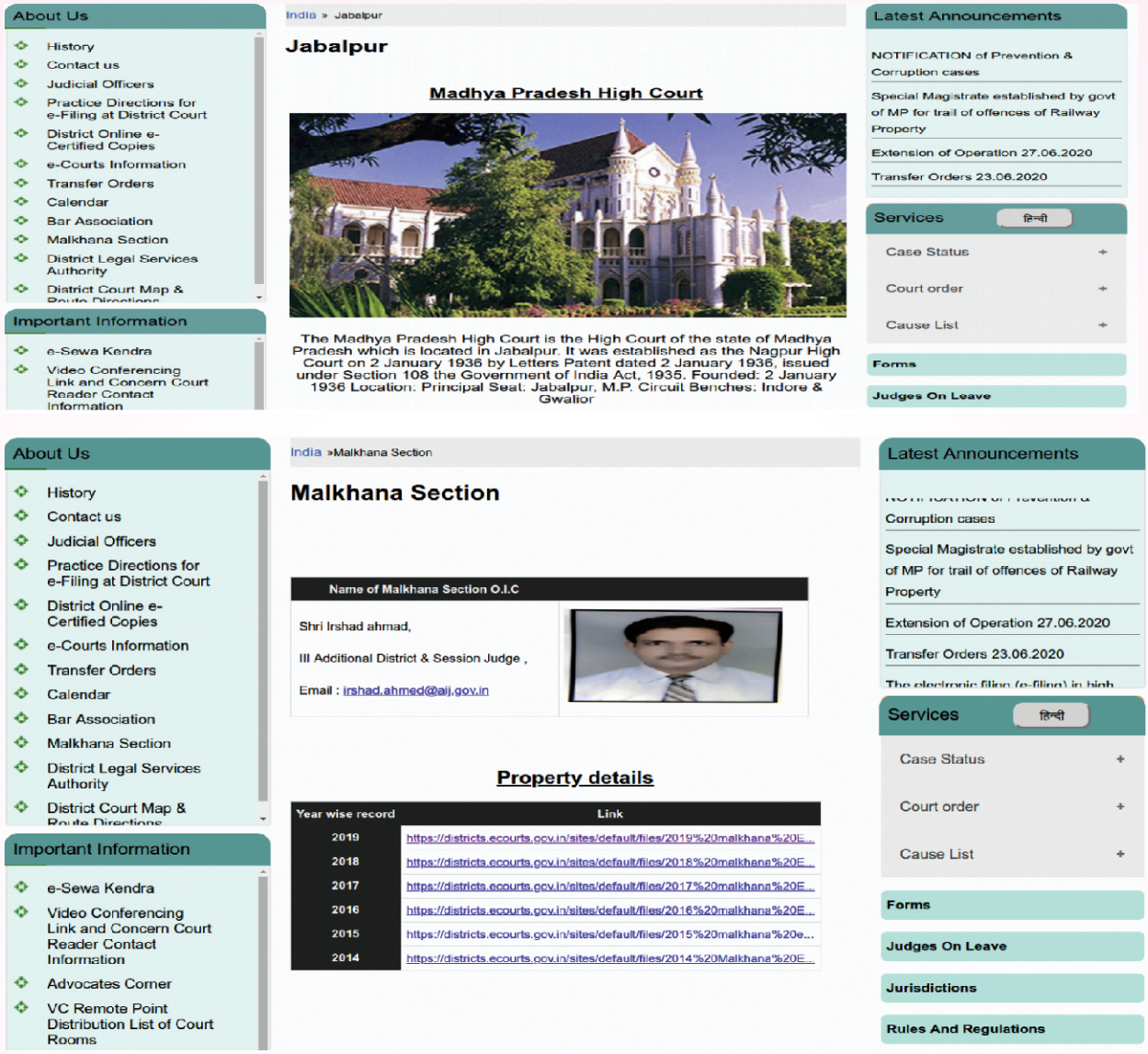
THE PROPERTIES KEPT IN NEW MALKHANA AND INFORMATION TO BE SOUGHT OUT FROM THE COMPUTER DATA/SEARCH

Modernization of Malkhana and achieving the goal of paperless Courts and accreditation of putting a step forward, Malkhana has 28,000 properties, which were systematically got entered according to the year basis on an excel sheet. After that the entries are classified on the basis of racks which got indexed. Every rack labeled as **A,B,C** and every rack has section/block from **1,2,3.** For example in rack A, block-1 properities pertaining to year 2019 are to be kept. If properties are kept in that manner it may be traced easily. The better part of classification is that if any court calls any case property the details fed in the computer will immediately reflect that in which rack and block the property is kept. In this way time can be saved and the search is done quickly as well as the witness will not have to go back on the basis of non-production of property. Additional entries are made accordingly by Malkhana Number, FIR Number, Police station, Name of the Court, Case No, Name of the accused, Sections applied and details of the seized case property. It will be beneficial, suppose the PROPERTY PURCHA/property details are not available and Malkhana No. of property is also not available, still from the file and FIR No., name of Court the properties can be identified. The Excel sheet computerized proforma is as follows.

1			MALKHANA ENTRY 2018								
2	मालखाना नं	FIR	थाना	दिनांक	न्यायालय का नाम	प्रकरण क0	आरोपी का नाम	धारा	संपत्ति का विवरण	TS No.	Addressing
3	004/18	707/16	हनुमानताल	03.01.18	श्री आर.आर. बडौदिया जेएमएफसी एनडीपीएस	707/16	नित्तू उर्फ नितेश	8/20 एनडीपीएस	एक सीलबंद पैकेट स्मैक 1–एक परीक्षणशुदा सैमपल ए1 2–एक पैकेट आर्टीकल ए 3–एक पैकेट आर्टीकल ए2 कीमती 2.00000/–रूपये।	01/18 dt. 04.01.18	
4	005/18	111/17	शहपुरा	04.01.18	श्री पदमचंद गुप्ता दशम एसीजे	73/12	तुलाराम चौधरी	376(2)(एफ)2(1) 506 एवं 5(1)(2)(एन) पास्को एक्ट	एक शीलबंद सफेद पैकेट में एफएसएल सागर से परीक्षण शुदा माल प्रदर्श ए शीलबंद पैकेट।		A15
5	006/18	112/17	बेलखेडा	04.01.18	श्री इरशाद अहमद तृतीय एसीजे	st 485/17	होरी सिंह	302ध34	एक शीलबंद कपडे में– 1–एक सीलबंद पैकेट में घटनास्थल से खून आलूदा मिट्टी। 2–एक शीलबंद पैकेट में घटनास्थल से सादी मिट्टी। 3–एक शीलबंद कपडे में मृतक के खून आलूदा कपडे। 4–एक शीलबंद कुल्हाडी। 5–एक शीलबंद डण्डा (लाठी)		A15
6	008/18		सीबीआई	04.01.18	श्रीमति माया विश्वलाल स्पेशल कोर्ट	st 27/17	सुनील शर्मा	13(1)(डी) एन डब्ल्यू 13(2) पी.सी. एक्ट	एक शीलबंद पैकेट में सीबीआई जबलपुर द्वारा प्रस्तुत। 1–05 कांच की शीशीयां जिसमें घोल भरा हुआ है। 2–09 सीलबंद लिफाफे जिसमें सी.डी. रखे हुए हैं। 3–01 शीलबंद लिफाफे जिसमें अभियुक्त का पेन्ट रख हुआ है जिन्हें एक साथ में शीलबंद किया गया है।		
7	1860/18	304/15	कोतवाली	05/09/18	श्री संजय कुमार शाही द्वितीय एएसजे	614/15	विक्की उर्फ शैलेष वगैरह	307, 302	एक शीलबंद पैकिट में सागर से परीक्षणशुदा एफएसएल प्राप्त A(a1-a2) b, c (p-449/15) जिसमें मृतक के कपड़े पेंट शर्ट एवं दो नग लोहे के चाकू है जो कि कपड़े की थैली में शीलबंद।		A18

In accordance with the guidelines given by the Hon'ble Supreme Court, Hon'ble High Court and the concept of E. Court process, the details in the Excel spreadsheet given as Malkhana No, FIR Number, Police station, Name of the Court, Case No, Name of the accused, Sections applied and details of the seized case property can be seen on Internet, District Court Jabalpur website https://districts.ecourts.gov.in/jabalpur

which is linked to the web:-



The details of the entries of Malkhana Section Jabalpur can be seen online and the witness of various departments who are coming from other city as witness can also be helped through this innovative method. Oftentimes it's happens that witness attends the court, but as the case properties are not available or not deposited in Malkhana Section then it is useless for the witness to attend the court and the government is also at economic loss. This position will not arise if in future the police personnel/officers before coming to court for the purpose of evidence, they can just log into the website of the District Court Jabalpur, and get the information through Email mentioned on the website and inform the Incharge of Malkhana Section about the case properties so that whenever he appears as a witness in the court, his deposition will not be incomplete and the time is saved and the justice delivery system is not hampered.

DUTIES AND RESPONSIBILITIES OF THE MALKHANA NAZIR.

Each district headquarters has a Malkhana section for the maintenance and the disposal of the seized case properties related to criminal matters. At the Tehsil level, there is also a Malkhana section for the case properties related to criminal matters. Its charge is called Malkhana Nazir. At the Tehsil level, the Assistant Nazir (Nayab Nazir) handles the works of Malkhana along with Nazrat. Their main duties are as follows:-

- Deposit of all properties related to criminal cases as per order of the presiding officer of the concerned court.
- It is the duty of Malkhana Nazir to carefully examine the condition of the case property and the details of its description given in the Malkhana Property Parcha while depositing the Malkhana property to ensure that both the details are the uniform and if any insimilarity is found then it should be rectified. Also write a complete and the correct entries be made in the register/computer itself.
- It is the duty of Malkhana Nazir to see that the details regarding name of the crime number, year and the name of the concerned police station, name of accused, case number etc. on the Malkhana Property Parcha is clearly mentioned and if there are no such references, then complete them as well as in Malkhana register and and make sure the above entries are correct in order to avoid future inconvenience.
- It is the duty of Malkhana Nazir that after depositing the case property, has to enter the registration number of the Malkhana register on the Malkhana Property parcha and return it and also mark the same number on the property also.
- It is the duty of Malkhana Nazir to serially arrange the property on yearly basis so that there is no inconvenience to find the property in Malkhana if required.
- It is the duty of the Malkhana Nazir to keep a plan and index in its Malkhana section, which shows the year-wise and sequential position of the properities and their storage. This plan and index should be like a mirror, which can be reflecting the image of property as to where it is kept. Malkhana Nazir should revise this plan and index every 3 to 6 months because in the meantime some new properties will come and some old properties be disposed. So Malkhana Nazir should put an action plan to revise this plan and index.
- It is the duty of the Malkhana Nazir to contact the execution clerk or criminal reader of concerned courts every month and receiving the Malkhana Parcha of the disposed cases and to proceed with the disposal of the Malkhana property according to the order or according to the instructions as well as the guidance given by the Officer-In-Charge.

Malkhana Nazir should dispose of the Malkhana property only in the presence of the Officer-In-Charge and should take action regarding the auctionable property as per the order of the Officer-In-Charge.

- It is the duty of Malkhana Nazir to produce Malkhana property from which it is called for, in the concerned court on time without delay and after cancluding the proceedings of

the case, the properties be kept back in the place assigned for it. This is possible only when Malkhana is arranged properly, so the property of Malkhana should be arranged properly.

- It is the duty of Malkhana Nazir to make an action plan for cleaning the Malkhana, daily/weekly/monthly and keep cleaning the Malkhana accordingly so that the properties are safly preserved.
- It is the duty of the Malkhana Nazir to report immediately to the officer-in-charge about any variation or damage to the properties in the Malkhana and get directions to them to show why such variation or damage was done.
- It is the duty of Malkhana Nazir to make efforts to dispose of the old pending Malkhana properties by co-ordinate the execution clerk of the concerned court from the old register of the concerned court or even from the record of the case of the recordroom section so that the disposal of the properties stored, is done in time.
- Regarding the valuable items such as jewelery etc. should be kept in sealed packets in the treasury. It should not be kept in the Malkhana. The remaining Notes and currencies, except the Punter notes or such notes which can be recognized/identified by its numbers, after acquiring the orders from the concerned court should be submitted in the treasury/Bank.
- It is the duty of Malkhana Nazir to find out whether the case for which the properties are pending is actually pending or has been disposed off. It sometimes happens that the case is disposed off in the court years ago and their properties are held up unnecessarily in Malkhana. So the utmost effort has to be made in this regard.
- It is the duty of Malkhana Nazir to do a physical verification of pending Malkhana properties once a year by keeping the Malkhana Register with it and also keep a separate year-wise list of pending Malkhana properties in which case number, court name etc. should also be mentioned and from this list and also take time in each court to check the status of the related case. Many times it also happens that in appealthe case is disposed and sent to the record room. Search for such cases and rectify the changes to be made. the case is disposed of by appeal and is deposited directly in the record room. Such cases will also be found on searching.
- It is the duty of Malkhana Nazir to make proper efforts to keep the Malkhana items and the Malkhana room safe in such a way that there is no possibility of theft etc.

REGISTER OF PROPERTY MADE OVER TO THE NAZIR IN CRIMINAL CASES **V-80 Cr.J.(E)**

Serial No.	Date of	Name of Magistrate with number and year of case	Description of property	Date on which the property is to be produced before Magistrate	Date and manner of disposed	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)

M.P. CRIMINAL RULES AND ORDERS
RULE RELATED TO MALKHANA SECTION

Rule 124. (1) the attention of the courts is invited to the provisions of section 516-A of the Code. When the property concerned cosists of livestock it should wherever possible be placed in the custody of a supratdar, security being taken from 'him for tits production whenever ordered, and arrangements made for payment to him of the expenses incurred by him for feeding and looking after the live-stock.

(2) Orders for the safe custody of property pending the conclusion of the enquiry or trial should invariably be made as soon as the articles are produced in court. When such articles consist of valuables, jewellery or money, whether in currency notes or coins, excedding Rs. 100 in aggregate value, they should be sent for safe custody to the treasury or sub-treasury officer. Other articles should remain in the custody of the nazir (which term wherever used in this Chapter also includes a naib-nazir).

(3) Property sent for safe custody should be accompanied by a memorandum in Form No. 198 or 199 on Schedule V-Cr. J.E. as may be appropriate. Valuables, jewellery or money shall invariably be made up into a sealed packet in the presence of the presiding officer. If the value of the packet exceeds Rs. 100 the sealed packet and memorandu shall be sent to the treasury or sub-treasury officer through the nazir for retention in the treasury in safe custody and the treasury or sub-treasury officer will proceed in accordance with Financal Rules 9 and 10. in other cases the property and memorandum shall be sent to the nazir. The nazir shall endorse on the memorandum the receipt of the property and also the serial number the property bears in the Register of Property made over to the nazir in criminal cases. If the property consists of or contains a sealed packet which is not to be forwarded to the nazir shall keep the packet in his safe.

The memorandum shall be returned to the court and filed in the record of the enquiry or trial. All property whether sent to the treasury or sub-treasury officer, or kept by the nazir, shall be entered in the above mentioned register and details of the property as shown in the accompanying memorandum noted in the appropriate columns.

(4) When the property is required at any intermediate hearing the court shall endorse a requisition on the memorandum and sent the memorandum to the nazir. As soon as the day's hearing concludes the property shall be returned to the nazir. Who shall if necessary re-deposit it in the treasury. If it consists of or contains valuables, jewellery or money, such valuables jewellery or money shall be made into a sealed packet in the presence of the presiding officer as directed in sub-rule (3)

Provided that in trials before the Court of Session the property shall be produced and taken back by the nazir of the District Magistrate's office.

(5) After the conclusion of the enquiry or trial, an order for the disposal of any property produced should be recorded in accordance with the provisions of section 517 of

the Code. In this connexion the attention of the courts is invited to the explanation to this section which enables the court to return the sale proceeds of stolen property to the person from whom such property was stolen, though such property itself is not forth coming.

Rule 125. Special care should be taken for the safe custody during the pendency of the enquiry or trial of documents that are forged or suspected to be forged. Ordinarily they shuld not be retained with the record but should be deposited with the nazir in a sealed cover after such hearing. See alos part II chapter 18, rule 466.

Rule 466. The court make special provision for the safe custody during trial of any document alleged to be furged and may make special provision for the safe custody during trial of any document which by reason of antiquarian or other value it considers unsuitable for retention on the record. Documents kown or suspected to be forged shal be kept in a sealed envelope bearing an endorsement describing its contents. The envelope shall be kept in the custody of the nazir (or naib-nazir) and on no account kept with the record. The court shall make an entry in the order sheet whenever it sends the envelope to the nazir, and shall be responsible for its safe transit to and from his custody.

Rule 680. Register of property made over to the Nazir in criminal cases.-

(1) Pending the completion of an enquiry or trial, the articles in evidence of the personal property of an accused produced by the police shall, unless otherwise ordered by the court, remain in the custody of the nazir, except where they consist of valuables, currency notes or coins exceeding Rs. 100 in aggregate value. Valuable, currency notes or coins shall invariably be made up into a sealed packet in the presence of the magistrate and a memorandum in the prescribed form (Schedule V.No. 198) giving the list of the property and the estimate value thereof prepared. If the value of the packet exceeds Rs. 100 the sealed packet and memorandum shall be sent to the treasury or sub-treasury officer through the nazir to be kept in the treasury officer or sub-treasury officer shall proceed in accordance with Financial Rules 9 and 10. if the value of the packet and memorandum shall be sent to the nazir. The nazir shall endorse on the memorandum the receipt of the packet and also the serial number which the packet bears in his register of property made over to the nazir in criminal cases and keep the packet in his safe. The memorandum shall be returned to the magistrate and filed in the record of the enquiry or trial. Each packet, whether sent to the treasury officer or sub-treasury officer or kept by the nazir in his safe, shall be entered in the above-mentioned register and the alleged contents and their value noted in the appropriate columns.

(2) When the property contained in a sealed packet is required at any intermediate hearing the magistrate shall requisition on the memorandum and send the memorandum to the treasury officer or sub-treasury officer or the nazir and obtain the packet. As soon as the day's hearing concludes the property shall again be made up into a sealed packet in the presence of the magistrate and sent with the memorandum for safe custody as directed in sub-rule (1).

(3) Property other than valuables, currency notes or coins shall be sent to the nazir

with a memorandum in the prescribed form (Schedule V, No. 199) for safe custody. The nazir shall enter the property in his register of property made over to the nazirin criminal cases, endorse on the memorandum the receipt of the property and also the serial number which the property bears in the above mentioned register and return the memorandum to the magistrate for being filed in the record of the enquiry or trial. When the property is required at any intermediate hearing the magistrate shall endorse the requisition in the memorandum and send the memorandum to the nazir and obtain the property. As soon as the day's hearing concludes the properly shall be sent to the nazir with the memorandum for safe custody as before.

(4) When a trial is concluded, the property shall be sent back with the memorandum containing the copy of the order for its disposal, and the nazir or the naid-nazir shall acknowledge on the order sheet of the case the receipt by him of the property and the memorandum. After the property is disposed of, the memorandum shall be sent to the record-keeper for being filed in the record of the case.

(5) When property is disposed of by return sale or otherwise, an entry to the effect shall be made in the register and it shall be attested by the magistrate concerned.

(6) (i) Articles in evidence should be disposed of as soon as possible after the case is concluded. If no orders for disposal are received within a reasonable time a refrence should be made by the nazir to the court concerned.

(ii) Where an appeal or revision is filed the court of appeal or revision, as the case may be, shall send intimation thereof to the trial court.

(iii) On receipt of such intimation the court reader shall make a note of itin the remarks column of the Register of Criminal Cases for ready refrence when the nazir resubmits the memorandum of property for disposal as required by section 517 (3) of the Code of Criminal Procedure.

(iv) in murder cases in which a sentence of death has been passed the property shall not be disposed of until the sentence has been executed:

Provided that where a proceeding arising from a murder case is pending against an approver the property shall not be disposed of until the proceeding has been finally decided.

(7) Property retained by the nazir in connetion with a proceeding under section 512 of the Criminal Procedure Code shall not be kept for more than five years, unless the District Magistrate expressly directs its further retention.

(8) The register maintained at the head-quarters of a district shall be put up for scrutiny every month to the Additional District Magistrate or the officer-in- charge of the nazarat. The register at outlaying stations shall be put up every month to the Sub-Divisional Magistrate or the tahsildar,as the case may be.

(9) A quarterly statement showing the items in the register pending since the end of the previous quarter shall be submitted by the nazir or naib-nazir to the officer-in-charge of the nazarat, and the officer-in-charge shall examine the register and see that it is being properly maintained.

PLANS AND MEASURES FOR REDUCING THE NUMBER OF PROPERTIES IN MALKHANA SECTION

In every district in Malkhana more properties are kept/preserved than its capacity, whereas the reality is that the number of pending cases at the headquarters is less than half which shows that more than half of the properties kept in the Malakhana may be disposed off and of some case properties of finally decided cases is also unnecessary preserved.

