

(2014) 09 DEL CK 0148

In the Delhi High Court

Case No : Crl. M.C. 4485/2013 and Crl. M.A. No. 16055/2013

Manjit Singh

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 10-09-2014

Acts Referred:

Constitution of India, 1950 — Article 141, 16, 215, 226, 227
Contempt of Courts Act, 1971 — Section 2(b)
Criminal Procedure Code, 1973 (CrPC) — Section 170, 451, 451, 452, 452
Delhi Police Act, 1978 — Section 66, 67, 68, 69
Penal Code, 1860 (IPC) — Section 323, 341, 363, 498A, 506 (ii)
Police Act, 1861 — Section 25, 27

Citation : (2015) 2 AD 594 : (2015) 214 DLT 646

Hon'ble Judges : J.R. Midha, J

Bench : Single Bench

Advocate : Jasmeet Singh and Kritika Mehra, Advocate for the Appellant;
Sidharth Luthra, Sr. Adv., S. Rumnong, Advocate and Varun Goswami, APP,
Advocate for the Respondent

Final Decision : Allowed

Judgement

J.R. Midha, J.

Factual Matrix

1. The petitioner is the registered owner of Ford Endeavour being registration No. DL 3C AY 5481 which was stolen on 20th February, 2009 whereupon FIR No. 56/2009 was registered by P.S. Defence Colony. On 20th July, 2009, the car was recovered by the police from the accused persons and it was released by the Court to the petitioner on superdari on 4th August, 2009. The trial against the accused persons is still pending.

2. On 5th June, 2013, the petitioner moved an application u/s 451 Cr.P.C. for permission to sell the vehicle on the grounds that it was more than 5 years old, it required lot of maintenance/repair and its market value had depreciated.

3. Vide order dated 19th September, 2013, the learned Additional Sessions Judge allowed the petitioner to sell the vehicle in question subject to the condition that the prospective/intending purchaser shall execute the superdari bond to produce the vehicle as and when required. The relevant portion of the impugned order is reproduced hereunder:-

"...It has been contended on behalf of the applicant that the vehicle in question bearing registration No. DL-3CAY-5481 is the subject matter of the instant case as it was taken away from the possession the complainant. The same has been released on superdari to Harjeet Singh authorised by the applicant/owner Manjeet Singh. It is now submitted that the owner wants to sell the vehicle in question as it has become too old and its market value is also depreciating. The vehicle being more than five years old has become white elephant, very expensive to maintain as such the applicant/owner may be permitted to sell the same on the terms and conditions as may be deemed appropriate.

On the other hand, learned Additional Public Prosecutor has submitted that the case is still pending and it may require the production of the vehicle in question, therefore, the application for selling the vehicle may not be allowed. Vehicle is being used by the owner the way it is to be used and pendency of the case is no impediment.

In order to supplement his contentions, counsel for the applicant has further contended that photographs of the vehicle or appropriate Punchnama may be prepared and the applicant may be permitted to sell the vehicle as the victim would be unnecessarily be burdened to maintain it and depreciation would cause unnecessary loss, which he does not want to suffer. In view of the judgment in *Sunderbhai Ambalal Desai and C.M. Mudaliar Vs. State of Gujarat*, , it is submitted that the vehicle may be allowed to be sold without any condition of superdari.

So far as the proposition laid down in the judgment above referred is concerned, there cannot be any two opinions. However, this judgment nowhere says that the permission to sell is to be given invariably. The judgment primarily talks of allowing the owner to use a particular object but the same shall remain on superdari bond. The permission to sell is required to be given only in those cases where the case property is of perishable nature. The vehicle in question since does not fall into the perishable category and it is only five-six years old. Normally an automobile is kept and maintained for decades in this country. Therefore, in such circumstances, the application moved on behalf of the applicant does not have any sound basis, especially when it is with him for his use without there being any restrictions.

The case is still pending and the vehicle in question may be required during the evidence. The possibility that the accused from whose possession it has been allegedly recovered may also stake a claim which depends upon the outcome of the case and above all, the contentions that the vehicle has become useless or

very expensive to maintain does not go down well in view of the fact that it is merely five years old. Therefore, in such circumstances, when the vehicle would be required during the proceedings of the case and production of the vehicle cannot be dispensed with. However, if the applicant wants to sell it, he may do so with the condition that the prospective or intending purchase should step into his shoes and execute superdari bond to produce the vehicle during the proceedings as and when required. With these observations, the application stands disposed of."

Petitioner's contentions

4. The petitioner is aggrieved by the condition imposed by the learned Sessions Court and has sought the permission to unconditionally sell the vehicle in question on the ground that the impugned order is in clear violation of the principles laid down in *Sunderbhai Ambalal Desai and C.M. Mudaliar Vs. State of Gujarat*, *Sunderbhai Ambalal Desai and C.M. Mudaliar Vs. State of Gujarat*, and *General Insurance Council and Others Vs. State of Andhra Pradesh and Others*, in which the Supreme Court held that the photographs of the vehicle can be used as secondary evidence during trial and it is not necessary to produce the vehicle at the time of trial. It is submitted that the learned Sessions Court has imposed unreasonable and arbitrary condition contrary to the well settled principles of law.

Present status of the case properties in custody of Delhi Police

5. During the course of the hearing dated 17th February, 2014, learned counsel for the petitioner pointed out that the Courts are not following the principles laid down by the Supreme Court and large number of vehicles are lying inside the police stations as well as on public places/roads. In order to ascertain the present status, this Court directed the Delhi Police to furnish the following relevant data with respect to the case properties with the police:

"(i) Total number of vehicles in custody of Delhi Police due to involvement in various offences. Give particulars as to the type of vehicles, period of custody and the condition of vehicles.

(ii) Whether the seized vehicles are lying inside the police station. If not, whether the police has any arrangement to keep them or they are lying on the road or public space.

(iii) The status of the claim in respect of the said vehicles vis-?-vis whether the custody of the said vehicles has been claimed and if so, the reason for non-release of the vehicles.

(iv) Measures to ensure the safety of the vehicles.

(v) The status of the proceedings in which the vehicles are involved vis-?-vis whether the proceedings are still pending or have finally concluded.

The Delhi Police shall also compile a similar data with respect to the properties other than the vehicles, in custody of the Police as case property. The Delhi

police shall place the relevant photographs on record to enable this Court to appreciate the magnitude of the problem."

6. In compliance with the above directions, Delhi Police filed an affidavit dated 3rd April, 2014 in which they disclosed the following information:-

6.1 Vehicles in custody of Delhi Police

6.1.1 Delhi Police is in custody of 25,790 vehicles involved in various offences out of which 20,023 vehicles are in custody for more than a year.

6.1.2 Only 5,827 vehicles are roadworthy whereas 19,970 vehicles are not roadworthy.

6.1.3 19,411 vehicles are lying inside the police stations whereas 2,479 vehicles are lying on the roads/public places.

6.1.4 The claim has been made in respect of 582 vehicles whereas 25,215 vehicles have not been claimed.

6.1.5 Out of 25,547, 2,715 cases are pending investigation, 17,504 cases are pending trial and 5,328 cases have been decided.

6.1.6 No measures have been taken by the Delhi Police to ensure the safety of the vehicles.

6.2 Properties other than vehicles in custody of Delhi Police

6.2.1 Delhi Police is in custody of 2,81,813 properties other than vehicles out of which 2,42,283 are in custody for more than a year.

6.2.2 The condition of 2,13,323 properties is sustainable whereas condition of 60,400 is not sustainable.

6.2.3 The properties lying inside the police stations are 2,79,214 whereas 1,163 properties are lying on the roads/public places.

6.2.4 Out of 2,75,121, only 905 properties have been claimed.

6.2.5 Out of 2,81,003 cases, 30,655 are pending investigation; 2,09,208 cases are pending trial and 41,163 have been disposed of.

6.2.6 No measures have been taken by Delhi Police for safety of the properties.

7. The Delhi Police has placed on record 21 photographs which show that the vehicles in the custody of Delhi Police have been reduced to junk.

Response of Delhi Police

8. The properties seized by the Police during the course of preliminary inquiry or investigation under Criminal Procedure Code, 1973 and Special Laws are produced before the concerned Magistrate. The seized articles are then deposited in the storage facility in a police station termed as Malkhana prescribed under

Chapters XXII & XXVII of the Punjab Police Rules of 1934. The Moharrir Head Constable (Malkhana)(in short MHCM) and Moharrir Head Constable (Case Property) [in short MHC(CP)] are the custodian of the case properties. The case properties are entered in prescribed registers by MHCM. These properties are produced by MHC(CP) before the Court as and when directed and at the stage of recording of evidence.

9. Delhi High Court Rules-Part E of Chapter XI of Volume III deal with custody and disposal of properties sent by the police. The properties, other than counterfeit coins together with the implements for their manufacture and implements used for forgery, remain in the custody of the Police pending the disposal of the case. However after the decision of the case, the properties, if not returned to the owner, are handed over to the Nazir for safe custody or disposal, as the Magistrate may direct. The Counterfeit coins together with the implements for their manufacture remain in the custody of the Police Department pending the disposal of the case. At the conclusion of the case and not till after the appeal or revision, if any, the Court sends the properties to the Treasury or Sub-Treasury together with a short description of the case. However, implements used for forgery, remain in the custody of the Police during the trial but at the conclusion of the case but after the appeal or revision, if any, the articles are handed over to the Police for their destruction or for such other action as may be found suitable in accordance with the rules. The property comprising of bullion, coins, currency notes, jewels etc. above Rs. 1000 in value is handed over to the Treasury officer instead of Nazir.

10. Part-A of Chapter X of Volume IV of the Delhi High Court Rules prescribes that any property which has been attached by the Court in execution of the decree and remain unclaimed shall be disposed of in accordance with the Section 25 and 27 of the Police Act. Part-B of the Rules provide for disposal of property attached under the Code of Criminal Procedure and Part-C of the Rules provide for disposal of arms and ammunitions. However, all arms, which have been forfeited by the Government and have not been ordered to be destroyed by a Court, may be sold under the order of the District Magistrate.

