

2023 SCC OnLine Gau 728 : (2023) 3 GLT 9

In the High Court of Gauhati[±]
(BEFORE MICHAEL ZOTHANKHUMA AND MALASRI NANDI, JJ.)

Crl. Pet 284/2022

State of Assam and Another ... Petitioners;

Versus

Ram Sankar Maurya ... Respondent.

With

Crl. Pet 213/2022

State of Assam and Another ... Petitioners;

Versus

Kamrul Islam Mazumdar ... Respondent.

With

Crl. Pet 356/2022

State of Assam and Another ... Petitioners;

Versus

Fakrul Haque Laskar ... Respondent.

With

Crl. Pet 358/2022

State of Assam and Another ... Petitioners;

Versus

Sahidul Alom Laskar ... Respondent.

With

Crl. Pet 505/2022

State of Assam and Another ... Petitioners;

Versus

Anowar Hussain Laskar ... Respondent.

With

Crl. Pet 517/2022

State of Assam and Another ... Petitioners;

Versus

Soma Paul ... Respondent.

With

Crl. Pet 641/2022

State of Assam and Another ... Petitioners;

Versus

Md. Imthiyaz Khan ... Respondent.

With

Crl. Pet 642/2022

State of Assam and Another ... Petitioners;

Versus

Md. Shamsuzzaman Sheikh ... Respondent.

Crl. Pet 284/2022, Crl. Pet 213/2022, Crl. Pet 356/2022, Crl. Pet 358/2022, Crl. Pet 505/2022, Crl. Pet 517/2022, Crl. Pet 641/2022
and Crl. Pet 642/2022

Decided on March 2, 2023, [Date of Hearings : 09.02.2023 &
21.02.2023]

Advocates who appeared in this case:

For the petitioners : Mr. P.N. Goswami Addl. Advocate General.

For the respondent : Mr. M. Biswas Advocate.

For the petitioners : Mr. P.N. Goswami Addl. Advocate General.

For the respondent : Mr. H.R.A. Choudhury Sr. Advocate.

Mr. A. Ahmed. ...Advocate

For the petitioners : Mr. P.N. Goswami Addl. Advocate General.

For the respondent : Mr. Z. Kamar Sr. Advocate.

Mr. P.J. Saikia. ...Sr. Advocate.

For the petitioners : Mr. P.N. Goswami Addl. Advocate General.

For the respondent : Mr. P.J. Saikia Sr. Advocate.

Mr. A.K. Gupta. ...Advocate.

For the petitioners : Mr. P.N. Goswami Addl. Advocate General.

For the respondent : Mr. Z. Kamar Sr. Advocate.

Mr. S. Dihingia. ...Advocate.

For the petitioners : Mr. P.N. Goswami Addl. Advocate General.

For the respondent : Mr. Z. Kamar Sr. Advocate.

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For the petitioners : Mr. P.N. Goswami Addl. Advocate General.

For the respondent : Mr. A. Sarma

Mr. P. Dutta. ...Advocates.

For the petitioners : Mr. P.N. Goswami Addl. Advocate General.

For the respondent : Mr. N.M. Hazarika

Mr. A. Duarah. ...Advocates.

JUDGMENT AND ORDER (CAV)

MICHAEL ZOTHANKHUMA, J.: — Heard.

2. This batch of petitions has been referred to by a Single Bench of this Court to decide the question “whether pending investigation, seized articles can be released by the Court, by exercising the

jurisdiction, either under Section 451, or under Section 457 of the Cr. P.C.”

3. Mr. P N Goswami, learned Addl. Advocate General submits that a Court cannot release seized articles under Section 451, 457 or 102 Cr. P.C. during the stage of investigation, unless and until the case reaches the stage of enquiry or trial. He also submits that Section 102 Cr. P.C. provides power to the Police Officer, to give custody of any seized property to any person and the said provision does not give any power to the Court to give custody of such property to any person during the investigation stage.

4. The learned Addl. Advocate General submits that the orders passed by this Court in the case of;

(1) *The State of Assam v. Nur Uddin Daskar*, CrI. Pet. No. 368/2022.

(2) *The State of Assam v. Lalhruaizela*, CrI. Pet. No. 597/2022

(3) *Rafikul Islam v. State of Assam*, CrI. Rev. Pet. No. 16/2022 have clearly held that the definition of the words “Inquiry” provided under Section 2(g) Cr. P.C. and the definition of “Investigation” as provided under Section 2(h) Cr. P.C. shows that an inquiry is not an investigation. Further, as “trial” does not encompass investigation, the power to release seized property under Section 451 Cr. P.C. cannot be exercised by a criminal Court at the time of investigation.