Following plans and measures can reduce the number of properties in Malkhana section:-

- Calling of a signed list of appealed cases from the DPO office or the Public Prosecutor's Office.

Purpose : Time will not be wasted in seeking information about the cases in which the prosecution has preferred appeal/revision and in the condition of acquittal the properties may be disposed off because in most of these cases prosecution is not preferring appeal. In this regard, M.P. Criminal Rules and orders Rule 680 (6)(ii)(iii) is remarkable, it is provided in this rule that where an appeal or revision is filed the court of appeal or revision, as the case may be, shall send intimation thereof to the trial court and on receipt of such intimation the court reader shall make a note of it in the remarks column of the Register of Criminal Cases for ready referrence when the nazir re-submits the memorandum of property for disposal as required by section 517 (3) (New Section 452) of CrPC.

- From every police station the details of the absconding accused signed list has to be called for.

Purpose : The list is maintained with the complete details of the absconding accused in the police station. It would be beneficial to call the above list that the cases which are not showing CIS and where there is a doubt of the accused being absconding these cases can be identified and separated from the Malkhana list and the properties of these cases are safly preserved M.P. Cr. Rules and orders Rule 680 (7) provided that property retained by the nazir in connection with a proceeding under section 512 (New Section 299) of Cr.P.C. shall not be kept it for more than five years, unless the District Magistrate expressly directs its further retention.

- List of cases should be taken which was disposed off in previous years Lokadalat.

Purpose : As the cases disposed off in lokadalat, no appeal shall be prefer against that order, then the keeping of properties in Malkhana are of no use and can be disposed off immediately.

- To obtain Muddemal parcha/property parcha from the abhilekhagar/ record room of already disposed off cases.

Purpose : Since it is in practice earlier that muddemal parcha used to be attached with case file itself and not to be sent to malkhana section after disposal of case, than when the list of cases is being received by putting extra staff of the courts in the Record room, the property parcha can be removed and sent back to the Malkhana and accordingly the properties can be disposed off as per law/rules immediately and space can be made for future cases.

- Obtaining the list of appeals filed under Section 378 CrPC against the acquittal from the computer section of the Hon'ble High Court. Purpose : The list of appeals filed under each category or section is available on the district basis in the Honorable High Court. More than 100 properties are lying in the Malkhana Section of the cases triable by Session Court resulting in acquittal. This shall save time and space and properties related to that cases may be disposed off accordingly.

- It should be ensure to serially arrange the property on yearly basis and to keep a plan and index in its Malkhana section, which shows the year-wise and sequential position of the properities and their storage so that there is no inconvenience cause to find out the property in Malkhana as and when required. This plan and index should be revised time to time.

- It should be ensure that every month the execution clerk or criminal reader of every courts sent the Malkhana parcha of the disposed cases to malkhana section for disposal of the Malkhana property according to the order of concerned court.

- It should be ensure that every month the execution clerk or criminal reader of every courts while making the Workdone of the court for each month, the information as per "Appendix A" should be sent to the Nazir (Malkhana Section) every month. Disposal of that month's cases will be deposited in the Record-room only after receipt of acknowledgement received by the Nazir Malkhana Section on "Appendix A" above.

"Appendix A"

Court . . . . . .

Case disposal list in the Month of .....

Reference :- Rules and orders Criminal Rule 680 (4).

Malkhana Nazir, Malkhana Section District Court Jabalpur.

S. no.	Court Case no.	Crime no.	Malkhana no.	P.S.	Parties	Section Title	Siezed case property	Order for final disposal of Siezed case property	What action has been taken in respect of order of disposal of Siezed case property	Remark

INVENTORY CERTIFICATE (PROFORMA)

Crime No. .....
Police Station.....

INVENTORY CERTIFICATE

(U/S 52A(2)(a)(b)(c) of the Narcotic Drugs and Psychotropic Substances Act 1985).

1. This is to certify that, PSI Shri..... of P.S. ..... today appeared before me at ..... a.m. alongwith ..... i.e. muddemal property, which has been seized in Crime No. ....., for the offence punishable under section ..... of ..... Act. PSI ..... has sought permission to make inventory in respect of muddemal property.

2. The accused ....., Aged ..... yrs., R/o ..... and ....., Aged ..... yrs., R/o ....., Ta. ..... , Dist. ..... are also produced alongwith the muddemal property. ASI ..... (B.No. .....), PC ..... (B.N0. .....), PC ..... (B.No.....) ,Photographer namely Shri. ..... of ..... Photo Studio ,..... and grocery shopkeeper namely Shri. ..... of ..... Kirana Store, ... alongwith electronic weighing machine are present in court premises.

3. ..... is produced before me for inventory purpose. It is having one seal and its packed by ..... There is having one name in bold in red colour as ".....Brand" over the said gunny bag. On this bag, one label was affixed containing the name of Police Station ....., Distt. ..... , date of seizure (incident) and time is written as ..... of .....00 hrs. The quantity of seized material is described as total ..... plastic bundles containing Ganja etc..... of weighing ..... kg. ..... gram worth of Rs. ...../. It also contents the name of the person from whom the said material was seized i.e. ....., Aged ..... yrs., R/o ..... and ....., Aged ..... yrs., R/o ..... The said label was also signed by the person from whom it was seized and the signatures of panchas and PSI. The label is marked as P1.

4. Firstly, the said sealed pack ..... gunny bag alongwith intact seal is weighted on electronic weight machine and it was found of .....kg. ..... gram. One photo of seal packed ..... gunny bag is taken by photographer in my presence. Thereafter, the ..... gunny bag is opened in my presence by cutting white thread and cello tape over it. Then one photo of the broken .....gunny bag is taken by the photographer in my presence. The said .....gunny bag contains plastic wrapped bundles. The said bundles are counted in my presence and found total .....plastic transparent bags bundle wrapped with ..... colour cello tape. One photo of total

.....plastic transparent bags bundle is taken by the photographer in my presence. Thereafter, each ..... plastic transparent bags bundles are opened one by one in presence of accused, police and myself. It contains gracy greenish dry leaves i.e. the alleged muddemal property Ganja or .....other Drugs. Thereafter, the said muddemal property alongwith the plastic transparent bundles weighed on the electronic weighing machine by shopkeeper Shri. ..... in my presence.

The bundles are marked at serial numbers 1 to ..... alongwith its weight. Three photos are taken in my presence at the time of weighing the bundles. The particulars of each plastic transparent bags alongwith muddemal property description is as follows.

Sr. No. of Bundles	Weigh
1.	0.000 kg.
2.	0.000 kg.
3.	0.000 kg.
4.	0.000 kg.
5.	0.000 kg.

5. Thereafter, the empty white colour gunny bag is weighed in my presence, it is only 0.125 gram. Lastly, all above bundles containing leaves are packed and again kept in white colour gunny bag. The two photo at the time of packing of the bag is taken by photographer in my presence. The white colour nylon bag is sealed and labelled under

my signature and seal of this court. The white colour nylon bag is tied with white thick thread and also sealed by lakh. After sealed, the said gunny bag weighed in my presence on the weighing machine by the shopkeeper Mr. ..... The total weigh is found 14.448 kg. Accordingly, shopkeeper Mr. Takalkhede has also given one certificate. The two photo at the time of packing of the gunny bag is taken by photographer in my presence. Total ten photos are taken by the photographer Mr. Murlidhar Kolhe. After completion of full inventory, the muddemal property is handed over to PSI ..... of P.S. ..... and his acknowledgment to that effect is taken on his request application dated ..... The inventory prepared is true and correct.

This procedure is completed, inventory prepared and handed over to PSI ..... at .....00 p.m.

Date : .....

(.....)
Judicial Magistrate, First Class,
Jabalpur.

Court Order for Disposal/Distruction (Proforma)

Dated : .....

Ld. AGP for state alongwith IO namely.....

Investigation Officer, Police Station-.....Jabalpur, MP moved an application under Section 52A NDPS Act in Crime No. ....., PS-..... District- ..... U/s.....NDPS Act alongwith case diary as well as the seized contraband for order for disposal/distruction of the contraband. Contraband is produced. Case diary is also produced.

As per application, It is requested to pass an order to dispose/destruct the remaining contraband of total quantity of .....apart from sample taken U/s. 52-A of the NDPS Act.

Heard, record perused, which shows that application/casee diary containing the copies of FIR, Seizure memo/jabti patrak, FSL report, application filed before the Executive Magistrate for conducting proceeding U/s. 52-A, order of the Executive Magistrate by which sample was taken and remining case property was siezed, photographs taken during proceeding, indexing and certificate issued by Executive Mgistrate U/s. 52-A (3). There is hardly any credible protection against theft, replacement, pilferage and destruction of the seized drugs on account of the wholly unsatisfactory and unscientific method of storage of drugs and psychotropic substances and there is also possibility to take time for trial of case. If for any reason, situation arises to conduct the chemical exmination again, in that situation sample taken by the order of Executive Magistrate is also available which is admissible in evidence as per judgment of Hon'ble *High* Court of Madhya Pradesh titled as **Nirmal v. State of MP ILR (2009) MP 848.**

In the discussion made hereinabove, it would be appropriate in the interest of justice to allow the application moved by IO/state. Accordingly application is hereby allowed and it is directed to concerning authority to make sure to follow the guidlines issued vide notification No. GSR 38(E) dated 16.01.2015 and also comply the direction strictly passed by Hon'ble Supreme Court in judgment titled as **Union of India v. Mohan Lal (2016)3 SCC 379.**

Copy of this order is given dasti to IO with case diary.

Case be put-up for date already fixed.

Special Judge,

NDPS Act, Jabalpur, M.P.

Copy to.. Copy of this order be sent to TI concerned for intimation and compliance

Maintenane of Malkhana, Nazarat and Embezzelment of Properties

SH.R.B. DIXIT,

District Judge (Vig.) Jabalpur, [*NOTE : Recently* there was an embezzlement of about Rs. 8,00,000/- Rupees Eight Lakhs) in one district Court. Hon'ble the Chief Justice of M.P. High Court Shri A.K. Mathur had also addressed in the Institutional Training Programme regarding the seriousness to be observed by the Judicial Officers in dealing with the office work. He had also warned the Judicial Officers for their dereliction, slackness and carelessness in attaining accomplishing officer wor*k.*

Senior most Dirstrict Judge, Shri R.B. Dixit presently posted in S.T.A.T. Gwalior had written an article on "Maintenane of Malkhana, Nazarat and Embezzelment of Properties" which was published in 'JOTI JOURNAL' Vol, III Part I (February 1997).

1. Very few of the Judicial Officers realise the importance of Malkhana and Nazarat in working of judicial system. Lack of sufficient knowledge of these branches may land officer-in-charge in trouble and spoil their carrier. On the other hand, if Malkhana and Nazarat is properly handled, it will boost working capacity of a Judicial Officer. Nazarat may be termed as a small secretariat of court. It controls staff members and their behaviour towards courts and litigating parties. To be a successful Judicial Officers working of Nazarat and Malkhana is to be carefully learnt.

2. It is true that Judicial Officers are not account trained, nor they get enough time to devote for checking accounts and verify Malkhana Properties. However if working knowledge of these sections is acquired, it will save a Judicial Officer from committing serious mistakes as officer-in-charge and they will be able to provide proper checks on its working. No Judicial Officers can properly control his staff if he takes such type of personal services or adopts pleasing tactics.

3. A broad principle of dealing accounts and ornaments is that a kind of practical faith on staff is necessary but one should be vigilant enough in this theory of make believe because blind faith leads to embezzlement of public money and properties. It is noticed that an accused of embezzlement is mostly well behaved and appears very innocent. He will cheat his master (officer-in-charge) by his hard working and outward sincerity. He will look like an honest serviceable colleague. The officer-in- charge therefore should not rely on such subordinate officials and check the accounts and properties themselves in time and surprise checking at frequent intervals.

4. From time to time High Court has issued circulars that in case of any loss of public money and properties the Judicial officers (in-charge) will also be held equally responsible and liable for prosecution. In the Circumstances a Judicial Officers should not feel free when

he is not directly incharge of Malkhana of Nazarat, because as a presiding officers of a court also he is required to sign and seal many account papers or valuable property. In case any lapse in signing or sealing such papers or property, the judicial Officer may be caught in trouble at any subsequent time, even after his retirement. It is seen that instead of acquiring working knowledge of Malkhana and Nazarat,. some Judicial Officers hesitate in signing day to day account papers, in order to save their skin but it is all the more troublesome to them and subordinate staff. Delay in disposing off daily work causes public complaints against defaulting officers and one has to face checking difficulties in case of piling of work and possibility of missing document and account links. Maintenance of daily accounts and daily checking are of paramount importance.

5. Rule 458 Rules and orders (Civil) provides that when any defalcation or loss of public money, stamps or other property of more than Rs. 200/- discovered in Nazarat or any other section of office, should be immediately reported to the Accountant General and the Government in the Finance Dept. through the High Court, even when such loss has been made good by the person responsible for it, when the matter had been fully investigated a further and complete report should be submitted showing the errors or neglect or rules by the officials or officers, concerned.

6. Under Rule 460 & Order (Civil) Nazarat is required to maintain a Register of Properties Passing into or through the Nazir under order of a civil court. In this register articles of movable property only should be entered. The date and manner of disposal of property should be made in col. 9 of this register. Valuables in charge of Nazir should be delivered in presence of Judge or OIC. At the end of each quarter Nazir should prepare an abstract of the pending items and place the register before the officer-in-charge for scrutiny. The Nazir should also send regular reminders to the courts concerned for orders of disposal of the pending items and in cases of unnecessary delay bring it in notice of District Judge through officer-in- change. Valuable articles should be verified at least once a quarter by the officer-in-charge and at inspection by the district Judge.

7. Rule 461 & Order (Civil) deals with Register of property passing into the hands of Nazir otherwise then under order of a civil court. Articles of old furniture, stationary, boxes etc. which are deposited for sale are shown in this register. Register of General Cash Account is maintained under Rule 462 Rules and Order (Civil). All sums received in cash and disbursed by the Nazir should be accounted for in detail in this register. The register is divided into two parts-one credits of receipts and other is debit or repayment side. Except permanent advance and sums received for disbursement which can be disbursed within a reasonable time all money in the hands of the Nazir shall be credited day by day into the treasury except under extraordinary circumstances, which should be noted in the remark column of classification register, the cash balance in the hand of Nazir at handquarter should not exceed Rs. 1000/- and at outlying station Rs. 700/- respectively. The daily

account shall be examined by the clerk of court or Dy. clerk of court or in absence by Officer-in-charge and at outlying station by Officer-in-Charge. He shall compare all entries on the receipt side with the corresponding entries in the Book of Receipt, C. C. D. Register, Processes and Process Fees, returned Diet Money etc. The Register shall be checked every month of Officer-in-Charge by counting cash balance and record a certificate to that effect.

8. Under Rules 463 & Orders (civil) all sums drawn from treasury on abstract contingent bills and all payments made out of the permanent advance are to be entered in contingent cash Account Register. In no Case shall the Nazir make a payment from the permanent advance or from sums drawn on abstract contingent bills without the signature of the district judge or clerk of court being affixed to the order of payment. At places where there is no clerk of court every order for payment should be signed by the Officer-in-Charge. The contingent cash amount shall be checked daily by the officer-in-charge with the vouchers for which payments have been made.

9. Every endeavour should be made to repay returned diet-money speedly. The Judges should be particular to see that a notice for repayment of returned diet-money is displayed in every court as required by Rules 465 Rules and Order (Civil). At the beginning of each working day Reader should collect all the process on which diet money has been returned and should total up the sum repayable thereon. This amount is to be requisitioned from the Nazir and to be paid to the parties in the presence of the Judge. The transaction in respect of returned diet money should be completed by 12 noon. Such diet money as remains unpaid after close of the case should be sent to the party concerned by money order.

10. Civil Court Deposit (C.C.D.) is a head of account where defalcations have occurred and therefore judges should be vigilant while dealing with this account. Rule 466 Rules and Order (Civil) should be thoroughly learnt regarding maintenance of C.C.D. account. All moneys received by sale of executions, deposit of rent, purchase of judicial stamps, copying fees etc. are accounted for in C.C.D. Register. When ever an application for repayment of C.C.D. money is presented Nazir is required to report the C.C.D. number and amount of deposit on this application. After receiving the report a voucher for payment is prepared by the Court and Nazir is authorized to draw the amount from treasury for payment to the party concerned, what the judges should see before signing the voucher for payment is whether the amount is really in deposit and/or if it is not already paid to the party? It is to be seen that in a particular case where money in C.C.D. is deposited through application, Nazir should endorse C.C.D. No. on this application and when an application for receiving payment is made and report of Nazir is called the original remittance List (R.L.) should be called from Nazir for comparing the entries, before signing the voucher of payment.

11. In process of C.C.D. amount a document known as Remittance List is very important. It is divided into two parts. In first part number of deposits with C.C.D. No. and

amount is mentioned and in second part amount to be withdrawn with C.C.D. No. is to be entered. Below a balance between the two is to be stated. For example total amount to be deposited on a particular day is Rs. 500/- and amount to be withdrawn is Rs. 400/- then balance of Rs. 100/- only is to be deposited in treasury on which Treasury Officer will give his receipts. On the other hand if Rs. 400/- is to be deposited and Rs. 500/- is to be withdrawn the balance of Rs. 100/- only is to be paid by the treasury. Now the Officer-in-charge should see that the amount of deposits are checked from duplicated receipt book and amount to be withdrawn for the payment vouchers of the courts, the Judge who signs a payment voucher should verify from the Remittance List that the amount is really deposited in treasury and its payment is outstanding.

12. If process registers. Register of process server's work done and Register showing the work done by Sale Amins are checked (see Rule 377 to 386, 468 and 469 Rules & Orders, Civil) regularly. The problem of not receiving processes by courts in time can be easily solved. Although fine account is not maintained in Nazarat but the amount of fine is deposited in treasury through Nazir. Every Presiding Officer is personally responsible for fine amount and therefore they should see in beginning of the day that the fine amount realized on previous day was correctly deposited in treasury and fine registers are daily maintained (see Rule 577 to 583 and 590 Rules & Order, Criminal).

13. High Court is very particular about payment of witnesses (Rule 440 to 444 Rules and Orders. Civil and Rule 588 to 569, 592 and 684 of the Rules and Orders, Criminal). The Court Reader should assess the number of witnesses and amount to be paid to them in early hour of the working day and collect the amount from Nazir. The witnesses should not be left waiting for payment after they are discharged from evidence. The Reader should submit the payment vouchers to Nazir before 4 p.m. every day. The officer-in-charge should see that the statement of account with payment vouchers is submitted in time for the purpose of recoupment, otherwise Nazarat will be left with no money to pay for witnesses next time and judicial officers will come under heavy fire for non-payment of witnesses.

14. Deposit and payment in claim cases is also not concerned with Nazarat but the transaction under this head is carried through Nazir. The best way is to open an account of the party in a registered bank whenever an order of payment is made. After deposit of claim amount in the bank the concerning party may be authorized to receive payment through cheque. If the amount is to be kept in fix deposit the receipt should be retained in court (till its maturity for payment, no unnecessary delay in payment should be made and no pleader should be handed over authority of payment for any party).

15. Every presiding officer and officer-in-charge of Malkhana, now requires to be specially vigilant because it may spoil their carrier any time in their service life. Most of the officers so much fear in touching Malkhana for disposal of properties. That they always avoid its work. This tendency is the root cause of miseries that are buried deep in the debris

of malkhana properties. In most of the malkhanas old pending properties are not only piling up for disposal but also loosing their shape, size and marks of identification. After few years a huge amount of debris of such properties is made to puzzle the judicial officers who come for its disposal. The High Court has not yet framed any rules to coup up with this situation effectively and there is no effective checks on embezzlement of malkhana properties. The every judicial officer is given extra units of work for disposal of malkhana properties. Every Judicial Officer may be required to dispose of malkhana properties whose cases are decided by him before he hands over charge at a particular station.

16. Rule 422 to 433, 467 to 470 and 680 of Rules and Orders (Criminal) are to be strictly followed regarding disposal of properties. Judicial Officers are advised to develop following practices in keeping up malkhana upto date:-

- Quarterly verification of property should be regularly made.
- Valuable properties are to be tested. Verified and sealed in presence of presiding officer and the metal seal is always kept in personal custody of the presiding officer.
- Porperty more than Rs. 500/- is considered as valuable property and should be immediately deposited in treasury.
- Property memo containing receipt of Nazir and Treasury Officer (where necessary) should be checked and kept with the pending case file.
- Heavy property should be given on superdiname of any independent person.
- Property liable to be destroyed may be destroyed immediately and its sample only be retained, if not required for evidence.
- Property liable to be confiscated and likely to be decayed are to be sold immediately.
- Soon after disposal of a case and passing of period of appeal (if no instructions are received from appellate court) property memo is to be endorsed to Nazir with result of the case and manner in which property is to be disposed of.

