WORKSHOP – II FOR THE JUDICIAL OFFICERS IN THE UNIT OF DISTRICT JUDGE, SRIKAKULAM.

SUBJECT - FRAMING OF CHARGES AND WRITING JUDGMENTS IN CRIMINAL CASES.

1. EXAMINATION OF ACCUSED AND FRAMING OF CHARGES.

2. DISPOSAL OF CASES WITHOUT TRIAL.

3. RECORDING OF EVIDENCE – RELEVANCY, ADMISSIBILITY AND APPRECIATION OF EVIDENCE.

4. CONCEPT OF CORPUS DELICTI.

5. EFFECT OF NON-RECOVERY CRIME WEAPON AND OTHER INCRIMINATING MATERIAL.

6. EXAMINATION OF ACCUSED UNDER SECTION 313, CODE OF CRIMINAL PROCEDURE.

7. JUDGMENT WRITING.

8. REMEDIES, RELIEFS, SENTENCING AND PUNISHMENT.

9. DISPOSAL OF CASE PROPERTY.

V.B.NIRMALA GEETHANBA
Principal District Judge
SRIKAKULAM.

EXAMINATION OF ACCUSED AND FRAMING OF CHARGES.

We all know that under Code of Criminal Procedure 1973,four types of trials are prescri bed for adjudicating criminal cases. They are:

(1) Summary trial cases; (Section 260 to 265 Cr.PC)

(2) Trial of summons cases; (Section 251 to 259 Cr.PC)

(3) Trial of warrant cases, (Secs. 238 to 243 & 244 to 247 Cr.PC)

(4) Trial of cases triable by a Court of Session. (Secs.205 to 237 Cr.PC)

Different trial procedures are adopted in the Code to enable the court to try the cases summarily in minor offences while, adopting eloborate procedure in warrant cases and more eloborate procedure in sessions cases.

EXAMINATION OF ACCUSED.

Before commencing trial of a criminal case, examination of the accused in summary trial cases, summons trial procedure cases and warrant trial cases, is prescribed under

sections 251 and 239 Code of Criminal Procedure. So far as the summary trial cases are concerned, the procedure for trial is laid down in Section 262 of Code of Criminal Procedure. So, in summary trial cases the summons procedure cases, the examination of the accused has to be conducted under section 251 Code of Crimainal Procedure. Under section 251 Code of Criminal Procedure, when the accused appears or is brought before the Magistrate, particulars of the offence for which he is accused or the accusation leveled against the accused shall be stated to him and he shall be asked whether he pleads guilty or has any defence to make. Either in summary trial cases or in summons procedure cases, it is not at all necessary to frame a charge against the accused person. frame a charge against the accused person. If the accused pleads not
guilty and claims to be tried after his examination under section 251 Code of Criminal Procedure in a summary trial case, court has to conduct trial by following the procedure for summary trials and pronounce judgement under section 264 of code of Criminal Procedure. So far as trial of summons cases by the Magistrate is concerned, chapter XX of the Code of Criminal Procedure deals with
it. Section 250 to 258 Code of Criminal Procedure deal with the procedure for trial of summons cases by Magistrates. Like, summary trial, in the trial of summons cases also the substance of the accusation levelled against the accused i.e., particulars of the offence levelled against accused shall be explained to the accused and the court has to ascertain whether the acc used pleads guilty or claims to be tried. In the trial of summons cases also there is no need to frame any charge. During examination under section 251 Code of Criminal Procedure if he pleads guilty the Magistrate shall record admission of the commission of the offence by the accused as mabe possible in the words used by the accusedand may in his discretion convict the acc used. The very fact that in a Summons Case there is no provision of a discharge, unlike

warran cases speaks volumes as to the legislative intent of not having an eloborate hearing at the time of framing of charge. So, the need for specific discharge hearing in summons cases was ousted.

FRAMING OF CHARGE

What is charge: Charge is accusation made against person in respect of the offence alleged to have committed by him.

In Section 2 (b) of Code of criminal Procedure "Charge" was defined as under: "Charge" includes any head of the charge when the charge contains more head than one.

The question of framing charge arises only when the court finds that the accused is not entitled to discharge under Sections 227 and 239 Code of Criminal Procedure in Sessions Cases and Warrant cases and the provisions relating to dischage of the accused are very imortant and the judge must first consider whether there are any sufficient grounds for proceeding against the accused. Section 227 Code of Criminal Procedure empowers the Sessions Judge to discharge the accused in case he finds that there is no sufficient ground for proceeding against the accused. Likewise Section 239 Code of Criminal Procedure empowers the Magistrate to discharge the accused in case the charge levelled against the accused is groundless. In both the cases reasons for doing so, are to be recorded. Sections 228 and 240 of Code of Criminal Procedure deal with framing of charge in Sessions Case and Warrant Cases respectively.

If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant cases instituted on a police report;is exclusively triable by the Court, he shall frame in writing a charge agaisnt the accused. Where the Judge frames any charge, it shall be read over and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried. If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is

ground for presuming that the accused has committed an offence triable the court shall give the accused full notice of the offence charged against him. The primary object of framing of charge, is to tell the accused person precisely and concisely about what the prosecution intends to prove against him. Framing of charge is vital part in a criminal trial. Separate and distinct charges to be framed for each offence. The Court can Amendment or Alter a charge. According to Section 216 (1) of CrPC, any court may alter or add to any charge at any time before judgment is pronounced. The section invests a comprehensive power to remedy the defects in the framing or non-framing of a charge, whether discovered at the initial stage of the trial or at any subsequent stage prior to the judgment. The code gives ample power to the courts to alter or amend a charge whether by the trial court or by the Appellate Court provided that the accused has not to face a charge for a new offence or is not prejudiced either by keeping him in the dark about that charge or in not giving a full opportunity of meeting it & putting forward any defence open to him, on the charge finally preferred against him. The court has a very wide power to alter the charge; however, the court is to act judiciously and to exercise the discretion wisely. It should not alter the charge to the prejudice of the accused person.

What should a charge contain.

Section 211 of the Code of Criminal Procedure, Contents of charge:

(1) Every charge under this Code shall state the offence with which the accused is charged.

(2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

(3) If the law which creates the offence does not give it any specifiic name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

(6) The charge shall be written in the language of the Court.

(7) If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge; and statement has been ommitted the court may add it at any time before sentence is passed.

The court may also charge more than on charge jointly under section 223 code of Criminal Procedure. The following persons may be charged and tried together, namely: —

(a) persons accused of the same offence committed in the course of the same transaction;

(b) persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence;

(c) persons accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months;

(d) persons accused of different offences committed in the course of the same transaction;

(e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such last-named offence;

(f) persons accused of offences under sections 411 and 414 of the Indian Penal Code (45 of 1860) or either of those sections in respect of stolen property the possession of which has been transferred by one offence;

(g) persons accused of any offence under Chapter XII of the Indian Penal Code (45 of 1860) relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges:

Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, then Magistrate may, if such persons by an application in writing, so desire, and if he is satisfied that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together.

Important Case Law on Examination of Accused and Framing of Charges:

The Purpose Of Framing Charge : In the ruling of a four-Judge Bench of The Hon'ble Supreme Court in **V.C. Shukla v. State Through C.B.I.,1980 Supplementary SCC 92 at page 150** and paragraph 110 of the report. Justice Desai delivering a concurring opinion, opined that ***' the purpose of framing a charge is to give intimation to the accused of clear, unambiguous and precise notice of the nature of accusation that the accused is called upon to meet in the course of a trial'.***

Whether not framing a specific charge is fatal to the case of Prosecution. In **Annareddy Sambasiva Reddy and others v. State of Andhra Pradesh** reported in **(2009) 12 SCC 546** this court again had occasion to deal with the same question and referred to Section 464 of Cr.P.C. In paragraph 55 at page 567 of the report, this Court came to the conclusion that if the ingredients of the section charged with are obvious and implicit, conviction under such head can be sustained irrespective of the fact whether the said section has been mentioned or not in the charge. The basic question is one of prejudice.

Even in the case of **Dalbir Singh v. State of U.P.**, reported in **(2004) 5 SCC 334,** a three-Judge Bench of this Court held that in view of Section 464 Cr.P.C. it is possible for the appellate or revisional court to convict the accused for an offence for which no charge was framed unless the court is of the opinion that the failure of justice will occasion in the process. The learned Judges further explained that in order to judge whether there is a failure of justice the Court has to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself. If we follow these tests, we have no hesitation that in the instant case the accused had clear notice of what was alleged against him and he had adequate opportunity of defending himself against what was alleged against him.