5. The learned Addl. Advocate General has also submitted that though the wording of Section 451 Cr. P.C. and 457 Cr. P.C. are similar, the difference is that the seized property is produced before the criminal Court during an inquiry or trial under Section 451 Cr. P.C., while there is no production of the seized property before a criminal Court during an enquiry or trial under Section 457 Cr. P.C., though the seizure of the property by the Police during investigation is reported to the Magistrate under Section 457 Cr. P.C. He submits that as the criminal Court does not have the power to release custody of property under Section 451 Cr. P.C. unless the case reaches the stage of inquiry or trial, the same yardstick would apply to release of seized property under Section 457 Cr. P.C.

6. He submits that in the case of *Nevada Properties Pvt. Ltd. v. State of Maharashtra*, (2019) 20 SCC 119, the Supreme Court has held that while Section 451 Cr. P.C. empowers the criminal Court to pass an order of custody of any property during an inquiry or trial, Section 457 Cr. P.C. applies to properties which have been seized by the police officer during investigation, but not produced during inquiry or trial.

7. He also submits that the learned Single Judge of this Court in the case of *Sunil Gogoi v. State of Assam*, reported in (2002) 3 GLR 572, fell into error when it held that Section 457 Cr. P.C. gets attracted when

trial has not yet started. He submits that in terms of the judgment of the learned Single Judge in *Sunil Gogoi* (supra), the Court can give custody or dispose of seized property even at the investigation stage, which is not in consonance with the provisions of Section 457 Cr. P.C.

8. The learned Additional Advocate General has also taken us through various provisions of the Cr. P.C., with regard to the definition of inquiry, investigation and Chapter-XXXIV Cr. P.C., in support of his stand that the power of the Court to give custody of a seized property under Section 451 and 457 Cr. P.C. during the investigation stage comes into play, only after a case reaches the stage of enquiry or trial.

9. The learned Additional Advocate General also submits that as per the Cr. P.C., 1973, custody of seized property can be given during investigation under Section 102 Cr. P.C. only by a police officer. However, there is no provision for giving custody of the seized property/article at the stage of investigation by the Court under Sections 102, 451 or 457 Cr. P.C. He also submits that in terms of Section 523 of the old Criminal Procedure Code, 1898, which corresponds to the present Section 457 Cr. P.C., the Court was empowered to dispose or give custody of any seized property at the time of investigation, inquiry or trial. However, in the Cr. P.C., 1973, the power of the Court to give custody of a seized property under Section 457 Cr. P.C. during the stage of investigation has been taken away, till such time the case reaches the stage of inquiry or trial. He submits that if the intention of the legislature was to give power to the Court to give custody of seized property during investigation, the same could have been easily stated in clear terms in Section 457 Cr. P.C. The same not being done, the Court has no power to give custody of seized property during investigation. In support of his submissions, the learned Additional Advocate General has relied upon various judgments, which are as follows:

- (i) *Nevada Properties Private Limited, through its Directors v. State of Maharashtra*, reported in (2019) 20 SCC 119.
- (ii) *Hardeep Singh v. State of Punjab*, reported in (2014) 3 SCC 92
- (iii) *Directorate of Revenue Intelligence v. PRK Diamonds Pvt. Ltd.*, 2019 SCC OnLine Del 8226 and
- (iv) *Directorate of Revenue Intelligence, Shillong Regional Unit, Shillong v. Shri Ajay Babu Manda*, CrI. Pet. No. 1/2022.
- (v) *Noorkhan Jafarkhan v. SK Kakeer Sk. Akbar and Balaji v. State of Andhra Pradesh*, reported in 2003 0 AllMR (CrI.) 878
- (vi) *Balaji v. State of Andhra Pradesh*, reported in 1976 Cri LJ 1461.

10. The learned Additional Advocate General has also submitted various judgments of the Apex Court with regard to principles to be followed while interpreting Statutes, which are as follows:

- (i) *Visitor, AMU v. K.S. Misra*, reported in (2007) 8 SCC 593,
- (ii) *Nathi Devi v. Radha Devi Gupta*, reported in (2005) 2 SCC 271,
- (iii) *Commissioner of Wealth Tax v. Dr. Karan Singh*, reported in 1993 Supp (4) SCC 500

11. The learned counsels for the respondents, on the other hand, submit that custody of the seized property can be given by a Criminal Court under Section 451 Cr. P.C. and Section 457 Cr. P.C., during the investigation stage also. In this regard, they have relied upon the judgments of the Supreme Court in the case of *Sunderbhai Ambalal Desai v. State of Gujarat*, reported in (2002) 10 SCC 283 and in the case of *Multani Hanif bhai Kalubhai v. State of Gujarat*, reported in (2013) 3 SCC 240. They submit that though the Supreme Court has not stated in so many words that the Court can give custody of seized property during the stage of investigation, the facts enumerated in the above two cases and the directions issued therein, implies that Section 451 Cr. P.C. is applicable, for releasing custody of seized property during the stage of investigation.