Circular & Notification issued by Hob'le MP High Court related to Malkhana Section

न्यायालय भवन में मालखाना एवं रिकार्ड रूम के लिये पर्याप्त स्थान उपलब्ध कराने बाबत् उपरोक्त विषय के सन्दर्भ में आपकी स्थापना पर जब भी नवीन न्यायालय भवन का निर्माण कराया जावे तो उसमें मालखाना एवं रिकार्ड रूम के लिये पर्याप्त स्थान की समुचित व्यवस्था का प्रावधान रखा जावे व वर्तमान रिकार्ड रूम तथा मालखाना में उचित व्यवस्था की कार्यवाही करायी जावे।

.....क्र.सी/5554/पाँच/–3–12/80–दो, जबलपुर, दि. 21 नवम्बर, 1998.

DISPOSAL OF UNCLAIMED/FORFEITED AND CONFISCATED GOLD AND GOLD ORNAMENTS.

In accordance with the instructions contained in the Govt. of India Ministry of Finance Department of Economic Affairs letter No. F4(3)EFVI-57, dated 14-05-1957, all confiscated gold is to be transferred to the Central Government. In their letter No. F-I/58/53-GO.II, dated the 21st September, 1964 the Government of India, Ministry of Finance Department of Revenue and Company Law have further intimated that all unclaimed/forfeited/confiscated gold ornaments or gold ornaments or gold may be collected in a central place and dispatched under suitable invoice to the Mini Master.

India Government Mint, Bombay. The State Government are accordingly pleased to declare Bhopal Treasury as the central place for collection of all unclaimed/ forfeited/ confiscated gold and gold ornaments. Further instructions regarding the procedure to be followed for collecting the confiscated gold and gold ornaments at Bhopal Treasury and sending it to the Mint Bombay will be issued by the Director of Treasuries & Accounts who will inter alia send fifty copies of the instructions to the Law Department.

...Memo No. 1098-878/IV-R-8/66, Bhopal, dated 28th June, 1966.

PHYSICAL VERIFICATION OR PROPERTIES

Cases of defalcation and loss of properties kept in the Malkhana of Criminal Courts have come to light which could have been presented by compliance of Rule 680 of the Rules and Orders (Criminal). I am, therefore, directed to request you to enforce full compliance of Rule 680 ibid.

I am further to request that in place where there is complete separation of the Judicial from the executive the Officer-in-charge of the Nazarat at the headquarters and at out-lying stations which scrutinizing the registers under Rule 680 (8) must atleast once in a quarter physically verify the properties pertaining to criminal case in charge of the Nazir, whether

deposited in the Malkhana or not. In places where there is no separation of the Judiciary from the Executive physical verification of the properties pertaining to Courts of Sessions must be done atleast once in a quarter by the Sessions Judges.

...H.C. Memo No. 4278/III-2-9/40 Pt. V.No.2, Jabalpur, dated 06th June, 1966.

DISPOSAL OF CONFISCATED GOLD AND GOLD ORNAMENTS

- In continuation of memo No. 1098-878/IV.R.8/66, dated 28th June, 1966 from the Finance Department of the Government of Madhya Pradesh the following instructions are issued for regulating the procedure for collecting confiscated gold and gold ornaments at Bhopal Treasury and for sending it to the Mint at Bombay.

- The Presiding Officer of the Court which makes the order declaring the articles confiscated to Government, should have them in his presence. An exact and detailed descriptive inventory of the articles should be prepared in triplicate and inventory of the articles should be authenticated by the full signature of the Presiding Officer. The inventory should also state the approximate total value of the articles. The articles and one copy of authenticated inventory should be placed in strong cloth-lines envelope and sealed with the official seal of the Court, or if there it no such seal, with the official seal of the Presiding Officer. This envelope should in turn be kept inside another strong clothe line envelope and similarly sealed. If the articles are too strong metal receptacles may be used for this purpose. All the sealing should be done in one presence of the Presiding Officer and over each envelope/receptacles, the Presiding Officer should certify that it was sealed in his presence. If the estimated value of the article is not more than Rs. 5,000/- the sealed packets may be sent to the Treasury Officer, Bhopal by registered post/parcel insured for an appropriate amount. If the value exceeds Rs. 5,000/- the packets should be sent to the Treasury Officer, Bhopal with a reliable messenger. In either case, one copy of the authenticated inventory should sent simultaneously to the Treasury Officer, Bhopal by name by registered post.

- The Treasury Officer, Bhopal should treat these packets in the same way as valuables lodged in the Treasury for safe custody, but keep them in a separate receptacle and maintain a separate register for recording particulars of all such items. Besides other details usually recorded in such cases, this register should also show the estimated value of the articles in each packets stated by the presiding officer of the court concerned. The Treasury Officer should be particularly careful to see that the seals on the packets are intact when they are received by him and that remain in take till the packets are opened in his presence in the Mint at Bombay. The authenticated inventories received separately by post should be posted in a guard file which should remain in the personal custody of the Treasury Officer.

- When the total estimated value of the gold held by the Treasury exceeds Rs. One Lakh a list of all such articles should be sent confidentially to the Master of the Mint at Bombay and he should be asked to specify the date and time when the gold could be brought to the Mint. These should be so determined that the packets could be taken directly from the Bombay Railway Station to the Mint without the necessary of having to be stored anywhere outside the Mint and that the articles could be taken over by the Mint the same day. The Treasury Officer, Bhopal should carry the packets personally to the Mint at Bombay with an appropriate armed escort. The packets should be opened in the presence of the Treasury Officer an authorized representative of the master of the Mint after both satisfy themselves that the seals thereon are intact. The articles should be checked with reference to the copies of the inventory, one inside the packet and the other in the guard file of the Treasury Officer and then weighed. If the description exactly tallies and weight is also found to be reasonably correct after making due allowance for the deficient sensitivity to the Sacales used by the Court. The articles should be handed over to the Mint and an acknowledgment obtained on the inventory recorded by the Treasury Officer in his guard file. The Mint could, of course amplify the description of their articles where the recorded description in considered inadequate or record their correct weight in its acknowledgment if it happens to differ from the weight shown by the Presiding Officer of the confiscating Court. If the articles are found to be not as described in the inventories or if their weight is found to be so far deficient that the difference cannot be ascribed wholly to th lack of sensitivity in the scales used by the Court, the articles should be resealed in the manner already described in the presence of the two officers. Afresh descriptive inventory showing the correct description and weight of the articles should be prepared and signed by both the officers before the articles are resealed. The Treasury Officer, Bhopal would bring back the resealed packet and the correct inventory, relodge the former in his strong room and made a detailed report of the facts of the case to the Gold Control Officer of the State Government who will decide what further action is to be taken in the matter. These arrangements have been concurred in by the Department of the Government of Madhya Pradesh and the Master of teh Mint Bombay.

…Memo No. 262/Acctts/64/2125, Bhopal, dated 16th July, 1966.

CASE OF DEFALCATION AND LOSS-FIXING RESPONSIBILITY

- Despite clear and categorical instructions with regard to strict compliance of rule 680 of the Rules and Orders (Criminal) and physical verification of criminal properties by the Officer-in-charge, Nazarat, once every quarter, cases of defalcation and loss of criminal properties appear to be on increase. One of the main reasons for this is the casual manner of handing and taking over charge of Nazarat and criminal properties by the officials

concerned at the time of transfer or change of duties. What with the above and the fact that disciplinary proceedings against the delinquent officials are often delayed, it becomes a trifle difficult to fix responsibility for the loss so much so that faced with the Hobson's choice, the Government have to be moved to write off the loss.

- All this can be avoided, if the district level supervising agencies enjoin than rule 680 of the Rules and Orders (Criminal) is strictly adhered to; that physical verification of Criminal properties in regularly done by the Officer-in- charge, Nazarat; that at the time of the change of charge, the official taking over charge takes it by physical verification of Criminal and other properties; and that when defalcation or loss is detected, action, inter alia, is taken at once to fix responsibility on the erring officials.

- Attention in this connection is also invited to rules 22 to 25 of the Financial Code, volume I and instructions 4 to 6 in Appendix I to Financial Code. Volume II If all these instructions are carefully studied and followed, there is no reason whatsoever why loss of property due to defalcation or otherwise should go undetected or unpunished or un-recovered.

- It is also being noticed that in many a case, one official throws responsibility on the other and vice-versa with the result that proposals pour in for writing of the lesson expressing inability to fix responsibility on any one. This should stop forthwith and efforts should be made to fix responsibility on particular individual or individuals, severally, jointly, constructively or variously, as the facts and circumstances may suggest.

- Please bring these instructions to the notice of all concerned and kingly see to it that they are followed both in letter and spirit. Officials taking over charge should be fare-warned that any failure on their part to take charge of such properties without physical verification will recall on them, in that they alone will be held responsible for any defalcation or loss.

...H.C. Memo No. 621/III-19-18/69, Jabalpur, dated 13th January, 1970.

DISPOSAL OF CONFISCATED GOLD AND SILVER

I am directed to refer to this Ministry's letter No. F4(3)-EF.VI/57, dated 14-05- 1957 on the subject cited above (copy enclosed for ready reference) and with particular reference to paragraph 3 thereof to say that Government of India now feels that confiscated silver also should kept in official reserves as far as possible instead of allowing it to be sold in the market as here to fore. The Government of India are therefore prepared to take over, at the prevailing market rates, and silver confiscated by the State Government. I am to request that the State Government may kindly issue suitable instructions to all judicial and other authorities concerned that silver confiscated by them and which otherwise would have

been disposed of by Scale in the market should hereafter be transferred to Master. India Government Mint, Bombay with indication of the head of account to which the value of the silver would be enclosed. On receipt of silver, it will be assayed at the Government of India Mint at Bombay and necessary credit for the value of the silver at the market price prevailing on the date of receipt will be afforded to the State Government under the head of account to be indicated by the confiscating authorities.

...Memo No. F-12/2/68-GS, Bhopal, dated 20th May, 1970.

कोषालयों में कैश चेस्ट/बहुमूल्य वस्तुओं सुरक्षा हेतु रखा जाना–

वित्त विभाग के ज्ञापन क्र/714 सी.आर. 2567/चार–आर–5, दिनांक 07–08–1967 द्वारा म. प्र. कोष संहिता भाग–एक के सहायक नियम 47 में जो वाक्यांश जोड़े गये हैं, उनके अनुसार हाईकोर्ट रूल्स एवं आर्डर्स (क्रिमिनल) के नियम क्रमांक/680 के अनुसार कोषालयों में सुरक्षा हेतु रखे जाने वाले बहुमूल्य वस्तुओं के लिये जिलाध्यक्ष की स्वीकृति आवश्यक नहीं है। सुलभ संदर्भ हेतु हाईकोर्ट रूल्स एवं आर्डर्स (क्रिमिनल) के नियम 680 (1) तथा (2) की प्रतिलिपि संलग्न है। उक्त नियम 680 (1) के अन्तर्गत रखी गयी वस्तुओं को प्राधिकारी द्वारा म. प्र. कोष संहिता भाग–एक के सहायक नियम 47 के अन्तर्गत ही कोषालय में रखी जाती है। अतः नियम 47 के प्रतिबंध इनके लिये भी लागू होते हैं। इसलिये इन वस्तुओं को भी तीन वर्ष के बाद सम्बन्धित न्यायालय को लौटाया जाना चाहिये तथ्वे चाहें तो इन वस्तुओं को दुबारा सील करके फिर कोषालय में रख सकते हैं।

संलग्न (1) **Estract copy of Rule 680 (1) and (2) of Rules & Orders (Criminal) for the guidance of the criminal Courts sub-ordinate to the High Court of Madhya Pradesh**

(1) 680, **Register of Property made over to the Nazir in Criminal cases**

– (1) pending the completion of an enquiry or trial, the articles in evidence or the personal property of an accused produced by police shall, unless otherwise ordered by the Court, remain in the custody of the Nazir, except where they consist of valuables, currency notes or coins exceeding Rs. 100 in aggregate value. Value of currency notes or coins shall invariable be made up into a sealed packet in the presence of the magistrate and a memorandum in the prescribed form (Schedule V, No. 198) giving the list of the property and the Estimated value of prepared. If the value of the packet exceeds Rs. 100 the sealed packet and memorandum shall be sent to the treasury or sub-treasury officer shall proceed in accordance with Financial Rules 9 and 10. If the value of the packet does not exceed Rs. 100 the sealed packet and memorandum shall be sent to the Nazir. The Nazir shall on the memorandum the receipt of the packet and

also the serial numbers which the packet bears in his register of property made over to the Nazir in criminal cases and keep the packet in his safe. The memorandum shall be returned to the magistrate and filed in the record of the enquiry or trial. Each packet, whether sent to the treasury officer or sub-treasury officer or kept by the Nazir in his safe;

shall be entered in the above mentioned register and the alleged contents and their value noted in the appropriate columns.

2. When the property contained in a sealed packet is required at any intermediate hearing the magistrate shall endorse the requisition on the memorandum and send the memorandum to the treasury officer or subtreasury officer or the Nazir and obtain the packet. As soon as the day's hearing concludes the property shall again be made up into a sealed packet in the presence of the magistrate and sent with the memorandum from safe custody as directed by sub- rule (1).

...ज्ञापन क्रमांक–लेखा/स्प्ट/8/71–72/4698, भोपाल, दिनांक 25 मई, 1972.

...H.C.Endt. No. 9689/III-2-9/40 Pt. V.No.-2, Jabalpur, dated 04th October, 1972.

कोषालय/उप–कोषालय से कीमती सामान के सील्ड पैकेट वापस प्राप्त किया जाना

में दण्डाधिकारी/न्यायाधीशों द्वारा अपराधों से सम्बन्धित कीमती सामान के सील्ड पैकेट्स इत्यादि कोषालय/उप–कोषालय के डबल लॉक में सुरक्षा हेतु जमा किये जाते हैं।

हाईकोर्ट के उप–नियम 682 (2) एवं म. प्र. कोष संहिता भाग–2 के सहायक नियम 48 में विहित प्रावधान अनुसार, कोर्ट में मामलों की सुनवाई आदि के समय, आवश्यकता पड़ने पर सम्बन्धित दण्डाधिकारी/न्यायाधीश द्वारा, उसके द्वारा जमा किये गये कीमती सामान के सील्ड पैकेट्स कोषालय/उप–कोषालय से प्राप्त मेमोरे डम पर कोर्ट के प्रिसाईडिंग ऑफीसर के स्वयं के हस्ताक्षरों के आधार पर वापस प्राप्त करने का प्रावधान है। इसके विपरीत यह देखने में आया है कि कुछ कोषालय/उप–कोषालयों द्वारा सम्बन्धित कोर्ट के द्वारा रखी गयी प्रापर्टीज को, कोर्ट नाजिर/नायब नाजिर के हस्ताक्षरों के आधार पर ही कोषालय/उप–कोषालय से वापस कर दिये गये। यह कार्यवाही अनियमित है। फलस्वरूप कुछ नाजिरों/नायब नाजिरों द्वारा कीमती सामान गायब किया जाना सम्भव हुआ। अतएव इस सम्बन्ध में आपको निर्देशित किया जाता है कि कोर्ट द्वारा जमा किये।

DISPOSAL OF LONG PENDING CRIMINAL PROPERTIES

It has been brought to the notice of Hon'ble the Chief Justice that several items of properties relating to disposed of criminal cases are lying undisposed of in the Malkhanas at all the stations in the District. The result is that no room is found available in the malkhanas and properties are left in the verandahs or in the open ground uncared for. This has also added to the work of the Clerk-in-charge of the Malkhana and has created confusion worse confounded. Much time is wasted in taking out the properties of the pending cases from amongst the properties of disposed of cases.

2. Instructions have already issued in this Registry Memorandum No. 4278/III-2- 9/40 Pt.-V, F No.-2, dated 6 the June, 1966 and 621/III-19-18/69, dated 13th January, 1970 in the matter of preservation, custody and quarterly physical verification of the properties,

received in criminal cases. The Hon'ble the Chief Justice now desires that the properties relating to disposed of criminal cases should be disposed of after the Courts. This work should be orders passed by the Courts. This work should be taken up immediately and the District and Sessions Judges.

...Memo No. 5717, Jabalpur, dated 22nd April, 1974.

KEEPING VALUABLES IN TREASURY/SUB-TREASURY

I am directed to forward a copy of Department of Law and Legislature Affairs, Memorandum No. 1242/13/41/1972/21-B, dated 16-01-1975 with a copy of the enclosure for orders as under: -

- All packets containing valuables upto the value of Rs. 250/- should be withdrawn from the Treasury/Sub-Treasury and kept in safe custody of the Nazarat;
- Articles like Ganja, Bhang, Opium, Charas etc., exceeding Rs. 250 in value should be made up in scaled packets and sent to the Treasury/Sub-Treasury for safe custody, but care should be taken to see that there articles do not emit foul smell during their storage in strong-roc of the Treasury/Sub-Treasury;
- For the purpose of Rule 680 of the Rules and Orders (Criminal) the valuables shall be deemed to be those exceeding Rs. 250/- in value, instead of Rs. 100/- as specified in the present Rule;
- After the position of the Malkhana properties in reviewed to give effect to the amended provision of S.R. 47 of M. P. T. C. Vol., I compliance should be regarding lodgment of valuables exceeding Rs. 250/- in value has been completed and article like Ganja, Bhang, Opium, Charas, etc. exceeding Rs. 250/- in value has been made upon sealed packets and sent to the Treasury/Sub- Treasury for safe custody.

2. I am also to add that the question of lodgment of fire-arms, guns, etc., in the strong-room of the nearest Police Station is under consideration of the Government and orders will follow in due course. So long as orders are not communicated, statusquo could be maintained

...Memo No. 2871/III-2-9/40 Pt. VF.No.-2, Jabalpur, dt. 01st March, 1975.

VERIFICATION OF MALKHANA PROPERTIES

I am to say that inspite of instructions issued in this Registry Memorandam Nos. 4278/III-2-9/40-V.F.No. 2, dated 06-06-1966, 621/III-19- 18/69, dated 13-01-1970, 4804/IV-6-4/72, dated 30-04-1973, 12156/IV-6-4/72, dated 16-09-1974 and 2871/III- 2-9-40-V.F.No. 2, dated 01-03-1975, defalcations of Malkhana Properties and Government money continue to occur. With a view to put a check on the defalcation of Malkhana Properties the

Honourable the Chief Justice desires that: -

- During the ensuing Civil Court vacation, one or two Magistrates at the headquarters are exclusively deputed for the purpose of physical verification of Malkhana Properties, particularly the valuables exceeding Rs. 250/- in value kept in Treasuries/Sub-Treasuries as also the cash, ornaments, watches etc. below Rs. 250/- but above Rs. 50/- in value kept in the Malkhana. They should not be asked to do any Judicial Work during checking period as above;
- At the outlying stations, the officer-in-charge if there are two judges or Magistrates, or the Presiding Officer if there is only one, should devote half day for the purpose of physical verification of the properties, preferably the later half of the day and for half of the day they may do Judicial Work.
- The District and Sessions Judges should see that as for as possible physical verification as above is completed during the period of vacation and a certificate to the effect that this has been done in respect of all the Malkhana in their district should be sent for the information of the High Court; and
- Specific instructions are issued to the Presiding Magistrate of the Courts that the properties relating to disposed of cases ripe for disposal according to law are disposed of by sale, destruction, return forfeiture or otherwise and each of the Magistrate in the Civil District submits a report by the 5th of next month to the District and Sessions Judge about the disposals made in the previous month and District and Sessions Judges in their turn sent a consolidated statement of disposal of properties to this Registry for the information of the High Court.

2. I am also directed to add that where the Magistrate entrusted with the work relating to physical verification of properties are in need of part of the vacation for special reasons, these instructions should not be deemed to debar them from availing of the vacation.

...H.C.Memo No6742/IV-6-7/75, Jabalpur, dated 05th May, 1975.

PRESERVATION AND CUSTODY OF FIRE ARMS ETC.

I am to refer to your Memorandum No. 383/III-10--3/62-II, dated 17-02- 1976 on the above on the above subject and directed to convey approval of the Hon'ble the Chief Justice to keeping of the fire arms produced before the Courts at the headquarters in the armoury of the Police Lines at Sagar as suggested by the Superintendent of Police, Sagar.

- So far as the preservation and custody of such properties consisting of fire arms produced before the Courts at outlying stations is concerned, they could be kept in a secured and sealed box and placed in the custody of the nearest Police Station.
- The above procedure has been approved only by way of interim arrangements. The

State Government have already been moved to provide police guards for keeping watch over the Malkhanas attached to each of the Courts in the State and when police guards are provided, the fire arms-guns, rifles etc. could be allowed to be kept in the Malkhanas of the Courts.

...H.C.Memo No. 2714/III-2-9/40-V-F,No.-2, Jabalpur, dated 03rd April, 1975.