CONCLUSION:

In a criminal trial the charge is the foundation of the accusation and every care must be

taken to see that the charge is properly framed. In framing a charge during a criminal trial, instituted upon a police report, the court is required to confine its attention to documents referred to under Section 173. The judge needs to be only convinced that there is a prime facie case. There there is no necessity to adduce reasons for framing charges. However, the magistrate is required to write an order showing reasons if he decides to discharge the accused. The sections dealing with charge do not mention who is to frame the charge. The provisions dealing with different types of trials however provide that it is always for the court to frame the charge. The court may alter/ add to any charge at any time before the judgment is pronounced. But, if a person has been charged, the court cannot drop it. He has either to be convicted or acquitted. All this has an important bearing on the administration of justice.

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DISPOSAL OF CASES WITHOUT TRIAL

It is duty of court of law to conduct full fledge trial of an accused produced before it to ascertain whether the accused is innocent or offender. However depending upon nature of the alleged offence in the interest of justice and also depending on the circumstances prevailing in the criminal case to give a chance to the accused for reformation (or) to avoid abuse of law (or) to save time (or) to avoid a protracted litigation, court may acquit or discharge the Accused in accordance with law. Following are the provisions that deal with disposal of case without trial.

When Criminal proceedings barred by limitation of time:

If the accused raises the preliminary plea that the criminal proceedings against him are barred by the limitation of time as prescribed under law then the proceedings must be stopped if the cognizance was taken after the lapse of limitation period as contemplated under section 468 of Cr.P.C. **Section 468: Bar to taking cognizance after lapse of the period of limitation.**

Autrefois acquit and autrefois convict:

If the accused raises a plea that he was earlier tried for the same offence and was convicted or acquitted of the same and that according to the principle of autrefois

convict or autrefois acquit he cannot be tried again. If the principles laid down under Section 300 of Cr.P.C are satisfied then the proceedings are barred. The above said principle has been recognized as a fundamental right in the Constitution.

300. Person once convicted or acquitted not to be tried for same offence.

(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence. A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first-mentioned Court is subordinate.

Rejection of complaint filed for offence under Section 138 of Negotiable Instruments Act: Hon'ble Supreme Court in Alavi Haji Vs. Palapetti Muhammed reported in AIR 2007 SC 1705, it was held that drawer/accused who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons in such the complaint is liable to be rejected.

Discharge of Accused:

When the magistrate considers the charge against the Accused is groundless, after recording reasons the accused can be discharged under **Section 239 of Criminal Procedure Code.**

Conditional pardon to an accomplice:

The criminal proceedings against an accused person come to an end if he is given pardon in accordance with the provisions of Sections 306 and 307.

306. Tender of pardon to accomplice.

(1) With a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to an offence to which this section applies, the Chief Judicial Magistrate or a Metropolitan Magistrate at any stage of the investigation or inquiry into, or the trial of, the offence, and the Magistrate of the first class inquiring into or trying the offence, at any, stage of the inquiry or trial, may tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission
thereof.

249. Absence of complainant :-

When the proceedings have been instituted upon complaint, and on any day fixed for the hearing of the case, the complainant is absent, and the offence may be lawfully compounded or is not a cognizable offence, the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.

Withdrawal by prosecution:

The Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court, at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of an y one or more of the offences for which the accused is tried. Such offence must be in the nature as provided under Section.321 of the code.

Section 321: Withdrawl from prosecution

The Public Prosecutor or Assistant Public Prosecutor in charge of a case may, with the consent of the Court at any time before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and upon such withdrawal,

(a) If it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;

(b) if it is made after a charge has been framed, or when under this Code no charge is required he shall be acquitted in respect of such offence or offences:

Provided that where such offence

(i) was against any law relating to a matter to which the executive power of the Union extends, or

(ii) was investigated by the Delhi Special Police Establishment under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or

(iii) involved the misappropriation or destruction of, or damage to, any property belonging to the Central Government, or

(iv) was committed by a person in the service of the Central Government while acting or purporting to act in the discharge of his official duty, and the prosecutor in charge of the case has not been appointed by the Central Government he shall not, unless he has been permitted by the Central Government to do so, move the Court for its consent to withdraw from the prosecution and the Court shall, before according consent, direct the Prosecutor to produce before it the permission granted by the Central Government to

withdraw from the prosecution.

Withdrawal by complainant:

In a trial of a summons case initiated on a private complaint, if the complainant at any time before a final order is passed satisfies the magistrate that there are sufficient grounds for permitting him to withdraw his complaint against the accused, then the magistrate may permit him to withdraw the same, and shall thereupon acquit the accused. (Sec.257 Cr.P.C)). In a trial of a warrant case initiated on a private complaint, the complainant has no power to withdraw the complaint. The only provision which may have some relevance in this connection is Section 224 of the code.

257. Withdrawal of complaint - If a complainant, at any time before a final order is passed in any case under this Chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint against the accused, or if there be more than one accused, against all or any of them, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused against whom the complaint is so withdrawn.

Compounding of offences:

Where the offences are essentially of a private nature and relatively not quite serious, the Code considers it expedient to recognize some of them as compoundable offences and some others as compoundable only with the permission of the court. **Section 320** of the code deals with compoundability of offence.

Power of court to stop proceedings in certain cases:

In any summons case instituted otherwise than upon complaint, a magistrate of the first class, or any other judicial magistrate with the previous sanction of the Chief Judicial Magistrate, may stop the proceedings at any stage without pronouncing any judgment. While stopping the proceedings the magistrate shall record reasons for doing so. (Sec.258)

258. Power to stop proceedings in certain cases - In any summons-case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case release, the accused, and such release shall have the effect of discharge.

Abatement of proceedings on the death of the accused:

The ultimate object of the criminal proceedings is to punish the accused on his conviction of any offence. Therefore, the criminal proceedings abate on the death of the accused, as their continuance thereafter will be infructuous and meaningless. This position being self evident the Code has not made any specific provision in this regard.

Conclusion:

Above discussed are some of the provisions that are generally followed to dispose a case without trial to meet the ends of justice depending upon the circumstance prevailing in the case. Disposal of a case without trial not only saves time but also in certain cases helps in restoring harmony that cannot be achieved by conducting a full fledge trial.

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RECORDING OF EVIDENCE – RELEVANCY, ADMISSIBILITY AND APPRECIATION OF EVIDENCE.

Before moving into the topic, it is apt to refer to the word **"Evidence"**. It is derived from the Latin root word **"evidare"** which means **"to show clearly; to ascertain; to prove". In Kalyan Kumar Gogoi vs Ashutosh Agnihotri (AIR 2011 SC 760),** the Hon'ble Apex Court observed: "The word 'evidence' is used in common parlance in three different senses: (a) as equivalent to relevant (b) as equivalent to proof and (c) as equivalent to the material, on the basis of which courts come to a conclusion about the existence or non-existence of disputed facts." Evidence is the tool by which proof is obtained. Then when we think that how evidence is defined, the Indian Evidence Act, 1972 comes into play with its Sec.3 defining "Evidence" which means and includes oral evidence and documentary evidences.

Unless the evidence is brought on record, it cannot be looked into for appreciation of evidence with marshalling of facts for proper adjudication. Now, we have to think again, how to bring the evidence on record. Then bringing of evidence on record is of two types viz., oral evidence and documentary evidence. Oral evidence is the evidence which is permitted and required to be made and that too the truth from the voice of the witness on Oath and subject to the exceptions of Sec.4 of the Oaths Act. Such receiving of oral evidence is regulated by The Code of Criminal Procedure under certain provisions viz., 272, 275, 276, 277 – which speaks that the language of Courts will be decided by the concerned State Government and in every case where evidence is taken down under Sec. 275 and 276 that if the witness gives evidence in the language of the

Court, it shall be taken down in that language and if given in any other language, it may, if practicable, be taken down in that language, and if it is not practicable to do so, a true translation of the evidence in the language of the Court shall be prepared.