12. The respondents' counsels submit that in terms of Section 102 Cr. P.C., Police can give custody of seized property during investigation. However, problems would arise if the Police fail to give custody of seized property under Section 102 Cr. P.C. In that eventuality, where would citizens go for getting custody of the same, keeping in view the fact that sometimes, investigation goes on for years together.

13. The respondents' counsels also submit that the Division Bench of this Court in W.A. No. 296/2019, *Ali Trading v. State of Assam*, had held that any seizure affected by invoking Section 102(1) Cr. P.C. would have to be subjected to the procedure prescribed under Section 102(3), i.e. to forthwith submit a report of the seizure to the Magistrate. Without such procedure being undertaken, any detention of the seized article would have to be said to be without authority and jurisdiction and Courts would have to step in to release the seized property. However, in the event of seizures being followed up with submission of reports to the Magistrate, it would be subject to the procedure provided under Section 451 Cr. P.C.

14. The respondents' counsels also submit that in the case of *Ram Parkash Sharma v. State of Haryana*, reported in (1978) 2 SCC 491, the Apex Court has held that Section 457 Cr. P.C. can be applied by the Court for releasing custody of the seized property when the investigation is not over and charge-sheet has not yet been filed.

15. The respondents' counsels also submit that the Division Bench of Calcutta High Court in the case of *Ambika Roy v. The State of Calcutta*, reported in 1974 Cri LJ 1002, had on interpreting Section 457 Cr. P.C., held that the words "such property is not produced before a Criminal Court during an inquiry or trial" appearing in Section 457 Cr. P.C.,

merely referred to the stage of investigation and not the stage of inquiry or trial. As such, it had held that a Court had the power to give custody of seized property at the stage of investigation under Section 457 Cr. P.C.

16. The learned counsels for the respondents thus submit that custody of seized property can be given by Courts during the investigation stage under Section 451 and 457 Cr. P.C. In support of their submissions, they have relied upon various judgments of various High Courts which are as follows:

- (i) *Ghafoor Bhai Nabbu Bhai Tawar v. Motiram Keshao Rao Bongirwar*, reported in 1977 Supreme (Bom) 77,
- (ii) *M.S. Jaggi v. Subashchandra Mohapatra*, reported in 1997 Supreme (Ori) 28,
- (iii) *Ajai Singh v. Nathi Lal*, reported in 1978 Cri LJ 629,
- (iv) *Bharat Heavy Electricals Ltd., Hyderabad v. State*, reported in 1981 Cri LJ 1529
- (v) *Joshi v. The State*, reported in 1986 Cri LJ 263
- (vi) *Dheerendra Dwivedi @ Dheeru v. State of M.P.* (Criminal Revision No. 2078/2020),

17. The learned counsels for the respondents also submit that in case of ambiguity, in the construction of a penal statute, the Court must favour the interpretation which leans towards protecting the rights of the accused, given the ubiquitous power disparity between the individual accused and the State machinery, as laid down by the Apex Court in the case of *M. Ravindran v. Directorate of Revenue Intelligence*, reported in (2021) 2 SCC 485.

18. The learned Advocate General submits that the stand taken by the respondents' counsels that seized property can be given in custody by the Courts during the investigation stage under Section 457 Cr. P.C., by relying upon two Apex Court decisions i.e. *Sunderbhai Ambala Desai v. State of Gujrat*, reported in (2002) 10 SCC 283 and in the case of *Ram Prakash Sharma v. State of Haryana*, reported in (1978) 2 SCC 491, is misplaced. He submits that the Apex Court's direction in *Sunderbhai Ambala Desai* (supra) to the concerned Magistrate, to take immediate action under Section 451 Cr. P.C. for releasing the seized property, so as to ensure that the same was not kept at the police station for not more than 15 (fifteen) days to 1 (one) month, was made at the stage of trial. He submits that there was no issue framed or adjudicated by the Apex Courts on the scope of grant of custody by a Criminal Court under Section 451 and Section 457 Cr. P.C. during the stage of investigation. Further, the decision taken in the above case was only with respect to Section 451 Cr. P.C. and not Section 457 Cr. P.C.