11. The current mechanism for disposal of the case properties is being done by the District Nazir for whole of Delhi. The District Nazir covers all the nine districts and about 181 police stations. The District Nazir is not able to cope up with the heavy backlog of the properties due to shortage of necessary infrastructure.

12. Delhi Police has a specialized Unit named "Provisioning and Logistics Unit" (hereinafter referred to as P&L Unit) which deals with disposal of unclaimed properties taken into custody u/s 66 of Delhi Police Act, 1978. The P&L Unit has a proper infrastructure for procurement and disposal of unclaimed properties as per the procedure laid down in Sections 67, 68 and 69 of Delhi Police Act. The P&L Unit of Delhi Police also deals with the disposal/auction of condemned vehicles/Government stores which includes furniture, office equipments, arms and ammunitions and even radioactive material. The disposal of the arms and

ammunitions is done through the Ordinance Depots/Factories. The P&L Unit is also conducting auction of unserviceable and condemned goods by tender/public auction. Delhi Police has also an agreement with M/s. Metal Scrap Trading Corporation Ltd. for disposal of the equipments. In the last three years, P&L Unit has auctioned 7115 unclaimed condemned government vehicles. The P&L Unit of Delhi Police is ready to take the responsibility for disposal of case properties.

13. The Government of NCT Delhi, Department of Revenue has introduced structural and systematic reforms and proposed the scheme for decentralization of Nazarat Branch in the 12th Five Year Plan (2012-17). Thereafter, a more detailed draft of the Write-Up of Plan Schemes for Annual Plan (2013-14) was proposed which provided a detailed proposal for decentralization of Nazarat branch.

14. The volume of the case properties in Delhi have acquired gigantic proportions and have consumed enormous space inside as well as outside the police stations. Lack of covered space exposes the heavy and bigger case properties particularly the vehicles, large equipments and furniture to the vagaries of weather which reduce the life and value of the properties.

15. A large number of vehicles are lying in the custody of the police because the owners of the said vehicles have already claimed insurance and the insurance companies are not interested to take the vehicle to save the money for lifting, storage and disposal of vehicles. It would be appropriate to order such vehicles to be disposed of by auction.

Suggestions of Mr. Sidharth Luthra

16. Since the law with respect to the disposal of properties is well settled by the Supreme Court in Smt. Basava Kom Dyamogouda Patil Vs. State of Mysore and Another, , Sunderbhai Ambalal Desai v. State of Gujarat (supra), Sunderbhai Ambalal Desai v. State of Gujarat (supra) and General Insurance Council v. State of A.P. (supra), the police has to produce the case properties before the Court within one week of the seizure and the concerned Court has to pass appropriate order within the time limit of one month fixed by the Supreme Court.

17. The volume of articles in custody of Delhi Police have acquired unmanageable proportions and have consumed enormous space at Police Stations, both in the Malkhana and in other spaces, besides creating a humongous back log in their disposal. The lack of space with Delhi Police and an ineffective mechanism for disposal exposes the bigger case properties such as vehicles, equipments and furniture to the damage by weather.

18. As per the details provided by the Delhi Police, the total number of case properties lying in all the Police Stations of Delhi are as under:-

19. The disposal of case properties has to be expeditiously ordered by the Courts as per the procedure prescribed in Section 451 to 459 Cr.P.C. When an application is moved by a SHO for disposal of any case property u/s 451 or 457

Cr.P.C., immediate direction has to be passed by the concerned Court. Wherever necessary, notice should be issued to the owner/any other interested party to submit reply within one week as to their title or claim or objection to disposal by destruction of the seized property. The final order should be passed by the Court within one month of the receipt of application from the SHO.

20. In case of perishable properties or those subject to speedy and natural decay, disposal should be ordered keeping in view the expected life of the property rather than the conclusion of investigation/trial. Certain items like vehicles, which also deteriorate with time, speedy disposal shall similarly be ensured to effectively implement the mandate of the Supreme Court in *Sunderbhai Ambalal Desai v. State of Gujarat* (supra) that articles are not to be kept for a period of more than one month. As regards valuable articles and currency notes, mandate of the Supreme Court as prescribed in above mentioned judgments should be strictly ensured.

21. The narcotic drugs, liquor, fake and pirated merchandise, adulterated food products and spurious medicines, inflammable/volatile materials and other seized items, warrant destruction and their destruction/disposal u/s 451, 457, 458 and 459 Cr.P.C. should not await completion of the trial and may be ordered if there is no provision in a Special Statute governing the proceedings after retaining samples and/or photographs of the seized properties and the concerned Court should pass the order within one month of receipt of application by the SHO.

22. As regards food-grains and other edible articles, immediate steps should be taken by releasing them on superdari or disposal by auction keeping in view the shelf life of the seized articles. Wherever third party interest is involved, the concerned party should be notified, within three days of receiving the request made by SHO, with direction to file reply within one week. Final order of the Court should be passed within one month of the receipt of application seeking disposal of the property by SHO.

23. Where the disposal orders by Court require either destruction or auction of a case property, P&L Unit of Delhi Police be given the responsibility of the disposing of the properties.

24. Wherever any property e.g. vehicles, for which final disposal orders have been issued and the ownership in the property vests in the Insurer, the order should specify the obligation on the part of the Insurer to take charge of the property from Police within 15 days of receipt of a written request from the concerned SHO to that effect. Where Insurer fails to take charge of the property and an application is moved by the SHO, Insurer should be summoned by the Court and asked to show cause why the property should not be confiscated and auctioned and proceeds of auction deposited with government. Such notice to Insurer should be issued within one week of receipt of application by SHO and the Insurer be given opportunity to reply within 10 days of receipt of the notice. Final order for confiscation/handing of property to Insurer should be passed

within one week of receipt of reply from Insurer. Where Insurer fails to reply to the notice within the time prescribed, ex-parte order be passed within one week. Disposal of such properties by auction should also be done by DCP/Provisioning & Logistics following due procedure.

Relevant provisions of Code of Criminal Procedure

25. Chapter XXXIV-DISPOSAL OF PROPERTY

25.1 Section 451. Order for custody and disposal of property pending trial in certain cases.-When any property is produced before any Criminal Court during an inquiry or trial, the court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation. For the purposes of this section, property includes-

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

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

25.2 Section 452. Order for disposal of property at conclusion of trial.-(1) 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.

(2) An order may be made under sub-section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond, with or without sureties, to the satisfaction of the court, engaging to restore such property to the court if the order made under subsection (1) is modified or set aside on appeal or revision.

(3) A Court of Session may, instead of itself making an order under sub-section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in sections 457, 458 and 459.

(4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub-section (2), an order made under sub-section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

(5) In this section, the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such

property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

25.3 Section 457. Procedure by police upon seizure of property.-(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

25.4 Section 458. Procedure when no claimant appears within six months.-(1) If no person within such period establishes his claim to such property, and if the person in whose possession such property was found is unable to show that it was legally acquired by him, the Magistrate may by order direct that such property shall be at the disposal of the State Government and may be sold by that Government and the proceeds of such sale shall be dealt with in such manner as may be prescribed.

(2) An appeal shall be against any such order to the court to which appeals ordinarily lie from convictions by the Magistrate.

25.5 Section 459. Power to sell perishable property.-If the person entitled to the possession of such property is unknown or absent and the property is subject to speedy and natural decay, or if the Magistrate to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner, or that the value of such property is [less than ten rupees], the Magistrate may at any time direct it to be sold; and the provisions of Sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale.

Delhi High Court Rules

26. Part E of Chapter XI of Volume III of Delhi High Court Rules

"Custody of property sent in by the police

1. Kinds of property sent in by Police--Property sent in by the Police is usually of three kinds :

(i) Articles including (a) counterfeit coins, together with implements for their manufacture, such as dyes, moulds, etc., and (b) implements, such as, dyes,

moulds, etc., used in the forgery of currency notes, transmitted to the Magistrate, u/s 170 of the Code of Criminal Procedure, with the Police report in cases sent up for trial.

(ii) Property seized by the Police as stolen property or upon suspicion, and ordered by, the Magistrate, u/s 523 of the Code of Criminal Procedure [Section 457 of new Code] to be forwarded to headquarters.

(iii) Property taken charge of by the Police u/s 25 of the Police Act, (Act V of 1861), and ordered by the Magistrate of the districts to be forwarded to headquarters.

2. Custody and disposal of the property--(a) With regard to property referred to in Rule (I)(i) above, other than articles enumerated in (a) and (b) the Police Department will retain charge of it pending the disposal of the case. When the case is decided, the property, if not returned to the owner, will be made over to the Nazir for safe custody or otherwise disposed of, as the Magistrate may direct.

(b) Articles enumerated in 1 (i)(a) above will remain in the custody of the Police Department pending the disposal of the case. At the end of the case and not till after the appeal or revision, if any, the Court shall send them to the treasury or Sub-Treasury together with a short description of the case; and

(c) Articles enumerated in 1 (i) (b) above produced in and confiscated by a Court shall remain in the custody of the Police Department during the trial of the case. At the end of the case and not till after the appeal or revision, if any, the Court shall make the articles over to the Police Department for their destruction or for such other action as may be found suitable in accordance with the rules of that department.

3. Custody and disposal of the property--Property of the second kind, when sent in to headquarters, will remain in the custody of the Police until the Magistrate makes an order for the issue of a proclamation u/s 523 of the Code of Criminal Procedure [Section 457 of new Code] when it should be transferred to the custody of the Nazir or otherwise disposed of as the Magistrate may direct.

4. Custody and disposal of the property--Property of the third kind should on arrival at headquarters be made over at once to the Nazir by the Police Department.