राजसात किये गये सोने–चाँदी का निपटारा

संदर्भित ज्ञापन क्रमांक–1098–878/चार/नि–8/66, दिनांक 28 जून, 1966 के अनुसार राजसात किये गये सोने एवं सोने के आभूषणों के निपटारे के सम्बन्ध में आदेश जारी किये गये हैं। जहां तक राजसात किये गये चाँदी एवं चाँदी के आभूषणों के निपटारे का प्रश्न है, यह निर्देशित किया जाता है कि इन्हें बाजार में न बेचते हुए इन्हें भारत सरकार वित्त मंत्रालय के आदेश क्रमांक–एफ–12/2/68/जी.एस., दिनांक 20 मई, 1970 (प्रतिलिपि संलग्न) के अनुसार मिण्ट मास्टर, भारत सरकार मिण्ट बम्बई भेजा जावे और राजसात किये गये चाँदी एंव चाँदी के आभूषणों की कीमत वर्तमान भाव के अनुसार मिंअट मास्टर, बम्बई द्वारा राज्य शासन के बजट शीर्ष ''065–अन्य प्रशासनिक सेवायें–ग–अन्य सेवायें–अन्य प्राप्तियां'' खाते में जमी की जावेगी।

...ज्ञापन क्रमांक–एफ 13/44/79/चार/नि–3, भोपाल, दिनांक 10 अप्रैल, 1980.

...H.C.Memo No. A/3682/III-2-14/64, Jabalpur, dated 19th April, 1980.

आपराधिक सम्पत्तियों के गबन हानि की रोकथाम

यद्यपि आपराधिक प्रकरों से सम्बद्ध सम्पत्तियों के गबन हानि के रोकथाम के लिये उच्च न्यायालय ने समय–समय पर निर्देश प्रसारित किये हैं किन्तु गबन हानि की घटनाएं बराबर बढ़ती जा रही हैं और यह देखने में आया है कि इनका प्रमुख कारण यह है कि जब सम्पत्तियां न्यायालय में प्रस्तुत की जाती हैं तो उनके सम्बन्ध में निम्नानुसार कार्यवाही सम्बन्धित पीठासीन अधिकारियों द्वारा नहीं की जाती। अतःयथानिर्देशित आपसे निवेदन है कि :– अपने अधीनस्थ समस्त न्यायिक अधिकारियों को निर्देशित करें कि जैसे ही आपराधिक प्रकरणों की मूल्यवान सम्पत्ति उनके न्यायालय में पेश की जावे वे उसकी सुरक्षा के सम्बन्ध में स्पष्ट आदेश प्रसारित करें, उसको अपने सामने सीलबन्द करवायें और यदि उसका मूल्य रूपये 250/– से अधिक हो तो नियम तथा आदेश (आपराधिक) के नियम 124और 680 के अनुसार नाजिर के माध्यम से कोषालय में जमा करावें और इस बात की ओर विशेष ध्यान देवें की प्रॉपर्टी मेमो कोषालय अधिकारी के हस्ताक्षरयुक्त उनके न्यायालय में प्राप्त हो जाता है और उसे सम्बद्ध प्रकरा के अभिलेख के साथ नस्तीबद्ध कर दिया जाता है।

- अपने जिले के समस्त नाजिर एवं नायब नाजिरों को निर्देशित करें कि वे भविष्य में कोई भी सम्पत्ति सीधे पुलिस से प्राप्त नहीं करें और बिना प्रॉपर्टी मेमो के कोई मूल्यवान सम्पत्ति, जो न्यायालय की सील द्वारा मुहरबन्द न हो कदापि प्राप्त नहीं करें। केवल प्रॉपर्टी–मेमो न्यायालय में प्राप्त होने पर ही, उनकी अभिरक्षा में रखी हुई रूपये 250/– से कम मूल्य की मूल्यवान सम्पत्ति न्यायालय को भेजें और यदि रूपये 250/– से अधिक मूल्य की मूल्यवान सम्पत्ति हो तो प्रॉपर्टी–मेमो द्वारा उक्त सम्पत्ति कोषालय से मंगवाकर सम्बन्धित न्यायालय को भिजवायें।

- अपने अधीनस्थ समस्त न्यायिक दण्डाधिकारियों को निर्देशित करें कि वे न्यायालय की ब्रास–सील अपने ही आधिपत्य में रखें, जिससे उनके दुरूपयोग के अवसर अधीनस्थ कर्मचारियों को प्राप्त न हो सकें।

....उच्च न्यायालय ज्ञापन क्र.–ए/6281/तीन–19–18/80, जबलपुर, दिनांक 07 जुलाई, 1981.

कोषालय/उप–कोषालय के दृढ़कक्ष में मूल्यवान वस्तुएँ रखना महालेखाकार द्वारा कोषालय/उप–कोषालय के निरीक्षण प्रतिवेदनों में यह आपत्ति ली गयी है कि न्यायालयों द्वारा भांग, गांजा तथा अफीम आदि मादक द्रव्यों के पैकेट कोषालय/उप–कोषालय के दृढ़कक्ष में अभिरक्षा हेतु रखे जाते हैं। इन मादक द्रव्यों के पैकेट की दुर्गन्ध से दृढ़कक्ष का वातावरण दूषित होता है। ऐसी वस्तुओं के पैकेट्स अच्छी तरह से पैक भी नहीं किये जाते।

अतः आपसे अनुरोध है कि कृपया अधीनस्थ न्यायालयों को स्पष्ट निर्देश जारी करने का कष्ट करें कि यथा संभव मादक द्रव्यों एवं शीघ्रनाशी वस्तुओं के पैकेट्स कोषालयों/उप–कोषालयों के दृढ़कक्ष में न रखे जावे। यदि ऐसे पैकेट्स रखे जाना नितांत आवश्यक हो तो उनका मोटे कपड़े से भली–भांति पैकिंग किया जावे ताकि उसकी दुर्गन्ध बाहर न फैलने पावे। कृपया की गयी कार्यवाही से शीघ्र ही इस संचालनालय को अवगत कराने का कष्ट करें ताकि तदनुसार महालेखाकार को सूचित किया जा सके।

...ज्ञापन क्रमांक–कोनि ा/मनि/1/84–85/374, भोपाल.

...H.C Endt.No. B/8217/III-2-9/40-V-2-B,Jabalpur, dated 19th September, 1985.

लूट, चोरी, गबन से हुई शासकीय हानि की राशि पुनः कोषालय से आहर करना

- शासन के ध्यान में यह बात आयी है कि गबन, चोरी, लूट आदि के प्रकरणों में आहरित शासकीय धनराशि अनुपलब्ध हो जाने पर, शासकीय कर्मचारियों के वेतन आदि स्वत्वों का भुगतान, बिना उसकी किसी गलती के लम्बे समय के लिये रूक जाता है, जिसके कारण उन्हें आर्थिक कठिनाइयों का सामना करना पड़ता है।

- इस प्रकार खोयी गयी राशि, वित्त विभाग के ज्ञापन क्रमांक–1202/चार/बी–6/72, 02–11–1972 (प्रतिलिपि संलग्न) में प्रसारित निर्देशों के अनुसार कोषालय से पुनः आहरित कर लिये जाने का प्रावधान है। उक्त निर्देशों के अन्तर्गत, आहरण पूर्व, राज्य शासन की स्वीकृति प्राप्त किया जाना आवश्यक है।

- राज्य शासन चाहता है कि भविष्य में इस प्रकार के प्रकरणों में वित्त विभाग के उक्त ज्ञापन अनुसार अविलम्ब, कार्यवाही करते हुए, अधिकाधिक एक माह के अन्दर, कोषालय से राशि के पुनः आहरण की व्यवस्था कर, उसका वितरण कर दिया जाना चाहिये।

...ज्ञापन क्रमांक–एफ–ई–3/2/89/नि–5/चार, भोपाल, दिनांक 12 जुलाई, 1989.

...H.C Endt. No. B/9213/IV-8-6-36, Jabalpur, dated 19th October, 1989.

POSTING OF OFFICIALS AS MALKHANA-NAZIR/NAIB NAZIR

A case has come to the notice of the High Court in which a Malkhana Nazir retired on attaining the age of superannuation without handing over charge of Malkhana properties in

full and till the enquiry into the matter was completed for initiating departmental enquiry, the limitation for the same had expired with the result that no departmental enquiry, could be recovered from him. This situation has arisen because of the fact that he was allowed to continue as Malkhana Nazir till his retirement and since the properties involved were grant in number, the enquiry about non-delivery could not be completed within the period of limitation (four years from the date of occurrence of the misconduct). It not only reflects on the efficiency and effectiveness of the administration but also involves a considerable loss to the Government or the public.

Keeping in view the above aspect it has been decided that in future no person shall be posted or allowed to continue as Malkhana Nazir/Naib Nazir who has attained the age of 55 years so that in case of failure of any Malkhana Nazir/Naib Nazir in handling over charge of property or properties, an enquiry may be made and responsibility fixed and, if the need be, a departmental enquiry or a criminal prosecution or both may initiated before the retires.

...Memo No. A/1409/III-18-25/95, Jabalpur, dated 08th March, 1996.

आपराधिक सम्पत्तियों के गबन/हानि की रोकथाम बाबत्

यद्यपि आपराधिक प्रकरणों से सम्बद्ध सम्पत्तियों के गबन हानि के रोकथाम के लिये उच्च न्यायालय ने समय–समय पर निर्देश प्रसारित किये हैं किन्तु गबन हानि की घटनायें बराबर बढ़ती जा रही है और यह देखने में आया है कि इनका प्रमुख कारण यह है कि जब सम्पत्तियां न्यायालय में प्रस्तुत की जाती हैं तो उनके सम्बन्ध में निम्नानुसार कार्यवाही सम्बन्धित न्यायिक अधिकारियों द्वारा नहीं की जाती। अभी हाल में जिला न्यायाधीश मदंसौर ने अपने ज्ञापन दिनांक 12–04–1996 द्वारा यह सूचित किया है कि तत्कालीन न्यायिक दण्डाधिकारी, गरोठ द्वारा दिनांक 27–06–1986 को आपराधिक प्रकरण क्रमांक–115/86 में पुलिस द्वारा प्रस्तुत मुद्देमाल के सीलबंद पैकेट को खोलकर न देखा जाना और स्व ीकार से सत्यापन कराये जाने के अभाव में सोने के दो कड़े जैसे मूल्यवान सम्पत्ति की हानि घटित हुई है। इस रजिस्ट्री के ज्ञापन क्र–ए/तीन–19–18/80, दिनांक 07–07–1981 (प्रतिलिपि संलग्न) द्वारा जारी निर्देशों के तारतम्य में यथा निर्देशित आपसे निवेदन है कि :–

(1) अपने अधीनस्थ समस्त न्यायिक अधिकारियों को निर्देशित करें कि जैसे ही आपराधिक प्रकरणों की मूल्यवान सम्पत्ति उनके न्यायालय में पेश की जावे वे उसकी सुरक्षा के सम्बन्ध में स्पष्ट आदेश प्रसारित करें, उसको अपने सामने सीलबंद करवायें और यदि उसका मूल्य रूपये 250/– से अधिक हो तो नियम तथा आदेश (आपराधिक) के नियम 124 तथा 680 के अनुसार नाजिर के माध्यम से कोषालय में जमा करावें और इस बात की ओर विशेष ध्यान देवें कि प्रापर्टी मेमो कोषालय अधिकारी के हस्ताक्षरयुक्त उनके न्यायालय में प्राप्त हो जाता है और उसे सम्बद्ध प्रकरण के अभिलेख के साथ नस्तीबद्ध कर दिया जाता है।

(2) कोई भी मूल्यवान सम्पत्ति (सोना, चाँदी आदि) पुलिस से प्राप्त होने पर सीलबंद पैकेट/सीलकर स्वयं संतुष्टि कर लें और उक्त आभूषणों की स्वीकार से सत्यापन कराया जाकर तदाशय की प्रविष्टि मुद्देमाल पंजी में अवश्यक हस्ताक्षरित करें। नाजिर/नायब नाजिर प्रापर्टी मेमो न्यायालय से प्राप्त होने पर ही उनकी अभिरक्षा

में रखी हुई रूपये 250/–से कम मूल्य की मूल्यवान सम्पत्ति न्यायालय को भेजें और यदि 250/– से अधिक मूल्य की मूल्यवान सम्पत्ति हो तो प्रापर्टी मेमो द्वारा सम्पत्ति कोषालय से बुलवाकर सम्बन्धित न्यायालय को भिजवायें। नियम एवं आदेश (आपराधिक) के नियम 680 में निहित प्रावधानों का कड़ाई से पालन किया जाना अपेक्षित है।

...उच्च न्यायालय ज्ञापन क्र.–बी/3382/चार–6–4/96, जबलपुर, दिनांक 16 जुलाई, 1996.

DISPOSAL OF PROPERTY KEPT IN MALKHANA

I am directed to enclose here with a copy of Extract letter of Hon'ble Justice Shri R. S. Garg in continuation of this earlier Registry D.O. No. 382, dated 07-03-1998 for information and future guidance.

I am further directed to request you kindly to send the information as required by the aforesaid D. O. letter to this Registry immediately. **Encl. :- As above.**

...H.C.Memo No. C/2307/III-2-9/40 V-20, Jabalpur, dated 07th April, 1998.

EXTRACT COPY OF LETTER DATED 30-03-1998 OF HON'BLE JUSTICE SHRI R. S. GARG-

In my opinion, it is not one man job, but each and every Court is required to see that the properties produced before it are properly accounted for and are properly disposed. It does not even appear for the report of the Naib Nazir as to what is the number of the property and why the property could not be disposed of. It also does not appear from the report of Naib Nazir as to how many properties have become unidentifiable and how many properties now can be disposed of as the same have become unidentifiable. From the report of C.J.M., it appears that many courts are not issuing proper instructions or are not passing proper orders regarding disposal of the property. Please inform all the Courts that they are duty bound to direct disposal of the property by giving the details and its deposit number. A line or two in the judgment that property in the case be disposed of after the period of appeals, etc. is not sufficient.

If the criminal cases do not have the property deposit parch, then it is for the said Court to suffer some pains and see to it that proper directions are issued. Not only this, but it is also for the said Court to see that its orders are properly carried out.

The Property, as I am told, is required to be disposed of in consultation with the Sessions judge himself can not avoid the liability simply by saying that the property was to be disposed of by the Chief Judicial Magistrate who is also the In-charge of the Nazarat. It is important to note that in whole of M.P., this problem has taken an uncontrollable shape. It has to be a joint effort of all concerned, and the In-charge of the Sessions Division would always be answerable for non-disposal of the property.

...Memo No. C/2307/III-2-9/40 V-20, Jabalpur, dated 07th April, 1998.

TO INCREASE NUMBER OF DISPOSED PROPERTY.

As directed according to quarterly return regarding disposal of property disposed Criminal Cases of the Malkhana for the quarter July 2013 to September 2013 received from your end it has been found that number of disposed property is less then number of demanded property in Headquarters / Outlying Courts in your esteblishment .

You are therefore requested to direct Incharge Malkhana Headquarters/

outlying Courts to increase number of disposed property in the next quarter

...Memo No. D /1452/III-19-8-2012 Jabalpur DATED 12-02-2014

REGARDING PHYSICAL VERIFICATION OF VALUABLES AND ELIMINATION OF PROPERTY.

On the subject cited above, it is stated that, it has come to the notice of Hon'ble High Court that the properties kept in the possession of Nazir/Naib- Nazir in Malkhana and in Treasury/Sub-Treasury are not properly verified and the Rules 124 and 680 of Madhya pradesh Rules and Orders (Criminal) are not properly complied.

As per The Madhya Pradesh Treasury Code volume I. If the property is in the custody of Tresury for more than 3 years it requires physical verification At the time of physical verification, the concerning Presiding judge in the matter of pending cases shall verify the property after opening the seal and certify it and then seal it again. If the property relates to dosposed of cases it shall be the duty of the Officer-in-Charge (O.I.C) of Malkhana to verify such property.

It is pertinent to mention here that vide Memo no Account/LIV/8/71/72/ 4698, Bhopal dated 25-05-1972 (Annexure "A") of Deputy Director, Directorate of Treasuries and Accounts, Madhya pradesh has clarified that Subsidiary Rule 47(i) of "The Madhya pradesh Treasury Code Volume I" (Annexure "B") regarding the permission of Collector is not applicable in the matter under Rule 680 of " Madhya pradesh Rules and Orders (Criminal)" for the purpose of physical verification of the properties. The copies of the Memo dated 24-05-1972 and subsidiary Rule 47 (i) of "The Madhya Pradesh Treasury Code volume I" are attached herewith for ready reference.

On every working Saturday, one or two Magistrates at the headquarters be deputed exclusively for the purpose of property verification of Malkhana particularly the valuables exceeding Rs. 250/- in value kept in the Treasuries/ Sub- treasuries as also the cash, Ornaments Watches etc below Rs 250/- but above Rs 50/- in value kept in the Malkhana. During that period they may not be asked to do any judical work except urgent work of their Court and be entitled for special unit as per instruction of the High Court.

In case there is large number of valuable properties, which requires verification the

District Judge may distribute the work amongst the other Magistrates. The verifying magistrate/O.I.C shall specifically mention their name with signature whenever required.

At the outlying Stations if there are two Judges/ Magistrates the officer in Charge and if only one Judge, the Presiding Officer shall devote reasonable time for the purpose of physical verification of the properties, without affecting Judical work .

If the valuable property is called by Court during Trial and if it is opened, the Presiding Officer shall ensure to seal it in his presence and also ensure the receipt from the Treasury /Sub-Treasury. The facts of receiving from Treasury/Sub-Treasury shall be mentioned in the Order Sheet of concerned case.

At the time of transfer or change of the Official, the Official taking the charge of Malkhana shall physically verify all the properties kept in Malkhana and if any defalcation of loss is detected, appropriate action shall be taken as per rules , to fix the responsibility on the erring Officials.

The O.I.C of Malkhana shall ensure that long pending properties of disposed off cases are regularly disposed-off as per order of the concerning Court and also ensure that property having the value exceeding Rs 250/- has been deposited in treasury/ Sub Treasury . OIC shall send the information through the District Judge to the High Court on monthly basis on or before 10th day of succeeding month on attached proforma (Ann. "C")

The District Judge shall ensure that the compliance of physical verification of valuables within two Months and report the status in format attached (Annexure "D") to this Registry till 30th June, 2019 Report shall be duly signed by the Officer-in-charge. Malkhana and counter signed by the District & Sessions Judge.

A progress report of elimination of property shall quarterly be submitted to this Registry.

The directions of Hon'ble the Supreme Court in Judgment dated 01-10- 2002 in case of "Sunderbhai Ambalal Desai vs State of Gujarat [(2002) 10 SCC 283] (Annexure "E") are required to be strictly complied.

Therefore as directed by Hon'ble the Chief Justice it is requested that in this regard kindly issue the directions to all the concerned in your jurisdiction to ensure the strict compliance of Rules 124 and 680 of "Madhya pradesh Rules and Orders (criminal)"and directions of Hon'ble the Supreme Court in the matter of " Sunderbhai Ambalal Desai vs State of Gujarat" [(2002) 10 SCC 283] as well as above said directions

Encl: As above

...Memo No. C/1346/III-2-9/40 P/II-D, Jabalpur, dated 15.03.2019

GUIDANCE SOUGHT BY THE DISTRICT AND SESSION JUDGE, UJJAIN IN RESPECT OF WITHDRAWAL/DEPOSITION OF SEALED PACKETS LESS THAN WORTH RS 50,000/- FROM TREASURY AND SUB-TREASURY.

As directed, on the subject and reference mentioned above, and in

continuation to this Registry Memo No. C/715 dated 19-02-2020 the Memo received from District and Sessions Judge Ujjain was placed before Hon'ble Administrative committee No. 1 for consideration.

Hon'ble Administrative committee No. 1 has been pleased to resolve to

persue the matter with Government to provide required infrastructure facilities as well as security for keeping the valuables upto Rs 50,000/- in safe custody in court premises.

Hon'ble committee has been further resolved to request you tho relax the

operation of amendment in Rule 28 (2) of Treasury Code in respect of cases of District Courts/ Subordinate Court till infrastructure and security is made available at District Courts.

I am therefore request you to kindly do needful in the matter under

intimation to this Registry.

...Memo No. C/2284 III-2-9/40 pt.V2D Jabalpur dated 14-09-2020

PROCEDURE FOR DISPOSAL OF INFLAMMABLE AND EXPLOSIVE SUBSTANCES.

With reference to aforementioned subject, as directed, I am to inform you that whenever the explosive material is produced before the court by the police in Criminal case or if any explosive material exists at present in the Malkhana of District Court/outlying Court, Rule 129 of Explosive Rules 2008, Shall be followed expeditiously.

It is further informed that whenever the explosive material (including crackers and raw material of crackers) is produced before the court, instead of depositing it in the Malkhana of District/outlying Court, the presiding Officer or OIC Malkhana should write a letter to Deputy Chief Controller, Explosives, E7/41, Lala Rajpat Rai Society, 12 No. Bus Stop, Arera Colony Bhopal, Office phone No. 0755-2445270, for inspection and destruction of the explosive material, as per rule or to direct the concerned Police to contact with the Deputy Chief Controller, Explosives regarding inspection and destruction of explosive material.