19. The learned Advocate General submits that the direction passed by the Apex Court in *Ram Parkash Sharma* (supra) to release seized property under Section 457 Cr. P.C. during the investigation stage cannot be a law holding the field, as there was no deliberations made by the Apex Court, on the scope of grant of custody of seized property during the stage of investigation under Section 457 Cr. P.C. He submits that the decision made by the Apex Court in *Ram Parkash Sharma* (supra) was not accompanied by reasons and accordingly the same could not be deemed to be a law declared to have a binding effect, as contemplated by Article 141 of the Constitution.

20. We have heard the learned counsels for the parties.

21. For adjudicating the issue at hand, the definition of the words inquiry and investigation as provided in Section 2(h) to 2(g) are reproduced below:

22. As per Sec. 2(h) of Cr. P.C., Investigation has been defined in the following terms:

(h) "Investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf.

While under S. 2(g) of Cr. P.C. 'Inquiry' is defined as:

"Inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate Court.

What is investigation?

23. The Code of Criminal Procedure provides the procedure for investigation and the report of the Police Officer on completion of investigation.

24. Sec. 157 Cr. P.C. states as follows:—

"157. If, from information received or otherwise, officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender;"

25. Sec 173(1) of Cr. P.C. adumbrates that the Investigation shall be completed without unnecessary delay.

26. The Apex Court while considering the case of *H.N. Rishbud And Inder Singh v. The State of Delhi*, reported in AIR 1955 SC 196, *State*

of *U.P. v. Bhagwant Kishore Joshi*, (1964) 3 SCR 71 and *Satish Narayan Sawant v. State of Goa*, (2012) 8 SCC 365 held that investigation consists generally of the following steps:

1. Proceeding to the spot,
2. Ascertainment of the facts and circumstances of the case,
3. Discovery and arrest of the suspected offender, and
4. Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places of seizure of things considered necessary for the investigation and to be produced at the trial, and
5. Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under section 173.

27. In the case of *Hardeep Singh* (supra), the Apex Court has held that the stage of inquiry commences, insofar as the court is concerned, with the filing of the charge-sheet and the consideration of the material collected by the prosecution, that is mentioned in the charge-sheet for the purpose of trying the accused. This has to be understood in terms of Section 2(g) CrPC, which defines an inquiry as every inquiry, other than a trial, conducted under this Code by a Magistrate or court.

28. In the case of *Niranjan Singh v. State of U.P.*, reported in AIR 1957 SC 142, it has been laid down by the Apex Court that investigation is certainly not an inquiry or trial before the Court and that is why the Legislature did not contemplate any irregularity in investigation as of sufficient importance to vitiate or otherwise form any infirmity in the inquiry or trial. In *Manubhai Ratilal Patel v. State of Gujarat*, reported in (2013) 1 SCC 314, the Apex court held as "It is apposite to note that the investigation, as has been dealt with in various authorities of this Court, is neither an inquiry nor trial."

29. In view of the judgments of the Apex Court enumerated in the foregoing paragraphs, it is clear that investigation is an activity which is different from an inquiry or trial. As the stage of inquiry commences from the date of filing of the charge-sheet, the period prior to filing of the charge-sheet would have to be considered to be the stage of investigation.

30. Now coming to the question as to whether a Criminal Court can release custody of seized property during investigation under Section 451 or 457 Cr. P.C., we would have to see the provisions of Section 102, 451 to 457 Cr. P.C. and the judgments passed by the Supreme Court and various High Courts.

31. Section 102, 451 and 457 Cr. P.C. are reproduced below as follows:—

“102. Power of police officer to seize certain property:—

- 1. Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the Commission of any offence.*
- 2. Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.*
- 3. Every police officer acting under Sub-Section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be, conveniently transported to the Court or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same.*

Provided that where the property seized under Sub-Section (1) is subject to speedy and natural decay and if the person 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 and the provisions of sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceed of such sale.

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

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

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- (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.”*

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

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

32. On reading the various judgments enumerated in the foregoing paragraph and the provisions of Chapter XXXIV of the Code of Criminal Procedure, we are of the view that the Court can make an order for the proper custody of the seized property under Section 451 Cr. P.C. only after a charge-sheet is filed. Section 452 Cr. P.C. is to be applied for disposal of property, only at the conclusion of an inquiry or trial. Section 459 Cr. P.C., on the other hand, allows for the Court to sell the seized property, if the person entitled to possession of the property is unknown or absent and the property is subject to speedy and natural decay or that the sale would be for benefit of the owner or the value of the property is less than Rs. 500/-.

