

Disposal of Property in Criminal Cases
(Sections 451, 452, 457 CrPC & under Special Acts)

S.S. Upadhyay

Former District & Sessions Judge/

Former Addl. Director (Training)

Institute of Judicial Training & Research, UP, Lucknow.

Member, Governing Body,

Chandigarh Judicial Academy, Chandigarh.

Former Legal Advisor to Governor

Raj Bhawan, Uttar Pradesh, Lucknow

Mobile : 9453048988

E-mail : ssupadhyay28@gmail.com

Website: lawhelpline.in

1.1. Scope of release of case property u/s 451 CrPC : The object and scheme of the various provisions contained in the CrPC appear to be that where the property which has been the subject-matter of an offence is seized by the police, it ought not be retained in the custody of the court or of the police for any time longer than what is absolutely necessary. As the seizure of property by the police amounts to a clear entrustment of the property to government servant, the idea is that the property should be restored to the original owner after the necessity to return 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 delivery of the property to the owner or otherwise in the interest of justice. The object of the Code of Criminal Procedure 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. For this purpose, if material on

record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles should be handed over to the complainant after :

- (i) Preparing detailed proper panchnama of such articles,
- (ii) Taking photographs of such articles and a bond that such articles would be produced if required at the time of trial, and
- (iii) After taking proper security. See :

- (i) **Multani Hanifbhai Kalubhai Vs. State of Gujarat & Another, (2013) 3 SCC 240**
- (ii) **Sunder Bhai Ambalal Desai Vs. State of Gujrat, 2003(46) ACC 223 (SC)**
- (iii) **Smt. Basavva Kom Dyamangouda Patil Vs. State of Mysore, 1977(14) ACC 220(SC)**

1.2. **Immovable property cannot be seized by police: While investigating a case, police cannot seize immovable property u/s 102 CrPC. See: Nevada Properties Private Ltd Vs. State of Maharastra, AIR 2019 SC 4554 (Three-Judge Bench).**

2. **Prompt exercise of power by Court u/s 451 CrPC for disposal of property necessary** : Cautioning the Magistrates for taking prompt action u/s 451 CrPC for the release/disposal of case property seized by police, the Hon'ble Supreme Court has issued its directions thus : *"We hope and trust that the concerned Magistrates would take immediate action for seeing that the powers u/s 451 CrPC are properly and promptly exercised and articles are not kept for a long time at the police station, in any case for not more than 15 days to one month. This object can also be achieved if there is proper supervision by the registry of the concerned High Courts in seeing that the rules framed by the High Court with regard to such articles are implemented properly"*. See : **Sunder Bhai Ambalal Desai Vs. State of Gujarat, 2003(46) ACC 223 (SC).**

3. **Physical production of vehicle and personal bond of insured vehicle to be distanced with** : Relying on its previous two decisions rendered in the cases of (i) **Sunderbhai Ambalal Desai Vs. State of Gujarat, (2002) 10 SCC**

283 and (ii) General Insurance Council Vs. State of AP, (2007) 12 SCC 354, the Hon'ble Supreme Court has, in the case noted below, held as under : It is necessary that in addition to the directions issued by this Court in Sunderbhai Ambalal Desai considering the mandate of Section 451 read with Section 457 CrPC, the following further directions with regard to the seized vehicles are required to be given :

- "(i) Insurer may be permitted to move a separate application for release of the recovered vehicle as soon as it is informed of such recovery before the jurisdictional court. Ordinarily, release shall be made within a period of 30 days from the date of the application. The necessary photographs may be taken duly authenticated and certified and a detailed panchnama may be prepared before such release.
- (ii) The photographs so taken may be used as secondary evidence during trial. Hence, physical production of the vehicle may be dispensed with.
- (iii) Insurer would submit an undertaking/guarantee to remit the proceeds from the sale/auction of the vehicle conducted by the Insurance Company in the event that the Magistrate finally adjudicates that the rightful ownership of the vehicle does not vest with the insurer. The undertaking/guarantee would be furnished at the time of release of the vehicle pursuant to the application for release of the recovered vehicle. Insistence on personal bonds may be dispensed with looking to the corporate structure of the insurer. It is a matter of common knowledge that as and when vehicles are seized and kept in various police stations, not only do they occupy substantial space in the police stations but upon being kept in open, are also prone to fast natural decay on account of weather conditions. Even a good maintained vehicle loses its roadworthiness if it is kept stationary in the police station for more than fifteen days. Apart from the above, it is also a

