

Disposal of Property during Inquiry Investigation & Trial

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Introduction

- The disposal of property IN POLICE SEIZURE CASES covering Crpc- provision chapter-XXXIV- sec 451 to sec-459.
- Most of the enforcement agencies like customs, NCB, Police have there own standard procedure for the disposal of seized goods/property keeping in view that the same does not loose their evidential value in trial/ prosecution.
- Law permits disposal of the property/goods (pretrial & posttrial) under seizure after being certified/ordered by the Magistrate.
- Steps for early disposal under different categories should be taken up with appropriate court considering their hazardous nature, vulnerability to theft, substitution and constraints of proper storage and custody.

Disposal under CRPC 1973

The police are not empowered to dispose of the property seized without the order of the competent court. Under sub-section (2) of Section 102 CrPC the police are empowered to hand over the custody of the property seized which could not be retained in their custody for want of accommodation to any person on execution of a bond with a direction to produce before the court as and when required. So also the where the property seized under sub-section (1) is subject to speedy and natural decay and if the entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police. In all other cases and circumstances court is empowered to dispose of the property seized as per the provisions of Sections 457 and 458 CRPC.

Disposal of NDPS

The Government of India has, by issue of Notification in F.No. 664/23/89-Opium dated the 29th May, 1989 (SO. No. 38 1(E) published in the Gazette of India (Extraordinary), has specified the following narcotic drugs and psychotropic substance, which shall, as soon as after their seizure, be disposed off, having regard to their hazardous nature, vulnerability to theft, substitution and constraints of proper storage space:

Narcotic Drugs

- (i) Opium
- (ii) Morphine
- (iii) Heroin
- (iv) Ganja
- (v) Hashish(Charas)
- (vi) Codeine
- (vii) Thebaine
- (viii) Cocaine
- (ix) Poppy Straw: and
- (x) Any other manufactured drug, as defined under clause (ix) of section 2 of the Act.

Psychotropic Substances

- (i) Methaqualone
- (ii) THC
- (iii) Amphetamine: and
- (iv) Any other psychotropic substance, as defined under clause (xxiii) of section 2 of the said Act.

Most of the narcotic drugs and psychotropic substances cannot be conclusively proved to be such drugs or substances merely by visual examination in the trial Court and they require to be proved by chemical analysis to be conducted by chemist authorized under section 293 of Cr. P.C. 1973. Government of India vide notification No. 74 F.No.50/53/76-Ad.II dated 17th July 1976 as amended vide notification dated 2nd February 1977 have declared chemists of different grades working in Central Revenues Control Laboratories as Chemists to Government for the purpose of section 293 of Cr.P.C.

As regards to materials, apparatus, utensils, any other articles or conveyances seized along with Narcotic Drugs or Psychotropic Substances, or in respect of which any offence punishable under Chapter IV of the Narcotic Drugs and Psychotropic Substances Act, 1985, they shall be dealt as per the provisions of the section 451 of the Criminal procedure, which is reproduced below:

“451. Order for custody and disposal of property pending trial in certain cases:

When any property is produced before any criminal court during any enquiry or trial, the court may take such order it thinks fit for the proper custody of such property pending the conclusion of the enquiry or trial, and, if the property is subject to speedy 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

Explanation: For the purpose of this section” property includes-

- a) Property of any kind or document which is produced before the court or which is in its custody.
- b) Any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offences.

STANDING ORDER NO. 1/89 DT. 13.06.89

WHEREAS the Central Government considers it necessary and expedient to determine the manner in which the narcotic drugs and psychotropic substances, as specified in Notification No.4/89 dated the 29th May, 1989 (F.No.664/23/89-Opium, published as S.O. 381(E), which shall, as soon as may be, after their seizure, be disposed off, having regard to their hazardous nature, vulnerability to theft, substitution and constraints of proper storage space;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 52a of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985), (hereinafter referred to as 'the Act'), the Central Government hereby determines that the drugs specified in the aforesaid Notification shall be disposed off in the following manner, namely:

DRUGS MEANT FOR DISPOSAL

Narcotics Drugs		Psychotropic Substances:
(i)	<i>Opium</i>	<i>Methaqualone</i>
(ii)	<i>Morphine</i>	<i>T.H.C.</i>
(iii)	<i>Heroin</i>	<i>Amphetamine</i>
(iv)	<i>Ganja</i>	<i>Any other psychotropic substance, as defined under clause (xxiii) of section 2 of the said Act</i>
(v)	<i>Hashish(Charas)</i>	
(vi)	<i>Codeine</i>	
(vii)	<i>Thebaine</i>	
(viii)	<i>Cocaine</i>	
(ix)	<i>Poppy straw</i>	
(x)	<i>Any other manufactured drug, as defined under clause (xi) of Section 2 of the Act</i>	

Follow-up action to be taken by Police and Empowered officers

Where any narcotic drug or psychotropic substance has been seized and forwarded the officer- in- charge of the nearest police station or to the officer empowered under Section 53, the officer, shall prepare an inventory of such narcotic drugs or psychotropic substances containing arch details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars of the narcotic drugs or psychotropic substances or the packing in which they are packed, Country of origin and such other particulars as may be considered relevant to the identity of the aforesaid drugs in any proceedings under the Act and make an application to any Magistrate for the purpose of -

Application to Magistrate for pre-trial disposal

- Certifying the correctness & of the inventory so prepared: or
- Taking, in the presence of such Magistrate, photographs of such drugs or substances and certifying such photographs.
- Allowing to 4mw representative samples of such drugs or substances, in the presence of such Magistrate and certifying the correctness of any list of samples so drawn.