5. Custody of coins, currency notes, etc.--In any individual case where the property consists of bullion, coin, currency notes, valuable securities or jewels, and is of great value, say, above one thousand rupees, it should instead of being made over, under the preceding rules to the Nazir, be made over the Treasury Officer; coin or currency notes (other than counterfeit coin and notes) will be treated as regular deposits, bullion at its estimated value in cash, and securities, irrespective of their face value, and jewels will be deposited for safe custody, and an entry made not in the ordinary register, but in a special register which should be countersigned every month by the Deputy Commissioner. The orders of the

Deputy Commissioner should first be obtained by the Police before placing bullion or jewellery, etc., for safe custody at the Treasury.

6. Responsibility of Police for safe custody--Until the property is, under the preceding rules, made over to the Nazir or the Treasury, the Police Department will continue to be responsible for its safe custody. When so made over, the responsibility for its safe custody will rest with the Nazir and Treasury, as the case may be."

27. Part C of Chapter X of Volume IV of Delhi High Court Rules

"Arms and Ammunition

The following rules have been framed by the Punjab Government for the guidance of officers dealing with arms, ammunition and military stores deposited in district malkhanas:--

Rules

1. Nazarat Officer--Separate room in Malkhana under double lock to be provided for custody of arms, etc.--A separate room in every district malkhana shall, if possible, be set apart for the deposit of arms, ammunition and military stores. Where such a separate room is used, it shall be kept under double lock, one key being retained by the officer of the headquarters staff responsible for the supervision of the malkhana, who is referred to in these rules as the "Nazarat Officer," and the other by the "District Nazir".

2. Responsibility of the Nazarat Officer--The Nazarat Officer shall be generally responsible for the supervision and disposal of arms, ammunition and military stores deposited in the malkhana. He shall compare the arms, ammunition and military stores in stock in the malkhana with the register prescribed by rule 4 once a month, and shall submit a report of this inspection to the District Magistrate by the 10th of each month.

3. Responsibility of the District Nazir--Subject to the control of the Nazarat Officer, the District Nazir, and not any of his assistants, shall be held personally responsible for the proper receipt, safe custody and disposal of all arms, ammunition and military stores.

4. Register of Arms, etc., deposited in malkhana--Particulars of all arms, ammunition or military stores received in the malkhana shall at once be entered in register to be kept for this purpose, in addition to Miscellaneous Register F, in form I appended to these rules. On the receipt of any arms, ammunition or military stores, columns 1 to 13 shall forthwith be filled up, and the register shall then be submitted to the Nazarat Officer who, after satisfying himself as to the accuracy of the entries, shall place his initials in columns 14.

5. Return of arms, etc., deposited in the malkhana--Arms, ammunition and military stores which have been deposited in the malkhana, and have not been forfeited to Government, shall be returned to the persons entitled to possess

them in cases in which the deposit was made by a Court, under the orders in writing of that Court and in other cases under the orders in writing of the Nazarat Officer. The return of all arms, ammunition and military stores under this rule shall take place in the presence of a Gazetted Officer, who shall be responsible for seeing that the relevant columns of the register are filled up. 6. Sale of arms, etc., forfeited and not ordered to be destroyed--All arms, ammunition and military stores which have been deposited in the malkhana, and have been forfeited to Government, and have not been ordered by a Court to be destroyed, may be sold under the orders in writing of the District Magistrate to persons entitled to possess them. A specific and distinct order must be passed with respect to the sale of each weapon or of each lot of ammunition or military stores proposed to be sold, and the sale price must be fixed by the District Magistrate unless the sale is to be by auction. In passing orders for the sale of arms, ammunition and military stores, the District Magistrate should remember that arms, ammunition and stores which can be utilized by the police or by any department under Government may be retained and brought into use with the sanction of the State Government, and should refer for orders any case in which it appears that it would be to the advantage of Government that the arms, ammunition or stores should be retained.

7. Magistrate dealing with administration of the Indian Arms Act to be informed of the sale--The officer of the headquarters staff who, under the orders of the District Magistrate, deals in the first instance with questions relating to the administration of the Indian Arms Act, 1878, and of the rules thereunder, shall be informed of the sale of all arms, ammunition and military stores, and shall be furnished with a full description of the articles sold and with information as to the address of the purchaser.

8. Procedure for destruction of arms, ammunition and military stores--All arms, ammunition and military stores which have been ordered by a Court to be destroyed, or for the destruction of which the District Magistrate, after considering the possibility of their disposal under Rule 5, has passed express orders, shall be dealt with as follows:--

(a) All rifled fire-arms and fire-barrels, pistols and revolvers shall be sent to the nearest Ordnance Officer, under proper precautions, to be broken up. The Nazarat Officer shall advise the Ordnance Officer concerned of the despatch of such arms, and shall personally supervise their despatch. He shall also inform the District Magistrate as soon as he has actually despatched them, and shall, in due course, submit the receipt of the Ordnance Officer to the District Magistrate for his information.

(b) All arms, other than those referred to in clause (a) of this rule, ammunition and military stores shall be broken up or destroyed locally in the presence of the Nazarat Officer and the materials (if any) remaining shall be sold. When the procedure prescribed by this rule has been completed, the relevant columns of the register shall be filled up. It is of great importance that the number of

articles awaiting disposal under this rule should not be allowed to become excessive. Articles, the destruction of which has been ordered, should be kept as far as possible separate from the remainder of the arms, ammunition and military stores in the malkhana, and should be despatched to the Arsenal or destroyed locally, as the case may be, at least once a month. A simple register of such articles should be kept in Form II appended to these rules.

9. Register No. 1 to be opened a new every year. Its checking by the Nazarat Officer and the District Magistrate The register mentioned in Rule 4 shall be an annual register. At the beginning of each year a new register shall be opened on to which all arms, ammunition and military stores lying in the malkhana shall be brought before the 10th of January. The Nazarat Officer shall be personally responsible for seeing that all arms, ammunition and military stores not shown as disposed of in the previous year's register are in the malkhana, and he shall at once report if there is any deficiency. The District Magistrate shall, during the month of January, check the entries in the register with the arms in the malkhana, and, in order to satisfy himself that the register has been properly prepared, he shall examine a sufficient number of entries in the previous year's register. He shall specially arrange for the disposal of arms liable to sale or destruction if their number is excessive."

Standing Order of Delhi Police

28. Standing Order No. Ops.-38 of Delhi Police deals with the disposal of properties, relevant portion of which is reproduced hereunder:-

"(C) Disposal of Properties

Chapter XXXIV of the Code of Criminal Procedure, 1973 deals with the disposal of property taken in possession or seized during investigation of a case. However, no provision exists either in the Code of Criminal Procedure or in the Punjab Police Rules, 1934 regarding the period for which property seized by the police, in cases which are ultimately filed as untraced or cancelled or the case which go in appeal, should be kept pending by the police. Therefore, Standing Order No. 57 of 1988 was issued vide no. 28894-904/C&T (AC-V) dated 18.10.88 relating to disposal of properties kapt in the Malkhana.

1. Untraced Cases

Only that property, which is likely to be of evidentiary value to the prosecution in the event of the case being traced, shall be retained with the approval of the Assistant Commissioner of Police for a period of 5 years from the date of order of the Magistrate for keeping the case as untraced. A conscious scrutiny of the case file and property seized should be done by the SHO for this purpose as soon as a case has been sent as untraced and specific orders of the ACP for retention of property obtained. The ACP should also check pending properties in untraced cases, particularly during his periodical visits to the police station concerned. Such retained properties should be disposed of under the orders of a Magistrate

only after the destruction of the file of the case in accordance with the provisions of P.P.R. 27(39)(5)(II). All other property shall be disposed of immediately after the orders for sending the case as untraced are passed by the Magistrate. All the case property in the untraced cases shall be disposed of immediately only after obtaining the orders from the concerned MM for final disposal and not otherwise.

2. Cancelled Cases

Once a case has been cancelled, the property need not be retained. All such property shall be disposed of immediately after the orders of cancellation of the case are passed by the Magistrate. The SHO shall, however, obtain specific orders from the Magistrate for the disposal of such case property.

3. Cases under Appeal

Since appeal is in continuation of the trial process, the case property connected with criminal cases shall not be disposed of or destroyed without ascertaining facts regarding filing of appeals either by the state or by the accused. The property in such cases should not be destroyed or disposed of till the finalization of the Appeals/Writ Petitions/Special Leave Petitions etc., if any. Before doing so, a clearance report should be had from the office of the Chief Prosecutor of the District or the Standing Counsel (Criminal) in the High Court or the Senior Government Advocate, Central Law Agency, Supreme Court as the case may be.

4. Unclaimed Property

Where any property has been taken in charge u/s 66 of D.P. Act, the same may be disposed of as per the provisions contained in Sections 67, 68 and 69 of the D.P. Act, 1978.

5. Decided Cases

The case property of decided cases, in which no appeal or writ petition is pending or which is otherwise not required to be kept in the Malkhana be disposed of with the approval of the Court as per provisions contained in Chapter XXXIV of the Code of Criminal Procedure. The MHC(CP) should put up details of all such cases before the Inspector(CI) who would scrutinize each and every case and then put up to SHO for initiating process for the disposal of such case property. They would take all precautions before the case property which are no longer required are disposed of.

6. Personal Search Items

The personal search items recovered from the accused persons shall be disposed of under the orders of ACP concerned only after ascertaining that no appeal, or revision, etc. is pending before Sessions Court or the Hon'ble High Court or the Hon'ble Supreme Court of India. In case, any appeal or revision is pending in any of the above courts, then personal search items shall not be disposed of till final decision in the said appeal or revision. The SHO should be very conscious and careful prior to the disposal of the personal search items as sometimes the

personal search items recovered from the accused persons are also material and essential incriminating evidence against the accused in the trial. Therefore, the SHO should keep in mind the above facts while reporting on the application of the accused person for return of personal search items and should not consent for return of personal search items which are also a part of the incriminating evidence against the accused.