...Memo No. C/2681 Jabalpur dated 22-10-2020

श्री एम.पी. शर्मा सेवानिवृत्त मालखाना नाजिर जबलपुर
द्वारा संपत्तियों की अफरा तफरी किए जाने बावत।

संदर्भित ज्ञापन के द्वारा चाहा गया मार्गदर्शन निम्नानुसार आपकी ओर प्रेषित करते हुए, अनुरोध है कि मालखाना में वास्तविक रूप से हुई हानि/गबन की स्थिति एक माह के अंदर इस रजिस्ट्री को भिजवाने का कष्ट करें।

- आपके ज्ञापन कमांक 721 दिनांक 10.05.2000 एवं ज्ञापन क.900 दिनांक 23.06.2000 के पालन मुल्यवान संपत्तियों का मिलान संबंधित कर्मचारियों से एक माह के अंदर पूर्ण कराया जावें, जिससे वास्तविक रूप से हुई हानि/गबन की स्थिति स्पष्ट हो सके। नियमानुसार समय–समय पर मालखाने में रखी संपत्ति का सत्यापन सक्षम अधिकारी द्वारा किया जाना अनिवार्यतः है।
- ऐसी संपत्ति जो मूल्यहीन है तथा जिनका सत्यापन हो पाना किसी भी स्थिति में संभव नहीं है। उन संपत्तियों को नियमानुसार व्ययन करने की अनुमति की जाती है।
- सत्यापन में व्यवधान उत्पन्न करने वाले कर्मचारी का नाम व कब से पदस्थ है बावत जानकारी एवं अभी तक उनके विरूद्ध की गई कार्यवाही की जानकारी।

... उच्च न्यायालय ज्ञापन क्रमांक–A/2628/ चार–6–11/92 जबलपुर दिनांक 12 जुलाई 2000
मालखाना जबलपुर में रखी बिना पहचान की संपत्ति के व्ययन के संबंध में।

निर्देशानुसार, उपरोक्त विषय एवं संदर्भ में मध्यप्रदेश वित्तीय संहिता भाग 1 व 2 में वर्णित प्रावधानों का पालन सुनिश्चित करते हुए आपकी स्थापना के मालखाना अनुभाग में 4,556 बिना पहचान की मुल्यहीन सम्पत्तियों एवं कुछ ऐसी सम्पत्तियां (जैसे बर्तन इत्यादि) जो स्क्रैब के रूप में मूल्य रखती है, के व्ययन हेतु अनुमति प्रदान की जाती है।

साथ ही, यह भी निर्देशित किया जाता है कि सूची में अंकित की गई मूल्यविहीन सामग्रियों का नियमानुसार तथा मध्यप्रदेश उच्च न्यायालय के ज्ञापन दिनांक 12.07.2000 में जारी निर्देशानुसार व्ययन की कार्यवाही की जावे।

उच्च न्यायालय ज्ञापन क्रमांक–A/2466 IV 6 11/92 जबलपुर दिनांक 07.11.2020

CASE LAWS RELATED TO RELATED TO THE DISPOSAL OF THE SEIZED PROPERTY -

SUNDERBHAI AMBALAL DESAI V. STATE OF GUJARAT, (2002) 10 SCC 283-

The Hon'ble Apex Court, explained the object and scheme various provisions of the code as to disposal of case property 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".

7. The powers under Section 451 CrPC should be exercised expeditiously and judiciously. It would serve various purposes, namely:

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 the 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. ***Valuable articles and currency notes***

11. Valuable articles, such as, golden or silver ornaments or articles studded with precious stones, it is submitted that it is of no use to keep such articles in police custody for years till the trial is over. In our view, this submission requires to be accepted. In such cases, the Magistrate should pass appropriate orders as contemplated under Section 451 CrPC at the earliest.

12. For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after:

1. Preparing detailed proper panchnama of such articles;

2. Taking photographs of such articles and a bond that such articles would be produced if required at the time of trial;

3. and after taking proper security.

13. For this purpose, the court may follow the procedure of recording such evidence,

as it thinks necessary, as provided under Section 451 CrPC. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The court should see that photographs of such articles are attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over. Still however, it would be the function of the court under Section 451 CrPC to impose any other appropriate condition.

14. 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 be kept in police custody, it would be open to the SHO 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 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 purposes of investigation and identification. For currency notes, similar procedure can be followed.

VEHICLES

17. In our view, whatever be the situation, 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.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by a 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 the 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 the 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.

LIQUOR/NARCOTIC DRUGS

19. For articles such as seized liquor also, prompt action should be taken in disposing of it after preparing necessary panchnama. If sample is required to be taken, sample may be

kept properly after sending it to the Chemical Analyser, if required. But in no case, large quantity of liquor should be stored at the police station. No purpose is served by such storing.

20. Similarly for the narcotic drugs also, for its identification, procedure under Section 451 CrPC should be followed of recording evidence and disposal. Its identity could be on the basis of evidence recorded by the Magistrate. Samples also should be sent immediately to the Chemical Analyser so that subsequently, a contention may not be raised that the article which was seized was not the same.

21. However, these powers are to be exercised by the Magistrate concerned. We hope and trust that the Magistrate concerned would take immediate action for seeing that powers under Section 451 CrPC are properly and promptly exercised and articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month. This object can also be achieved if there is proper supervision by the Registry of the High Court concerned in seeing that the rules framed by the High Court with regard to such articles are implemented properly.

GENERAL INSURANCE COUNCIL V. STATE OF A.P., (2010) 6 SCC 768

Para 13. We also feel, it is necessary that in addition to the directions issued by this Court in *Sunderbhai Ambalal Desai* [(2002) 10 SCC 283 considering the mandate of Section 451 read with Section 457 of the Code, the following further directions with regard to seized vehicles are required to be given:

"(*A*) Insurer may be permitted to move a separate application for release of the recovered vehicle as soon as it is informed of such recovery before the jurisdictional court.

Ordinarily, release shall be made within a period of 30 days from the date of the application. The necessary photographs may be taken duly authenticated and certified, and a detailed panchnama may be prepared before such release.

(B) The photographs so taken may be used as secondary evidence during trial. Hence, physical production of the vehicle may be dispensed with.

(C) Insurer would submit an undertaking/guarantee to remit the proceeds from the sale/auction of the vehicle conducted by the Insurance Company in the event that the Magistrate finally adjudicates that the rightful ownership of the vehicle does not vest with the insurer. The undertaking/guarantee would be furnished at the time of release of the vehicle, pursuant to the application for release of the recovered vehicle. Insistence on personal bonds may be dispensed with looking to the corporate structure of the insurer."

MANJIT SINGH VS. STATE 2014 SCC ONLINE DEL 4652 - REFFERED- S. ARUNKUMAR VERSUS STATE THROUGH INSPECTOR OF POLICE, BATLAGUNDU 2016 SCC ONLINE MAD 8001 & MUKESH V. STATE (NCT OF DELHI), (2017) 6 SCC 1 THE HON'BLE HIGH COURT OF DELHI LAID GUIDELINES FOR DISPOSAL OF CASE PROPERTY-

The following principles emerge from the above judgments:

54. The properties seized by the police during investigation or trial have to be produced before the competent Court within one week of the seizure and the Court has to expeditiously pass an order for its custody in terms of the directions of the Supreme Court in *Basavva Kom Dyamangouda Patil* v. *State of Mysore*, *Sunderbhai Ambalal Desai* v. *State of Gujarat* and *General Insurance Council* v. *State of A.P.*

55. The Court has to ensure that the property seized by the police should not be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary and in any case, for not more than one month.

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

57. The expeditious and judicious disposal of a case property would ensure that the owner of the article would not suffer because of its remaining unused or by its misappropriation; Court or the police would not be required to keep the article in safe custody; and onerous cost to the public exchequer towards the cost of storage and custody of the property would be saved.

TIME LIMIT FOR RELEASE

58. Whenever a property is seized by the police, it is the duty of the seizing officer/SHO to produce it before the concerned Magistrate within one week of the seizure and the Court, after due notice to the concerned parties, is required to pass an appropriate order for its disposal within a period of one month.

VALUABLE ARTICLES

59. The valuable articles seized by the police may be released to the person, who, in the opinion of the Court, is lawfully entitled to claim such as the complainant at whose house theft, robbery or dacoity has taken place, after preparing detailed *panchnama* of such articles; taking photographs of such articles and a security bond.

60. The photographs of such articles should be attested or countersigned by the

complainant, accused as well as by the person to whom the custody is handed over. Wherever necessary, the Court may get the jewellery articles valued from a government approved valuer.

61. The actual production of the valuable articles during the trial should not be insisted upon and the photographs along with the *panchnama* should suffice for the purposes of evidence.

62. Where such articles are not handed over either to the complainant or to the person from whom such articles were seized or to its claimant, then the Court may direct that such articles be kept in a locker.

63. If required, the Court may direct that such articles be handed back to the Investigating Officer for further investigation and identification. However, in no circumstance, the Investigating Officer should keep such articles in custody for a longer period for the purposes of investigation and identification.

64. If articles are required to be kept in police custody, the SHO shall, after preparing proper *panchnama*, keep such articles in a locker.

CURRENCY NOTES

65. The currency notes seized by the police may be released to the person who, in the opinion of the Court, is lawfully entitled to claim after preparing detailed *panchnama* of the currency notes with their numbers or denomination; taking photographs of the currency notes; and taking a security bond.

66. The photographs of such currency notes should be attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over and memo of the proceedings be prepared which must be signed by the parties and witnesses.

67. The production of the currency notes during the course of the trial should not be insisted upon and the releasee should be permitted to use the currency.

VEHICLES

68. Vehicles involved in an offence may be released to the rightful owner after preparing detailed *panchnama*; taking photographs of the vehicle; valuation report; and a security bond.

69. The photographs of the vehicle should be attested and countersigned by the complainant, accused as well as by the person to whom the custody is handed over.

70. The production of the vehicle should not be insisted upon during the trial. The *panchnama* and photographs along with the valuation report should suffice for the purposes of evidence.

71. Return of vehicles and permission for sale thereof should be the general norm rather than the exception.

72. If the vehicle is insured, the Court shall issue notice to the owner and the insurance company for disposal of the vehicle. If there is no response or the owner declines to take the vehicle or informs that it has claimed insurance/released its right in the vehicle to the insurance company and the insurance company fails to take possession of the vehicle, the vehicle may be ordered to be sold in auction.

73. If a vehicle is not claimed by the accused, owner, or the Insurance company or by a third person, it may be ordered to be sold by auction.

LIQUOR AND NARCOTIC DRUGS

74. Prompt action should be taken in disposing of the liquor bottles/pouches and narcotic drugs after preparing a detailed *panchnama* containing an inventory; retaining a sample thereof; taking photographs of the entire lot of seized bottles/pouches/narcotic drugs and security bond. The sample shall be kept properly after sending it to the chemical analyst, if required.

75. The sample along with the photographs of the case property and the *panchnama* would be sufficient evidence at the stage of trial.

COUNTERFEIT COINS/CURRENCIES

76. The counterfeit coins/currencies together with implements for their manufacture such as dyes, moulds, etc. shall be retained by the police pending trial and till the disposal of the appeal or revision, if any. On conclusion of the trial, the Court shall pass an order for its disposal by destruction or for such other action in accordance with the rules.

ARMS AND AMMUNITIONS

77. The arms and ammunition seized by the police shall be stored in the *Malkhana* during the pendency of the trial. Upon conclusion of the trial, the Court shall pass appropriate order under Section 452 Cr.P.C. for its confiscation or destruction or release.

PERISHABLE PROPERTIES

78. In case of properties subject to speedy and natural decay, the Magistrate may pass an appropriate order under Section 459 Cr.P.C. for its disposal on such conditions as may be considered appropriate.

79. 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.

DISPOSAL OF PROPERTY AT CONCLUSION OF TRIAL

80. Upon conclusion of enquiry or trial, the Court may make an order under Section 452 Cr.P.C. for the disposal by destruction, confiscation or delivery to any person claiming to be entitled for possession thereof or otherwise.

81. For delivery of any property to any person claiming to be entitled thereto, the Court may release the property unconditionally or impose a condition of a bond with or without sureties to restore such property to the Court upon modification/setting aside of the order in appeal or revision.

82. The aforesaid order shall not be carried out for a period of two months or when an appeal is presented, until disposal of the appeal except in case of live stock or property subject to speedy and natural decay.

UNCLAIMED PROPERTIES

83. If no person establishes his claim to case property within six months or the person in whose possession such property was found is unable to show that he legally acquired the same, the Magistrate may order sale of the property by the State Government under Section 458 Cr.P.C.

LOSS/THEFT/DESTRUCTION OF THE CASE PROPERTY IN POLICE CUSTODY

84. Where the seized 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 its owner.

85. The Court has to assess the value of the property seized by the police and the owner of the property is entitled to receive the value of the property lost from the State.

GENERAL

86. The Court may impose any other condition which may be necessary in the facts of each case.

87. The Court shall hear all the concerned parties including the accused, complainant, Public Prosecutor and/or any third party concerned before passing the order. The Court shall also take into consideration the objections, if any, of the accused.

88. When the property has any evidentiary value, it is to be kept intact and the

condition of non-alienation is imposed to ensure its production during the course of evidence for the purpose of marking as a material object. However, when the property has no evidentiary value and only the value of the property is to be properly secured for passing of final order under Section 452 Cr. P.C., the necessity of keeping such properties intact by imposing onerous conditions, prohibiting its alienation or transfer would not be necessary in law.

89. The production of property which has evidentiary value during evidence is a part of a fair trial. With the advanced technology, it is not necessary that the original of the property inevitably has to be preserved for the purpose of evidence in the changed context of times. The reception of secondary evidence is permitted in law. The techniques of photography and photo copying are far advanced and fully developed. Movable property of any nature can be a subject matter of photography and taking necessary photographs of all the features of the property clearly is not a impossible task in photography and photo copying. Besides, the *mahazar* could be drawn clearly describing the features and dimensions of the movable properties which are subject matters of criminal trial.

90. Irrespective of the fact whether the properties have evidentiary value or not, it is not necessary that the original of the property has to be kept intact without alienation. As suggested above, the photography or photostat copy of the property can be taken and made a part of the record duly certified by the Magistrate at the time when the interim custody of the property is handed over to the claimant. In the event of the original of the property not produced in the evidence, photograph could be used as secondary evidence during the course of evidence. Ultimately, while passing final orders, it is only the value of the property that becomes a prime concern for the Court. If a person to whom the interim custody is granted, is not entitled to the property or its value and if some other person is held to be entitled to have the property or its value by taking necessary bonds and security from the person to whom interim custody is granted, the value could be recovered and made payable to the person entitled to.

NAIZ AHMED VS. STATE OF U.P. 1994 SUPP (3) SCC 356

- If the property delivered to the person claiming for its entitlement, may execute a bond with or without securities. The bond contains that he will restore or give back the property to the court if the order so modified or set aside on appeal or also on revision. - Disposal of Property seized from accused as theft property. Truck seized from Accused and sold in auction. Criminal Proceedings ended in favour of Accused and Truck was directed to be returned to accused from whom it was seized. Auction purchaser cannot have a right to retain vehicle. He is only entitled to have return of money deposited by him as sale consideration.

N. MADHAVAN V. STATE OF KERALA, (1979) 4 SCC 1

8. The material part of Section 517 of the Code of Criminal Procedure, 1898 [which has been re-enacted as Section 452(1) in the Code of 1973], reads as follows: "When an inquiry or trial in any criminal court is concluded, the court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence."

An analysis of this provision would show that it refers to property or document

(*a*) which is produced before the court, or (*b*) which is in the custody of the court, or (*c*) regarding which any offence appears to have been committed, or (*d*) which has been used for the commission of any offence. Then, at the conclusion of the enquiry or trial, the disposal of any class of the property listed above, may be made by (*i*) destruction, (*ii*) confiscation, or (*iii*) delivery to any person entitled to the possession thereof.

10. The words "may make such order as it thinks fit" in the section, vest the court with a discretion to dispose of the property in any of the three modes specified in the section. But the exercise of such discretion is inherently a judicial function. The choice of the mode or manner of disposal is not to be made arbitrarily, but judicially in accordance with sound principles founded on reason and justice, keeping in view the class and nature of the property and the material before it. One of such well-recognised principles is that when after an inquiry or trial the accused is discharged or acquitted, the court should normally restore the property of class (*a*) or (*b*) to the person from whose custody it was taken. Departure from this salutary rule of practice is not to be lightly made, when there is no dispute or doubt — as in the instant case — that the property in question was seized from the custody of such accused and belonged to him.

MAHESH KUMAR V. STATE OF RAJASTHAN, 1990 SUPP SCC 541 (2)

2. In the facts and circumstances of the present case, we are satisfied that the direction made by the learned Single Judge of the Rajasthan High Court for the forfeiture of the amount of Rs 20,000 (Rupees twenty thousand) to the State is wholly unwarranted. It is now accepted principle that the confessional part of the statement made by the accused leading to discovery within the meaning of Section 27 of the Evidence Act, 1872 or Section 162 of the Code of Criminal Procedure, 1973 can be made use of for purpose of and the disposal of property under Section 452 of the Code. There is a long line of decisions laying down the principle and we would refer to only a few of them.

3. In *Queen Empress* v. *Tribhovan Manekchand* [ILR 9 Bom 131] a Division Bench of

the Bombay High Court laid down that the statement made to the police by the accused persons as to the ownership of property which was the subject matter of the proceedings against them although inadmissible as evidence against them at the trial for the offence with which they were charged, were admissible as evidence with regard to the ownership of the property in an enquiry held by the Criminal Procedure Code. The same view was reiterated in *Pohlu* v. *Emperor*[AIR 1943 Lah 312 : 45 PLR 391 : 209 IC 546] where it was pointed out that though there is a bar in Section 25 of the Evidence Act, or in Section 162 CrPC for being made use of as evidence against the accused, this statement could be made use of in an enquiry under Section 517 CrPC when determining the question of return of property. These two decisions have been followed by the Rajasthan High Court in *Dhanraj Baldeokishan* v. *State* [AIR 1965 Raj 238 : (1965) 2 Cri LJ 805 : 1965 Raj LW 289] and the Mysore High Court in *Veerabhadrappa* v. *Govinda* [ILR (1973) 23 Mys 64] . In the present case, the amount in question was seized from the accused in pursuance of statements made by them under Section 27 of the Evidence Act. The High Court as well as the courts below have found the property to be the subject of theft and the acquittal of the accused is upon benefit of doubt. The accused persons disclaimed the stolen property and there is no reason why the same should not be returned to the owner i.e. the complainant to whom it belongs.

RAJMATA VIJAYA RAJE SCINDIA V. STATE OF M.P. (2003) 12 SCC 429

3. When the prosecution is withdrawn ordinarily the articles have to be returned to the person from whom they were recovered, but the court can consider various other aspects and can pass appropriate order for disposal of the matter.

S. ARUNKUMAR VERSUS STATE THROUGH INSPECTOR OF POLICE, BATLAGUNDU 2016 SCC ONLINE MAD 8001-

10. To be at succinctly under Section 451 and 452 of Cr.P.C, title to property is not decided by a Court of Law. Indeed, an enquiry for disposal of property need not be a detailed/elaborate one. Even the statements recorded by the Police under Section 161 of Cr.P.C or under Section 25 of the Indian Evidence Act 1872 may be looked into by a Court of Law by arriving at a decision in regard to the issue of possession of a property involved in a pending case. In reality, aspect of possession and the right of possession alone would be considered in usual/ordinary course. However, ownership of title issues are purely in the realm of appropriate civil Court decision, in the considered opinion of this Court.

14. It is to be pointed out that where gold ornaments and other valuable articles snatched by the accused from the Complainant are recovered from the possession of the accused and when the Complainant prays for return of such articles; such seized articles shall be returned to the Complainant after taking security and bond so as to present

evidence on being altered or destroyed as per decision in *Yaswant Borwal* v. *State of Orissa* reported in 2004 CrlJ at Page 2278, 2279 and 2780.

15. It is to be relevantly pointed out that a Court of Law can take photographs of such valuable articles and the same being attested or counter-signed by the Complainant, Accused as well as by the person to whom the custody is handed over. Moreover, the possession of valuable articles like silver or gold ornaments should be restored to the individual from whom it was taken by a criminal act of theft. That apart, even a bona-fide purchaser of such stolen property cannot acquire any title to it as opined by this Court.

BINU PAUL VS. BABU RAJ 2000 SCC ONLINE KER 509

Disposal of properties recovered during investigation and before the Court. Properties, Jewels recovered at the place of occurrence and places pointed out by the accused. In the absence of any other claims, when accused acquitted, jewels to be returned to wife of deceased.