matter of common knowledge that several valuable and costly parts of the said vehicles are either stolen or are cannibalized so that the vehicles become unworthy of being driven on road. To avoid all this, apart from the aforesaid directions issued hereinabove, we direct that all the State Governments/Union Territories/Director Generals of Police shall ensure micro-implementation of the statutory provisions and further direct that the activities of each and every police station, especially with regard to disposal of the seized vehicles, be taken care of by the Inspector General of Police of the Division/Commissioner of police concerned of the cities/Superintendent of Police concerned of the district concerned. In case, any non-compliance is reported either by the petitioners or by any of the aggrieved party, then needless to say, we would be constrained to take a serious view of the matter against an erring officer who would be dealt with iron hands. See : **General Insurance Council Vs. State of AP, (2010) 6 SCC 768. (paras 13, 14 & 15)**

4(A-1).Seized article kept in police station should be returned to its rightful owner : In the case noted below, the police personnel were involved as accused in the commission of offences punishable u/s 429, 420, 465, 468, 477-A & 114 IPC and had criminally and unauthorizedly misappropriated the seized case properties like golden ornaments by replacing the same by other spurious articles. Misappropriation of the amount kept at the police station, unauthorized auction of the property seized and kept in the police custody and tampering with the records of the police station were committed by the police personnel. The Hon'ble Supreme Court directed for return of the seized articles to their rightful owners. See : **Sunder Bhai Ambalal Desai Vs. State of Gujarat, 2003 (46) ACC 223 (SC).**

- 4(A-2). Vehicle/truck seized for non-production of papers should be released in favour of its registered owner :** Where a truck was seized for non-production of papers, it has been held by the Supreme Court that the truck should be released in favour of its registered owner. See : **Ramesh Chand Jain Vs. State of Haryana, (2007) 15 SCC 126**
- 4(B). In the event of dispute of title, vehicle should be released temporarily in favour of its ostensible nameholder in the RC :** In the event of dispute of title, vehicle should be released temporarily u/s 451 CrPC in favour of its ostensible name holder in the registration certificate till the stage when the court passes the order regarding disposal of property on conclusion of the trial. It is not necessary to keep seized vehicle in court compound indefinitely for a long time till disposal of the case. It is more advisable to entrust the vehicle to its registered owner on behalf of the Court. See :
- (i) **Ashok Kumar Vs. State of Bihar, 2000 (41) ALR 170 (SC)**
 - (ii) **Rajendra Prasad Vs. State of Bihar, 2000 (2) JIC 440 (SC)**
- 4(C). Police cannot release vehicle seized by it :** Where car suspected to be stolen seized by police was entrusted to its owner by the police on execution of bond in favour of police, it has been held by the Supreme Court that release of vehicle by police is invalid as police can only report the seizure to the Magistrate and only Magistrate can release the seized property. See : **Anwar Ahmad Vs. State of UP, AIR 1976 SC 680.**
- 4(D). Seized vehicle to be returned to its owner only pursuant to an order of competent court :** Once a vehicle (car) is seized in connection with a case, it can be returned pursuant to an order of a competent court only. See : **George Vs. State of Kerala, AIR 1998 SC 1376.**
- 4(E). Registration of vehicle not conclusive proof of ownership of legal title to vehicle :** Registration of vehicle is not conclusive proof of ownership of legal title to vehicle. Section 2(30) of the MV Act, 1988 creates legal fiction of ownership

in favour of lessee only for purposes of the MV Act, 1988 but not for purpose of law in general. See : **Industrial Credit and Development Syndicate Limited Vs. Commissioner of Income Tax, Mysore, (2013) 3 SCC 541**

4(F). When third person other than registered owner driving vehicle—liability of insurer ? : Under Section 110-D of the MV Act, 1988, when the vehicle is used by a third person other than the registered owner with the permission of the registered owner, the insurer is still liable to pay compensation. Insurance is of the vehicle and not of the owner. See :

(i) **Oriental Fire and General Insurance Co. Moradabad Vs. Smt. Devi, 2007 (69) ALR 706 (All)**

(ii) **Rikhi Ram Vs. Sukhram (Smt.), (2003) 3 SCC 97**

(iii) **OIC Ltd. Vs. Tilak Singh, (2006) 4 SCC 404**

4(G). Vehicle involved in commission of offences u/s 302, 307 IPC not to be released : Where the vehicle was used at the time of commission of offences u/s 302, 307 IPC, it has been held by the Allahabad High Court that the vehicle was a material evidence and application for its release was rightly rejected by the lower court. See : **Sarjoo Prasad Vs. State of UP, 1989 ACC 547 (All)**

Note : But in view of the law declared by the Supreme Court in **Sunder Bhai Ambalal Desai Vs. State of Gujarat, 2003 (46) ACC 223 (SC)**, the above Allahabad High Court ruling now stands impliedly overruled.