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Section-III

Role of Sho and Supervisory Officers

A. Role of SHO, Inspector (L&O) & Inspector (CI)

Rule 22.15 of PPR states that "...every officer in charge of the station shall examine the property at least twice a month and shall report in the following Monday's diary that he has done so...". While this is not possible for an SHO to examine all case properties by just doing checking twice a month keeping in view the sheer volume of articles, he should at least check some articles, say 30 or 40 in a fortnight and record an entry in the Daily Diary. Inspector (L&O) and Inspector (CI) shall also do this exercise on a fortnightly basis. They should in particular check that the items are readily available in the Malkhana and are properly labeled, indexed and kept in an orderly manner and there is no scope of their being decayed or destroyed or stolen.

They MHC(CP) and SHO would also ensure that the disposal of case properties after finalization of the case in the court is done and no item is kept pending in the Malkhana once the case has been finally decided.

B. Role of ACP and other Senior Officers

The supervisory officers must check Malkhana Register and Government Property Registers invariably whenever they visit the police stations and cross-check a few properties to ensure that there is no misappropriation of articles. They should also ensure that SHO/Inspector (L&O)/Inspector (CI) are making regular checking of both the Malkhanas.

C. Formal Inspection & Annual Inspection

Formal inspections of the police stations are done on a half-yearly basis. The Inspecting Officers while conducting formal inspections should invariably check all the "costlier and important" items and as many other articles as they can. They should take from the Reserved Inspector a list of all articles issued during the preceding six months (for the period under inspection) from the District General Store and tally them with the articles available/consumed in the police station.

Now, annual inspections of the Malkhanas in all the police stations shall also be done, independent of the formal inspections, by an officer of the ACP rank. This

inspection shall be carried out invariably in January each year. The district DCP would nominate the officers to conduct annual inspections in the first week of January each year who would complete the inspection within three weeks or latest within a month. His inspection report would contain details of each case property lying in the Malkhana along with his remarks after physical checking.

The supervisory officers and the inspecting officer would also see that the disposal of case properties of decided cases is done on a regular basis, besides the general upkeep of the properties in the Malkhanas."

(Emphasis supplied)

Relevant judgments

29. In Smt. Basava Kom Dyamogouda Patil Vs. State of Mysore and Another, , the Supreme Court dealt with a case in which the recovered ornaments kept in a trunk in the police station were found missing and the owner of the property sought indemnification. The question arose with regard to payment of those articles. In that context, the Court observed as under:-

"4. The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police it ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The High Court and the Sessions Judge proceeded on the footing that one of the essential requirements of the Code is that the articles concerned must be produced before the Court or should be in its custody. The object of the Code seems to be that any property which is in the control of the Court either directly or indirectly should be disposed of by the Court and a just and proper order should be passed by the Court regarding its disposal. In a criminal case, the police always acts under the direct control of the Court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the Court exercises an overall control on the actions of the police officers in every case where it has taken cognizance."

(Emphasis supplied)

The Supreme Court further observed that where the property is stolen, lost or destroyed and there is no prima facie defence made out that the State or its officers had taken due care and caution to protect the property, the Magistrate

may, in an appropriate case, where the ends of justice so require, order payment of the value of the property. The relevant portion of the judgment is reproduced hereunder:

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

7...It is also clear that in the instant case, no plea had been taken by the State that the property was lost inspite of due care and caution having been taken by it or due to circumstances beyond its control. On the other hand, while all the articles were stolen from the trunk kept in the guardroom of the police station, except the formality of a report having been lodged, no action seems to have been taken by the State against the Sub-Inspector or the officers who were responsible for the loss of the property, even to this date. In these circumstances, therefore, the State cannot be allowed to successfully resist the application filed by the appellant."

30. In *Sunderbhai Ambalal Desai v. State of Gujarat* (supra), gold ornaments and other articles lying at the police stations were illegally replaced by the police personnel with spurious articles. The Supreme Court examined the scope of Sections 451 and 457 Cr.P.C. and held that Section 451 Cr.P.C. should be exercised expeditiously and judiciously. The observations of the Supreme Court are reproduced hereunder:

"5. Section 451 clearly empowers the Court to pass appropriate orders with regard to such property, such as--

- (1) for the proper custody pending conclusion of the inquiry or trial;
- (2) to order it to be sold or otherwise disposed of, after recording such evidence as it thinks necessary;
- (3) if the property is subject to speedy and natural decay, to dispose of the same.

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7. In our view, the powers u/s 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

With respect to the valuable articles and currency notes, the Supreme Court held as under:

"11. With regard to 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 u/s 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; and
- (3) after taking proper security.

13. For this purpose, the court may follow the procedure of recording such evidence, as it thinks necessary, as provided u/s 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 u/s 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."

(Emphasis supplied)

Vehicles

With respect to the vehicles seized by the police for involvement in various offences, abandoned vehicles and vehicles which are recovered during

investigation of complaint of thefts, the Supreme Court observed as under:-

"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 and narcotic drugs

With respect to seized liquor and narcotic drugs, the Supreme Court observed as under:-

"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 u/s 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."

Time limit for release

The Supreme Court further directed that the powers u/s 451 Cr.P.C. should be exercised promptly and articles should not be kept for not more than 15 days to one month. The observations of the Supreme Court are as under:-

"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 u/s 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."

(Emphasis supplied)

31. In *Sunderbhai Ambalal Desai v. State of Gujarat* (supra), the Supreme Court clarified that the endorsement of the accused be taken on the photograph if the accused disputes his involvement in the offence and no article was found from him. The Supreme Court further observed that seizure report is sufficient and there may not be any necessity to produce the vehicle before the Court.

The relevant portion is reproduced hereunder:

"2. In our view, no further directions are required to be given in these matters. However, it is made clear that in case where the accused disputes that he is not involved in the alleged incident and no article was found from him then such endorsement be taken on the photograph. Further, with regard to the vehicle also, it is made clear that there may not be any necessity of producing the vehicle before the court and the seizure report may be sufficient..."

(Emphasis supplied)

32. In *General Insurance Council v. State of A.P.* (supra), the Supreme Court noted that the police, investigating as well as prosecuting agencies were not taking adequate steps for compliance of the directions in *Sunderbhai Ambalal Desai v. State of Gujarat* (supra) which has resulted in loss of assets worth several hundred crores and the recovered vehicles are reduced to junk by the time they are released. The Supreme Court gave fresh directions in this matter. The relevant portion of the judgment is as under:

"3.... They further contended that despite the directions passed by this Court in *Sunderbhai Ambalal Desai* and *C.M. Mudaliar Vs. State of Gujarat*, , as also in *General Insurance Council and Others Vs. State of Andhra Pradesh and Others*, , there has not been full and complete compliance with the same. Therefore, they have once again approached this Court for issuing further directions so that national waste with regard to the seized vehicles involved in commission of various offences may not become junk and their roadworthiness be maintained.

4. According to the petitioners, in the report of 2005 of NCRB, 84,675 vehicles were reported lost, out of which 24,918 vehicles were recovered by the police and out of these, only 4676 vehicles were finally coordinated. As a result, several hundred crores worth of assets were lost. Further, by the time the recovered vehicles are released, the same are reduced to junk at the respective police stations. In other words, the petitioners have prayed that national waste that is being caused could be substantially reduced, curbed and eliminated to a great extent. Keeping in view the aforesaid facts in mind, they have filed this writ petition."

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10. Despite the aforesaid directions having been issued by this Court in the

aforesaid two matters, grievance is still being made by the petitioners, that the police, investigating agency and the prosecuting agency are not taking appropriate and adequate steps for compliance with the aforesaid directions issued by this Court. Therefore, a need has arisen for giving further directions so as to clear the clouds and iron out the creases.

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13. ...We also feel, it is necessary that in addition to the directions issued by this Court in *Sunderbhai Ambalal Desai and C.M. Mudaliar Vs. State of Gujarat*, 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."

(Emphasis supplied)

The Supreme Court further observed that the Inspector General of Police of the division/Commissioner of Police concerned of the cities/Superintendent of Police concerned of the district concerned shall be responsible for implementation of the statutory provisions and the directions of the Supreme Court. The relevant directions are as under:

14. It is a matter of common knowledge that as and when vehicles are seized and kept in various police stations, not only do they occupy substantial space in the police stations but upon being kept in open, are also prone to fast natural decay on account of weather conditions. Even a good maintained vehicle loses its roadworthiness if it is kept stationary in the police station for more than fifteen days. Apart from the above, it is also a matter of common knowledge that several valuable and costly parts of the said vehicles are either stolen or are cannibalised so that the vehicles become unworthy of being driven on road. To avoid all this, apart from the aforesaid directions issued hereinabove, we direct

that all the State Governments/Union Territories/Director Generals of Police shall ensure macro implementation of the statutory provisions and further direct that the activities of each and every police station, especially with regard to disposal of the seized vehicles be taken care of by the Inspector General of Police of the division/Commissioner of Police concerned of the cities/Superintendent of Police concerned of the district concerned."

(Emphasis supplied)

33. In K.W. Ganapathy Vs. State of Karnataka, , the owner of a stolen Zen car sought permission to sell the vehicle to repay the debt to the bank which was rejected by the Trial Court against which the owner preferred a criminal revision which was also dismissed whereupon the owner approached the High Court. The Karnataka High Court examined the law u/s 452 Cr.P.C. and permitted the owner to sell his car. The relevant portion of the said judgment is reproduced hereunder:-

"2. The petitioner is the owner of a Zen car bearing No. KA-12-N-4699. The said car was stolen by the accused. On a complaint the police have registered a case and laid a charge sheet in C.C. No. 269/2000 on the file of the Prl. JMFC., Virajpet. The prosecution version supports the contention of the petitioner that he is the owner of the car and was the subject matter of theft. The case is pending trial. The interim custody of the car was given to the petitioner u/s 457 Cr.P.C. by the JMFC., on certain conditions. The chief condition being that the petitioner shall keep the car in his custody intact and shall not alienate until the disposal of the case. After taking interim custody, the petitioner made another application before the JMFC submitting that the petitioner has taken finance from the Co-operative Bank while purchasing the car, the interest liability is mounting up and he is unable to make arrangements for repayment of the loan. Therefore, intends to sell the car for repaying the debt liability to the bank. In that connection, sought permission of the Court to permit him to sell the car. The Trial Court rejected the request. In Crl. Revision Petition No. 13/2002, the Sessions Judge Kodagu, confirmed the order of the JMFC and rejected the revision. Being aggrieved the present petition is filed.