SUSHILA V. UNION OF INDIA, 1998 SCC ONLINE DEL 851

11. A bare reading of Section 452 suggests that it applies to disposal of the property, after conclusion of inquiry or trial and it refers to the property, which is produced before the Court or which is in its custody or regarding which an offence appears to have been committed or which has been used in the commission of an offence. These four classes of the property are listed disjunctively. In case the inquiry or trial has come to an end and the property falls in any of the four categories, the Court has jurisdiction to pass orders for disposal under this section. The condition precedent for exercise of jurisdiction under Section 452 is that the inquiry or trial in any Criminal Court is concluded. Only on conclusion, the Court will get jurisdiction to pass an order with respect to disposal of the property, which falls in any of the four aforementioned categories. To say differently, an order for final disposal of the property cannot be passed under Section 452 prior to conclusion of the inquiry or trial. In other words, in case inquiry or trial has not concluded, but has otherwise come to an end, it cannot be said that Section 452 will come into operation. The word 'concluded' used in Section 452 obviously implies that it is the ultimate and final conclusion either by way of conviction, acquittal or discharge. Abatement of proceedings because of death of the sole accused cannot be termed as conclusion on inquiry or trial thereby investing the Magistrate with jurisdiction to deal with the property under Section 452 of the Code.

SURATI V. DEDA, 1994 SCC ONLINE RAJ 598

16. It is held that the Section 162 Cr. P.C. creates no bar against the reception of the statement recorded u/s. 161 Cr. P.C. A statement recorded u/S. 161 Cr. P.C. could be looked into for the purpose of delivery, of the properties. But in the present case the learned Sessions Judge had not made any attempt to look into the statement recorded u/s. 161 Cr. P.C. which has occasioned a mis-carriage of justice between the parties. Although the learned Sessions Judge has referred a judgment of this Court rendered in *Bal Kishan* v. *State*, and had also made a reference about the another decision of this Court given in the case of *Mst. Dhuti*v. *Bhanwarlal*, but he has not applied his judicial mind to the ratio of the aforesaid two decisions which has further resulted into miscarriage of justice and fair play.

THAMANNA SHIVALINGAPPA TELI V. STATE OF KARNATAKA, 2004 SCC ONLINE KAR 176 :

8. Learned Counsel appearing for the revision petitioner contended that the 2nd respondent has turned hostile to the prosecution stating that he does not know the accused and that no articles were seized from his shop and therefore, he is not entitled for the release of the articles to his custody. He further contended that the material objects were seized on the voluntary statement of the accused, which revealed that the articles were stolen from the house of the petitioner and therefore the voluntary statement is admissible in evidence for the purpose of release of material objects. In support of this submission, he relied upon the decision in case of *K.R. Haris Chandra Naik* v. *State by Town Police, Chitradurga* [2001 (4) Kar. L.J. 587 : ILR 2001 KAR 4727.] . In this decision, this Court by referring to the earlier decisions rendered in *Veerabhadrappa* v. *Govindamma* [1972 Mys. L.J. Sh. N. 377 : ILR 1973 KAR 64.] , has held that for the purpose of determining the entitlement of the seized property the statements recorded by the police under Section 161 and other documents like panchanama *etc.*, can be looked into even though panch witnesses have turned hostile and even though the evidence of Investigating Officer in that regard is found unacceptable. In the said decision, this Court has also referred to the decision in *Dhanraj Baldeokishan through its partner Dhanraj* v. *State* [AIR 1965 Raj. 238.] , wherein it is held that even a confessional statement which is otherwise inadmissible in evidence against the accused can be made use of for determining the question of return of property. In another decision in case of *Bal Kishan* v. *State of Rajasthan* [1984 Cri. L.J. 308 (Raj.).] , it is held that the statement of an accused or a witness can be looked into for disposal of the property, which takes place at the conclusion of the enquiry or trial of a case. In the decision in case of *Sher Singh* v. *State* [1981 Cri. L.J. 1337 (Del.).] , it is held that once the source of possession is traceable to theft or other criminal act, then in whomsoever's hand the property may have passed and however *bona fide* the last purchaser may be, the

possession must be restored to the person from whom it was taken by the criminal act.

9. Learned Counsel for the revision petitioner contended that the voluntary statement of the accused, which is admissible in evidence for the purpose of release of the articles, disclosed that the articles were stolen from the house of the petitioner and that the 2nd respondent is the receiver of stolen property, therefore, the order of the Sessions Judge is erroneous and unsustainable in law. In this case, the theft had occurred on 3-11-1985 and gold ornaments weighing 89½ tolas and silver articles weighing 45 tolas were lost. The police seized the property on 22-4-1986, after the lapse of 5 months. The gold ornaments were seized in the form of ingot from the possession of the 2nd respondent and hence the identity of the property was lost. It is true that the property need not be one exactly the same that has been stolen, it can be equivalent of the property converted after the theft has been committed. But, in the case on hand, the ingots seized from the possession of 2nd respondent has not been proved to be the stolen properties. It cannot be gathered from the evidence that the ingot seized from the possession of the 2nd respondent was converted into from stolen gold ornaments. As held in the decision cited supra, it is a settled position in law that the statement of the accused or a witness can be looked into for disposal of the property which takes place at the conclusion of the enquiry or trial of a case. The panchanama discloses that the gold ingots were seized from the possession of the 2nd respondent. The Investigating Officer has also testified to the fact of recovery of the articles from the possession of second respondent. The description, weight and other particulars of the seized gold do not tally with the description of the gold articles stolen. Since the source of possession is not traceable to theft, the decision in *Sher Singh's case*, supra is not of any help to the petitioner. The 2nd respondent is not found to be the receiver of stolen property. Therefore, I find that the Sessions Judge was justified in concluding that the seized articles are not the property in respect of which an offence had been committed and that the gold ingots were not the converted shape of stolen ornaments. He has not committed any illegality in delivering the articles to second respondent as he was *prima facie* entitled to its possession.

SAHIRUDDIN LASKAR V. AZIRUDDIN LASKAR, 1996 SCC ONLINE GAU 240

9. It further comes in light after going through the order of the learned CJM dtd. 13.2.91 that after conclusion of the trial because of the accused being discharged he was very much conscious of the provisions of law contained in Sec. 452 Cr. P.C. That being the position, he is specific in detailing in the operative portion of his order that in his opinion it would be unnecessary to hold further enquiry regarding the possession of the elephant particularly when this issue was after scrutiny decided in favour of the petitioner by the Sessions Judge on 8.9.89 and by this Court on 15.3.90. The learned CJM has also held that

the question of ownership of the elephant can only be decided by the Civil Court and hence it is concluded that in conformity with the above two orders passed in Criminal Revision No. 14(1)/89 on 8.9.89 and in Crl. Revisions Nos. 436 and 537 of 1989 passed by this Court on 15.3.90 the elephant was directed to be kept in the custody of Sahir Uddin till the matter is decided by the competent Civil Court. It is also concluded in his order dtd. 13.2.91 that the parties would seek relief in the competent Civil Court. The petitioner it further transpires that in that background immediately thereafter filed Title Suit 17/91 in the Court of the Asstt. District Judge which is not denied by the opposite party. The question thus for decision is as to whether in the instant case in the background of the facts and circumstances discussed above it was incumbent on the part of the CJM as to hold fresh enquiry with regard to the disposal of the property after the conclusion of the trial or his order so passed on 13.2.91 which was under challenge before the learned Sessions Judge and which is so set aside by the learned Sessions Judge on 18.12.91 requires any interference?

10. In my opinion, I find that when such occasion arises with regard to holding fresh enquiry for the disposal of the property U/S. 452 Cr. P.C., the trial Court is not bound to hold elaborate enquiry before passing any order U/S. 452 Cr. P.C. In the best interest of the property as well as the parties involved, the property need be delivered only to a person entitled for such possession because in no way the ownership of the property can be decided after holding enquiry by the Criminal Court which is the jurisdiction of the competent Civil Court only. Any order so passed U/S. 452 Cr. P.C. thus can well be said to be a tentative arrangement made by the Criminal Court. The title to the property and right to possess the same are only to be determined by the competent Civil Court. Thus since there is no need in such circumstances as to hold elaborate enquiry by examining witnesses the order so passed by the learned CJM on 13.2.91 directing the possession of the elephant in question as to continue with the petitioner particularly in the background of the two orders so passed on the point of entitlement for possession is elaborately discussed by the learned Sessions Judge on 8.9.89 in Crl. Revision No. 14(1)/89 and by this Court on 15.3.90 in Crl. Revision Nos. 436 and 537 of 1989, in my considered opinion, the learned CJM was prefectly justified in passing such orders directing the parties as to get the matter decided by the competent Civil Court for which a Title Suit 17/91 is so pending. Thus I find that the argument so advanced on behalf of the petitioner by Shri N. Choudhury by citing two of the reported cases is well founded and the learned Sessions Judge has thus erred by passing the order dtd. 18.12.91 in the background of the facts and circumstances of the case for holding fresh enquiry U/S. 452 Cr. P.C. in Crl. Appeal No. 8/91 which is under challenge. Taking that view the impugned order dtd. 18.12.91 of the learned Sessions Judge as to hold fresh enquiry U/S. 452 Cr. P.C. is thus hereby set aside and the order of the learned CJM dtd. 13.2.91 passed on this point in GR Case 663/89 is upheld and restored.

BASETTAPPA FAKIRAPPA KADAGAD V. STATE OF KARNATAKA, 2003 SCC ONLINE KAR 620

7. Regarding the disposal of the property is concerned the learned Counsel for the 2nd respondent relied on a ruling in the case of N. Madhavan, supra, wherein it is held thus: "10. The words "may make such order as it thinks fit" in the section, vest the Court with a discretion to dispose of the property in any of the three modes specified in the section. But the exercise of such discretion is inherently a judicial function. The choice of the mode or manner of disposal is not to be made arbitrarily, but judicially in accordance with sound principles founded on reason and justice, keeping in view the class and nature of the property and the material before it. One of such a well-recognised principles is that when after an inquiry or trial the accused is discharged or acquitted, the Court should normally restore the property of class (a) or (b) to the person from whose custody it was taken. Departure from this salutary rule of practice is not to be lightly made, when there is no dispute or doubt — as in the instant case — that the property in question was seized from the custody of such accused and belonged to him".

8. It is a case wherein the accused was discharged or acquitted after an enquiry or trial. At that time it was for the Court to normally restore the property from whom it was recovered, It was also made clear that the departure from the said practice could be made when there is no dispute or doubt that the property was seized from the custody of such accused and belonged to him.

10. The learned Counsel for the petitioner has relied upon a ruling of the Kerala High Court in the case of Thampi Chettiar Arjunan Chettiar v. State1985 Cri. L.J. 1158 (Ker.), regarding disposal of property under Section 452, wherein it is held that it cannot be held as a uniform rule that the person who produced the articles or from whom they were seized is alone entitled to custody under Section 452 in all cases, where the accused happens to be acquitted. It is a case wherein the accused is shown to have been prosecuted for the offence punishable under Section 406 of the IPC. The ratio has been laid down to the effect that it has to ascertain and order it to return it to the person who is really entitled to. So each case will have to be decided on its own merits and when there being a principle to be followed to return the article from whom it was recovered. In view of the above discussion the orders passed by the learned Magistrate and also confirmation of the said order by the learned Additional Sessions Judge, Dharwad, sitting at Hubli, in Criminal Appeal No. 8 of 1997 are required to be set aside holding that the complainant is entitled for the possession of the revolver by reversing the order of the Court below and confirming the claim of the complainant. Accordingly, I proceed to pass the following order:

KHERAJ V. STATE OF RAJASTHAN, 1995 SCC ONLINE RAJ 548

9. Under such circumstances, there was no sufficient evidence to prima facie establish

that implements Articles A-1 belonged to Sona Ram and that those did not belong to petitioner-Kheraj. Apart from it, merely because Sona Ram was acquitted of the offence under section 379 IPC/392 IPC by giving benefit of doubt and implements Articles A-1 were recovered at his instance from the Bera of Okha Ram, it cannot be held that he was the owner of the implements Articles A-1. Besides this, in Dhanraj Baldeokishan v. The State, it has been held that the statement inadmissible at trial may be admissible for the purposes of Section 517 Cr. P.C. (old) to connect ownership of property recovered as a result of the statement recorded under section 27 of the Evidence Act. The accused Sona Ram in his information recorded under section 27 of the Evidence Act Ex. P. 8 has not stated that the implements Articles A-1 belonged to him. On the other hand, he stated that he had concealed the implements Articles A-1 near the Bera of Okha Ram. The lower courts have ignored the aforementioned material evidence and committed illegality of fact as well as of law in directing that the implements Articles A-1 be given to accused-non-petitioner Sona Ram. In my considered opinion, the impugned judgements regarding the disposal of implements Articles A-1 are patently incorrect, improper and illegal and these deserve to be quashed.

B.S. TOOKAPPA V. STATE, 1977 SCC ONLINE KAR 84

4. The case regarding disposal of property incorporated in the order of the learned Magistrate lay under Section 452 of the Code of Criminal Procedure and a perusal of Section 452 indicates that the Magistrate had the jurisdiction, to make such order as he thought fit for the disposal of the property produced before him or in his custody or regarding which any offence appeared to have been committed. While making the order of disposal of such property, the learned Magistrate could deliver it to any person claiming to be entitled to the possession thereof or otherwise meaning thereby that the property could be delivered even to a person not claiming to be entitled thereof, provided the learned Magistrate was of the opinion that in the best interest of the property as well as of the parties involved the property need be delivered to him. That is so because the order of the learned Magistrate is only a tentative arrangement. The final title to property or right to possess the same are to be determined by the Civil Court or any other Court of competent jurisdiction. Therefore, the argument of the learned counsel that some arbitration proceeding was pending or that there was a contemplated civil suit for rendition of account would be of no consequence. It cannot be stated that the proceedings in the criminal Court were to remain suspended because of an intended civil litigation. The learned Magistrate had the jurisdiction to exercise under Section 452 and in case he exercised that jurisdiction in the best manner possible, perhaps this Court will not interfere in revision.

5. The main contention of the learned counsel has been that there was a contract of

bailment between the accused and the Co-operative Society and that the accused had a lien over the goods which he could detain until the accounts were properly rendered and until the equities were settled between the parties. For all this, the learned Magistrate was required to go into a detailed study of so many complicated questions of Civil law. He had to find out as to what transactions passed on between the parties, what law was applicable to such transactions, if a lien arose in favour of either party and if such a lien arose, to what extent the goods could be detained by the accused. In my opinion such complicated questions of civil law were not required to be decided by the learned Magistrate. Before him, the simple question was, as to which of the party was best entitled to possession and after considering the right to possess claimed by either party, if the learned Magistrate decided in favour of one and against the other that should be the end of the matter so far as his court was concerned. In Sri Prem Chand Kar v. State of West Bengal 1963 (1) Cr. L.J. 117. a learned Judge of Calcutta High Court has very succintly put the shape of controversy before the Magistrates in such eases. While dealing with a case under Sections 517 and 523 of the then Code of Criminal procedure, the learned Judge observed as below:

"It is within the jurisdiction of the Magistrate to pass orders both under Section 517 as also under Section 523 to dispose of the property seized in a summary manner and may according to his discretion deliver the property to the person, who according to his summary enquiry was found entitled to present possession thereof, if any party is aggrieved by such an order, his remedy lies in the appellate or the revisional Courts and the propriety or otherwise of such an order cannot be questioned in any Civil Court. The orders under Section 517 and Section 523 do not settle any rights or confer any title. They are merely empowering sections to dispose of the property seized in a summary way. The orders are concerned only with the right to immediate possession and not to the question of title or proprietary right to the property. The jurisdiction of the Civil Courts to decide the question of title to the property in such a case remains unaffected." Therefore, one has to see whether in the instant case the learned Magistrate has rightly exercised his jurisdiction.

GAYA PRASAD V. STATE OF MADHYA PRADESH, 1988 SCC ONLINE MP 74

9. Section 452 of the Code of Criminal Procedure, 1973 contemplating an order for disposal of property at conclusion of trial does not contemplate a notice or hearing to be given to the parties likely to be affected by the order as to disposal of the property. However, in *A. Madhavan* v. *State of Kerala*, AIR 1971 SC 1829. Their Lordships of the Supreme Court observed that the exercise of discretion conferred by section 517, Criminal Procedure Code (section 452 of the new Code) is inherently a judicial function. In that case a gun seized from an accused was directed to be confiscated, but without giving an opportunity 01 being heard to the accused specifically with regard to that matter. Such an order was held to be

arbitrary and unjudicial. In *Bachraj Dugar* v. *Narendra Kumar Singh*, 1979 Cri. L.J. 116, the High Court of Gauhati said 'Although Section 452, Criminal Procedure Code, providing for disposal of property in its custody at the conclusion of trial does not require issuance of notice to anyone, it is but necessary that prior notice should go to such of the persons who are likely to be affected by the order that may be passed under the section'. The above said law is nothing but projection of rule of natural justice that no order shall be passed to the prejudice of anyone unless he had an opportunity of being heard in that behalf.

10. The principle applies *a fortiori* to the present case. As stated, in one case the trial court had directed the seized property to be returned to the complainants, while in the other separate miscellaneous proceedings were directed to be drawn up for determining the entitlement as to disposal of the property. In one case there was a right accrued in favour of the complainant. In the other case, the complainant got a manifested right of being heard. Such an order could not have been set aside by the appellate Court without giving the complainant an opportunity of being heard. It was expected of the accused appellant challenging his conviction and also praying for release of the seized property in his favour to have impleaded the complainant as a party to the appeal. In any case it was obligatory on the part of the appellate Court to have noticed the complainant before the order as to disposal of the property could be reversed or modified.

The decision in *State Bank of India* v. *Rejendra Kumar Singh*, AIR 1969 SC 409, clinches the issue. Their Lordships while dealing with section 517 of old Criminal Procedure Code said. 'It is true that the statute does not expressly require a notice to be issued or a hearing to be given to the parties adversely affected. But though the statute is silent and does not expressly require issue of any notice, there is in the eye of law a necessary implication that the parties adversely affected should be heard before the Court makes an order of return of the seized property. Thus an order of the High Court reversing the order of the Sessions Court directing disposal of property under section 517, without giving notice to the person to whom the property is directed to be delivered by the Sessions Court, is vitiated by law.'

BALWANT SINGH V. STATE OF MADHYA PRADESH, 1990 SCC ONLINE MP 125

13. In the decision in *Gaya Prasad's case*, 1989 MPLJ 635 : 1988 JLJ 595 it has been pointed out that it is for the Court to decide in each case, in the background of its facts and circumstances, whether it is inclined to incorporate the order as to the disposal of the property in the main judgment or would choose to draw separate ancillary proceedings. The decision points out that it is necessary to give the person, likely to be affected by the order, an opportunity of being heard.

14. The decision in *Bhagchand's case*, 1972 MPLJ 14 relates to section 517 of the repealed Code, 1898 (section 452 of the 'Code' embodies the coresponding provision). In

the aforesaid decision, pointing out that the property in regard to disposal of which the Court is called upon to make an order is one regarding which an offence appears to have been committed or which has been used in the commission of the offence, it has been observed thus:—

"The test for restoration of the property to the original owner under section 517 is not whether the accused before the Court has been convicted under the charge, but whether any offence has been committed regarding the property. Section 517 does not direct return of the property to the original owns in so many words. It should be restored backwards to the stage at which no offence has been proved to have been committed. If it has changed hands, the Court will examine backwards each of the stages and stop at the stage when no offence is proved. If it is at the first stage itself the property shall be restored to the person from whom it has been taken. It is to state the position too widely to state that where there is an acquittal with benefit of doubt, property must be restored to the original owner. If it is an acquittal with benefit of doubt to the person on trial while it is found that the offence has been committed then certainly the restoration will be to the original owner. But where the benefit of doubt relates to the commission of the offence itself the general principle that the property should be restored to the person from whom it is recovered should followed."

15. It may be pointed out that section. 452 of the 'Code' is not concerned with the question of tide to the property. That question properly falls within the jurisdiction of Civil Court For an order under section 452 of the 'Code', what the Court has to find out is the entitlement for the possession of the property and the order passed is subject to the decision of a Civil Court. The discretionary order under the provision has to be passed on a careful consideration of the material brought on record and as already pointed out after opportunity of hearing to the parties concerned. In the decision in *Har Bhagwandas's case*, 1960 MPLJ 481 : 1960 JLJ 628 with reference to sections 439, 520 and 417 of the repealed Code of Criminal Procedure it has been observed as under:—

"Where the party has already resorted to a civil remedy by way of suit, revision petition challenging the order about return of property becomes infructuous. The scope of powers exercisable under sections 517 and 520 is only summary which does not adjudicate upon the civil rights of parties."

MUNNILAL YADAV V. STATE OF M.P. I.L.R. (2008) M.P. 150-

Trial Court directed for retention of gun, cartridges and wrist watch seized from the possession of appellant till conclusion of trial of absconding accused person – **Held**, Court has discretion to dispose of property in any of three modes specified in S. 452 – Discretion is inherently judicial function – Manner of disposal is not to be made arbitrarily but judiciously – When accused is acquitted Court should normally restore property to person from whose

custody it was taken – Even if gun was used for commission of any offence for which absconding accused are to be tried, no useful purpose would be served by retaining custody for indefinite period – Property restored to appellant on certain conditions.