33. In the case of *Directorate of Revenue Intelligence v. PRK Diamonds Pvt. Ltd.*, 2019 SCC OnLine Del 8226, the Delhi High Court held that for the applicability of Section 451 Cr. P.C., an enquiry or trial has essentially to be in progress.

34. In the case of *Directorate of Revenue Intelligence, Shillong Regional Unit, Shillong v. Shri Ajay Babu Manda*, CrI. Pet. No. 1/2022, the Meghalaya High Court held that in the absence of a trial or inquiry under Section 451/457 Cr. P.C., the Magistrate could not have released the seized vehicles to the owners of the vehicles.

35. In the case of *The State of Assam v. Nur Uddin Daskar*, CrI. Pet. No. 368/2022. (2) *The State of Assam v. Lalhruaizela*, CrI. Pet. No. 597/2022 (3.) *Rafikul Islam v. State of Assam*, CrI. Rev. Pet. No. 16/2022, the Ld. Single Judges of this Court have held that during the investigation stage, the power to give custody of a seized property under Section 451 Cr. P.C. could not be exercised by Criminal Courts. Nothing was stated in the above three decisions with regard to whether the Criminal Court could give custody of a seized property during the

investigation stage under Section 457 Cr. P.C. However, in the case of *Sunil Gogoi* (supra), another Single Bench of this Court had held that the Criminal Court has the power to pass an order of interim custody to the rightful owner, either under Section 451 Cr. P.C. pending trial of the case or under Section 457 Cr. P.C. when the property is seized by the police and trial has not yet started. Thus a reading of the judgment in *Sunil Gogoi* (supra), implies that a Criminal Court can give custody of a seized property under Section 457, prior to the start of trial, i.e. at the inquiry stage and investigation stage.

36. In the case of *Ghafoor Bhai Nabbu Bhai Tawar* (supra) the Bombay High Court has held that the provision of Section 457 Cr. P.C. are sufficiently wide so as to cover a case where the Magistrate is called upon to pass an order for disposal or custody of a property during the investigation stage.

37. In the case of *M.S. Jaggi* (supra), the Orissa High Court has held that the Expression, "and such property is not produced before a Criminal Court during an inquiry or trial" appearing in Section 457(1) merely refers to a stage of investigation and provide a condition precedent for exercise of jurisdiction of the Magistrate under the Section.

38. In the case of *Ajai Singh* (supra), the Division Bench of the Allahabad High Court has held that a Magistrate may have to exercise jurisdiction under Section 457 Cr. P.C. in different situations and circumstances. A person whose property has been seized may apply to the Magistrate for its release while the investigation is still in progress and before commencement of an inquiry or trial and before an occasion to produce the seized property before a Criminal Court arises.

39. The Allahabad High Court then held that it found nothing in the language of Section 457 Cr. P.C. to restrict its application and take away the jurisdiction of the Magistrate until trial or inquiry is held and the property is actually not produced in the court or during the investigation of the case.

40. In the case of *Nevada Properties Private Limited v. State of Maharashtra*, reported in (2019) 20 SCC 119, the issue that was to be decided by the Apex Court was whether the expression "any property" used in sub-section (1) of Section 102 Cr. P.C. would include immovable property and, consequently, whether a police officer investigating a criminal case could take custody of and seize any immovable property, which may be found under circumstances which create suspicion of the commission of any offence.

41. The Apex Court, on considering the above issue in conjunction with Chapter XXXIV of the Code of Criminal Procedure, which relates to disposal of property under Section 451 to 459, held that Section 451, 452 & 456 does not refer to any seized property under Section 102 Cr.

P.C. It held that the power of the Criminal Court under Section 451, 452 & 456 is not restricted to property seized by the police officer under Section 102 of the Code, i.e. it had the jurisdiction to give orders pertaining to immovable property also. However, Section 457 Cr. P.C. applied to properties which had been seized by the police officer under Section 102 of the Code, but not produced during inquiry or trial. The Apex Court thereafter held that the power of the criminal court under Section 451, 452 and 456 of the Code was not restricted to property seized by the police officer under Section 102 of the Code. However, Section 457 Cr. P.C., applied to properties which have been seized by the police officer under the Code but not produced during inquiry or trial. It thus held that the Expression "any property" appearing in Section 102 of the Code would not include immovable property.