Sections .275 and 276 contemplates that the evidence of each witness shall, as his examination proceeds, be taken down in writing either by the Magistrate/Presiding Officer himself or by his dictation in open court, or under his direction and superintendence, by an officer of the Court appointed by him in this behalf. If the witness is able to give rational answer and able to give evidence, there may not be any hurdle for recording of evidence. When a witness, who cannot speak, comes to court, then more caution is to be taken while recording the evidence and prior to proceeding with such recording, the Court has to ascertain before he is examined, that he possesses the requisite amount of intelligence and that he understands the nature of an oath and on being satisfied on this, the witness may be administered oath by appropriate means and that also be with the assistance of an interpreter and in case, if such person can read and write, it is most desirable to adopt that method being more satisfactory than any sign language and the law required that there must be a record of signs and not the interpretation of signs. When in such occasions, an interpreter is required; he shall be an expert, so as to safely rely on such evidence. Our judicial proceedings are of Audi Alteram Partem, which means to hear the other side i.e., hear both sides and no man should be condemned unheard.The recording of evidence is guided by the Code of Criminal Procedure that what ever be the evidence to be taken it shall be taken in the presence of the accused, except as otherwise expressly provided, or when his personal attendance is dispensed with, the presence of his pleader. Here it is to be noted that for this section “accused “includes a person in relation to whom any proceedings under Chapter VIII has been commenced under this Code”.But there is an exception to this principle under 299 CrPC stating that the evidence can be taken in the absence of the accused, if it is proved that an accused person has absconded and that there is no immediate prospect of arresting him, the Court can examine the witnesses (if any) produced on behalf of the prosecution. While recording the evidence, the parties to the suit may not be required in person before the Court. Evidence can be recorded through means of audio and video mechanism and in this regard we can have the guidance from the Judgement of our Apex Court decided between Praful B. Desai Vs.State of Maharashtra (2003(4) SCC 610) and the presence of accused can also be had through the same mechanism as was decided in Abdul Kareem Telgi Vs.State (2008 CriLJ 532)and the recording of evidence and maintenance of Courts can be had from the reference of recent Digital Courts established in our State of Andhra Pradesh and

Tiruvuru and Jaggaiahpet Courts of Krishna District and the evidences can also be recorded through Skype as was reported in C.Rangan Sobha @ Sobha Vs.C. Muralidhar Rao (2016 (3) LS 345). But at the same time, it is relevant to note that prior permission of the Court is mandatory to proceed with trial through electronic mode, as was discussed in Asha Ranjan Vs.State of Bihar & anr (2017 (4) SCC 397).

Now we shall proceed to the aspect of Relevancy of Evidence:

What ever the witness deposes before the Court in relation to a case for adjudication is the evidence and such evidence may not be direct, but it should have relevancy to the facts in issue for determination. Witness may speak as he wish, due to lack of knowledge on legal proceedings or with over anxiety, we have to take the relevancy of such evidence only for adjudication and we have to separate the grain from chaff. Certain times,the evidence may not be direct evidence, but it may be of a circumstantial evidence. When we move to the topic of receiving of evidence, we have to think of direct evidence, circumstantial evidence, primary evidence, secondary evidence and other evidence. The Indian Evidence Act says that Primary Evidence and Direct Evidence are the best evidence. Even though, when there is no scope of adducing primary evidences, the Act enables the parties to produce secondary evidence, subject to the circumstances laid down under Law. While receiving the documentary evidence, it is not necessary to think of admissibility initially. The document may be a written document or an electronic document, if it is related directly or indirectly to the facts in issue, it can be received in evidence. Now when the question of marking of such existing/received documents in evidence arises, the admissibility is to be looked into. While marking such document, if either party to the proceedings raises any objection, marking can be done with an endorsement as marked subject to objection and such objection shall be discussed in judgement as to the maintainability of such objection. But, the oblection with respect to stamp duty and penalty and registration, the objection shall be decided immediately and it cannot be postponed to answered at the time of judgement. Further, when once the document is admitted in evidence, without any objection at the time of marking, objection thereupon cannot be maintained regarding the admissibility of such document. But, if the docuement in inherently inadmissible, even if it is marked it can be de exhibited subsequently as docuements which are inherently inadmissible cannot be admitted in evidence and considered as admissible evidence.

While adjudicating the cases based on the electronic evidences, the cases settled by

Tomaso Brono & Ors Vs.State of U.P. (2015(1) ALD (Crl) 663 can be observed, wherein the case was decided based on the CC footages. While adjudicating the same, when a document/electronic document is marked, unless the objection is made at the time of marking, no such objection is tenable thereafter and the same principle was also laid down by Hon'ble Apex Court in Sonu Vs.State of Haryana (AIR 2017 SC 3441). Evidence is to be permitted only with regard to pleading, as evidence without pleadings is invalid and Pleadings without evidence is of no use. Appreciation of evidence is required to record reasoned order, which is hall mark function of the Judicial Officer. Reasons should be given as to why the evidence is admitted and not admitted for ascertaining such finding.

It is nothing but considering the evidence with regard to relevancy, credibility, analysis with regard to inadmissibility and admissibility, proof and Relevancy, Proof, admissibility are parts of the appreciation of evidence. While appreciating oral evidences, motive to speak, consistency with earlier statements, corroboration with other witnesses, circumstances and probabilities are to be looked into and at the same time, the conduct of parties as it being the natural course of human conduct in those circumstances is to be taken into consideration and while dealing with the criminal proceedings, substantive evidence is the evidence, on which the Judicial Order/Sentence can be given.

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CONCEPT OF CORPUS DELECTI

Corpus delicti (Latin: "body of the crime"; plural: corpora delicti) is a term from Western jurisprudence referring to the principle that a crime must be proved to have occurred before a person can be convicted of committing that crime.

Corpus delicti is very important in investigations and criminal cases. Basically, the rule states that there should be enough evidence -- either in the form of a body or in other forms -- to prove that a crime took place before an individual can be charged with that crime.

There are two elements of *corpus delicti* in any offense:

1. A certain consequence, or injury, has occurred
2. The consequence, or injury, is a result of a person's intentional, unlawful act

Applications of the Rule

Why was the rule designed? It was established to help prevent individuals from being charged with an offense they didn't commit. In addition, the rule provides a certain amount of protection for those individuals who suffer from mental illness or mental instability and who may have confessed to a crime they did not even commit. False confessions, although they don't happen all the time, do take place.

Corpus delicti applies to all crimes, but it is considered to be an especially important concept within any murder investigation. There should be a body or at least a body of evidence for police to work with before they charge someone with a crime. When someone goes missing and these two things don't exist, police often have a difficult time charging a crime; if there isn't a body or at least evidence present to prove there was a death, then a person is most likely considered to be a missing person or a runaway rather than a homicide victim.

However, it should be noted that the prosecution within such an investigation will aim to charge for a conviction of guilt in a homicide case even if the body is not located, just as long as there is substantial circumstantial evidence present that ultimately leads beyond a reasonable doubt. For example, if you were a suspect within a murder case, it would be really difficult for an attorney to charge you with murder when they are unable to locate a body or sufficient evidence proving that you committed such an act. However, if your cell phone contained incriminating information that was associated to you being the responsible party or co-conspirator in a crime like murder, then all cards are off the table and you can most certainly be prosecuted. Remember, there does not have to be a body present if enough supporting or circumstantial evidence is present.

But what exactly is circumstantial evidence? This is when there is enough association or link between several factors and these factors infer that something took place. Such associations may be perceived as truth, evidence, and factual in nature, without the admission of any additional evidence. Murder conviction without a body. Conviction for murder in the absence of a body is possible. Historically, cases of this type have been hard to prove, forcing the prosecution to rely on other kinds of evidence, usually circumstantial. So, the prosecution can also rely on circumstatial evidence to prove it s case. But, the chain of circumstances must be complete without any miising link to find a person guilty basing on circumstantial evidence. The leading case on circumstantial evidence is laid down **2010 (2) L.S 105 (S.C)** : I.E Act – **Circumstantial Evidence** – **Five Golden Principles Stated:**

1) The circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that the circumstances concerned “must or should” and not may be established. Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between may be and must be is long and divides vague conjectures from sure conclusions.

2) The facts so established should be consistent only with the hypothesis with the guilt of the accused, that is to say, there should not be any other hypothesis except that the accused is guilty.

3) The circumstances should be of a conclusive nature and tendency.

4) They should exclude every possible hypothesis except the one to be proved, and

5) There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all probability the act must have been done by the accused.

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EFFECT OF NON-RECOVERY OF CRIME WEAPON AND OTHER INCRIMINATING MATERIAL.

"Weapon" means anything used, designed to be used or intended for use ……
(a) in causing death or injury to any person, or
(b) for the purpose of threatening or intimidating any person
And without restricting the generality of the forgoing, includes a fire arm.