Magistrate to allow application

- Where an application is made under sub-section (2) of section 52A of the Act, the Magistrate shall, as soon as may be, allow the application.

Courts to treat documents and list of samples certified by Magistrate as 'primary Evidence'

- The Officer-in-charge of the go down, before accepting the deposit of drugs shall Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872) or the Code of Criminal Procedure, 1973 (2 of 1974), every court trying an offence under this Act, shall treat the inventory, the photographs, or narcotic drugs or psychotropic substances and any list of samples drawn under sub-section (2) *ibid* and certified by the Magistrate, as primary evidence in respect of such offence.

Grounds to be enumerated in application

While preferring an application under section 52 A to any magistrate, emphasis may be laid on 'expediency of disposal'. The grounds that may be highlighted may pertain to -

- Risk of pilferage, theft and substitution:
- Constraints of storage and hazardous nature:
- High potential and vulnerability of abuse:
- High temptations to traffickers
- Diminution in the value of other articles (including conveyances), due to long storage, etc.

Filing of charge sheet/plaint

Since the filing of charge-sheet /complaint is a condition precedent expeditious issue of orders for pre-trial disposal , complaints by the respective enforcement agencies must be filed after completion of investigation with in stipulated period of 90 days of seizure/arrest, on a priority basis. This requires to meticulously adhered to.

Documents to accompany application

- While moving the application under sub-section (2) of section 52 A of the A as above, production of all seized articles/drugs, etc. along with the Panchnama (in original) and detailed inventory thereof is essential. The inventory shall be complete in all respects and contain such particulars, as may be relevant to establish nexus/identity articles. The chemical analysis report should also be simultaneously filed.
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- After the court orders are passed for pretrial disposal of drugs, those drug which have no legitimate value (expecting opium, morphine, codeine and the baine, which are required to be transferred to the Government Opium and Alkaloid Works Undertaking at Ghazipur or Neemuch, as the case may be) are required to be destroyed consistent with the with the guidelines issued under this order and not repugnant to the court's order.

Disposal of Goods In Customs

Introduction :

- Procedures:
The procedures prescribed in the Manual are subject to the provisions of Customs Act/Central Excise Act, rules and regulations made there under and other allied Acts. In case of inconsistency between the procedures prescribed in the Manual and the provisions of Customs Act/Central Excise Act and various rules and regulations or allied acts, the later shall prevail.

Categorisation Of Disposal

- Disposal of seized goods
- Disposal of confiscated goods
- Disposal of uncleared goods
- Disposal of unclaimed goods
- Disposal of goods detained U/S 142 of Customs Act

Categories of Goods Based on Circular F. No. 711/31/83-LC (AS) dated 22.05.1984

- Seized/confiscated goods in the custody of the Department has been grouped under the following four different categories :
 - Category-I : Goods to be disposed off immediately after seizure
 - Category-II : Goods falling under Section 110(1A) of the Customs Act, 1962
 - Category- III : Goods to be disposed off within six months from the date of seizure or where the date of expiry is indicated well before that date
 - Category- IV : (All other goods)

List of Goods

- **Category-I**

1. Fresh flowers, Fresh fruits and vegetables, meat, fish, poultry, eggs and other fresh uncanned / unprocessed food materials.
2. Salt and hygroscopic substances (other than in sealed containers).
3. Raw (wet and salted) hides and skins
4. Livestock
5. Medicinal herbs
6. Molasses
7. Newspapers and periodicals
8. Confectionary
9. Cigarettes, biris, biri-leaves and tobacco, which are liable to deterioration due to drying or humidity

List of Goods

- **Category-I** cont...

10. Menthol. Camphor, Saffron

11. Cereals, sugar and other grocer' items

12. Tea and Coffee

13. Re-fills for ball-point pens

14. Lighter fuel, including lighters with gas. not having arrangement for refilling

15. Beer

16. *Cells, batteries and rechargeable batteries*

17. *Petroleum Products*

18. *All unclaimed/abandoned goods to be disposed off immediately which are liable to rapid depreciation in value on account of fast change in technology or new models etc.*

List of Goods

- **Category-II**

1. Gold in all forms including bullion, ingot, coin, ornament, crude jewellery
2. Silver in all forms including bullion, ingot, coin, ornament, crude jewellery
3. Diamonds, precious and semi - precious stones
4. Currency, Indian and Foreign
5. All electronic goods including television sets, Video Cassette Recorders, Tape recorders, calculators, computers; components and spares thereof including diodes, transistors, integrated circuits, etc;
6. Cellular Phones
7. Wrist watches including electronic wrist watches; watch movements, parts or components thereof
8. Primary cells and primary batteries including re-chargeable batteries
9. Photographic films
10. Conveyance
11. Man -made yarn and fabric
12. Bulk drugs and chemicals falling under Section VI of the First Schedule to the Customs Tariff Act. 1975 (51 of 1975).