4(H). Vehicle used in commission of offence u/s 302 IPC released in favour of its registered owner : Where the release of a motorcycle used in the commission of offence of murder u/s 302 IPC was refused by the Chief Judicial Magistrate, Allahabad on the ground that the same was a case property and would be required at the time of trial, the High Court set aside the order of the CJM and directed for release of the vehicle in favour of its registered owner. See : **Ram Prakash Prajapati Vs. State of UP, 1994 ACC 185 (All)**.

4(I). Vehicle involved in commission of dacoity u/s 395, 397 IPC released in favour of its registered owner : Relying upon the decision of the Hon'ble Supreme Court rendered in the case of **Sunderbhai Ambalal Desai Vs. State**

of Gujarat, 2003 (46) ACC 223(SC), the Hon'ble Allahabad High Court has held that a vehicle which was involved in the commission of offences u/s 395, 397 of the IPC should have been released in favour of its owner otherwise keeping the vehicle at the police station for a long time may diminish its value and ultimately the vehicle may become junk. See : **Manoj Kumar Vs. State of UP, 2011 (74) ACC 846 (All)**

4(J). **Last registered person entitled to the custody of vehicle** : Where there are two or more registered owners of a vehicle, the last registered person in the registration certificate would be entitled for interim custody of vehicle u/s 451 CrPC. See : **Shafiq Ahmad Vs. State of UP, 2000 ALJ 428 (All)**

4(K). **Motor vehicle seized by ARTO u/s 207(1) of the MV Act, 1988 can be released by the Magistrate u/s 207(2) of the said Act only when the complaint is filed in the Court** : Motor vehicle seized by ARTO u/s 207(1) of the Motor Vehicles Act, 1988 can be released by the Magistrate u/s 207(2) of the said Act only when the complaint is filed in the Court. See :

- (i) **Jugal Kishore Vs. State of UP, 1995 ALJ 1539 (All)(DB)**
- (ii) **Ram Sewak Jaiswal Vs. State of UP, 1995 (3) AWC 1376 (All)**
- (iii) **Mazhar Ali Khan Vs. State of UP, 1995 (2) AWC 849 (All)**
- (iv) **Pramod Kumar Pandey Vs. ARTO, Ballia, 1997 (34) ACC 650 (All)**

4(L). **Vehicle involved in accident u/s 279, 304-A IPC to be returned to its owner** : Vehicle involved in accident u/s 279, 304-A IPC should be returned to its owner or driver or to any person in-charge of the vehicle within 24 hours after it was inspected without asking for various particulars of the vehicle. See :

- (i) **Aadesh Kumar Vs. State of UP, 2007 (59) ACC 869 (All)**
- (ii) **Sunder Bhai Ambalal Desai Vs. State of Gujrat, 2003(46) ACC 223 (SC)**
- (iii) **Smt. Basavva Kom Dyamangouda Patil Vs. State of Mysore, 1977 (14) ACC 220 (SC)**
- (iv) **M.B. Venktappa Vs. State of UP, 2000 (3) ALR 8 (Summary) (All).**

5. **Release of Ornaments u/s 451 CrPC** : The object and scheme of the various provisions contained in the CrPC appear to be that where the

property which has been the subject-matter of an offence is seized by the police, it ought not be retained in the custody of the court or of the police for any time longer than what is absolutely necessary. As the seizure of property by the police amounts to a clear entrustment of the property to government servant, the idea is that the property should be restored to the original owner after the necessity to return it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place, it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The object of the Code of Criminal Procedure 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. For this purpose, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles should be handed over to the complainant after **(i)** preparing detailed proper panchnama of such articles, **(ii)** taking photographs of such articles and a bond that such articles would be produced if required at the time of trial and **(iii)** after taking proper security. See :

- (i) Sunder Bhai Ambalal Desai Vs. State of Gujrat, AIR 2003 SC 638**
- (ii) Smt. Basavva Kom Dyamangouda Patil Vs. State of Mysore, 1977(14) ACC 220 (SC)**