42. The Judgment of the Apex Court in *Nevada Properties Private Limited* (supra) was not with regard to the issue that has to be decided herein and neither was the same considered. The Apex Court held that the expression "any property" in Section 102 Cr. P.C. would cover only moveable property. The Apex Court has referred to Section 457 Cr. P.C. only in the last five lines of paragraph 26 in the entire judgment, which as follows:

"26. We have referred to the said provisions under Chapter XXXIV - 'Disposal of Property', as this would be of significance and, addresses the argument and concern expressed by the appellant - Nevada Properties Pvt. Ltd. and some of the State Governments. These provisions, specifically enable the Court to pass orders relating to the properties, both movable and immovable. We have referred to Section 451, which does not specifically refer to any seizure order under Section 102 of the Code but vide Explanation includes such property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence. Similarly, Section 452 refers to property regarding which an offence appears to have been committed as has been originally in possession or under control of any party and also such property into or for which the same may have been converted or exchanged. Again Section 452 per se, does not make any reference to Section 102 of the Code. This is also true for Section 456 of the Code which relates to restoration of possession of immovable property in certain circumstances. These provisions, therefore, do not directly define the contours and scope of Section 102 of the Code. On the other hand, it would show that Section 102 is not the primary or the core provision which would make the provisions of Section 451, 452 or 456 of the Code applicable. The parameters for application of these sections are those as are enumerated in the specific provisions. Sections 451 and 452 specifically define the

expression 'property' for the purpose of an order of custody and disposal by the Court. Section 456 applies to the category or type of offences concerning immovable property regardless of whether the immovable property is in custody of the Court or has been attached. Power of the Criminal Court under these Sections, except Section 457 of the Code, is not restricted to property seized by the police officer under Section 102 of the Code. Section 457, as noticed, applies to properties which have been seized by the police officer under the Code but not produced during inquiry or trial."

43. On considering the decision of the Apex Court in *Nevada Properties Private Limited* (supra), we are of the view that the Apex Court has not made any interpretation or laid down any law, with regard to whether Section 457 Cr. P.C. would be applicable at the stage of investigation. Accordingly, the decision made in the above case, in our view, is not applicable to the issue to be decided herein.

44. In the case of *Ambika Roy* (supra), the Division Bench of the Calcutta High Court held that the words "and such property is not produced before a Criminal Court during an inquiry or trial appearing in Section 457 Cr. P.C. merely referred to the stage of investigation and not the stage of inquiry or trial. As such, once the factum of seizure of a property has been reported to a Court under the provisions of Section 457 Cr. P.C., the Criminal Court could give custody of the seized property at the investigation stage under Section 457 Cr. P.C. The Calcutta High Court also held that if the property was produced in Court during an enquiry and trial, then Section 451 Cr. P.C. would apply and not Section 457 Cr. P.C.

45. In the case of *Sunderbhai Ambalal Desai* (supra), the Apex Court had considered the judgment of the Apex Court in *Smt. Basavva Kom Dyamangouda Patil v. State of Mysore*, reported in (1977) 4 SCC 358 and held that the Magistrate should take immediate action under Section 451 Cr. P.C., to see that the seized articles were not kept at the police station for more than fifteen days to one month from the date of seizure. There was no decision made with regard to whether Section 457 Cr. P.C. could be invoked by a Criminal Court for release of the seized articles.

46. In the case of *Smt. Basava Kom Dyamangouda Patil* (supra), the Apex Court held in para 4 as follows:—

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

should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The High Court and the Sessions Judge proceeded on the footing that one of the essential requirements of the Code is that the articles concerned must be produced before the Court or should be in its custody. The object of the Code seems to be that any property which is in the control of the Court either directly or indirectly should be disposed of by the Court and a just and proper order should be passed by the Court regarding its disposal. In a criminal case, the police always acts under the direct control of the Court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the Court exercises an overall control on the actions of the police officers in every case where it has taken cognizance."

47. The Apex Court in the case of *Sunderbhai Ambalal Desai* (supra) did not go into the question whether Section 457 Cr. P.C. could be applied by a Criminal Court during the stage of investigation. However, it held that seized property should not be kept for more than a month at the police station.

48. In the case of *P.V. Joseph v. State*, reported in 1978 Cri LJ 1206, the Kerala High Court has held that there is no bar in Section 457 Cr. P.C. from exercising the power under it, at the stage of investigation.