3. According to the material discussions made in the impugned orders, it appears that there are three accused in the criminal case and accused No. 2 and 3 are in judicial custody. Accused No. 1 is absconding. Perhaps the case against accused No. 1 is likely to be split up. Even assuming the case against accused No. 2 and 3 is expeditiously concluded, for want of other accused split up charge sheet would be pending and the petitioner has to suffer the restrictions of the conditional order prohibiting alienation till the disposal of the case. It is not known when the absconding accused is likely to be traced and the trial against him will be concluded. The indefinite and uncertain situation pestering the complainant prompted him to make an application to permit him to alienate the car.

4. After hearing the counsel for the State and the petitioner, I find that the

grievance made out by the petitioner is genuine. Of course, in the usual course of routine conditional orders are passed while delivering the property to the interim custody. When the property has any evidentiary value, it is to be kept intact and to ensure its production during the course of evidence for the purpose of marking as a material object the condition of non-alienation is imposed. 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 u/s 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.

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 jewellery by theft. The police successfully detect and discover the gold jewellery the same is produced before the Court. Production of gold jewellery 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 nonchalant towards the victims of crime. It may be that X require the gold jewellery 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 jewellery the condition of non-alienation 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.

9. In the instant case, the vehicle in question is a car and it has no evidentiary value, it is only required for the purpose of passing final orders u/s 452 Cr.P.C. Therefore, to ensure the recovery of its value, it is suffice only necessary bonds and security is to be taken from the petitioner to recover the value from him in the event of final orders going adverse to him.

10. In view of the reasons and discussions made above, it was not proper on the part of the Trial Court and Sessions Court to have rejected the request of the petitioner more so when he makes out a grievance of accumulating debt liability.

11. The petition is allowed. The petitioner is permitted to sell the car in his own way. But however, before he sells the car, Magistrate should get the market value of the car, as on date to be assessed and necessary bonds with one surety to be taken for the proportionate value of the property assessed and the petitioner shall deposit the value before the Trial Court in the event of final orders going against him.

The Registrar General directed to circulate the copy of this order to all the Sessions Judges and Magistrates in the State for proper compliance."

(Emphasis supplied)

34. In *Sundaram Finance Ltd. v. State of Tamil Nadu*, (2011) 1 MWN (Cri) 437, the police seized a Chevrolet Tavera car involved in offences under Sections 341/363/323/506 (ii) IPC. The vehicle was released by the Court to the owner on executing a bond of Rs. 5,00,000/- and to produce the same as and when required. The owner was also directed not to alter or change or sell the vehicle. The vehicle later caught fire and the entire front portion was damaged. Since the cost of repair was very high, the owner sought permission to sell the vehicle which was declined on the ground that the vehicle was necessary for identification during the trial. The owner challenged the order before the Madras High Court. The High Court allowed the owner to sell the vehicle following the judgment of the Supreme Court in *Sunderbhai Ambalal Desai v. State of Gujarat* (supra). The relevant portion of the said judgment is reproduced hereunder:-

"11. This Court is of the firm opinion that return of vehicles and permission for sale thereof should be the general norm rather than the exception it is today. The clear dictate of the Hon"ble Apex Court in this regard is followed more in the breach than in observance. Given the facilities of the modern day, there hardly is any scope to think that evidence relating to vehicles cannot be held in altered form. Causing of photographs and resort to videography, together with recording such evidence as befits a particular case would well serve the purpose. In cases where return of vehicles is sought and the claim therefor is highly contested, resort to sale of vehicle and credit of the proceeds in fixed deposits pending disposal of the case would be to the common good. None gain when the mere shell or the remnants of the vehicle are returned to the person entitled thereto, after completion of the trial. It would be no surprise to find that several vehicles have not been so much as claimed after completion of trial, because of the worthless state they have been reduced to. It is but natural to expect that a person eventually entitled would rather have the sale proceeds together with interest, than nothing at all.

12. This Court expresses a sincere hope that atleast hereinafter the Criminal Courts would follow the decision of the Apex Court in *Sunderbhai Ambalal Desai v. State of Gujarat*, in true letter and spirit.

13. These Criminal Original Petitions are allowed. The concerned Lower Court shall, upon production of the certified copy of this order, fix a date for production of the vehicle before it. Upon, production, the lower Court shall cause photographs of the vehicle to be taken and record Panchnama thereof. The petitioner shall then be at liberty to effect sale of the vehicle. The photographs and Panchnama prepared shall be read as evidence in lieu of marking of the vehicles.

14. The registry is directed to circulate a copy of this order to all Sessions/

Metropolitan/Judicial Magistrate Courts...."

(Emphasis supplied)

Report of the Committee appointed by this Court

35. On 19th November, 2009, the Chief Justice of this Court directed the Principal District and Sessions Judge, Delhi to constitute a Committee to examine the reasons for delay in disposal of criminal cases and to suggest the measures to remove the bottlenecks. The Committee also examined the issue relating to the properties seized by the police. Chapter 5 of the Report which deals with the issues relating to the case properties is reproduced hereunder:-

"PART (I)

Existing System

Besides various other reasons for which matters often get adjourned in criminal courts one major reason is the non-production or non-availability of the case property articles. Often the criminal cases involve recovery of one or the other incriminating article at the instance of accused and during the course of trial when the prosecution witnesses of recovery enters the witness box then they are required to be shown the said case property articles during the course of their deposition. The nature and kind of case property articles required to be produced in any given criminal case differs from case to case. In case of hurt or murder it is usually the weapon of offence which forms an important part of the case property. The recovery of certain immovable articles such as cash, documents or jewellery may form a part of case property articles in the cases of robbery, dacoity or theft etc. In road accident cases the case property articles are usually the vehicles involved in the accident. In the case of theft of vehicles the stolen vehicles become the case property. In cases under Excise Act it is recovery of liquor bottles or pouches which forms the case property. Similar is the position with respect to recovery of drugs under the NDPS Act cases.

Under the code of Criminal Procedure Sections 451 to 459 Cr.P.C. provide the manner regarding disposal of such seized property by the police. Often after seizure of any such case property by the police the same is produced before the court of law and either if gets released to the rightful owner on sapurdari or is retained by the police in their Malkhanas. During the course of trial the said case property articles are either produced by the Malkhana Moharrir (MHCM) or by the sapurdar. While the MHC(M) claims expenses for production of case property articles on routine basis from the court but at times the sapurdar also does claim his expenses for producing the case property articles. The situation often becomes more difficult for the court as well as for the witness when the case property articles are large in numbers such as in cases under Excise Act the recovered bottles or pouches are huge in numbers and the witness is called upon to identify each of the recovered pouch or bottle. This exercise is not only cumbersome but also poses practical difficulty for the court as well as for the

witness during the course of his examination. In fact in the crowded court complexes of ours it is even difficult for the MHC(M) to unload all such articles for inspection by the witness concerned. There have been instances also where liquor bottles and such other like articles have broken during the course of transportation from Malkhana to the court complexes and back and even while lying at the police station as there is hardly any proper arrangement for proper staking of such kind of articles even in the police stations.

As regards the vehicles involved in accident cases or in theft cases it is common knowledge that outside every police station in Delhi a number of vehicles remain parked and are getting rusted, for the reason that either no rightful owner has come up to claim its possession or still in some cases the court has thought it appropriate to not to direct its release.

Similarly in cases u/s 498A IPC the istridhan articles of the complainant which usually comprises of double bed, dressing table, almirah, TV, fridge etc. are seized by the police and even if ordered to be released to the complainant on sapurdari are often produced by them in the court after getting them loaded in a truck. This kind of exercise poses a great deal of inconvenience to the sapurdar and also leads to considerable delay and raising of unnecessary objections by the defence by putting unnecessary questions about the condition of the case property articles so produced.

In cases where cash is recovered there have been many instances where either the cash was ordered to be kept in the police Malkhana or even if released to any person on sapurdari was ordered to be produced in the court on each and every date. Even in the Malkhana of the police stations keeping of cash is not safe and there have been many instances where currency notes have got stolen.

As regards the private individuals to whom the cash or jewellery articles etc. are released the situation is equally difficult, for they are not only supposed to keep the same currency notes intact and also to produce them on each and every date in the court. They are rather forced to spend money for keeping in safe custody the said cash or the other valuable case property articles.

A visit to any Malkhana of a police station will also show as to in which condition the articles are kept over there. There have been many instances where case property of different cases has got mixed up.

Thus, in view of the aforesaid circumstances it is clear that this major reason for delay in trial of criminal cases can be easily circumvented if at the time of releasing of the case property articles certain steps are taken by the courts concerned and thereby obliterating the necessity of production of the case property articles during the course of trial. In fact in the case *Sunderbhai Ambalal Desai and C.M. Mudaliar Vs. State of Gujarat*, it was observed by Hon "ble Supreme Court that courts should exercise their powers u/s 451 Cr.P.C. expeditiously and judicially regarding disposal of case property pending trial. The Court gave specific directions with respect to different kind of case property

articles which should be followed by the courts.

Part (II)

Proposed Suggestions

Thus, keeping in view the said guidelines given by Hon"ble Supreme Court the committee proposes following suggestions which may be followed by the various courts of law dealing with criminal cases regarding the aspect of production/non-production of case property articles.

Liquor Bottles/Pouches

Upon production of any such article by the police before the court either during the course of inquiry or trial the court should direct the immediate disposal of all such bottles/pouches after retaining a sample thereof for the purposes of trial. Even photographs of the entire lot of the seized liquor bottles/pouches can be taken so as to show as to in what condition they were seized. A detailed inventory of the articles should also be prepared mentioning therein the condition of the bottles/pouches in which they were seized. If deemed necessary the court can also issue a notice to the accused before passing of any such order. Subsequently, during the course of trial such representative sample bottle/pouch along with the photographs of the case property articles and the inventory so prepared can be held to be sufficient in place of production of entire lot of case property articles. After retaining the sample bottle and taking of photographs besides the preparation of inventory as above the case property should be ordered to be disposed of.