6. **Release/disposal of liquor u/s 451 CrPC** : For articles such as seized liquor, prompt action should be taken in disposing it of after preparing necessary panchnamma. If sample is required to be taken, sample may be kept properly after sending it to the chemical analyzer, if required but in no case, large quantity of liquor should be stored at the police station. No purpose is served by such storing. See :
- (i) **Sunder Bhai Ambalal Desai Vs. State of Gujarat, 2003(46) ACC 223 (SC)**
 - (ii) **Smt. Basavva Kom Dyamangouda Patil Vs. State of Mysore, 1977(14) ACC 220(SC).**
7. **Disposal of Narcotic Drugs under NDPS Act** : For the Narcotic Drugs for its identification, procedure u/s 451 CrPC should be followed for recording evidence and disposal. Its identity can be on the basis of evidence recorded by the Magistrate. Samples also should be sent immediately to the chemical analyzer so that subsequently contention may not be raised that the article which was seized was not the same. See :
- (i) **Sunder Bhai Ambalal Desai Vs. State of Gujrat, 2003(46) ACC 223 (SC)**
 - (ii) **Smt. Basavva Kom Dyamangouda Patil Vs. State of Mysore, 1977(14) ACC 220(SC).**
8. **Release of vehicle under NDPS Act** : Where the narcotics was recovered from the truck when the accused, the brother of the owner of the truck, was sitting therein but the owner of the truck though a co-accused but was not arrested on the spot nor there was any evidence that carrying of the narcotics was in his knowledge, the High Court held that in view of the law propounded by the Supreme Court in the case of Sundarbhai Ambalal Desai Vs. State of Gujarat, 2003 (46) ACC 223 (SC), the truck should be released in favour of its registered owner u/s 451, 452 CrPC. See :
- (i) **Samarjeet Vs. State of UP, 2014 (86) ACC 505 (All)**
 - (ii) **Prateek Gupta Vs. State of UP, 2010 (70) ACC 82 (All)**

10(C). Release of Vehicle in the event of disputed title : In the cases noted below, where the vehicle seized by police was kept in the premises of the police station and there was also dispute of title and correctness of transaction, it has been laid down by the Hon'ble Supreme Court that the vehicle should temporarily be released in favour of its ostensible name holder in the registration certificate till the stage when the court passes the order regarding disposal of the property on the conclusion of the trial :

(i) **Ashok Kumar Vs. State of Bihar, 2000 (41) ALR 170 (SC)**

(ii) **Rajendra Prasad Vs. State of Bihar 2000 (2) JIC 440 (SC)**

11(A). Rifle/gun/revolver to be returned to its licence holder : Where sessions trial for offences u/s 147, 148, 149, 307 IPC and u/s 25/27 Arms Act was pending and the application for release of gun was moved by the license holder who was father of the accused and not himself an accused was rejected by the Addl. Sessions Judge, the High Court set aside the order of the ASJ and directed release of the gun in favour of the non-accused applicant/license holder. Rifle/gun/revolver should be returned to its license holder if the license is still valid. See : **Shail Kumar Singh Vs. State of UP, 2001 (1) JIC 262 (All)=2000 (41) ACC 653 (All).**

11(B).: Revolver used in commission of offence u/s 307 IPC should not be kept beyond 15 days in the police station and should be released by the court in favour of its licence holder : Where the application for release of revolver used in the commission of offence u/s 307 of the IPC was rejected both by the the Judicial Magistrate and the Sessions Judge, Gorakhpur, it has been held by the Hon'ble Allahabad High Court that articles recovered by the police should not be kept for long time at police station, in any case for more than fifteen days to one month. Setting aside the orders of the Courts below, the Hon'ble High Court directed to release the revolver u/s

451 of the CrPC. See : **Virendra Jaiswal Vs. State of UP, 2012 (77) ACC 876 (All)**

12(A). Person in possession of the vehicle under hypothecation to be treated as

owner of the vehicle : There is a common thread that the person in possession of the vehicle under the hypothecation agreement has been treated as the owner. Needless to emphasize, if the vehicle is insured, the insurer is bound to indemnify unless there is violation of the terms of the policy under which the insurer can seek exoneration. See : **HDFC Bank Limited Vs. Reshma & Others, (2015) 3 SCC 679 (Three-Judge Bench)(para 23).**

12(B). In a hire purchase agreement, financier can seize the vehicle in the event

of non-payment of installments: In an hire purchase agreement, purchaser remains merely a trustee/bailee on behalf of the financier/financial institution and ownership remains with the financier. No criminal action can be taken against the financier if the vehicle is seized by him against the non-payment of installments as he is repossessing the goods (vehicle) owned by him. See :

(ia). Magma Fincorp Limited Vs Rajesh Kumar Tiwari, (2020) 10 SCC 399

(i) Anil Kumar Rastogi Vs. State of UP, 2006 (63) ALR 591(All)(DB)

(ii) Trilok Singh Vs. Satyadeo Tripathi, AIR 1979 SC 850

(iii) K.A. Mathai Vs. Kora Bibbikutty, 1996 (7) SCC 212.