49. In the case of *Bharat Heavy Electricals* (supra), the Andhra Pradesh High Court has held that the Criminal Court had the power under Section 457 Cr. P.C. for delivery or disposal of a property prior to filing of a charge-sheet. However, it added a Caveat as follows:

"Even if I am wrong, I could still direct the delivery of the property to the petitioner company under Section 482 Criminal P.C. in order to secure the ends of justice."

50. In the case of *Joshy* (supra), the Kerala High Court has held that as no charge-sheet has been filed and the case was pending investigation, there was no pending inquiry or trial. Accordingly no orders under Section 451 Cr. P.C. could be passed. However, orders could be passed under Section 457 Cr. P.C.

51. In the case of *Dheerendra Dwivedi @ Dheeru v. State of M.P.*, Criminal Revision No. 2078/2020, the Madhya Pradesh High Court at Jabalpur has held that a Judicial Magistrate acquires jurisdiction to entertain an application under Section 457 Cr. P.C., when a police

officer seizes property and the matter is under investigation before the police, but before the property is produced before a Criminal Court during inquiry or trial. In such a condition, the Magistrate may make an order for disposal of such property or delivery of such property entitled to possession thereof.

52. In view of the conflicting decisions made by various High Courts, it would be profitable to now consider the decision of the Apex Court in the case of *General Insurance Council v. State of A.P.*, reported in (2010) 6 SCC 768. In the above case, the General Insurance Council had approached the Apex Court for further directions, orders and clarifications with regard to the violation of the directions passed by the Apex Court in *Sunderbhai Ambalal Desai* (supra), inasmuch as seized vehicles involved in commission of various offences were not being released, thereby reducing several hundred crores worth of assets to junk. The Apex Court in the above case held that though the questions projected in the case had been answered by the Apex Court in another case, i.e., *Sunderbhai Ambalal Desai* (supra), pertaining to interpretation and mode of implementation of Section 451 and Section 457 Cr. P.C., certain grey areas had been left untouched. The Apex Court thereafter, reiterated the observations of the Apex Court in *Sunderbhai Ambalal Desai* (supra), wherein it had been held that it was no use in keeping seized vehicles at Police Stations for a long period and it was for the Magistrate to pass appropriate orders immediately, by taking appropriate bond and guarantee as well as security for return of the seized vehicles, if required at any point of time. Thereafter, the Apex Court in *General Insurance Council* (supra) gave additional directions, in addition to the directions given in *Sunderbhai Ambalal Desai* (supra), after considering the mandate of Section 451 read with Section 457 Cr. P.C. Para 13 of the judgment of *General Insurance Council* (supra) is reproduced below as follows:—

“In our considered opinion, the aforesaid information is required to be utilised and followed scrupulously and has to be given positively as and when asked for by the Insurer. We also feel, it is necessary that in addition to the directions issued by this Court in Sunderbhai Ambalal Desai (supra) considering the mandate of Section 451 read with Section 457 of the Code, the following further directions with regard to seized vehicles are required to be given:

“(A) Insurer may be permitted to move a separate application for release of the recovered vehicle as soon as it is informed of such recovery before the Jurisdictional Court. Ordinarily, release shall be made within a period of 30 days from the date of the application. The necessary photographs may be taken duly authenticated and certified, and a detailed panchnama may be prepared before such release.

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

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

53. The Apex Court in *General Insurance Council* (supra) has thus held that an Insurer may be permitted to move an application for release of the seized vehicles as soon as it is informed of such recovery before the jurisdictional Court and that ordinarily, release should be made within a period of 30 (thirty) days from the date of the application for release of the seized vehicle. The above directions had been made on considering the mandate of Section 451 and Section 457 Cr. P.C.

54. In the case of *Ram Prakash Sharma* (supra), the Apex Court directed the Criminal Court to pass appropriate orders under Section 457 Cr. P.C. for disposal of seized property during the investigation stage. In the above case, the Apex Court has held that the Court has power to dispose of property seized by the police but not yet produced before the Court under Section 457 Cr. P.C. and before charge-sheet had been submitted. The Apex Court had thereafter taken into consideration the judgment of the Apex Court in *Smt. Basava Kom Dyamangouda Patil* (supra), that the police or the Court should not keep the seized property indefinitely in its custody. The Apex Court thereafter directed the Special Court to pass appropriate order under Section 457 Cr. P.C. for seized property despite the case being in the investigation stage.