Any instrument or device for use in attack or defense in combat fighting or war as a sword, refile or cannon.

Anything used against an opponent adversary or victims the deadly weapon of satire.
Weapon is not directly defined in law, articles of any description designed or adopted as weapon for the offence or defence, and includes fire-arms, sharp edged and other deadly weapons and parts of, and machinery for manufacturing arms, including items used in injuring a person.

Normally, to prove the offence agaisnt a person in case of injuries and death due to injuries or otherwise, the recovery of the crime weapon or the incriminating material is an important factor in investgation to prove the guilt of the accused in a particular case. The concept of recovery of crime weapon or the incriminating material may by be directly at the place of offence or at the instace of acccused. The discovery and recovery at the instance of the Accused is governed by Sec.27 and Sec.8 of Indian Evidence Act. In a criminal case appreciation of evidence plays a vital role in considering the prosecution case. In **Rang Bahadur Singh Vs. State of U.P**. reported in **AIR 2000 SC 1209** it has been has held as follows: "The time-tested rule is that acquittal of a guilty person should be preferred to conviction of an innocent person. Unless the prosecution establishes the guilt of the accused beyond reasonable doubt a conviction cannot be passed on the accused. A criminal court cannot afford to deprive liberty of the appellants, lifelong liberty, without having at least a reasonable level of certainty that the appellants were the real culprits." In view of the principle that the prosecution must

establish the guilt of the accused beyond reasonable doubt, The Evidence Act 1872 provides protections in the form of Sec.24, Sec.25 and Sec.26.

In **State, Rep. by Inspector of Police and Others, Vs. N.M.T.Joy Immaculate (AIR 2004 SC 2282)** the Hon'ble Supreme Court of India held that "The admissibility or otherwise of a piece of evidence has to be judged having regard to the provisions of the Evidence Act. The Evidence Act or the Code of Criminal Procedure or for that matter any other Law in India does not exclude relevant evidence on the ground that it was obtained under an illegal search and seizure. Hence, the direction given by the High Court that the confession and alleged recovery has no evidentiary value as it was obtained under an illegal order of remand is clearly illegal and has to be set aside.

In **AIR 2004 SC 2865** the Hon'ble Supreme Court of India held that – Sec.27 of Evidence Act is in nature of exception to preceding provisions particularly S.25 and S.26 - Conditions necessary for bringing S. 27 in operation stated". "The expression 'provided that' together with the phrase 'whether it amounts to a confession or not' in S. 27 show that the section is in the nature of an exception to the preceding provisions particularly Ss. 25 and 26. The first condition necessary for bringing this Section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only 'so much of the information' as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The reason behind this partial lifting of ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotely related to the fact discovered.

The various requirements of the section can be summed up as follows :

(1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other evidence connecting it with the crime in order to make the fact discovered admissible.

(2) The fact must have been discovered.

(3) The discovery must have been in consequence of some information received from the accused and not by accused's own act.

(4) The persons giving the information must be accused of any offence.

(5) He must be in the custody of a police officer.

(6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.

(7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible."

In – Pandu Rangu Kalupati and Another Vs. State of Maharastra. AIR 2002 SC 733 The honble Supreme Court held that the Discovery of a fact cannot equated with the recovery of the object though later may help in the final shape of what exactly the fact discovered pursuant to the information elicited from the accused. It has been further held by the High Court of Kerala that "there is no necessity of obtaining the signature of the accused in the disclosure statement so as to make it admissible. Recovery of the weapons, articles and other incriminating materials at the instance of the accused has always been found as relevant and in the same manner recoveries made from places accessible to all and sundry, were not admitted as relevant as incriminating evidence against the accused.

Now, it is to be seen whether non recovery of crime weapon or the incriminating material is fatal to the case of prosecution. In **Krishna Mochi & Ors. Vs. State of Bihar [(2002) 6 SCC 81],** Hon'ble Supreme Court of India held : "It has been then submitted on behalf of the appellants that nothing incriminating could be recovered from them, which goes to show that they had no complicity with the crime. In my view, recovery of no incriminating material from the accused cannot alone be taken as a ground to exonerate them from the charges, more so when their participation in the crime is unfolded in ocular account of the occurrence given by the witnesses, whose evidence has been found by me to be unimpeachable."

In **Lakshmi Vs. State reported in (2002) 7 SCC 198,** it was held that it is not an inflexible rule that weapon of assault must be recovered and the Hon'ble Supreme Court did not accept as a general and broad proposition of law that in case of non-recovery of the weapon of assault, the whole prosecution case gets torpedoed.

In **State of Rajasthan Vs. Arjun Singh and Ors. AIR 2011 SC 3380 and 2011 -9-SCC 115:** The Hon'ble Supreme Court held that Recovery evidence - Absence of recovery of pellets from scene of occurrence or from body of injured persons cannot be taken or construed as no occurrence of firing as suggested by prosecution has taken place - Mere non-recovery of pistol or cartridge does not detract case of prosecution where clinching

and direct evidence is acceptable - Moreso, when gunshot injuries tallied with medical evidence.

In **Mritunjoy Biswas Vs. Pranab alias Kutti Biswas and Another AIR 2013 SUPREME COURT 3334 : (2013) 12 SCC 769**.

The Hon'ble Supreme Court held that "There is ample unimpeachable ocular evidence corroborated by medical evidence - Mere non-recovery of weapon from accused does not affect prosecution case".

In **Krishna Gope Appellant v. State of Bihar Respondent. - AIR 2003 SUPREME COURT 3114**

The Hon'ble Supreme Court of India Held that Wordy altercation between deceased and accused over grazing of cow – Accused-appellant firing at deceased by country made rifle - Incident seen by eye-witness – Eyewitness knowing accused and was only 30 feet away - Version of eyewitness corroborated by other witness who saw accused running from scene - Statement given by deceased to police treated as FIR - Failure of I.O. to correctly state as to who recorded statement of deceased - Not of much importance - Delay of only one day in sending FIR to Magistrate – Accused liable to be convicted on evidence adduced - Non-recovery of weapon from the house of accused-appellant does not inure to his benefit."

In **Nirmal Kumar Appellant v. State of U.P Respondent – AIR 1992 SC 1131,** the Hon'ble Supreme Court held that "Occurrence taking place in family house, at night - Prosecution case resting on child evidence - Child deposing that she had seen accused in lantern light and giving out their names - Fact that lantern was burning however not stated before police - Names of accused also not mentioned to police officer who examined her - Contradictions are material - Recovery of weapon at instance of accused Not a corroborative evidence of significance - Accused entitled to be acquitted." In this judgement the court held that "mere recovery of the weapon is not a proof that the accused has committed the crime.

In **Pradumansinh Kalubha Vs.State of Gujarat – AIR 1992 SC 881,** the Hon'ble court held that "- Appreciation of evidence – Tension prevailing in immediate past between two communities - Testimony of eyewitnesses without independent corroboration not reliable – Medical evidence corroborated testimony of witnesses as to stabbing - No inference can be drawn that there was attempt to foist case on accused – Nothing suspicious in steps taken by investigating officer - Involvement of accused in

crime proved beyond doubt by evidence on record - Acquittal of accused by trial Court on conjecture and strained reasoning – Illegal ” and further held that “- Seizure of weapon - Not very material where there is a direct evidence”. **This judgment shows the direct evidence of the eye witness plays pivotal role as against the presence or recovery of the weapon. Discovery – Weak kind of evidence.**

In **Mani Vs. State of Tamil Nadu reported in AIR 2008 SC 1021,** the Hon’ble Supreme Court has held that “discovery is a weak kind of evidence and cannot be wholly relied upon in a serious matter and in the circumstances, where the prosecution discovered some articles ten days after murder barely three hundred feet away from teh dead body of the deceased and no attempt was made by the prosecution to prove that the discovered articles belong to the accused and there was also no evidence of motive of murder and in these circumstances the Hon’ble Court held it to be a ‘clear case of benefit of doubt’ .

Discovery of weapon – Non-examination by F.S.L. in State of Rajasthan Vs. Wakteng reported in AIR 2007 SC 2020, it was held by the Hon’ble Supreme Court that “Recovery on disclosure statement made by accused - Weapon of murder recovered - Weapon however not sent to Forensic Science Laboratory - Accused also not quizzed u/S. 313, Criminal P.C. on question of recovery - Evidence of recovery - Cannot be relied upon for conviction”.