(iv) Charanjit Singh Chadha Vs. Sudhir Mehra, (2001) 7 SCC 417

12(C) Hire purchase agreement and release of vehicle : Where the ownership

of the vehicle was not absolute and the registration certificate was subject to hire purchase agreement which was indicative that ownership of said vehicle was subject to terms and conditions agreed between hirer and owner, it has been held that the vehicle ought to be released u/s 451 CrPC in favour of the owner (revisionist) and not in favour of the hirer. See :

(i). Magma Fincorp Limited Vs Rajesh Kumar Tiwari, (2020) 10 SCC 399

(ii) Ashok Leyland Finance Ltd Vs. State of U.P, 2011 CrLJ 2011(All)

(iii) Manipal Finance Corp. Ltd Vs. T. Bangarappa, AIR 2001 SC 3721

12(D) In an hire purchase agreement, bank cannot hire goons to take vehicle by use of force : Bank cannot hire goons to recover loan and the vehicle cannot be taken possession of by use of force. See : **Manager ICICI Vs. Prakash Kaur, AIR 2007 SC 1349.**

13(A).Release of vehicle not wanted in any crime cannot be refused merely because the engine No. or chesis No. is erased : Where a motorcycle was seized from the possession of the son of the applicant/registered owner by the police but the vehicle was not wanted in any crime but release of vehicle by the ACJM, Mirzapur and the ASJ, Mirzapur (in revision) was refused on the ground that the engine and chesis numbers of the vehicle were tampered and illegible, the Hon'ble High Court directed release of the vehicle by criticizing the ACJM and the ASJ, Mirzapur and the UP Police for its likely role in erasing the engine and chesis numbers of the vehicle. See : **Shyam Bihari Vs. State of UP, 2013 (80) ACC 882 (All)**

13(B).Unclaimed (lawaris) property & duty of police & Magistrate : Section 25 of the Police Act, 1861 provides that it shall be the duty of every police officer to take charge of all unclaimed property and to furnish an inventory thereof to the Magistrate of the district. The police officer shall be guided as to disposal of such property by such orders as they shall receive from the Magistrate of the district. Section 459 CrPC shall be relevant to the detention and proclamation of such property by the Magistrate. Also see : **Sunder Bhai Ambalal Desai Vs. State of Gujarat, 2003(46) ACC 223 (SC)**

13(C).Custody & disposal of unclaimed property when the same not connected with any crime : Kindly See : Para 165(v)(i) & para 169 of the UP Police Regulations.

14(A). Release of vehicle seized under Indian Forest Act, 1927 : In view of the bar contained u/s 52-D of the Indian Forest Act, 1927, Judicial Magistrate

or the Sessions Judge have no power to order release of vehicle detained under the said Act. See :

(i) **State of Madhya Pradesh Vs. Uday Singh, AIR 2019 SC 1597.**

(ii) **Mohd. Aslam Vs. State of U.P., 2013 (80) ACC 895 (All).**

14(B). Criminal courts cease to have jurisdiction to release vehicle after start of confiscation proceedings : Once the confiscation proceedings are initiated, jurisdiction of criminal courts gets barred and even High Court u/s 482 CrPC cannot release the vehicle seized under the Forest Act in relation to the commission of an offence as to forest produce etc. See : **State of WB Vs. Sujit Kumar Rana, AIR 2004 SC 1851.**

14(C). Release of vehicle seized under Wild Life Protection Act, 1972 : In the case noted below, truck loaded with wood of forest department was used in commission of offences u/s 26 of the Indian Forest Act, 1927 and u/s 29, 39, 50 & 51 of the Wild Life Protection Act, 1972. Truck was confiscated and driver was arrested. Owner of the truck had no knowledge that his truck was used in commission of the said offences. Owner was not accused in the case. The High Court found it proper to direct the lower court to release the truck in favour of its owner with necessary conditions. See : **Arvind Kumar Dube Vs. State of UP, 2005 (3) AWC 2970 (All).**

14(D). Section 52-D of the Forest Act, 1927 ousts jurisdiction of all courts to release vehicle : Section 52-D of the Forest Act, 1927, as amended in Uttar Pradesh, ousts jurisdiction of all courts to release vehicles and forests produced etc. seized u/s 52(1) of the Forest Act, 1927.