UMA SHANKAR V. STATE OF M.P. AND ANOTHER 2005 (4) MPLJ 585

Held : At earlier occasion such question was answered by this Court in the matter of *Munshi Lal vs. Sewaram and others reported in 1987 M.P.L.J. 332* in which it was held as under: "Held, that for the purpose of disposal of property the statement made by the accused to the police during the course of investigation can be used as evidence against him because such statement is not being used against the accused in any enquiry or trial. Disposal of property is a separate proceeding. At the conclusion of enquiry or trial any admission or confession of fact with regard to seized property made by the accused during investigation can be used for determining the question as to in whose favour the order of disposal of property be passed. The admission of the accused led to the discovery of the material fact and the police recovered the property which was stolen according to the admission of the accused; the Sessions Judge was satisfied that the property belonged to the complainant and the said property therefore was liable to be returned to the complainant except insofar as the order regarding currency notes was made. Currency notes are unidentifiable property and, therefore they should be returned to the person from whose possession they had been recovered. *1963 JLJ Note No. 87,* Rel. *AIR 1968 MP 270* Ref."

The aforesaid case was decided on the basis of some earlier decided cases of this Court and in view of the aforesaid principles if we examined the case at hand then it is apparent that the confessional statement of the respondent No. 2 was recorded by the police and in pursuance of that the properties were seized, identified by the complainant and not claimed by the accused by submitting the cogent evidence or by cross-examining the complainant and their witnesses. So, in view of the aforesaid principles the order passed by the appellate Court is not sustainable.

GOVIND RAM V. STATEOF M.P. & ORS. 2006 (II) MPJR 408

Held : The trial court has rejected the application for the return of property to the appellant only on the ground that in the judgment of acquittal, it has been directed that the property may be deposited in the government treasury in order to confiscate it and, therefore, merely the application has been filed by the appellant for return of the property no order can be passed in that regard. The view taken by the trial court is ex-facie erroneous and contrary to the law. Under section 452 Cr.P.C. if in the conclusion of a trial the court makes an order to confiscate the property it would mean that a party who is otherwise

entitled to it may not file an application for its delivery and if such application is submitted the same would be rejected on the ground that an order has already been passed to confiscate the property. Under sub section (2) of Section 452 of Cr.P.C. if an application for delivery of the property is submitted by a person claiming and if he is entitled to be in possession of such property the court may without any condition or that he execute a bond with or without surety may pass an order to deliver the property. It appears that the court below without going through this provision has passed the impugned order. I have already stated herein above that vide Ex. P/20 the complainant submitted an application to the investigating officer to deliver the property. The accused persons have not claimed the property. The accused persons are silent in regard to the ownership of the property. On the other hand, the appellant is claiming the property. The accused persons have also denied the seizure and execution of the seizure memo in their examination under section 313 Cr.P.C. ... In the case of *Kamarlal v. State of M.P., 1992 Cr.L.J. 3407* the accused persons who were tried for theft were acquitted. The complainant submitted an application for delivery of the seized property. The accused persons remained silent about their claim to property. They also denied any seizure of property from them in their examination under section 313 Cr.P.C. In that situation, this court held that the court below rightly delivered the property to the complainant and the revision petition filed by the accused persons in that regard was dismissed. The learned counsel appearing for the appellant also placed reliance on the earlier decision of this Court in *Prakash Chandra Jain v. Jagdish and Another, AIR 1958 M.P. 270* wherein the same principle has been laid down.

MAHENDRA SINGH V. STATE OF M.P. I.L.R. (2008) M.P. 2989

– Section 452 - Disposal of property – Recovery of articles from appellants – Cash without any specific mark of identification seized from appellants – Appellant denied seizure of property from himself – He failed to lead any evidence to establish entitlement to have possession of property – Held, for return of property the appellant has to claim property and establish that he is the person entitled for possession – Appellant not entitled for property – Cash amount directed to be returned to the society instead of complainant who was employee of that society – Judgment of trial court amended.

OM PRAKASH CHATURVEDI V. STATE OF M.P. ILR (2010) M.P. 1998

Section 451- Application by complainant for supurdgi of gun, subject matter of robbery, dismissed by CJM holding that the gun is subject matter of evidence during trial – Revision also dismissed by ASJ – Held, where stolen or looted articles are seized by police it should be released on supuradnama to the person who *prima facie* establish his possession over the articles – Petition allowed.

INCOME TAX OFFICER V. STATE OF M.P. & ORS. I.L.R. (2011) M.P. 2919

Sections 451 and 457- Supurdnama – Conditions therefor – Condition of deposit of value of seized silver worth 1,40,00,000 imposed while directing supurdnama to Income Tax Authorities – Held, Income Tax Authority is a Statutory Authority under Income Tax Act which is responsible to its higher authorities/tribunals and Courts of law having jurisdiction – Conditions imposed by Magistrate superfluous and redundant – Application allowed.

KAMARLAL AND ANOTHER V . STATE OF M.P. AND ANOTHER 1992 CRI. L. J. 3407 (M.P.)

Criminal P.C. (2 of 1974), S.452- Disposal of property - Acquittal of accused persons of offence of theft, they being not in possession of said property - Complainant making application for delivery of seized property but accused remaining silent about their claim to property - Accused also denying any seizure of property from them in their examination u/s 313 - Held, no claim of accused over said property was established.

1988 (11) MPWN 159 , Disting. 1989 C. Cr.J.11, Rel . on . (Para 11)

11. In the instant case, the argument of the learned counsel for the petitioners-Accused is that that the property in dispute belongs to the Accused persons and the police seized the property from the Accused persons and implanted the same for the purpose of seizure in pursuance of memorandum under S. 27 of the Evidence Act. This argument in my opinion, has no legs to stand. If the police had seized the property belonging to the Accused persons from them, it was but natural that they would have made complaint of such highhandedness on the part of police at some forum. It was also expected in that circumstances that the Accused persons would, from the very outset make a claim to the property as belonging to them but they advisedly kept silent for some time even after the complainant made an application under S. 452 of the Cr. P.C. The Accused persons also denied any seizure of the property from them in the examination of the Accused. In these circumstances, no claim has been established of the Accused over the property which was the subject matter of the alleged offence of theft. In fact, the Accused persons have been acquitted because they were not found to be in possession of the property which was allegedly seized from them. Moreover, as observed in the case of Babulal (supra) the disposal of property u/S. 452, Cr. P.C. is summary in nature and subject to proper adjudication of civil rights of the parties in a civil suit by the person aggrieved.

GOVINDACHARI V. THE STATE 1979 CRI. L. J. 428 (M.P.)

Criminal P.C. (2 of 1974), S.452- Order for disposal of property - Trial Court not bound to examine witnesses and to hold an elaborate enquiry before making the order. It is not

necessary for passing an order u/S.452 that the trial court should examine witnesses and hold an elaborate enquiry. (Para 3)

In a case on complaint of theft, no evidence was let in and the accused was acquitted of the charge u/S.380. I.P.C. The accused himself when examined by the police stated that he stole the jewels from the house of the complainant and sold them to "A". "A" in his statement u/S.161 (3) admitted that he purchased the gold and silver jewels from the accused and converted them into ingots. Held, the trial court was justified in having ordered the return of the ingots to the complainant. (Para 3)

3. I am afraid the order of the learned Sessions Judge is unsupportable. It is not necessary for passing an order under S. 452, Cr. P. C. that the trial court should examine witnesses and hold an elaborate enquiry. In this case, no evidence was let in and the accused was acquitted. Apparently after perusing the records of the case, the learned Magistrate passed an order directing the return of the property to P. W. 1. The records clearly show that from the house of Govinda Achari, the complainant to the police, a double row gold chain and a silver anklet were stolen. The accused himself when examined by the police stated that he stole the articles and sold them to Atma Rao. Atma Rao himself in his statement under S. 161 (3). Cr. P. C. admitted that he purchased the two row gold chain and the silver anklet from the accused and converted them into ingots. Atma Rao has therefore obtained the jewels from the thief and as such he could have acquired no title to the same. According to Atma Rao, the ingots were made from the jewels after melting them. In the circumstances, the trial court was perfectly justified in having ordered the return of the ingots to P. W. 1. In Tookpappa v. State (1977 Cri LJ 1850) (Kant) it has been held that while making the order of disposal of property, the Magistrate could deliver it to any person claiming to be entitled to the possession thereof or otherwise, meaning thereby that the property could be delivered even to a person not claiming to be entitled thereto, provided the magistrate was of the opinion that in the best interest of the property as well as the parties involved, the property need be delivered to him and that it was so because the order of the Magistrate is only a tentative arrangement and the final title to the property or right to possess the same are to be determined by the Civil Court or any other court of competent jurisdiction. The learned Magistrate in this case has exercised the discretion given under S. 452 Cr. P. C. rightly and the learned Sessions Judge was not right in having set aside the order of the learned Magistrate.

RAMCHANDRA KESHARWANI V. STATE OF M.P. 1995 CRI. L. J. 3296 (M.P.)

Criminal P.C. (2 of 1974), S.452- Disposal of seized stolen property

Para 3. Section 372(3) of Indian Succession Act, requires a succession certificate to be obtained in respect of any debt or debts dew to the deceased creditor or in respect of

portions thereof. This is not a claim in respect of any debt due to the deceased, which necessitates the filling of succession certificate. The order of the learned Special Rly. Magistrate insisting on the production of succession certificate for return of the case property to the applicant is, therefore, erroneous especially when the other legal heirs of the deceased Hiralal appeared in the Court and stated that they had no objection for returning the property in favour of the applicant.

GOVIND SINGH AND OTHERS V. STATE OF U.P. AND OTHERS 1986 CRI. L. J. 1445

(A) Criminal P.C. (2 of 1974), S.452- Applicability of - Disputed ornaments not proved to be stolen property - Failure of Prosecution to prove dishonest retention of ornaments by accused and co-accused - S.452 not attracted - Denial of accused as to recovery of ornaments from his possession - Forfeature of ornaments to State - Proper.

In order to attract S.452 it is essential to establish (1) that the property has been produced before the Court or is in its custody; (2) that property must be the subject matter of an offence which appears to have been committed; (3) or which has been used for the commission of an offence. (Para 17)

Where the disputed ornaments were not proved to be stolen property and prosecution failed to prove the dishonest retention of the ornaments by the accused, and further failed to prove that the retention of those ornaments by co- accused was dishonest so as to attract S.411, S.452 would not be attracted and, therefore, while disposing of the appeal it was open to the appellate Court to have ordered its return to the person from whose possession it had been recovered. Further, where the accused did not admit the recovery of ornaments from his possession the order to forfeit the property to the State was proper.(Para17)

(B) Criminal P.C. (2 of 1974), S.452- Notice to other party not essential while order u/S.452 is passed simultaneously in judgment of Criminal Case - Order for disposal recorded at time of disposal of appeal - Notice to complainant not necessary.

S.452 does not require the issue of any notice to any party by the Court while ordering the disposal of the property simultaneously in the judgment of the Criminal Case. In such cases it cannot be said that the Court should have given a separate notice to the parties to show cause in respect of the disposal of said property.

However, if an application is made after some lapse of time in that event it is proper on general principles of law and principles of natural justice that the party adversely affected by the proposed order to have notice of such an application. (Para18)

DEEN DAYAL GUPTA & ANR V. STATE OF U.P. & ANR 1999 CRI. L. J. 299

(A) Criminal P.C. (2 of 1974), S.452, S.454- Order for disposal of property - Appeal against - Powers of Appellate Court - Scope. The order for disposal of a property when recorded in a judgment of conviction may come before the Court of appeal or revision either by way of an appeal against the disposal order itself as provided under Section 454, Cr. P.C. or it may come up as a question in an appeal against the conviction itself. Whether it is an appeal under Section 454 or an appeal against the conviction passed in the judgment in which the disposal order was passed, the court of appeal could modify, alter or annul the order of disposal recorded by the Court below and make any further order that may be just. (Para 4)

(B) Criminal P.C. S.452- Accused convicted for theft and lurking house trespass - Articles recovered during investigation lying in custody of complainants - Failure on part of complainants to identify articles in a test identification parade - Direction to keep unidentified articles in Court Malkhana (Store house) - Not improper. (Para 5)

THAMPI CHETTIAR ARJUNAN CHETTIAR V. STATE & ANR 1985 CRI. L. J. 1158

(A) Criminal P.C. (2 of 1974), S.452- Proceedings for disposal of property - It could not be held as uniform rule that person producing articles or from whom articles are seized is alone entitled to custody under S.452, where accused happens to be acquitted. It cannot be held as a uniform rule that the person who produced the articles or from whom they were seized is alone entitled to custody under S.452 in all cases, where the accused happens to be acquitted. In several cases of acquittal of the accused there may be evidence or circumstances indicating that he himself or the person from whom the items were recovered is not the person entitled to legal possession and somebody else is the person entitled to possession. Therefore, regarding the disposal of the property, no uniform rule of application can be followed. Each case will have to be decided on its own merits. The Magistrate or the Judge, as the case may be, is having the discretion in the peculiar facts and circumstances of each case to decide as to who is best entitled to possession of the property on the given facts. (Paras 6, 7)

The wife 'A' filed a complaint against husband B for an offence punishable under S.406, IPC, on the ground chat after their estrangement her gold ornaments were retained and misappropriated by B.B was acquitted on a finding that evidence had not established his guilt. In proceedings regarding disposal of property, after conclusion of trial, D who had pledged the ornaments with the bank claimed to be the owner of the ornaments. D had no consistent case. He claimed to be the owner in examination-in-chief. In cross-examination he said that his brother was the actual owner but was unable to specify how his brother got those items and how he was entrusted with them. D's brother did not approach the court

claiming the valuables. During investigation in criminal case D had stated that ornaments were entrusted to him by B for being pledged with the bank. Thus D had three different versions regarding gold ornaments at three stages. From the inception A was maintaining that almost all the items contained name and other details to show that A was the owner. The search list showed that many of the items contained name of A. There was no case that entries were made after search. All the items were identified by A. B himself did not claim the ornaments. Held, that A was the person best entitled to possession of ornaments in an enquiry under S.452, Cr.P.C. 1972 KLT 61, Rel. on. (Para 17) .

(B) Criminal P.C., S.162 (1)- Statements made during investigation - Use in evidence - Statements made by person during investigation of criminal case for an offence under S.406, I.P.C. - Trial concluded and proceedings regarding disposal of property started - Prohibition by S.162(1) regarding use of statement, is not applicable to admission of statement In proceedings regarding disposal of property. (Para 13)

BAL KISHAN & ANR V. STATE OF RAJASTHAN & ORS 1984 CRI. L. J. 308

Criminal P.C. S.452, S.457, S.161, S.162- Disposal of property at conclusion of enquiry or trial - Procedure for - Statement of accused or witness can be looked into - Prohibition under S.162 - Not attracted.

The statement of an accused or a witness can be looked into for disposal of the property, which takes place at the conclusion of the enquiry or trial of a case. AIR 1943 Lahore 312, (1885) ILR 9 Bom 131, 1965 (2) Cri LJ 805 (Raj), 1965 (2) Cri LJ 702 (Raj), Foll.(Para 9)

The words "at any enquiry or trial in respect of any offence under investigation" in Sec.162, Cr.P.C. imply that such a statement cannot be used during any enquiry or trial for the offence. But the use of such a statement recorded under S.161, Cr.P.C. is not prohibited for any other purpose or in a subsequent stage of the same case after when the trial is concluded. The reception of such a statement is not prohibited for any purpose other than in the enquiry or trial. (Para 6)

Criminal P.C., S.452(5)- Property acquired by conversion or ex- change - Gold nugget in possession of accused found to be converted into from molten pieces of stolen gold ornaments - Gold nugget and currency notes are converted or exchanged properties - Due orders for their delivery to person entitled to their possession can be legally passed. (Para 11)

AMAR NATH V. STATE OF H.P. 1990 CRI. L. J. 506

Criminal P.C. (2 of 1974), S.452- Disposal of property - Order as to - Detailed inquiry and examination of witnesses not necessary - Decision can be arrived by looking and examining

facts and evidence in main case. (Para 4)

Criminal P.C. (2 of 1974), S.452,S.468- Forest Act (16 of 1927), S.33- Disposal of property - Prosecution of accused u/s. 33 of Forest Act - Acquittal of accused due to bar u/s. 468 of Cr. P.C. - Disposal of property - Confiscation of katha seized from accused in favour of State - From evidence and statements of witnesses in case, it can be safely concluded that khata in question is extracted out of illicitly felled tress - Confiscation of katha in favour of State held correct. (Para7,9,10)

STATE OF RAJASTHAN AND ANR V. GANPATLAL AND ANR 2008 CRI. L. J. 2108

Penal Code (45 of 1860), S.406- Criminal breach of trust - Property i.e. some golden bars not permissible to be retained by any persons under provisions of Gold Control Rules, 1963 read with Defence of India Rules 1962 - Cannot be said to be 'valid property' within definition of S.405 which could be legally entrusted - Its demand from accused by complainant from whose "haveli" they were claimed to have been recovered also would be illegal - Fact of recovery of golden bar from "haveli" not revealed by complainant to his father also - Plea by complainant that he had sent certain persons for demand of golden bars to accused who had been alleged to have been entrusted with same - However, no letter was given to them nor did they know address of persons from whom they were to be recovered - Possibility of registering FIR from back date could not be ruled out from facts of case - Extra-judicial confession which is weak type of evidence cannot also be relied upon in facts of case - Accused acquitted. Gold (Control) Act (45 of 1968), S.110(2)(since repealed)-(Paras13,14,15) Criminal P.C. (2 of 1974), S.452- Disposal of property - Recovered gold not proved to be in ownership of complainant as it was contraband at relevant time - Order u/S.452 already passed by trial Court for delivering gold to Gold Control Authority by virtue of S.110(2) of Gold Control Act - No record of wealth tax proved in trial prior to recovery of seized gold - Order of trial Court needs no interference. (Para18)

It is true that the learned trial Judge has passed the order of recovered gold bars conveying to the nearest Gold Control Office by virtue of Section 110(2) of the Gold Control Act because of the guilt of the accused. This is the order passed under Section 452 Cr PC, which normally a Criminal Court passes at the conclusion of the trial. This order is of course appealable under Section 454 Cr PC, but inspite of filing an appeal, a revision was filed by the complainant before the learned Additional Sessions Judge, who by his order Dt. 7-8-1978, dismissed the revision as having become infructuous by confirming the order of the learned trial Judge regarding delivery of the gold to the Gold Control Officer. Though, under wrong provisions of law, the revision has been decided by the first Appellate Court and so also this present revision petition has been filed as there cannot be a revision against the order of revision. However, in exercise of the powers vested to this Court under Section 482

Cr PC, this petition is treated accordingly and in view of the findings arrived at as above, there is no need of sending the case back to the trial Court for disposal of the case property in accordance with law under Section 452 CrPC, because firstly, as held, the recovered gold was not proved to be in ownership of the complainant as it was a contraband article at the relevant time; secondly, the trial Court has already passed the order under Section 452 Cr PC for delivering it to the Gold Control Authority by virtue of Section 110(2) of the Act at the conclusion of trial and thirdly, no record of wealth tax has been proved in the trial prior to the recovery of seized gold and whatever record has been shown to the Court is of later years. Therefore, the order of the trial Court as well as that of first Appellate Court on disposal of property need no interference by this Court.

ORIENTAL INSURANCE CO. LTD V. STATE OF KARNATAKA 1998 CRI. L. J. 2672

Criminal P.C. (2 of 1974), S.452,S.457,S.161,S.162- Disposal of property at conclusion of enquiry or trial - Procedure for - Statement of accused or witness can be looked into - Prohibition under S. 162 - Not attracted.

In the instant case, accused Nos. 1, 2, 3 and 4 in their statements recorded by the I.O. which were produced in the trial Court along with the charge sheet, have given a clear account of their commission of robbery in the complainant Bank and of their having robbed the total cash amount of Rs. 1,32,000/- from the said Bank and having distributed that booty amongst themselves. Besides, there is the evidence of I.O. on record on his recovery of currency notes on the information and at the instance of these accused. Coupled with this dependable material there was also the said material evidence of complainant and cashier of the Bank available to the learned Magistrate and the learned Sessions Judge in revision. The bundle of notes were duly identified by them as the stolen cash amount of their Bank on the basis of the shroff scrolls appended to each of those bundles, under their initials and date. In the face of that sufficient and dependable material on record there was no justification whatsoever for both the Courts below to pass the impugned orders declining the delivery of the total cash amount of Rs. 93,300/- merely on the ground that on the basis of the evidence on record the negative findings were recorded by the learned Magistrate on the material points in judgment of acquittal. Undoubtedly, on the basis of the above relevant material on record, the complainant Bank was entitled to delivery of the possession of the cash and both the Courts below have erred in law in passing their impugned orders rejecting the prayer of the complainant Bank. In that view of the matter their orders are unsustainable in law and the application of the complainant Bank u/S. 452, Cr.P.C. made for delivery of the said cash amount is entitled to be allowed. (Para 14)

RAJALINGAM V. VANGALA VENKATA RAMA CHARY & ANR 1997 CRI.L.J. 575 (A.P.)