Ashok @ Dangra Jaiswal Vs. State of Madhya Pradesh 05.4.2011.
Non Production of the seized drugs and non Examination of Investigating officer and punch witnesses turned hostile. Then the accused entitled the bonefit of doubt.
But when there is direct eye witness evidence and non production of material object was a mere procedural irregularity and it can be cured by Section 465 of Crpc and did not cause prejudice to the accused.

CONCLUSION

So, in view of the above discussion and legal position referred, it shows that non reovery of crime weapon or the incriminating material by the Investigating Officer, may not be fatal in all circumstances and it has a very little impact when there is positive direct evidence with respect to the commission of offence by the accused.

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EXAMINATION OF ACCUSED UNDER SECTION 313 CODE OF CRIMINAL

PROCEDURE.

The scope and object of Section 313 Cr.P.C :

Section 313 Cr.P.C casts a duty on the court to put in an enquiry or trial ,questions to the accused for the purpose of enabling him to explain each material circumstance appearing in evidence against the accused is required to be put to him specifically, distinctly and separately and failure to do so amounts to a serious irregularity vitiating the trial ,if it is shown that the accused was prejudiced. The object of Section 313 Cr.P.C is to establish a direct dialogue between the court and the accused and if a point in the evidence is important against the accused and the conviction is intended to based upon it, it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining and no specific question has been put by the trial court on an inculpatory material in the prosecution evidence, it would vitiate the trial. The provision is mainly intended to benefit the accused and as its corollary to benefit the court in reaching the final conclusion. Even if the prosecution evidence is weak, court has to put incriminating circumstance to the accused and before recording statement of accused under sec 313 cr.p.c. the trial court is not expected to evaluate the evidence for the purpose of deciding whether or not he should question the accused. The law is equally well settled that the statement of the accused by it self is not evidence and the prosecution case is got to be provided by the evidence to be led. The statement of the accused may only add strength to the evidence adduced by the prosecution establishing the prosecution case. Even if it is assumed that the accused had made false statements while examined under section 313 Cr.P.C the law is well settled that the falsity of the defence cannot take the place of proof of facts which the prosecution has to established in order to succeed.

In Tanviben Pankaj Kumar Divetia Vs. State of Gujarath (1997) 7 SCC 156
wherein it was held that the conviction of the accused is vitiated on account of not drawing the attention of the accused specifically to the incriminating facts alleged by the prosecution witnesses.

Purpose of examination of the Accused U/sec . 313 Cr.P.C : In the opinion of the Hon’ble apex court the answers to the questions may sometimes be flat denial or outright repudiation of those circumstances and in certain cases the accused would offer some explanation to the incriminating circumstances. In very rare instances the accused even admit or own incriminating circumstance adduced against him, perhaps for the

purpose of adopting legally recognized defence. In all such cases the court gets the advantage of knowing his version about those aspects and it helps the court to effectively appreciate and evaluate the evidence in the case. The word " may" in clause (a) of subsection (1) in section 313 Cr.P.C indicates that even if the court does not put any question under that clause the accused cannot rise any grievance for it. But if the court fails to put the needed question under clause (b) subsection it would result in the handicap to the accused and he can legitimately claim that no evidence, without affording him the opportunity to explain, can be used against him. The expression " any circumstances appearing in evidence" means under section 313 Cr.P.C the court invites attention of the accused to the entire evidence of the prosecution and entire contents of all the documents relied upon by the prosecution including F.I.R., the contents of admissible confession statements and contents of dying declaration also have to be confronted to the accused in 313 Cr.P.C examination. Because those confessional statements and dying declaration are direct circumstances which incriminate the accused which was held in Maruthy College of Engineering and technology Vs.State of A.P, represented by public prosecutor, High court of A.P. , Hyderabad 2007 CRLJ 397. The entire evidence of the each witness should not be covered by single question to be put to the accused who was asked to explain the same. It is the duty of the trial courts presiding officers to examine the accused properly and fairly bringing home to his mind in simple and clear language the exact case he has to meet and each material point that is sought to be made against him and of affording him a chance to explain it as he can and if he so desires.

Some case laws on examination of the accused under sec 313 Cr.P.C.

1 .Brajendra Singh Vs State of M.P (2012 (2) SCC (Crl) 409)
wherin it was held by the Hon'ble Supreme court that Statement of an accused recorded when he was examined U/sec 313 Cr.P.C, can be used as evidence in so far as it supports the prosecution case when it is in line with the prosecution case.
2. R.Palanisamy Vs. State by Inspector of Police on 23rd April 2013 Wherein it was held by Hon'ble High Court of Madras "that the term "Here before condemn " which is the simplest meaning of the principle 'Audi Alteram Partem', a component of principles of natural Justice and is the idea behind examination of the accused U/sec 313 Cr.P.C examination is that an opportunity is given to the accused to give his explanation, his view as to the incriminating
details, aspects, circumstances appearing against him in prosecution evidence before it being used against him and could be considered along with inclupalory information in

the prosecution evidence.

Section 313 Cr.P.C., contemplates 2 types of examination of the accused. Actually, it is a dialogue between the accused and the court. Under Section 313(1)(a), at any stage of the case, the trial court 'may' examine the accused when it deem it necessary. So, it is discretionary and is not mandatory. However, under Section 313(1) (b), after the closure of the prosecution evidence, the trial court 'shall' examine the accused. Thus, it is mandatory. But such examination must be with reference to incriminating, in-culpatory statement, details and circumstances in the prosecution evidence available as against the accused. So,when no incriminating details or circumstance, information implicating the accused is available in the prosecution evidence, there is no occasion for the court to examine the accused under Section 313 (1) (b) Cr.P.C. Factual aspects of the case unaccompanied by any incriminating aspects or uncontraverted matters need not be put to the accused under Section 313 (1) (b) Cr.P.C.

Gian chand and others Vs. State of Haryana AIR 2013 SC 3395 Wherein it was held by the Hon’ble Supreme Court that it would not be enough for the accused to show that he has not been questioned or examined on a particular circumstance in section 313 Cr.P.C, instead he must show that such non-examination has actually and materially prejudiced him and has resulted in the failure of the Justice.

Munna Kumar Upadhyay Vs. State of Andhra Pradesh through Public Prosecutor, Hyderabad Andhra Pradesh. dt. 8th May, 2012 Wherein it was held that the object of Section 313 Cr.P.C is to serve a dual purpose, firstly to afford to the accused an oppurtunity to explain his conduct and secondly to use denials of established facts as incriminating evidence against him.

Ashraf Ali Vs. State of Assam ((2008) 16 SCC 328) It was Observed as follows that Section 313 of Cr.P.C casts a duty on the court to put in an inquiry or trial questions to the accused for the purpose of enabling him to explain any of the circumstances appearing in the evidence against him. It follows as a necessary corollary therefrom that each material circumstance appearing in the evidence against the accused is required to be put to him specifically distinctly and separately and failure to do so amounts to a serious irregularity vitiating trial, if it is shown that the accused was prejudiced. Section 313 Cr.P.C also empower that the accused also permitted to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. The option lies with the accused to maintain silence coupled with simpliciter denial or in

alternative to explain his version and reasons for his alleged involvement in the commission of the crime. However, if the statements made are false, the court is entitled to draw adverse inferences and pass consequential orders, as may be called for in accordance with law. The primary purpose is to establish a direct dialogue between the court and accused and to put to the accused every important incriminating piece of evidence and grant him an oppurtunity to answer and explain. The courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, However such statements made under this section should not be considered in isolation but in conjunction with evidence adduced by the prosecution. If the accused gave incorrect or false answers during the course of his statements U/sec 313 Cr.P.C, the court can draw an adverse inference against him.

In State of M.P. v. Ramesh, (2011) 4 SCC 786, “The statement of the accused made under Section 313 CrPC can be taken into consideration to appreciate the truthfulness or otherwise of the prosecution case. However, as such a statement is not recorded after administration of oath and the accused cannot be cross-examined his statement so recorded under Section 313 CrPC cannot be treated to be evidence within the meaning of Section 3 of the Evidence Act. 1872. Section 315 CrPC enables an accused to give evidence on his own behalf to disprove the charges made against him. However, for such a course, the accused has to offer in writing to give his evidence in defence. Thus, the accused becomes ready to enter into the witness box, to take oath and to be cross-examined on behalf of the prosecution and/or of the accomplice, if it is so required.”