14(E). Release of vehicle etc. under Indian Forest Act, 1927 & Wild Life Protection Act, 1972 after acquittal or confiscation : Merely because there was an acquittal of the accused in the trial before the Magistrate due to paucity of evidence or otherwise, did not necessarily entail in nullifying the

order of confiscation of seized timber or forest produce by the authorized officer. See : **Divisional Forest Officer Vs. Sudhakar Rao, AIR 1986 SC 328.**

14(F). Duty of Magistrate while dealing with the release of forest produce or

vehicle : The Magistrate while dealing with the case of any seizure of forest produce under the Indian Forest Act, 1927 should examine whether the power to confiscate the seized forest produce is vested in the authorized officer under the Act and if he finds that such power is vested in the authorized officer then he has no power to pass an order dealing with interim custody/release of the seized material. See : **State of Karnataka Vs. K.A. Kuuchindammed, (2002) 9 SCC 90.**

14(G). Seizure & confiscation of vehicle/other property under Indian Forest

Act, 1927 etc. : Certain important rulings on seizure, confiscation and release etc. of the forest produce and vehicle etc. are as under :

- (i) **State of Karnataka Vs. K. Krishnan, AIR 2000 SC 2729.**
- (ii) **Indian Handicrafts Emporium & Others Vs. Union of India, (2002) 7 SCC 589**
- (iii) **Balram Kumawat Vs. Union of India & Others, (2003) 7 SCC 628**
- (iv) **State of Bihar & Another Vs. Kedar Sao & Another, AIR 2003 SC 3650**
- (v) **Indrapal Singh Vs. State of UP, 2007 (66) ALR 728 (All).**

15(A). Release of vehicle involved in offence u/s 60/63 of the Excise Act :

Where a vehicle carrying 10 bags of illegal liquor was seized by police u/s 60/63 of the Excise Act, the Hon'ble Allahabad High Court while allowing the revision by relying on Sunderbhai Ambalal Desai Vs. State of Gujarat, 2003 (46) ACC 223 (SC) held that no useful purpose would be served by keeping the vehicle in question in police station concerned and there will be likelihood of the condition of the vehicle being deteriorated and ultimately vehicle may become junk and, therefore, the Magistrate should not have rejected application of the revisionist for release of the vehicle in question and the vehicle should have been released in favour of its registered owner. See : **Khursheed Vs. State of UP, 2014 (84) ACC 979 (All).**

15(B).Pendency of confiscation proceedings not to operate as bar against release of vehicle seized u/s 60 of the Excise Act : Pendency of confiscation proceedings before Collector u/s 72 of the UP Excise Act shall not operate as bar against the release of vehicle seized u/s 60 of the Excise Act. See : **Kamaljeet Singh Vs. State of UP, 1986 UP Criminal Rulings 50 (All).**

16(A).Vehicle/truck to be released in favour of its registered owner even when trade tax not paid : Where a truck loaded with goods was taken into custody in connection with offences u/s 332, 353, 419, 420 IPC etc., it has been held by the Allahabad High Court that the goods being perishable, the same would be released. Release of the goods would not be refused on the ground of mere non-payment of trade tax. See : **Kishan Lal Vs. State of UP, 2006 CrLJ 227 (All).**

16(B).Perishable items like rice etc. can be sold by court by public auction : In case of perishable items/goods like paddy/rice seized, the court would pass order for its sale by public auction or otherwise expeditiously. See : **Agro Industries Vs. State of Punjab, 2009 CrLJ 387 (SC).**

16(C).Perishable wheat seized ought to be released or sold : Where wheat was seized and kept in Mandi Samiti, it has been held by the Allahabad High Court that the wheat was a perishable item and possibility cannot be ruled out that by lapse of time, it may perish. The authorities were directed to sell the same in open market or by selling same in Govt. shops and money collected to be deposited in court concerned or with the authority concerned subject to the result of the case. See : **Anshu Vs. State of UP, 2010 CrLJ (NOC) 1224 (All)**

17(A).Currency notes can be released in favour of the rightful claimant : Where the accused did not claim the currency notes, it has been held that a

part of such currency notes may be kept for the purpose of identification at trial and the balance can be returned to its rightful claimants. See :

- (i) **Imtiaz Ahmed Vs. State of UP, 1994 (1) Crimes 242 (All)**
- (ii) **Sunil Kumar Verma Vs. State of UP, 1994 (2) Crimes 276 (All)**