Jewellery Articles

As regards the jewellery articles and such other valuable articles the photographs of the same should be taken before their release to the sapurdar. An inventory of the Articles should also be prepared wherever necessary the court may also get the said jewellery articles valued from a Government approved valuer.

Thus, during the course of trial the actual production of the jewellery articles should not be insisted upon and the photographs along with inventory so prepared should suffice for the purposes of evidence.

Currency Notes

In respect of the currency notes recovered, if in the opinion of the court, any person is lawfully entitled to claim them then they should be released to such person. In the other eventuality money can be ordered to be deposited in a nationalized bank. However, before releasing it to a private person or getting it deposited with a nationalized bank the Photostat of all such currency notes can be obtained with their numbers noted down or their denomination may simply be noted down. The bank as well as the private person, who is entrusted with the currency notes should be allowed to use those currency notes and the production of those very currency notes should not be insisted upon during the course of

trial.

The directions in this regard may vary from case to case as per the discretion of the court. The courts may also ask the sapurdar for furnishing of an indemnity bond.

Vehicles Involved in Accident/Theft Cases

Vehicles involved in road accident cases or theft cases may also be ordered to be released to rightful owner and at the time of release photographs of the vehicles should be taken and during the course of trial the actual production of the vehicles should not be insisted upon. Photographs should suffice for the purposes of evidence during the course of examination of various witnesses. In case no one comes forward to claim any vehicle then police should inform the court about all such vehicles lying unclaimed at their police station and the court should pass necessary orders for their auction as per the provisions of Cr.P.C. with a direction to deposit the money recovered from the auction in Government Treasury.

Istridhan Articles

In cases u/s 498A IPC also the actual production of case property articles should not be insisted upon and their photographs should stand suffice for the purposes of evidence during the course of examination of various witnesses.

The aforesaid guidelines may similarly be also extended in respect of all kinds of case property articles. The terms and conditions on which any such property is released or is ordered to be disposed of can vary depending upon the facts and circumstances of each case and within the broad framework of these guidelines the actual production of case property should not be usually insisted upon unless and until the same is necessary for a just and expeditious disposal of a case. The courts may be left at their discretion to impose different conditions though the condition should not be such which in itself may prove to be cumbersome for any party to comply with.

The aforesaid guidelines will certainly go a long way in expeditious disposal of criminal cases by saving time of the courts in expeditiously recording the examination of various prosecution witnesses but will also help in removing the various problems being faced by the police stations in maintaining their Malkhana. This, will also reduce the expenses being routinely claimed by the MHC(M) with respect to the production of case property articles.

The courts whenever deem necessary may also ask for an indemnity bond from the superdari."

36. On 24th October, 2013, the copy of the aforesaid report was sent by the Registrar General of this Court to all the District and Sessions Judges who circulated the same to all the judicial officers for applying the suggestions of the report in all cases relating to the properties seized by the police. The relevant portion of the letter dated 24th October, 2013 is reproduced hereunder:-

"Sub: Issues relating to production/non-production of case property.

Sir,

As directed by Hon"ble the Chief Justice and his companion Judges, I am forwarding herewith a copy of the relevant portion of the report of a Committee constituted to look into the matter regarding service of summons in criminal matters. The said portion deals with how the various types of case property articles seized by the police during the investigation of any case should be dealt with by the criminal courts.

I am further directed to request you to circulate the same to all the Judicial Officers of the District, for complying with the suggestions given therein. Apart from the above suggestions, the provisions as contained in Code of Criminal Procedure from Section 451 to 459 and especially as regards perishable goods be also re-emphasized to the Judicial Officers."

Consequences of not following well settled law

37. The Delhi Police as well as the Courts below are bound to follow the statutory provisions contained in Chapter XXXIV of the Code of Criminal Procedure and the principles laid down by the Supreme Court in *Basavva Kom Dyamangouda Patil v. State of Mysore* (supra), *Sunderbhai Ambalal Desai v. State of Gujarat* (supra), *Sunderbhai Ambalal Desai v. State of Gujarat* (supra) and *General Insurance Council v. State of A.P.* (supra).

38. This Court is shocked to note the non-compliance of the well settled principles of law for disposal of the case properties which has resulted in accumulation of 2,86,741 case properties including 25,547 vehicles, out of which as many as 2,479 properties are lying on public places outside the police stations. The photographs filed by the Delhi Police along with the affidavit dated 3rd April, 2014 show the shocking state of affairs.

39. The non-compliance of the directions of the Supreme Court have resulted in the blocking of the valuable area inside as well as around the police stations and the public places with the vehicles which have been reduced to junk and have thus resulted in loss of national wealth. Unnecessary retention of properties have also led to theft and misappropriations. No measures have been taken by the police for safety of these vehicles. The vehicles kept in the open spaces are also prone to fast and natural decay on account of weather conditions.

40. If an authority does not follow the well settled law, it shall create confusion in the administration of justice and undermine the law laid down by the constitutional Courts. Reference in this regard may be made to the judgments given below. In *East India Commercial Co. Ltd., Calcutta and Another Vs. The Collector of Customs, Calcutta*, , *Subba Rao, J.* speaking for the majority observed reads as under:

"This raises the question whether an administrative tribunal can ignore the law

declared by the highest Court in the State and initiate proceedings in direct violation of the law so declared under Art. 215, every High Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself. Under Art. 226, it has plenary power to issue orders or writs for the enforcement of the fundamental rights and for any other purpose to any person or authority including inappropriate cases any Govt. within its territorial jurisdiction. Under Art. 227 it has jurisdiction over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction. It would be anomalous to suggest that a tribunal over which the High Court has superintendence can ignore the law declared by that Court and start proceedings in direct violation of it. If a tribunal can do so, all the subordinate Courts can equally do so, for there is no specific provision, just like in the case of Supreme Court, making the law declared by the High Court binding on subordinate Courts. It is implicit in the power of supervision conferred on a superior tribunal that all the tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working; otherwise there would be confusion in the administration of law and respect for law would irretrievably suffer. We, therefore, hold that the law declared by the highest Court in the State is binding on authorities, or tribunals under its superintendence, and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding. If that be so, the notice issued by the authority signifying the launching of proceedings, contrary to the law laid down by the High Court would be invalid and the proceedings themselves would be without jurisdiction."

(Emphasis supplied)

41. The above legal position was reiterated in *Makhanlal Waza and Others Vs. State of Jammu and Kashmir and Others*, , in which Grover, J. observed as under:-

"The judgment which was delivered did not merely declare the promotions granted to the respondents in the writ petition filed at the previous stage as unconstitutional but also laid down in clear and unequivocal terms that the distribution of appointments, posts or promotions made in the implementation of the communal policy was contrary to the constitutional guarantee of Article 16. The law so declared by this Court was binding on the respondent-State and its officers and they were bound to follow it whether a majority of the present respondents were parties or not in the previous petition."

(Emphasis supplied)

42. In *Shri Baradakanta Mishra Ex-Commissioner of Endowments Vs. Shri Bhimsen Dixit*, , the appellant therein, a member of Judicial Service of State of Orissa refused to follow the decision of the High Court. The High Court issued a notice of contempt to the appellant and thereafter held him guilty of contempt which was challenged before the Supreme Court. The Supreme Court held as

under:-

"15. The conduct of the appellant in not following previous decisions of the High Court is calculated to create confusion in the administration of law. It will undermine respect for law laid down by the High Court and impair the constitutional authority of the High Court. His conduct is therefore comprehended by the principles underlying the law of Contempt. The analogy of the inferior court's disobedience to the specific order of a superior court also suggests that his conduct falls within the purview of the law of Contempt. Just as the disobedience to a specific order of the Court undermines the authority and dignity of the court in a particular case, similarly the deliberate and mala fide conduct of not following the law laid down in the previous decision undermines the constitutional authority and respect of the High Court. Indeed, while the former conduct has repercussions on an individual case and on a limited number of persons, the latter conduct has a much wider and more disastrous impact. It is calculated not only to undermine the constitutional authority and respect of the High Court, generally, but is also likely to subvert the Rule of Law and engender harassing uncertainty and confusion in the administration of law"

(Emphasis supplied)

43. M.P. Dwivedi and others, , the Supreme Court held as under:-

"22.... It appears that the contemner was completely insensitive about the serious violations of the human rights of the undertrial prisoners in the matter of their handcuffing inasmuch as when the prisoners were produced before him in court in handcuffs, he did not think it necessary to take any action for the removal of handcuffs or against the escort party for bringing them to the court in handcuffs and taking them away in handcuffs without his authorisation. This is a serious lapse on the part of the contemner in the discharge of his duties as a judicial officer who is expected to ensure that the basic human rights of the citizens are not violated. Keeping in view that the contemner is a young judicial officer, we refrain from imposing punishment on him. We, however, record our strong disapproval of his conduct and direct that a note of this disapproval by this Court shall be kept in the personal file of the contemner. We also feel that judicial officers should be made aware from time to time of the law laid down by this Court and the High Court, more especially in connection with protection of basic human rights of the people and, for that purpose, short refresher courses may be conducted at regular intervals so that judicial officers are made aware about the developments in the law in the field."

(Emphasis supplied)

44. In T.N. Godavarman Thirumulpad through the Amicus Curiae Vs. Ashok Khot and Another, , the Supreme Court held that disobedience of the orders of the Court strike at the very root of rule of law on which the judicial system rests and observed as under:-

"5. Disobedience of this Court's order strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. Hence, it is not only the third pillar but also the central pillar of the democratic State. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our constitutional scheme will give way and with it will disappear the rule of law and the civilised life in the society. That is why it is imperative and invariable that courts' orders are to be followed and complied with."