CONCLUSION:

Examination u/Sec.313 Cr.P.C is made to meet the requirement of the principles of natural justice as it requires that an accused may be given an opportunity to furnish an explanation of the incriminating material which had come again against him in the trial. The answers given by the accused in the examination u/Sec.313 Cr.P.C cannot be used to fill up the gaps left by the prosecution witnesses in their evidence. The statement of the accused u/Sec.313 Cr.P.C cannot be made a basis for his conviction as it is not a substantive piece of evidence and therefore, it can be used only for appreciating the evidence lead by the prosecution, though it cannot be a substitute for the evidence of the prosecution. In case the prosecution evidence is not found sufficient to sustain conviction of the accused, the inculpatory part of the statement of accused cannot be made the sole basis of his conviction. An adverse inference can be
drawn against the accused only if the incriminating material stood fully established and the accused is not able to furnish any explanation for the same in his examination

U/s.313 Cr.P.C.

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JUDGEMENT WRITTING

A Judgment must begin with clear recital of facts of the case, cause of action and the manner in which the case has been brought to the Court. First of all, the Presiding Officer must have essential facts in mind, and its narration should be without any error or mistake.

While writing a judgment, Judge shall give a brief introduction and to narrate in the judgment about the facts brought before him, about the theory of the case. Judge should avoid repeating pleadings and the law in the judgment. Judge may, write judgment in a style he is comfortable with. It is advised to use clear sentence structures and organization. It is always better to use plain English.

Section 354 of the Cr.P.C. prescribes the language of the judgment and requires the points for determination, the decision thereon, the reasons for the decision that it shall be dated and signed in open court.

It is always better to avoid use of complicated language or phraseology just for the fun of it. Use simple verbs and keep them as close to the subject which they refer as possible. A judgment should not be prolix or verbose. The language should be sober and temperate and not satirical or factious. It is always better to prefer to use active voice rather than using passive voice .

For easy understanding, proper use of Grammar and punctuation is always essential. Correct use of grammar definitely shows professionalism of a judge and thereby it makes writing much easier to understand. Judge should go through judgments of superior courts to appreciate the use of style and language in making judgment more professional .

BURDEN OF PROOF:

The concept of burden of proof is explained in Sections 101 to 114 of the Indian Evidence Act, 1872. Presiding Officer must keep in mind the rules determining burden of proof and the statutory exceptions to the general rules thereon. It is always essential to rember to state vividly and correctly who bears the burden to prove the case or issue

stated and to what standard. In criminal cases, the principle is beyond all reasonable doubt whereas in civil cases, it is on the preponderance of probabilities
with some exceptions where fraud is pleaded.

JUDGMENT should refer to the principles applicable as to the case law and the statutory law. Application of the law the facts of a case is the crux of judgment writing. What we call appreciation of evidence in the judgment is done at this stage. Judge should evaluate the evidence as a whole for the both sides. This is where the ratio decidendi is stated and the case is decided finally.

Avoid quoting editor's note in judgments. The Editors do not deliver judgments but prepare Head-note according to their understanding.

The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. Presiding officer must go through the entire judgment to understand the ratio laid down in it.

The Judgment , as provided in Section 354 of Cr.P.C. is to be written in the language of the Court, and that it shall contain the point or points for determination, the decision thereon and the reasons for the decision. This section also explains that the judgment shall specify the offence (if any) of which, and the section of IPC, or other law under it . If the accused is convicted and punishment to which he is sentenced. If the judgment is of acquittal, it shall state the offence of which the accused is acquitted and direct that accused should be set at liberty, if he is in judicial custody and his presence is not required in other case. Property order should carefully be noted in the result portion.

Appreciation of evidence in criminal case differs to that of the appreciation of evidence in civil case because in criminal cases, the prosecution has to prove the guilt of accused beyond all reasonable doubt, whereas in civil cases, the case should be disposed of on principle of preponderance of probabilities . The truth or otherwise of the evidence has to be weighed pragmatically.

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REMEDIES, RELIEFS, SENTENCING AND PUNISHMENT

We all know that one of the cardinal principles of criminal justice system is that an accused is presumed to be innocent unless proven otherwise. In Indian system, it is said, if two views are possible one pointing towards the **guilt of the accused and other towards his innocence, the view favourable to the accused should be accepted.**

“Every saint has a past, every sinner has a future” -J J Krishna Iyer.

“Theory of reformation through punishment is grounded on the sublime philosophy that every man is born good, but circumstances
transform him into a criminal” - K. T. Thomas J.

SENTENCE:

A sentence is a decree of punishment of the court in Criminal procedure. The sentence can generally involve a decree of imprisonment, a fine and / or other punishments against a defendant
convicted of a crime.

Those imprisoned for multiple crimes will serve a consecutive sentence (in which the period of imprisonment equals the sum of all the sentences served sequentially, or one after the next), a concurrent sentence (in which the period of imprisonment equals the length of the longest sentence where the sentences are all served together at the same time)

PUNISHMENT:

Punishment is a method of protecting society by reducing the occurrence of criminal behaviour. Punishment can protect society by deterring the potential offenders, preventing the actual offender from committing further offences and by reforming and turning him into a law abiding citizen.

The following are the some of the rights available to the accused, sentencing and punishment.

SUSPENSION OF SENTENCE:

“Suspension” means to take or withdraw sentence for the time being.

It is an act of keeping the sentence in abeyance at the pleasure of the person who is authorised to suspend the sentence, and if no conditions are imposed, the person

authorised to suspend the sentence has the right to have the offender re-arrested and direct that he should under go the rest of the sentence without assigning any reason. This position is given in the Law commission 41st Report P.
281 Para 29.1; and also in cases like Ashok Kumar Vs. Union of Inida (AIR 1991 SC 1792); State of Punjab V. Joginder Singh (AIR 1990 SC 1396).

Section 389 (1) and (2) of Cr.P.C deals with a situation where convicted
person can get a Bail from appellate court after filing the criminal appeal. Section 389 (3) deals with a situation where the trial court itself can grant a bail to convicted accused enabling him to prefer an appeal. Since we are concerned with the power of the trial court to suspend the sentence, section 389 (3) must be taken into account. Section 389 (3) is applicable only in the following conditions:

1. the court must be the convicting court,
2.The accused must be convicted by the court,
3. The convict must be sentenced to imprisonment for a term Not
exceeding three years,
4. the convict must express his intent to present appeal before the
appellate court,
5.The convict must be on bail on the day of the judgment,
6.There should be right of appeal

(Mayuram Subramanian Srinivasan Vs. CBI (2006) 5 SCC 752)).
Trial Court's Power U/sec. 389 (3) of Cr.P.C:

1.Trial Court has power to release such convict on bail.
2.Trial court has power to refuse the bail if there are “Special Reasons”
3.Trial Court has power to release such convict for such period as will
afford sufficient time to present the appeal and obtain the orders of the Appellate court.
Thereafter, it is provided that “ the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended”. So what is important to take note of, is that first the Trial Court has to decide whether there are special reasons to refuse the bail. If the trial court does not find any special reasons for rejection of the bail, then the convict has to be released on bail for enabling him to present appeal to the appellate court.

Features of section 389 (3):

1.The convict shall not be released on bail " as of right" but he will have to satisfy that he is "eligible" to be released on bail:
2. If the trial court is satisfied that there are "Special reasons " for not releasing the convict on bail, then the Trial Court can very well do:
3. The sole purpose of this provision is to enable the convict to present appeal to the appellate court:
4.No maximum period is prescribed for releasing the convict on bail;
5.Under this section 389 (3) suspension of sentence is "deemed" suspension;
6.Suspension of sentence is by product of the accused being released on bail;
7.The trial court has no power to suspend the sentence and then order the release of the convict on bail. So the order of trial court should be like this:

"The convicted is released on bail, since he intends to prefer appeal against the judgment and order of this court and there are no special reasons for refusing bail, for such period as will afford sufficient time to present the appeal within limitation period and obtain the orders of the Appellate court under Sub-Section (1) ; and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended"

RIGHT OF ACCUSED TO BE HEARD ON QUESTION OF SENTENCE IN WARRANT CASES;

The relevant provision as to the right of the accused to be heard on question of sentence in war rant cases exclusively triable by a court of Session is provided in Section 235 (2) of the Code of Criminal Procedure, whereas in cases pending trial before Judicial Magistrate can be located in Section 248 (2) of the same code. This provision of hearing on question of sentence is mandatory. Non–compliance with the provisions of section 235 (2)of the code of Criminal Procedure, is not an irregularity, but is an illegality which vitiates the sentence.