List of Goods

- **Category-II** cont...

- 13. Patent or proprietary medicine; i.e. any drug or medicinal preparations, in whatever form, for use in the internal or external treatment of, or for the prevention of ailments in, human beings or animals, which bears either on itself or on its container or both, a name which is not specified in a monogram, in a Pharmacopoeia or Formulary.
- 14. Dangerous drugs and psychotropic substances
- 15. Liquors
- 16. Ball Bearings;
- 17. Zip fastners;
- 18. Software
- 19. *Petroleum products falling under Chapter 27 of Custom Tariff Act, 1975*
- 20. *Red Sander*
- 21. *Sandalwood*

Any other goods notified under notification Section 110 of the Customs Act, 1962 in future will also be covered by this category. For expeditious disposal of these goods, immediate action as per the procedure as laid down in sub-section (IB) of Section 110 (1A) must be taken by the seizing unit.

List of Goods

- **Category- III:**

- 1) Photographic goods such as photographic chemicals, papers and digital medium of photographs.
- 2) Cameras of all types
- 3) Time-pieces and clocks
- 4) Pre-recorded cassettes, CDs, DVDs, MDs and other mediums (Audio/Video);
- 5) Costume Jewellery
- 6) Readymade Garments
- 7) Spectacles
- 8) Perfume, Toilet waters and essential oils;
- 9) Tinned and preserved provisions, condensed milk and milk powder.
- 10) Spices;
- 11) Catechu
- 12) Hides, Skins, features and products thereof
- 13) Rubber goods and erasers

List of Goods

- **Category- III:** cont...

14) Paper and articles made of paper

15) Raw-jute

16) V. N. E. oils

17) Petroleum products

18) Hypodermine needles and syringes, surgical instruments/equipments

19) *Medicines and drugs which remain officious only for a limited period*

20) *Boats and launches (other than those meant for departmental Appropriation*

List of Goods

- **CATEGORY – IV (All other goods):**

All other goods not listed in the above 3 categories come under this category. The disposal of goods falling under this category has to be effected after completion of all due formalities and when finality is reached about the disposal of the goods.

Procedure of Disposal

Requirement of Issuing Notice to The Owner of Goods

- a) Section 150 of the Customs Act, 1962 provides for a mandatory requirement of issuing of notice to the owner of the goods, not being confiscated,, which are proposed are to be sold under any provision of the Customs Act, by public auction or by tender or in any other manner.*
- b) The requirement to issue notice to the owner of the goods shall also prevail in case of goods that have been confiscated but in respect of which all appeal/legal remedies have not been exhausted by the owner of the goods.*

[F.No.711/4/2006- Cus (AS) dated 14.02.2006]

Procedure of Disposal

Procedure for disposal of goods under Section 110(1A) of the Customs Act, 1962

- a) *Before action under Section 110 (1A) is initiated, a written notice to the concerned party shall be given with a clear 15 days notice.*
- b) *All cases under Section 110(1A) shall be processed for disposal on completion of a period of two months from the date of their seizure. The process of seeking sanction of the Magistrate whenever needed shall be completed within a month thereafter. This shall not apply in cases where the party claims legal ownership of the goods and requests for their release. In such cases, since the issue relating to title of the goods has not yet been adjudicated upon by the competent adjudicating authority, attempt should be made to expedite the investigation and adjudication proceedings. A decision regarding disposal of the goods should be taken in such cases immediately on completion of the adjudication proceedings.*

Procedure of Disposal

Procedure for disposal of goods under Section 110(1A) of the Customs Act, 1962

Cont...

- c) If seized goods are highly perishable and may not have remaining shelf life of even three months time, the file may be processes and put up for seeking approval to dispose of the goods under Section 110 (1A) immediately after seizure is affected and preliminary investigation are over.*
- d) The disposal of the goods should be clearly reflected in the Show Cause Notice so that the adjudication authorities as well as the appellate authority pass appropriate orders. When action under Section 110(1A) is initiated after issue of Show Cause Notice, an addendum shall be issued immediately after the disposal of goods to indicate the fact of disposal.*
- e) After the disposal order is passed in terms of Section 110(1A) and the goods disposed, appropriate entries should be made in adjudication file as well so that at the time of adjudication ,the adjudicating authority does not give an option of redemption to the party since no goods exists for exercising such an option.*

[Standing Order No.1/99 dated 16.07.99 of Mumbai (Prev.) Commissionerate]

Procedure of Disposal

Pretrial Disposal:

In respect of the goods other than Category II goods, which are locked in court proceedings or if prosecution is contemplated/launched, Pretrial disposal orders can also be obtained by the seizing unit under Section 451 of Cr. PC. The format for filing application for pretrial disposal under Section 110 of the Customs Act, 1962 (**Appendix A**) may be used for the purpose.

Thank you

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