17(B). Parties to be directed to approach civil court when none of them could prove his entitlement to the property (currency notes) before the criminal court : Rs. four lacs were recovered in connection with an offence u/s 394 IPC. Accused was acquitted and the said amount was forfeited in favour of the State Govt. and the application for its release was rejected by the Magistrate. In criminal revision filed against the order of the Magistrate, Addl. Sessions Judge was of the view that there was no sufficient material for passing the order regarding disposal of the money. The High Court held that proper procedure for the Addl. Sessions Judge was to direct the parties to file a civil suit in respect of the title to the money and the same should have been directed to be returned to the party who succeeds in the civil suit but the amount could not have been forfeited in favour of the State Govt. See : **District Co-operative Bank, Fatehpur Vs. State of UP, 2006 (56) ACC 640 (All)**

18(A). Magistrate and Sessions Courts have no jurisdiction to release a vehicle involved in transportation of cow or cow progeny: It would be pertinent to note that sub-sections (6), (7), (8), (9), (10) and (11) have been inserted after sub-section (5) of Section 5-A in terms of the Uttar Pradesh Prevention of Cow Slaughter (Amendment) Act, 2020. [U.P. Act no. 20 of 2020]. A plain reading of the provisions contained under Section 5-A of the PCSA would indicate that the transportation of cow, etc., is regulated in terms thereof. Sub-section (1) of Section 5- A contains a clear prohibition on transportation of any cow or bull or bullock, the slaughter whereof in

any place in Uttar Pradesh is punishable under the Act, from any place within the State to any place outside the State, except under a permit to be issued by an officer authorised by the State Government in this behalf by notified order and except in accordance with the terms and conditions of such permit. Sub-section (4) mandates that the form of permit, the form of application therefor and the procedure for disposal of such application shall be such as may be prescribed. In exercise of powers under Section 10 of the PCSA read with Section 21 of the U.P. General Clauses Act, 1904, and in supersession of Uttar Pradesh Prevention of Cow Slaughter Rules, 1956, the Uttar Pradesh Prevention of Cow Slaughter Rules, 1964 were made. Rule 16 of the Rules, 1964 provides for issuance of a permit in a prescribed form to any person intending to transport or to offer for transport or to cause to transport any cow, bull or bullock, the slaughter whereof is punishable under the Act in any place in Uttar Pradesh from any place within the State to any place outside the State. For ease of reference, Rule 16 of the Rules, 1964 is being reproduced below :“16. (1) Any person intending to transport or the offer for transport or to cause to transport any cow, bull or bullock, the slaughter whereof is punishable under this Act in any place in Uttar Pradesh from any place within the State to any place outside the State shall apply for a permit to the officer authorised under Section 5-A of the Act on prescribed Form "G".” In terms of Section 2 of the Amending Act i.e. U.P. Act No. 20 of 2020 by means of which sub-sections (6), (7), (8), (9), (10) and (11) have been inserted in Section 5-A, the powers with regard to confiscation and seizure of which vehicle used in transportation of the beef or cow and its progeny, in violation of the provisions of this Act and the relevant rules have been delineated. As per terms of sub-section (7) of Section 5-A, the vehicle by which the beef or cow and its progeny are being transported in violation of the Act and the relevant rules is to be confiscated

and seized by the law enforcement officers and concerned District Magistrate/Commissioner of Police are to undertake proceedings of confiscation and release, as the case may be. Sub-section (11) of Section 5-A provides that where the provisions of Act or the related rules in context of search, acquisition, disposal and seizure are silent, the relevant provisions of the Code shall be effective thereto. The provisions inserted under Section 5-A in terms of the aforesaid Amending Act, i.e. U.P. Act No. 20 of 2020 in respect of confiscation and release of vehicle would therefore, go to show that the scheme of the Act provides a complete procedure with regard to proceedings relating to confiscation and release. The necessary provisions with regard to confiscation, seizure and release of vehicle used for transportation in violation of the provisions of PCSA and the Rules made therein, having being provided for, and the Act and the Rules not being silent in regard thereto as per the stipulation under sub-section (11) of Section 5-A, the provisions of the Code would not be invocable in matters relating to confiscation, seizure and release under the PCSA. Section 5 of the Code contains a saving clause and as per terms thereof nothing contained in the Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force. The applicability of the provisions of the Code in an area covered by a special or local law, in the context of the saving clause under section 5 of the Code was considered in the Constitution Bench judgment in the case of Maru Ram Vs. Union of India⁶ and also in State (Union of India) Vs. Ram Sharan⁷, and it was held that the section consists of three components: (i) the Code covers matters covered by it; (ii) if a special or local law exists covering the same area, the said law is saved and will prevail; (iii) if there is a special provision to the