PRE-SENTENCE HEARING:

Therefore, the sentence awarded has to satisfy many conflicting demands. It has to satisfy the victims of the crime and the society in general that the culprit has been adequately and appropriately punished. It should leave an impression on the offender that he is punished for the offence he has committed and shall remind him

that commission of crime won't do any good to him and that if he commits or repeats the commission of the offence and continue crime as his career, he will be caught and punished, and thereby deter and prevent him from committing or repeating the commission of the offence. The punishment imposed also should bring home the reformation of the offender and restore him to the society as its prodigal member. The punishment also shall take care of reparation of the victims by providing adequate and reasonable compensation. Thus, exploration of the modern penology made the task of Judges in exercising their discretion to choose and impose sentence complex and complicated.

Thus, there shall be material or evidence before the court relating to crime, socioeconomic, psychological and personal aspects of the offence, and in some cases of the victim, to arrive at a just and adequate sentence order. Information relating to these aspects may be found to some extent from the material gathered by the investigating agency during the investigation and proved by the prosecution, and also from the evidence produced during trial.

But is is a known experience that this material so produced before the court is hardly adequate to assist the court to meet the punitive dilemma in arriving at an appropriate sentence. The consideration of these aspects relates to post conviction stage. It is also a fact that the counsel appearing for the accused feels shy to seek permission of the court to adduce evidence or to advance arguments on behalf of the accused touching the aspects of the sentence, with an apprehension that the court may take it as the accused accepting the guilt and is under an expectation of conviction.On the other hand, if an opportunity is provided after conviction dealing with aspects relating to the sentence to be imposed on the convict, the same will afford an opportunity both for the prosecution and also to the accused to place relevant material and evidence before the court, which will make the task of the court easy and meaningful, and the same will be of immense help for the court to arrive at just and adequate sentence.

Thus, there should be a stage, after convciton of the accused and before passing sentence order, in criminal proceedings, dealing with an inquiry purely relating to the aspects of the sentence.

Supreme Court, in SANTA SINGH Vs. STATE OF PUNJAB CASE (AIR 1976 (4) SCC 190), dealt with the scope and meaning of the words “hear the accused” and held as follows:

“We are, therefore, of the view that the hearing contemplated by section 235 (2) is not confined merely to hearing oral submissions, but it is also intended to given an opportunity to the prosecution and the accused to place before the court facts and

material relating to various factors bearing on the question of sentence and if they are contested by either side, then to produce evidence for the purpose of
establishing the same, of course, care would have to be taken by the court to see that this hearing on the question of sentence is not abused and turned in to an instrument for unduly protracting the proceedings. The claim of due and proper hearing would have to be
harmonised with the requirement of expeditious disposal of the proceedings”

CONSEQUENCES OF NON-COMPLIANCE:

Non-Compliance of the requirement of the hearing of the accused contemplated under these provisions of law is not a mere irregularity, curable under section 465 Cr.P.C but it is an illegality which vitiates the sentence. Supreme court of India, in SANTA SINGH'S CASE (AIR 1976 (4) SCC 190.dealing with the non-compliance of section 235 (2), held as follows:
“The next question that arises for consideration is whether non compliance with section 235 (2) is merely an irregularity which can be
cured by section 465 or it is an illegality which vitiates the sentence.
Having regard to object and the setting in which the new provision of section 235 (2)was inserted in the 1973 code there can be no doubt that it is one of the most fundamental part of the criminal procedure and non-compliance thereof will ex-facie vitiate the order. Even if it be regarded as an irregularity the prejudice caused to the accused would be inherent and implicit because of the infraction of the rules of natural justice which have been incorporated in this statutory provision, because the accused has been completely deprived of an
opportunity to represent to the court regarding the proposed sentence and which manifestly results in a serious failure of the justice”.

DUTY OF THE COURT:

The Role of the Judge at the stage of hearing on sentence is no passive and he has to actively participate in the enquiry and make every endeavor to get all the facts and evidence, which have
bearing in determining the sentence.

The importance of the role participation of the Judge and the duty cast upon him during “hearing on sentence” under section 235 (2) Cr.P.C is elaborately discussed and

appropriate directions are given in MUNIAPPAN Vs. STATE OF TAMILNADU (AIR 1981 SC 1220))

in the following lines:-

“We are also not satisfied that the learned sessions Judge made any serious effort to elicit from the accused what he wanted to say on the question of sentence. All that the learned Judge says is that when the accused was asked on the question of sentence, he did not say anything”.The obligation to hear the accused on the question of sentence which is imposed by section 235(2)of the Criminal Procedure code is not discharged by putting a formal question to the accused as to what he has to say on the question of sentence. The Judge must make a genuine effort to elicit from the accused all information which will eventually bear on the question of sentence. All admissible evidence is before the Judge but that evidence itself often furnishes a clue to the genesis of the crime and the motivation of criminal. It is the bounden duty of the Judge to cast aside the formalities of the court scene and approach the question of sentence from a broad sociological point of view.

BENIFIT OF PROBATION OF OFFENDER'S ACT, 1958

The recent trend of criminal justice system is to reform the criminal rather than to punish him. In India reformatory theory of punishment reflects in section 360 of the code of criminal procedure and section 3 and 4 of the Probation of offenders Act, 1958. As per section 3 of the probation of offenders Act, 1958 the court may release the convict on due admonition when he is found guilty of having committed an offence punishable under Section 379, 380, 381, 404 or 420 of Indian Penal Code or offence punishable with imprisonment for not more than two years, and no previous conviction is proved against him. Under section 4 of the said Act when any person is found guilty of having committed an offence not punishable with death or imprisonment for life and the court is of the opinion that it is expedient to release him on probation of good conduct, then the court may instead of sentencing him to any punishment release him on his executing bond, with or without sureties to appear and receive sentence when called upon during such period, not exceeding 3 years, and in the meantime to keep the peace and be of good behaviour. Therefore, benefit of Probation of Offenders Act should be given to convict in deserving cases.

RIGHT OF THE ACCUSED CONVICT AS TO SET OFF THE PERIOD OF

DETENTION UNDERGONE BY HIM (SECTION 428 OF THE CODE OF CRIMINAL PROCEDURE, 1973

Section 428, code of Criminal Procedure is a new provision. It confers a benefit on a convict reducing his liability to undergo imprisonment out of the sentence imposed for the period which he had already served as an under trial prisoner. Section 428 of the Code permits the accused to have the period undergone by him in jail as an under trial prisoner set off against the period of sentence imposed on him irrespective of whether he was in jail in connection with the same case during that period.

CONCLUSION:

The Code of Criminal Procedure, 1973. Provides for wide discretionary
powers to the Judge once the conviction is determined. The power used by court as mentioned supra, is not to be used indiscriminately in a routine, casual and cavalier manner for the reason that an exception clause requires strict interpretation.

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DISPOSAL OF CASE PROPERTY

INTRODUCTION

The word **"Property"** under section 451 Criminal Procedure Code, means and includes:
a) property of any kind or document which is produced before the court or which is in its custody.
b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence. When such property is involved in commission of an offence, or is the subject matter of an offence, the same is known as case property.

PROVISIONS FOR DEALING WITH THE PROPERTY UNDER CRIMINAL PROCEDURE CODE:

The provisions relating to CASE PROPERTY are envisaged under Sections 451 to 459. Besides these provisions, the Criminal Rules of Practice and Circular Orders provide Rules 220 to 234.

SECTION 451:- ORDER FOR CUSTODY AND DISPOSAL OF THE PROPERTY PENDING TRIAL IN CERTAIN CASES:

(i) When any property is produced before any Criminal Court during any inquiry or trial, the Court may order such property for proper custody, pending the conclusion of the inquiry or trial.
(ii) If the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

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

(i) Order under this section should be passed at conclusion of trial.

(ii) The Court may make such order (with or without any condition) for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to.

(iii) But, the Court has to make such order engaging that person to restore such property

to the Court if the order made under sub- section (1) is modified or set aside on appeal or revision. However, if property is livestock or is subject to speedy and natural decay, this condition to wait until lapse of appeal time does not arise.

(iv) While passing order under this section, ‘’APPEAL TIME’ is to be kept in mind.

(v) Under this section, a Court of Session may direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in sections 457, 458 and 459.

(vi) It is pertinent to mention that Section 452 Criminal Procedure Code, property includes the same which is converted or exchanged, whether immediately or otherwise.