Criminal P.C. (2 of 1974), S.452- Disposal of property, subject matter of theft - Ownership of property disputed - Serious claim as to ownership put forward by both accused and complainant - Court directed parties to establish their claim before Civil Court. 1954 Cri LJ 207 (Madras), 1979 Cri LJ 1197 (SC) and (1989) 3 Crimes 685 (Orissa) Foll. (Para 6)

As held by Madras High Court reported in Muthaiah Muthirian v. Vairaperumal Muthirian, AIR 1954 Madras 214 : (1954 Cri LJ 207) case wherein it was held : (Para 2)

"In normal circumstances, on acquittal or discharge, the property would be returned to the person from whom it was seized. But when there are circumstances showing that the culprit has not claimed the property as his specifically and when there are also no grounds to hold that the property could belong to him and the question of ownership has not been gone into in the judgment and decided one way or the other and discharge or acquittal is based upon inadequacy or doubtfulness of the proof offered, it would be unreasonable to return the stolen property to the accused person" It was further held in above said decision as follows : (Para 3)

"Where therefore, there is a doubt as to ownership of property or where a question of bona fide title by purchase or otherwise arises the duty of the Criminal Court is to leave the parties to their remedy in a Civil Court".

Following the principles laid down in the abovecited decisions and also the reason mentioned therein and in view of the observations made by the Madras High Court in Muthaiah Muthirian case this Court inclined to dispose of these two revision cases with the following observations. Since there is serious claim as to the ownership of the property involved in the case by both the accused and the complainant it is proper to direct the parties to establish their claim over the properties before the Civil Court. If such a suit is instituted by either of the parties to the proceedings before the competent Civil Court such Court shall dispose of the same within six months from the date of institution of the suit. Both the parties shall co-operate with the trial Court to get the matter disposed of if necessary by leading evidence day by day. Till then M. O. 1 namely, cash of Rs. 40,000/- in the form of currency notes shall be deposited in a nationalised bank and interest if any accrued thereon shall be returned to the party who succeeds in the Civil Court. Regarding the M. Os. 2 and 3 it is ordered that M. Os. 2 and 3 gold ornaments shall be kept in the safe custody of the nationalised bank and it shall be returned only to the person who gets order in his favour in the Civil Court.

Andhuri Podhan v. State of Odisha, 1987 CrLJ 1478 - To further be elaborative on the legal touch, the property can directly be delivered to the Chief Judicial Magistrate, who shall deal with it as prescribed under Section 457, 458 and 459. When conflicting claims are made with benefit of doubts, the Session judge can direct for a delivery of the property to

the Magistrate under Section 452(3) of the Code for disposal.

K.W. GANAPATHY V. STATE OF KARNATAKA, ILR 2002 KAR 3751

5. The production of property which has evidentiary value during evidence is a part of a fair trial. With the advanced technology, **it is not necessary that the original of the property inevitably has to be preserved for the purpose of evidence in the changed context of times.** The reception of secondary evidence is permitted in law. The techniques of photography and photo copying are far advanced and fully developed. Movable property of any nature can be a subject matter of photography and taking necessary photographs of all the features of the property clearly is not a impossible task in photography and photo copying. Besides, the mahazar could be drawn clearly describing the features and dimensions of the movable properties which are subject matters of criminal trial. Many a time, we find as a routine course, the Courts impose condition of non- alienation and to keep the property intact without alteration in any manner. Many a time such conditions act harshly upon rightful owners of the property from exercising their lawful ownership rights.

6. Irrespective of the fact whether the properties have evidentiary value or not it is not necessary that the original of the property has to be kept intact without alienation. As suggested above, the photography or photostat copy of the property can be taken and made a part of the record duly certified by the Magistrate at the time when the interim custody of the property is handed over to the claimant. In the event of the original of the property not produced in the evidence, photograph could be used as secondary evidence during the course of evidence. Ultimately, while passing final orders, it is only the value of the property that becomes a prime concern for the Court. If a person to whom the interim custody is granted, is not entitled to the property or its value and if some other person is held to be entitled to have the property or its value by taking necessary bonds and security from the person to whom interim custody is granted, the value could be recovered and made payable to the person entitled to. The rightful owners, who have lost the property by an act of crime even after detection and recovery are continued to be prevented from beneficial possession and enjoyment of the same by the archaic conditions imposed as a regular routine despite the changed context of scientific developments.

7. To illustrate, a situation one X looses gold jewellar by theft. The police successfully detect and discover the gold jewellary the same is produced before the Court. Production of gold jewellary and marking of the same in evidence to prove the same as corpus delicti is one of the insistence of law as a part of fair trial. Even after the gold jewellery is given to the custody of X to deprive him by imposing the condition of non-alienation from exercise of right ownership for unreasonable length of time would be too harsh and one sided, and a non-chalent towards the victims of crime. It may be that X require the gold jewellary for the

purpose of the marriage of his daughter or may be that he may require funds for medical treatment or other genuine needs, when he has no alternative source except by sale of the gold jewellary the condition of non-alternation in such situation would be onerous and unreasonable. The production of property during the trial having incriminating value is a insistence to secure the rights of accused as a part of fair trial. At the same time, when there is a possibility of having a secondary evidence of the said property, it is no longer necessary in law to insist that the property to be kept intact without alteration and non-alienation.

8. In order to ensure the recovery of value, it is necessary that the Trial Court shall take all necessary diligent steps to get the market value of the property, correctly assessed the photography of the property, properly taken depicting all its features and dimensions and before the property is delivered to the interim custody, the photographs have to be certified by the Magistrate. Further necessary bonds and security to be taken from the person to whom interim custody to be given for the value of the property in order to ensure prompt recovery of value from the person to whom interim custody is given. By following the said safeguards, it is no longer necessary to follow the archaic convention of imposing condition of non-alienation. After all the Court while passing a judicial order of interim custody is guided by the investigation material and other prima facie material, which support the claim and title of the person to whom interim custody is given. Having once given the interim custody to the person who is supposed to be the owner of the property, depriving him to effectively use and exercise the lawful ownership rights would be unlawful.

LENOVO INDIAN (P) LTD., -VS-THE STATE 2013 (4) MLJ(CRL) 673

Sec.451 Disposal of Properties:- Permission to sell property involved in Criminal Case-- Words 'subject to speedy and natural decay' cannot be restricted to perishable items alone – If computers or other electronic items are kept as it is, naturally, they will loose their utility value – Photograph of material object may be permitted, signature of complainant and accused to be obtained and kept in case records to be exhibited at time of trial.

KALIA AMMAI VS. STATE 2000 (2) ALT CRIMINAL 232 MADRAS.

If the offence is compounded before enquiry or trial has commenced, Section 452 Crpc does not apply.

MAKKENA SUBBANAIDU VS. STATE OF A.P. 2002 (2) ALT CRIMINAL 44.

8. In his order, inter alia, the learned Magistrate was of the view that in view of the recitals in Ex. D.1, the amount belonged to the revision petitioner herein and the said amount was paid at the house of the revision petitioner to the accused; and that the

revision petitioner was able to give denominations of the cash paid by him to the accused whereas the wife of the accused failed to give at least denominations of the cash seized by the Police; and that, therefore, her claim was only at the instance of her husband-accused. I see no plausible grounds given by the learned Sessions Judge so as to upset the said finding. Anyway, the property disposal order passed under Section 452 of the code is not a final order in as much as it is not within the realm of the Criminal Court to decide the rights of the parties. At that stage, the Criminal Court is mainly concerned with right to possession of the property but not right over the property. The rights over the property can only be adjudicated by a competent Civil Court having jurisdiction over the same. It is always open to the parties to assail the said order in a competent Civil Court or file a suit to claim the right over the property. Therefore, always and in all circumstances while directing the property to be given possession of to a particular person, it shall be the endeavour of the Criminal Court to observe that such a right is subject to the result of the decision of a competent Civil Court having jurisdiction over the matter. Any attempt in that view of the matter to decide the rights over the properties marked in a criminal case is, therefore, without jurisdiction and competence of the Criminal Court.

JASPAL SINGH @ SONU VS STATE (RAJASTH HIGH COURT) CRIMINAL MISC(PET.) NO. 3021 / 2017 DECIDED ON 13 SEP. 2017 (HTTPS://INDIANKANOON.ORG/DOC/5255659/)

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. 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.

NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES- Shakil Vs. State of M.P I.L.R. (2008) M. P. 2102

- Disposal of seized narcotic drugs and psychotropic substances -Narcotic drug and psychotropic substances can be disposed off immediately after following procedure prescribed in Section 52-A

- Investigating agency or prosecution should have taken recourse of these provisions - Trial court also suo-moto could have taken steps for disposal of seized articles.(Paras 11 & 12)

NIRMAL V. STATE OF M.P I.L.R. (2009) M.P. 848

- Disposal of seized narcotics drugs and psychotropic substances u/s 52-A-THE

aforesaid provision of disposal of seized narcotic drugs and psychotropic substances is meant for disposal of the property during the pendency of the trial and meaning of disposal means final disposal, and the property would not remain in Police custody or in the custody of the Court or in custody of Excise Department Or Central narcotics Bureau, Neemuch (M. P.). sub-section 1 of section 52-a of "the act" is assigning reason for disposal of the property and for which notification would be published by the Central Government for the official gazette specifying such narcotic drugs or psychotropic substances or clause of narcotic drugs or clause of psychotropic substances. Notification shall also specify the Officer and the manner of disposal from time to time. Before disposal of the seized property, the concerned agency will follow the procedure prescribed in sub-section 2, 3 and 4 of section 52-a of "the act", after producing the substance before any magistrate. Any magistrate means any executive or judicial magistrate, as defined in Criminal Procedure Code under section 6 and 20. The inventory of the property would be prepared and learned magistrate shall certify the correctness of inventory or in his presence photographs of such drugs or substances will be taken and certified by the learned magistrate or representative samples of such drugs or substances in presence of magistrate will be taken and magistrate will certify the correctness of list of samples. sub-section 3 of section 52-a of "the act" is issuing mandate for allowing the application filed by the police or prosecution under sub-section 2 of section 52-a of "the act" as early as possible and sub-section 4 of section 52-a of "the act" is giving status to inventory, photographs, list of samples as a primary evidence in respect of such offence, in which the narcotic drugs or psychotropic substances were seized, during the course of trial for proving the prosecution case.

UNION OF INDIA V. MOHANLAL, (2016) 3 SCC 379

The Hon'ble Supreme Court laid guidelines for Narcotic Drugs and Psychotropic Substances Act-

STORAGE

20. The Narcotic Drugs and Psychotropic Substances Act, 1985 does not make any special provision regulating storage of the contraband substances. All that Section 55 of the Act envisages is that the officer-in-charge of a police station shall take charge of and keep in safe custody the seized article pending orders of the Magistrate concerned. There is no provision nor was any such provision pointed out to us by the learned counsel for the parties prescribing the nature of the storage facility to be used for storage of the contraband substances. Even so the importance of adequate storage facilities for safe deposit and storage of the contraband material has been recognised by the Government inasmuch as

Standing Order No. 1 of 1989 has made specific provisions in regard to the same. Section III of the said Order deals with "Receipt of Drugs in Godowns and Procedure" which inter alia provides that all drugs shall invariably be stored in "safes and vaults" provided with double-locking system and that the agencies of the Central and the State Governments may specifically designate their godowns for storage purposes and such godowns should be selected keeping in view their security angle, juxtaposition to courts, etc. We may usefully extract Paras 3.2 to 3.9 comprising Section III supra at this stage for ready reference:

"3.2. All drugs invariably be stored in safes and vaults provided with double- locking system. Agencies of the Central and State Governments, may specifically, designate their godowns for storage purposes. The godowns should be selected keeping in view their security angle, juxtaposition to courts, etc.

3.3. Such godowns, as a matter of rule, shall be placed under the overall supervision and charge of a gazetted officer of the respective enforcement agency, who shall exercise utmost care, circumspection and personal supervision as far as possible. Each seizing officer shall deposit the drugs fully packed and sealed in the godown within 48 hours of such seizure, with a forwarding memo indicating NDPS crime number as per Crime and Prosecution (C&P Register) under the new law, name of the accused, reference of test memo, description of the drugs, total number of packages/containers, etc.

3.4. The seizing officer, after obtaining an acknowledgement for such deposit in the format (Annexure I), shall hand over such acknowledgment to the investigating officer of the case along with the case dossiers for further proceedings.

3.5. The officer in charge of the godown, before accepting the deposit of drugs, shall ensure that the same are properly packed and sealed. He shall also arrange the packages/containers (case wise and lot wise) for quick retrieval, etc.

3.6. The godown-in-charge is required to maintain a register wherein entries of receipt should be made as per format at Annexure II.

3.7. It shall be incumbent upon the inspecting officers of the various departments mentioned at Annexure II to make frequent visits to the godowns for ensuring adequate security and safety and for taking measures for timely disposal of drugs. The inspecting officers should record their remarks/observations against Column 15 of the Format at Annexure II.

3.8. The Heads of the respective enforcement agencies (both Central and State Govt.) may prescribe such periodical reports and returns, as they may deem fit, to monitor the safe receipt, deposit, storage, accounting and disposal of seized drugs.

3.9. Since the early disposal of drugs assumes utmost consideration and importance, the enforcement agencies may obtain orders for pre-trial disposal of drugs and other

articles (including conveyance, if any) by having recourse to the provisions of sub-section (2) of Section 52-A of the Act." (emphasis in original)

23. It is evident from the responses received from the State and the Central Government agencies that no notified storage facility-godown has been established for storage of the seized drugs. Even the Narcotics Control Bureau has admitted to using malkhana of the Courts for storage of the seized drugs in certain cases and in certain circumstances. The Customs and Central Excise Department and DRI have also stated that they have no designated storage facility for storage of contraband.

The position in the States is no different. Due to non-availability of any designated godown-facility with adequate vaults and double-lock system, the seized contraband is stored in Police Malkhana which is a common storage facility for all kinds of goods and weapons seized in connection with all kinds of offences including those specified by IPC. This is a totally unhappy and unacceptable situation to say the least.

DISPOSAL OF DRUGS

27. Section 52-A as amended provides for disposal of the seized contraband in the manner stipulated by the Government under sub-section (1) of that section. Notification dated 16-1-2015, in supersession of the earlier Notification dated 10-5-2007 not only stipulates that all drugs and psychotropic substances have to be disposed of but also identifies the officers who shall initiate action for disposal and the procedure to be followed for such disposal. Para 4 of the Notification, inter alia, provides that officer in charge of the police station shall within 30 days from the date of receipt of chemical analysis report of drugs, psychotropic substances or controlled substances apply to any Magistrate under Section 52-A(2) in terms of Annexure 2 to the said Notification.

28. Sub-para (2) of Para 4 provides that after the Magistrate allows the application under sub-section (3) of Section 52-A, the officer mentioned in sub- para (1) of Para 4 shall preserve the certified inventory, photographs and samples drawn in the presence of the Magistrate as primary evidence for the case and submit details of seized items to the Chairman of the Drugs Disposal Committee for a decision by the Committee on the question of disposal. The officer shall also send a copy of the details along with the items seized to the officer in charge of the godown. Para 5 of the Notification provides for constitution of the Drugs Disposal Committee while Para 6 specifies the functions which the Committee shall perform. In Para 7 the Notification provides for procedure to be followed with regard to disposal of the seized items, while Para 8 stipulates the quantity or the value up to which the Drugs Disposal Committee can order disposal of the seized items. In terms of proviso to Para 8 if the consignments are larger in quantity or of higher value than those indicated in the

Table, the Drugs Disposal Committee is required to send its recommendations to the head of the department who shall then order their disposal by a high-level Drugs Disposal Committee specially constituted for that purpose. Para 9 prescribes the mode of disposal of the drugs, while Para 10 requires the Committee to intimate to the head of the Department the programme of destruction and vest the head of the Department with the power to conduct a surprise check or depute an officer to conduct such checks on destruction operation. Para 11 deals with certificate of destruction while Paras 12 and 13 deal with details of sale to be entered into the godown register and communication to be sent to the Narcotics Control Bureau.

30. In order to avoid any confusion arising out of the continued presence of two notifications on the same subject we make it clear that disposal of narcotic drugs and psychotropic and controlled substances and conveyances shall be carried out in the following manner till such time the Government prescribes a different procedure for the same:

30.1. Cases where the trial is concluded and proceedings in appeal/revision have all concluded finally: In cases that stood finally concluded at the trial, appeal, revision and further appeals, if any, before 29-5-1989 the continued storage of drugs and narcotic drugs and psychotropic and controlled substances and conveyances is of no consequence not only because of the considerable lapse of time since the conclusion of the proceedings but also because the process of certification and disposal after verification and testing may be an idle formality. We say so because even if upon verification and further testing of the seized contraband in such already concluded cases it is found that the same is either replaced, stolen or pilferaged, it will be difficult if not impossible to fix the responsibility for such theft, replacement or pilferage at this distant point in time. That apart, the storage facility available with the States, in whatever satisfactory or unsatisfactory conditions the same exist, are reported to be overflowing with seized contraband goods. It would, therefore, be just and proper to direct that the Drugs Disposal Committees of the States and the Central agencies shall take stock of all such seized contraband and take steps for their disposal without any further verification, testing or sampling whatsoever. The heads of the department concerned shall personally supervise the process of destruction of drugs so identified for disposal. To the extent the seized drugs and narcotic substances continue to choke the storage facilities and tempt the unscrupulous to indulge in pilferage and theft for sale or circulation in the market, the disposal of the stocks will reduce the hazards that go with their continued storage and availability in the market.

30.2. Drugs that are seized after May 1989 and where the trial and appeal and revision have also been finally disposed of: In this category of cases while the seizure may have taken place after the introduction of Section 52-A in the statute book the non-disposal

of the drugs over a long period of time would also make it difficult to identify individuals who are responsible for pilferage, theft, replacement or such other mischief in connection with such seized contraband. The requirement of Para 5.5 of Standing Order No. 1 of 1989 for such drugs to be disposed of after getting the same tested will also be an exercise in futility and impractical at this distant point in time. Since the trials stand concluded and so also the proceedings in appeal, revision, etc. insistence upon sending the sample from such drugs for testing before the same are disposed of will be a fruitless exercise which can be dispensed with having regard to the totality of the circumstances and the conditions prevalent in the malkhanas and the so-called godowns and storage facilities. The DDCs shall accordingly take stock of all such narcotic drugs and psychotropic and controlled substances and conveyances in relation to which the trial of the accused persons has finally concluded and the proceedings have attained finality at all levels in the judicial hierarchy. The DDCs shall then take steps to have such stock also destroyed under the direct supervision of the head of the department concerned.

30.3. Cases in which the proceedings are still pending before the Courts at the level of trial court, appellate court or before the Supreme Court: In such cases the heads of the department concerned shall ensure that appropriate applications are moved by the officers competent to do so under Notification dated 16-1-2015 before the Drugs Disposal Committees concerned and steps for disposal of such narcotic drugs and psychotropic and controlled substances and conveyances taken without any further loss of time.

31. To sum up we direct as under:

31.1. No sooner the seizure of any narcotic drugs and psychotropic and controlled substances and conveyances is effected, the same shall be forwarded to the officer in charge of the nearest police station or to the officer empowered under Section 53 of the Act. The officer concerned shall then approach the Magistrate with an application under Section 52-A(2) of the Act, which shall be allowed by the Magistrate as soon as may be required under sub-section (3) of Section 52-A, as discussed by us in the body of this judgment under the heading "seizure and sampling". The sampling shall be done under the supervision of the Magistrate as discussed in Paras 15 to 19 of this order.

31.2. The Central Government and its agencies and so also the State Governments shall within six months from today take appropriate steps to set up storage facilities for the exclusive storage of seized narcotic drugs and psychotropic and controlled substances and conveyances duly equipped with vaults and double-locking system to prevent theft, pilferage or replacement of the seized drugs. The Central Government and the State Governments shall also designate an officer each for their respective storage facility and provide for other steps, measures as stipulated in Standing Order No. 1 of 1989 to ensure proper security against theft, pilferage or replacement of the seized drugs.

31.3. The Central Government and the State Governments shall be free to set up a storage facility for each district in the States and depending upon the extent of seizure and store required, one storage facility for more than one districts.

31.4. Disposal of the seized drugs currently lying in the Police Malkhanas and other places used for storage shall be carried out by the DDCs concerned in terms of the directions issued by us in the body of this judgment under the heading **"disposal of drugs".**

32. Keeping in view the importance of the subject we request the Chief Justices of the High Courts concerned to appoint a Committee of Judges on the administrative side to supervise and monitor progress made by the respective States in regard to the compliance with the above directions and wherever necessary, to issue appropriate directions for a speedy action on the administrative and even on the judicial side in public interest wherever considered necessary.