(Emphasis supplied)

45. In *Maninderjit Singh Bitta Vs. Union of India (UOI) and Others*, , the Supreme Court held as under:-

"26. ... Disobedience of orders of the court strikes at the very root of the rule of law on which the judicial system rests. The rule of law is the foundation of a democratic society. Judiciary is the guardian of the rule of law. If the judiciary is to perform its duties and functions effectively and remain true to the spirit with which they are sacredly entrusted, the dignity and authority of the courts have to be respected and protected at all costs...

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29. Lethargy, ignorance, official delays and absence of motivation can hardly be offered as any defence in an action for contempt. Inordinate delay in complying with the orders of the courts has also received judicial criticism. ... Inaction or even dormant behaviour by the officers in the highest echelons in the hierarchy of the Government in complying with the directions/orders of this Court certainly amounts to disobedience. ... Even a lackadaisical attitude, which itself may not be deliberate or wilful, have not been held to be a sufficient ground of defence in a contempt proceeding. Obviously, the purpose is to ensure compliance with the orders of the court at the earliest and within stipulated period."

(Emphasis supplied)

46. In *Priya Gupta and Another Vs. Addl. Secy. Ministry of Health and Family Welfare and Others*, , the Supreme Court held as under:-

"12. The government departments are no exception to the consequences of wilful disobedience of the orders of the Court. Violation of the orders of the Court would be its disobedience and would invite action in accordance with law. The orders passed by this Court are the law of the land in terms of Article 141 of the Constitution of India. No court or tribunal and for that matter any other authority can ignore the law stated by this Court. Such obedience would also be conducive to their smooth working, otherwise there would be confusion in the administration of law and the respect for law would irretrievably suffer. There can be no hesitation in holding that the law declared by the higher court in the State

is binding on authorities and tribunals under its superintendence and they cannot ignore it. This Court also expressed the view that it had become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have a grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty are important hallmarks of judicial jurisprudence developed in this country, as discipline is sine qua non for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and to abide by the rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law. (Ref. East India Commercial Co. Ltd., Calcutta and Another Vs. The Collector of Customs, Calcutta, and Official Liquidator Vs. Dayanand and Others,)

13. These very principles have to be strictly adhered to by the executive and instrumentalities of the State. It is expected that none of these institutions should fall out of line with the requirements of the standard of discipline in order to maintain the dignity of institution and ensure proper administration of justice.

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19. It is true that Section 12 of the Act contemplates disobedience of the orders of the court to be wilful and further that such violation has to be of a specific order or direction of the court. To contend that there cannot be an initiation of contempt proceedings where directions are of a general nature as it would not only be impracticable, but even impossible to regulate such orders of the court, is an argument which does not impress the court. As already noticed, the Constitution has placed upon the judiciary, the responsibility to interpret the law and ensure proper administration of justice. In carrying out these constitutional functions, the courts have to ensure that dignity of the court, process of court and respect for administration of justice is maintained. Violations which are likely to impinge upon the faith of the public in administration of justice and the court system must be punished, to prevent repetition of such behaviour and the adverse impact on public faith. With the development of law, the courts have issued directions and even spelt out in their judgments, certain guidelines, which are to be operative till proper legislations are enacted. The directions of the court which are to provide transparency in action and adherence to basic law and fair play must be enforced and obeyed by all concerned. The law declared by this Court whether in the form of a substantive judgment inter se a party or are directions of a general nature which are intended to achieve the constitutional goals of equality and equal opportunity must be adhered to and there cannot be an artificial distinction drawn in between such class of cases. Whichever class they may belong to, a contemnor cannot build an argument to the effect that the disobedience is of a general direction and not of a specific order issued inter se parties. Such distinction, if permitted, shall be opposed to the basic rule of law.

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23. ... The essence of contempt jurisprudence is to ensure obedience of orders of the Court and, thus, to maintain the rule of law. History tells us how a State is protected by its courts and an independent judiciary is the cardinal pillar of the progress of a stable Government. If over-enthusiastic executive attempts to belittle the importance of the court and its judgments and orders, and also lowers down its prestige and confidence before the people, then greater is the necessity for taking recourse to such power in the interest and safety of the public at large. The power to punish for contempt is inherent in the very nature and purpose of the court of justice. In our country, such power is codified..."

(Emphasis supplied)

47. In *Hasmukhlal C. Shah and Others Vs. State Of Gujarat and Another*, , the Division Bench of Gujarat High Court after examining several decisions on the point, observed:

"11...in Government which is ruled by laws there must be complete awareness to carry out faithfully and honestly lawful orders passed by a Court of law after impartial adjudication. Then only will private individuals, organizations and institutions learn to respect the decisions of Court. In absence of such attitude on the part of all concerned, chaotic conditions might arise and the function assigned to the Courts of law under the Constitution might be rendered a futile exercise..."

48. In *State of Gujarat Vs. Secretary, Labour Social Welfare and Tribunal Development Deptt. Sachivalaya and Another*, , the Division Bench of the Gujarat High Court summarized the principles as under:-

"11. From the above four decisions, the following propositions emerge:

(1) It is immaterial that in a previous litigation the particular petitioner before the Court was or was not a party, but if a law on a particular point has been laid down by the High Court, it must be followed by all authorities and tribunals in the State;

(2) The law laid down by the High Court must be followed by all authorities and subordinate tribunals when it has been declared by the highest Court in the State and they cannot ignore it either in initiating proceedings or deciding on the rights involved in such a proceeding;

(3) If in spite of the earlier exposition of law by the High Court having been pointed out and attention being pointedly drawn to that legal position, in utter disregard of that position, proceedings are initiated, it must be held to be a wilful disregard of the law laid down by the High Court and would amount to civil contempt as defined in section 2(b) of the Contempt of Courts Act, 1971."

(Emphasis supplied)

49. In *C.T. Subbarayappa Vs. Vice-Chancellor, University of Agricultural Sciences, Bangalore and Another*, , the Karnataka High Court held as under:

"8. It was expected that after declaration of the law by this Court regarding powers of the Board of Regents vis-?-vis the recommendations of the Selection Committee based on merits, the Board will function in accordance with the Constitutional mandates and the requirements of law, but it seems the members of the Board had hardly any regard for the rule of law and the decisions rendered by this Court. In the case of Shri Baradakanta Mishra Ex-Commissioner of Endowments Vs. Shri Bhimsen Dixit, , it has been held that such an action can very well be held as coming within the principles underlying the law of contempt.

9. In the above view of the matter, though I am not proposing to direct initiation of contempt proceedings for the present, it is high time that the University authorities be warned that if they, in future, are found to be acting in violation of the law declared by the Courts, then they may be subjected to appropriate contempt proceedings. At the same time it is necessary to direct the Registrar of the University to always acquaint the members of the Board of Regents and other University authorities about the law declared by this Court and the Supreme Court for its strict adherence and compliance. It should be taken to be the duty of the Registrar to place before the members of the Board of Regents all the relevant judgments of the Court as and when meetings are held dealing with the relevant subjects. In conclusion, for the reasons stated above the appointment of the second respondent as Assistant Professor as contained in order dated 18-12-1995 (Annexure-E) is quashed and the Board of Regents is directed to reconsider the question of appointment to the said post out of the three names recommended by the Selection Committee in accordance with the Statute 30 and law declared by this Court. This should be done within six weeks from today. Till that time the second respondent is permitted to continue on the post, which will be subject to the final decision of the Board of Regents.

(Emphasis supplied)

50. In Parmal Singh v. Union of India, WP(C) No. 7231/2011 decided on 29th September, 2011, the Division Bench of this Court taking note of the judgment of the Supreme Court in Baradakanta Mishra (supra) directed the authorities to apply the principles of law to other similarly situated persons. This Court further imposed punishment of censure against the officer in default with directions to keep the copy of the judgment in his service book to be considered as and when his case was considered for promotion. The Division Bench held as under:-

"8. If a general issue of law affecting large number of persons is decided by a Court and a specific reference is made that the department should consider extending the principle of law declared across the board to all so that others are not forced in litigation, it is expected that the bureaucrat applies himself properly and does not foist litigation on the others.

9. The note extracted herein above says that the Ministry of Finance has agreed to extend the implementation of the Court judgment to only those applicants who approach the Court and not the others.

10. The decision creates an artificial distinction not recognized by law for the reason it would be arbitrary to say that law means

A for those who go to the Court, and it means

B for those who do not.

11. While disposing of the writ petition and directing the respondents to treat the mandamus issued vide order dated 9.10.2009 passed in WP (C) No. 12258/2009 as the mandamus issued in the instant writ petition, we censure Sh. Pritam Lal, Under Secretary, (Pr-V), Government of India, Ministry of Home Affairs and direct that a copy of this decision would be placed in his service book and as and when his case is placed before a Departmental Promotion Committee, it be highlighted that this Court has censured Sh. Pritam Lal, Under Secretary (Pr-V)."

(Emphasis supplied)

51. In *Ex-Ct Nardev Vs. Union of India (UOI) and Others*, , the Division Bench of this Court, in which I was a member, applied the aforesaid principles of law to a service matter and held as under:

"15. The instant case manifests such conduct of the respondents. The present adjudication has been necessitated only because the respondents have failed to abide with the dicta laid down by this Court in the judgment passed as back as in 2002 and subsequently.

16. It, therefore, needs no elaboration that failure to abide by the principles laid down by the Supreme Court as well as by this Court in the aforementioned binding judicial precedents would render the authorities liable for proceedings under the Contempt of Court Act. We have brought this noteworthy aspect to the notice of the respondents and are refraining from taking further action on this occasion.

17. There is yet another aspect to this matter. The failure of the executive to abide with the well settled legal principles generates unwarranted and frivolous litigation. This very issue has also been considered in *Head of Deptt. Air Force Station v. R.K. Giri* through LRs. (*supra*).