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

i) This section applies to Payment to innocent purchaser of money found on accused. (It applies to cases such as theft, and receiving or retaining stolen property).

ii) Under this section, on application, the Court can order to make payment to innocent purchaser out of money found on accused.

iii) If no money is found on accused, the court cannot order accused who is convicted or the owner to make payment of purchase money to the innocent purchaser. Of course, the innocent purchaser may approach civil court for such claim.

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

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

SECTION 455 :DESTRUCTION OF LIBELLOUS AND OTHER MATTERS:
Under this section, when an accused is convicted for offences under sections 292, section 293, section 501 or section 502 IPC, the Court may order the destruction of all the copies of the thing. Similarly, on conviction of offences under sections 272 to 275

Indian Penal Code, the Court may order the food, drink drug or medical preparation in respect of which the conviction was had, to be destroyed.

SECTION 456: POWER TO RESTORE POSSESSION OF IMMOVABLE PROPERTY:

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

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

i) When case property is reported to Magistrate by police, this section applies.

ii) Under this section, during an inquiry or trial, the Magistrate may order disposal of such property or the delivery of such property to the person entitled to.

SECTION 458 : PROCEDURE WHEN NO CLAIMANT APPEARS WITHIN SIX MONTHS

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

SECTION 459: POWER TO SELL PERISHABLE PROPERTY

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

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

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

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

The Hon'ble Apex Court, in 2002 Supp(3) SCR 39 = (2002) 10 SCC 283, between SUNDERBHAI AMBALAL DESAI VS STATE OF GUJARAT, succinctly explained the object and scheme of the various provisions of the Code as to disposal of case property. The Hon'ble Supreme Court, in the above case, observed as follows:

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

In view of the ratio-laid down by the Hon'ble Apex Court, it is clear that unless the caseproperty is necessary, court cannot retain the case property either in its custody or in the custody of police for any time longer. Therefore, it is the duty of court to pass appropriate property orders according to law without any delay. The question of proper custody of the seized article is raised in number of matters. In [1977] 4 SCC 358, between SMT BASAWA KOM DYANMANGOUDA PATIL VS STATE OF MYSORE AND ANOTHER , the Hon'ble Supreme Court dealt with a case where the seized articles were not available for being returned to the complainant. In that case, the recovered ornaments were kept in a trunk in the police station and later it was found missing. The question was with regard to payment of those articles. In that context, the Court observed at para no.4 as under-

"4. The object and scheme of the various provisions of the code appear to be that where the property which has been the subject-matter of an offence is seized by the police, it ought not to be retained in the custody of the Court or of the police for any time longer than what is necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a Government servant, the idea is that the property should

be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. High Court and the Sessions Judge proceeded on the footing that one of the essential requirements of the code is that the articles concerned must be produced before the Court or should be in its custody. The object of the code seems to be that any property which is in the control of the Court either directly or indirectly should be disposed of by the Court and a just and proper order should be passed by the Court regarding its disposal. In a criminal case, the police always acts under the direct control of the Court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the Court exercises an overall control on the actions of the police officers in every case where it has taken cognizance." The Court further observed that where the property is stolen, lost or destroyed and there is no prima facie defence made out that the State or its officers had taken due care and caution to protect the property, the Magistrate may, in an appropriate case, where the ends of justice so require, order payment of the value of the property. To avoid such a situation, the powers under Section 451 Criminal Procedure Code should be exercised promptly and at the earliest.

In that regard, the observations of the Hon’ble Supreme Court in Sunderbhai Ambalal Desai vs State Of Gujarat (3rd supra) are very much relevant which read thus:

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

In case, where such articles are not handed over either to the complainant or to the person from whom such articles are seized or to its claimant, then the Court may direct that such articles be kept in bank lockers. Similarly, if articles are required to kept in

police custody, it would be open to the Station House Officer that after preparing proper Panchnama to keep such articles in a bank locker. In any case, such articles should be produced before the Magistrate within a week of their seizure. If required, the Court may direct that such articles be handed over back to the Investigating Officer for further investigation and identification, However, in no set of circumstances, the Investigating Officer should keep such articles in custody for a
longer period for the purpose of investigation and identification.

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

PRECAUTIONS WHILE TAKING PANCHNAMA

1) Panchnama for return of the property shall be made taking all same precautions while preparing panchnama for seizure of property.

2) In addition to the same, photographs of the articles of the property shall also be taken.

3) A bond from the petitioner shall be undertaken stating that the property shall be produced at the time of the trial and a proper security shall also be taken. As observed by Hon'ble Apex Court in Sunderlal Ambalal's case that the bond and security should be taken so as to prevent the evidence being lost, altered or destroyed.

4) The photographs or such articles shall be attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over.

5) The court in the interest of justice and from circumstances of the case impose any other conditions as may find appropriate.

6) It is further clarified by Hon'ble Apex Court that if the accused disputes that he is not involved in the alleged incident and no article was found from him, such an endorsement to be taken on the photograph.

7) In respect to the vehicle, it was made clear that it is not necessary to produce the vehicle before the court during trial and that the seizure report may be sufficient.

RULES COVERED UNDER CRIMINAL RULES OF PRACTICE WITH REGARD TO PROPERTIES

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

1) Rule 230 (2) Crl.R.P :- Art objects and antiquity: The Court shall send the art objects and Antiquity to the Director of archaeology and Museums, if he desires otherwise they should be confiscated to the state.

2) Rule 230(3) Crl.R.P :- Gold ornaments : The Court shall send the Gold Ornaments to Mint Master through a responsible Officer by pre-arrangement.

3) Rule 234(1) Crl.R.P :- Counterfeit coins : They shall be forwarded together with any dies, moulds etc., which may have been produced in the case to the nearest Treasury or Sub-Treasury, with request that they may be remitted to the Mint for examination. A concise and accurate report should also be sent containing a description of the case and the sentence imposed.

4) Rule 234(2) Crl.R.P:- Forged Currency Notes: It is a matter for the decision of the Court which tries the case.
(1) deliver the same to police for destruction; or

(2) If they are of special interest, police may make them over to the Criminal Investigation Department for this purpose;

(3) All forged currency notes brought before the Court shall be handed over to the Police

for being forwarded to the Issue Department of the Reserve Bank of India, with a brief report of the case.

5) Rule 234(4) Crl.R.P: Arms and ammunitions : They should be sent to the nearest Arsenal for disposal.

DELIVERY OF CASE PROPERTY TO THE PERSON ENTITLED

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

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

PROCEDURE FOR DISPOSAL OF PROPERTY AFTER EXPIRY OF APPEAL PERIOD

1. If the property is still pending even after the expiry of appeal time, a notice as in the form no 61, of Criminal Rules of Practice (The form shall contain the date of appearance and the next date of course of action) shall be served on the person to whom property is ordered to be returned.

2. Such notice shall indicate the date on or before which the person has to appear before the court and it shall also contain a warn to the claimant if he does not appear by the specified date, then the property shall be confiscated to the state.

3. The police shall be strictly directed to see that the notices are served at least one week in advance and file the reports before the court.

4. If no one appears before the court within the given date in notice to claim the property, then a note shall be put up by the clerk and a suitable order shall be passed by the concerned Magistrate.

5. In case of unclaimed property, the ownership or legal possession of it cannot be traced by the police and no complaint is received with regard to such property.

6. Such unclaimed property has to be disposed-off as per the procedure provided Under Section 457,458 and 459 Criminal Procedure Code.

7. Before disposing the unclaimed property the concerned Magistrate has to take the below steps:

i) The officer should see the steps taken by the police to trace any complaint regarding such property is satisfactory.

ii) he should also ascertain whether there is any person entitled to the possession of the property.

iii) he should issue a proclamation u/sec 457 Criminal Procedure Code as in Form No.62, If no person is ascertained with regard to unclaimed property.

iv) Such Proclamation may be carried on by affixture before the court by the police and the places where the property was seized and some conspicuous place of the town and by way of tom tom.

v) Such report of due proclamation shall be submitted by the police before the court and the court shall wait until six months from the date of proclamation actually made.

vi) After expiry of six months, no claimant appears ,then the court shall pass the orders for disposing such property in any one of the modes provided under the Criminal Procedure Code and Civil Rules of Practice.

vii) All such property orders passed from time to time have to be entered in the registers concerned.

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

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

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

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

CONCLUSION

The disposal of case property is an important function of the court. The property shall be diposed off immedaitely when it is no more required by the court. The court shall bestow special attention in disposing off the case property from titm to time and see that no case property is left over after appeal time is over and that the case property is disposed off promptly.

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