contrary, that will override the special or local law. The PCSA is a “local law” within the meaning of Section 5 of the Code and in view thereof, the general provisions contained under Sections 451 of the Code with regard to custody and disposal of the property pending trial or the power for making an order for disposal of property at the conclusion of trial under Section 452 or the procedure under Section 457 would therefore, be subject to the powers exercisable under Section 5-A of the PCSA which makes a special provision with regard to confiscation and seizure of the vehicle used for transport in contravention of the provisions of the Act. The provisions under Section 451 to 457 of the Code are in the nature of general provisions whereas the provisions relating to seizure, confiscation and release as contained under Section 5-A of the PCSA which expressly deal with these matters would be in the nature of special provisions contained under a special Act and in view thereof, the normal rule of interpretation that the special provision must prevail over the general and if a case is covered by a special provision, the general provision would not be attracted, would be applicable. In the case of *Sunderbhai Ambalal Desai (supra)*, which is sought to be relied upon on behalf of the applicant, the subject matter of consideration was a challenge which had been raised to an order of police remand granted to the prosecuting agency for the petitioners therein, who were police personnel involved in offences punishable under Sections 429, 420, 465, 468, 477-A and 114 of the Indian Penal Code, 18608 on allegations that they had committed offences during a period of time by replacing of valuable articles retained as case property by other spurious articles, misappropriation of the amount which was kept at the police station, unauthorised auction of the property which was seized and kept in the police custody pending trial and tampering with the records of the police station. The offences which were subject matter of the case were under the

penal code and not under a special Act, and accordingly, the provisions under Sections 451 and 457 were applicable. The judgment in the case *Sunderbhai Ambalal Desai (supra)*, which is an authority relating to release of vehicles seized in connection with criminal proceedings under general law would not be applicable under the facts of the present case which relate to proceedings under a special Act, particularly in view of the provisions under Section 5 of the Code. A similar question as to whether the Magistrate would have jurisdiction to exercise powers under Sections 451, 452 and 457 of the Code to direct release of any property which was subject matter of confiscation proceedings under Section 72 of the U.P. Excise Act, 1910 before the Collector, was considered in a recent judgement of this Court in the case of *Vikki Vs State of U.P. and Another* and taking into consideration that the Excise Act is a local law within the meaning of Section 5 of the Code, it was held that the provisions contained under Section 72 of the Excise Act would have the effect of denuding the Magistrate of his power to pass any order under Section 457 of the Code for release of any article seized in connection with an offence purporting to have been committed under the Act. Applying the aforesaid principle to the facts of the present case, the vehicle in question having been confiscated and seized in exercise of powers under Section 5-A of the PCSA, which is in the nature of a special Act and a local law under Section 5 of the Code, the same would clearly have the effect of denuding the Magistrate of his power to pass any order under Sections 451, 452 and 457 of the Code for release of the vehicle seized for alleged violation of the provisions of the Act. See: **Judgement dated 02.09.2021 of the Allahabad High Court passed on application u/s 482 No. - 12300 of 2021, Yas Mohammad Vs. State of U.P.**

18(B).Cattle seized under Prevention of Cruelty to Animals Act, 1960 can be released on conditions : Interim custody of the cattle seized under the Prevention of Cruelty to Animals Act, 1960 and the Uttar Pradesh Prevention of Cow Slaughter Act, 1956 may be given to the cattle owner on filing affidavit that it is his first offence and that on release the cattle shall not be subjected to the cruelty. See : **Raju Singh Vs. State of UP, 2002 CrLJ 124 (All)**.

18(C).Supreme Court rulings on various aspects of Prevention of Cow Slaughter Act :

- (i) **Mohd. Hanif Quareshi case of Bihar, AIR 1958 SC 731 (Five-Judge Bench)**
- (ii) **Mohd. Faruk Vs. State of Madhya Pradesh, (1969) 1 SCC 853**
- (iii) **Haji Usmanbhai Hasanbhai Qureshi Vs. State of Gujarat, AIR 1986 SC 1213**
- (iv) **State of West Bengal Vs. Ashutosh Lahiri, (1995) 1 SCC 189**
- (v) **State of Gujarat Vs. Mirzapur Moti Kureshi, AIR 2006 SC 212 (Seven-Judge Bench)**

19. Elephant restored to its owner : Where the only allegation against the owner of the elephant was that he was not having license, the elephant was given in the custody of its owner. See : **Gunnaseelam Vs. State of TN, AIR 1984 SC 1816**.

20. Case property can be released u/s 452 CrPC even after pronouncement of judgment : There is nothing to limit the jurisdiction of the court to pass an order u/s 452 CrPC subsequent to the judgment. See : **1977 CrLJ 1298 (All)**.