18. For the reasons and the ratio of the aforementioned judicial precedents, we are of the view that the present writ petition was wholly unnecessary and the respondents should have voluntarily taken the initiative to grant such relief to the petitioners to which they were entitled in view of the rule position as well as the principles of law laid down by this Court which had been affirmed by the Division Bench as well as by the Supreme Court. Valuable judicial time has been wasted. The petitioners, positioned as they are, can ill afford this kind of litigation. The respondents are therefore liable to pay costs of this litigation. However, it is clear that in case the judicial pronouncements are not complied with and action taken at the earliest by the respondents, we would be compelled to take more serious view in the matter."

(Emphasis supplied)

52. In *Head of Department, Air Force Station Amla v. Ram Kumar Gir, III* (2010) ACC 279, the Air Force raised a plea of sovereign immunity in a case of motor accident claim arising out of a road accident. This Court noted that the law was well settled law by the Supreme Court that the doctrine of sovereign immunity has no application in respect of the compensation cases under Motor Vehicles Act. Taking note of *Baradakanta Mishra* (supra), this Court issued a notice to the Attorney General to look into the matter and consider the implication of the government refusing to follow the well-settled law. Relevant portion of the said order is reproduced hereunder:-

"34. If the Executive does not follow the certain well settled law laid down by the Hon'ble Supreme Court, it shall create confusion in the administration of justice and undermine the law laid down by the Apex Court and shall impair the constitutional authority of the Apex Court. The disobedience of the law laid down by the Court shall also amount to contempt of Court.

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36. Before passing any further order in this matter, this Court would like the learned Attorney General to personally look into the matter and consider the implication of Government raising the plea of sovereign immunity in claims under the Motor Vehicles Act, 1988 despite clear and well settled law by the Hon'ble Supreme Court. The learned Attorney General shall ascertain the number of pending motor accident claim cases in various Courts/Tribunals where the plea of sovereign immunity has been raised and shall also consider the possibility of issuance of a circular/Government of India directive in respect of all pending motor accident claim cases as well as cases that may arise in future."

(Emphasis supplied)

In pursuance to the above notice, the Law Ministry issued a memorandum to the effect that sovereign immunity would not be pleaded by the Government in any case for compensation arising out of motor vehicle accident involving government vehicles on government duty. The relevant portion of the order dated 28th May, 2010 passed in the above matter is reproduced hereunder:-

"1. The learned counsel for the appellant submits that the Air Headquarters, Department of JAG (Air) has issued as circular dated 12th May, 2010 to all its departments directing them not to raise the plea of sovereign immunity in any case of motor vehicle accident. It has been further directed that if any such case has been filed, the same may be withdrawn. Copy of the said circular has been placed on record.

2. The learned counsel for the appellant further submits that the Solicitor-General of India has advised the Law Ministry to issue a memorandum to the effect that the sovereign immunity should not be pleaded by the Government in cases for compensation arising out of motor vehicle accidents involving the use of Government vehicles on Government duty. The learned counsel for appellant

submits that the memorandum is expected to be issued shortly."

53. In *Nidhi Kaushik v. Union of India*, LPA No. 736/2013, decided on 26th May, 2014, the Division Bench of this Court, in which I was a member, examined the aforesaid judgments and summarized the law as under:

"Consequences of refusing to follow well settled law If an authority does not follow the well settled law, it shall create confusion in the administration of justice and undermine the law laid down by the constitutional Courts. The consequence of an authority not following the well settled law amounts to contempt of Court as held by the Supreme Court in *East India Commercial Co. Ltd.* (supra), *Makhan Lal* (supra), *Baradakanta Mishra* (supra), *M.P. Dwivedi* (supra), *T.N. Godavarman Thirumulpad* (supra), *Maninderjit Singh Bitta* (supra), *Priya Gupta* (supra) and various High Courts in *Hasmukhlal C. Shah* (supra), *Secretary, Labour Social Welfare and Tribunal Development Deptt. Sachivalaya* (supra), *C.T. Subbarayappa* (supra), *Parmal Singh* (supra), *Ex-CT Nardev* (supra) and *Head of Department, Air Force Station Amla*."

Summary of principles of law

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* (supra), *Sunderbhai Ambalal Desai v. State of Gujarat* (supra), *Sunderbhai Ambalal Desai v. State of Gujarat* (supra) and *General Insurance Council v. State of A.P.* (supra).

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 u/s 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 u/s 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 u/s 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 u/s 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 u/s 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 an 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.

Responsibility of the High Court Registry to ensure the compliance of the directions of the Supreme Court by the Courts below as well as police

91. In *Sunderbhai Ambalal Desai v. State of Gujarat*, (supra) (para 21), the Supreme Court has directed that the Registry of the High Courts to ensure that the powers u/s 451 Cr.P.C. are being properly and promptly exercised by the Magistrates.

Responsibility of the Commissioner of Delhi Police to check the compliance by police stations

92. In *General Insurance Council v. State of A.P.* (supra) (para 14), the Supreme Court has fixed the responsibility of the Inspector General of Police of the Division/Commissioner of Police concerned of the cities/Superintendent of Police of District concerned to check the activities of each and every police station with regard to the disposal of the seized vehicles.

Consequences of refusing to follow well settled law

93. The consequence of an authority not following the well settled law amounts to contempt of Court as held by the Supreme Court in *East India Commercial Co. Ltd.* (supra), *Makhan Lal* (supra), *Baradakanta Mishra* (supra), *M.P. Dwivedi* (supra), *T.N. Godavarman Thirumulpad* (supra), *Maninderjit Singh Bitta* (supra), *Priya Gupta* (supra) and various High Courts in *Hasmukhlal C. Shah* (supra), *Secretary, Labour Social Welfare and Tribunal Development Deptt. Sachivalaya* (supra), *C.T. Subbarayappa* (supra), *Parmal Singh* (supra), *Ex-CT Nardev* (supra) and *Head of Department, Air Force Station Amla*."

Conclusion

94. In compliance with the directions of the Supreme Court in *Basavva Kom Dyamangouda Patil v. State of Mysore* (supra), *Sunderbhai Ambalal Desai v. State of Gujarat* (supra), *Sunderbhai Ambalal Desai v. State of Gujarat* (supra) and *General Insurance Council v. State of A.P.* (supra), the SHO/IO shall file applications and produce the case properties presently in custody of Delhi Police before the concerned Court within one week whereupon the concerned Court shall pass appropriate order within one month thereafter.

95. With respect to fresh seizure of properties, the SHO/IO shall produce the case properties before the concerned Court within one week of the seizure whereupon the Court shall pass appropriate order within one month thereafter.

96. Since the Supreme Court has fixed responsibility of the Registry of the High Court to ensure the compliance of its directions, the Delhi Police shall submit a quarterly compliance report before the Registrar General of this Court. The first compliance report for the period 1st October, 2014 to 31st December, 2014 be filed by 15th January, 2015. The quarterly reports thereafter, be filed after every three months. The compliance report shall contain the particulars of the applications for disposal of the properties filed and the orders passed thereon by the concerned Courts. The compliance report shall also contain the list of cases in which the applications could not be filed within the prescribed period along with the explanation thereof. The Registrar General shall consider the reports and ensure the compliance of the directions issued by the Supreme Court. The compliance reports be filed by the police officers made responsible by the Supreme Court in para 14 of *General Insurance Council v. State of A.P.* (supra).

97. The Courts below shall also file a quarterly report through their District & Sessions Judge before the Registrar General containing the particulars of the cases in which the appropriate order has been passed within one month of the application. If any case could not be disposed of within 30 days, particulars thereof along with the reasons be also submitted. The first compliance report for the period 1st October, 2014 to 31st December, 2014 be filed by 15th January, 2015.

98. With respect to the submission of Delhi Police that the District Nazir is not

equipped to deal with the order with respect to the sale/auction of the case properties and therefore, Provisioning & Logistics Department of Delhi Police be allowed to deal with the sale/auction of the case properties, it would be appropriate for the Delhi Police to take up the matter with the High Court on the administrative side and no orders are warranted in this petition.

Present case

99. In the present case, the petitioner is registered owner of the car in question and the accused has no objection to the petitioner being permitted to sell the vehicle and in that view of the matter, the learned Sessions Court should have permitted the petitioner to sell the vehicle after taking photographs of the same. The Supreme Court in *Sunderbhai Ambalal Desai v. State of Gujarat* (supra), *Sunderbhai Ambalal Desai v. State of Gujarat* (supra) and *General Insurance Council v. State of A.P.* (supra) has clearly held that the production of the vehicle during trial is not necessary and the photographs of the vehicle would be sufficient to be proved in evidence. The Committee appointed by the Chief Justice of this Court in their Report which was circulated to all the judicial officers also clearly approved the said procedure. However, in utter violation of the Supreme Court judgments as well as the Report of the Committee of this Court, the learned Sessions Court held that the vehicle would be required during evidence. The Sessions Court further gravely erred in recording that the accused may stake a claim on the vehicle without even asking him. When the accused appeared before this Court on 13th December, 2013, he clearly staked no claim on the vehicle and had no objection for the sale of the vehicle. The least expected from the learned Sessions Court was to have asked the accused whether he had any claim or objection to the sale of the vehicle. The petitioner being a registered owner of the vehicle which was stolen and recovered from the possession of the accused, the view taken by the learned Sessions Court (without even asking the accused) that the accused, the alleged thief, would stake a claim is clearly perverse. The learned Sessions Court also did not appreciate the petitioner's contention that the petitioner would not get a fair price if the vehicle is sold with a bond and further that the value of the vehicle is already depreciated and it is expensive to maintain the same.

100. For the reasons stated above, the petition is allowed and the condition imposed by the learned Trial Court requiring the prospective/intending purchaser to execute the superdari bond is set aside. The petitioner has already been permitted to unconditionally sell the vehicle after taking photographs of the said vehicle and furnishing them to the Investigating Officer concerned. The pending application is disposed of.

101. This Court appreciates the valuable assistance rendered by Mr. Sidharth Luthra, then ASG as well as Mr. Varun Goswami, learned APP for the Delhi Police.

102. The Registrar General shall circulate the copy of this order to all the Session Judges and Magistrates.

103. Copy of this judgment be given dasti to counsels for the parties as well as learned APP for the State.