55. The extract of the judgment of the Apex Court in *Ram Prakash Sharma* (supra) is reproduced below:

"3. Be that as it may, the situation is squarely covered by Section 457 Cr. P.C. However, the fact that the court has power to dispose of property seized by the police but not yet produced before the court does not mean that the Special Judge must always release such property to the person from whom the property has been recovered, especially when the state of the case is in suspicion, the investigation is not over and charge-sheet has not yet been laid. The court has to be circumspect in such a situation before releasing the property. While we reverse the decision of the courts below that the

Special Judge had no power to release the seized property, we should not be taken to mean that whenever the claimant asks for the property back, he should be given back the said property. That has to be decided on its own merits in each case and the discretion of the court has to be exercised after due consideration of the interests of justice including the prospective necessity of the production of these seized articles at the time of the trial. If the release of the property seized will, in any manner, affect or prejudice the course of justice at the time of the trial, it will be a wise discretion to reject the claim for return.

4. All that we need do at the moment is to uphold the power of the court to release the property and direct the Special Judge to hold an investigation into the necessity for the notes seized to be retained with the police or in the court for future use at the time of the inquiry or trial. If he is of the opinion that the notes are so required, the property shall not be released. If, on the other hand, the notes are not needed in any manner in the later stages of the inquiry or trial, it will be proper for the court to release the property on the appellant furnishing adequate security.

5. In reaching the conclusion we have taken note of the decision of this Court in *Smt. Basava Kom Dyamangouda Patil v. State of Mysore (1977) 4 SCC 358* of course, the Police should not indefinitely keep property in its custody nor need the court keep the property seized and produced before it unduly long but this does not whittle down the need for the court to be vigilant when an application is made for return of property seized by the police as to the necessity of such property being required in the future course of the trial.

6. Having regard to these circumstances, the court will pass appropriate orders under Section 457 Cr. P.C. regarding the disposal of the property seized by the police in this case. The Special Judge will dispose of the matter expeditiously since considerable time has elapsed. The appeal is disposed of accordingly."

56. In the case of *Visitor, AMU v. K.S. Misra*, reported in (2007) 8 SCC 593 and *Nathi Devi v. Radha Devi Gupta*, reported in (2005) 2 SCC 271, the Apex Court has held that that it is a well settled principle of interpretation of the statute that it is incumbent upon the court to avoid a construction, if reasonably permissible on the language, which will render the part of the statute devoid of any meaning or application. The courts must always presume that the legislature inserted every part thereof for a purpose and the legislative intent is that every part of the statute should have effect. The legislature is deemed not to waste its words or to say anything in vain and constructions which attribute redundancy to legislature will not be accepted, except for compelling

reasons. It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words and that the real intention of the legislation must be gathered from the language used.

57. In the case of *M. Ravindran v. Directorate of Revenue Intelligence* (supra), the Apex Court has held that in case of any ambiguity in the construction of a penal statute, the Courts must favour the interpretation which leans towards protecting the rights of the accused, given the ubiquitous power disparity between the individual accused and the State machinery. The Apex Court also held that this is applicable not only in the case of substantive penal statutes but also in the case of procedures providing for the curtailment of the liberty of the accused.

58. On a reading of Section 457 Cr. P.C., we find that the said provision covers a wide spectrum and would apply to all kinds of seizures under the Cr. P.C. On a reading of the words "and such property is not produced before a Criminal Court during an inquiry or trial" appearing in Section 457 Cr. P.C., the same does not necessarily mean that the report of the seizure of property to a Magistrate would be given to the same Magistrate who would hold an inquiry of the case under Section 2(g) of the Code and the trial of the case. The report of the seizure of property could be to a different Magistrate than the one who would conduct the inquiry or trial. The report of the seizure of property under Section 457 Cr. P.C. which has not been produced at the stage of investigation, could be to a Magistrate who may not have the jurisdiction to hold the inquiry or trial on the submission of the charge-sheet in the said case. As such, we are of the view that the power conferred under Section 457 Cr. P.C. cannot be given a restrictive meaning, as the power under the said provision can be exercised by a Magistrate who has no power to hold an inquiry or trial of the case, in which the seized property is involved in.

59. The fact that the Hon'ble Supreme Court has given a direction to the learned Criminal Court to consider release of seized property/articles at the investigation stage under Section 457 Cr. P.C., shows that Section 457 Cr. P.C. can be applied by the Criminal Court at the investigation stage for release of seized property. The submission made by the counsel for the appellant that the judgment of the Apex Court in *Ram Prakash Sharma* (supra) did not deliberate on the scope of Section 457 Cr. P.C., for granting custody of seized property at the stage of investigation cannot be accepted by us. While different situations and circumstances could arise in respect of seized property, one situation that can arise is when the police submit a final negative report and the police authorities fail to release custody of the seized

property in terms of Section 102 Cr. P.C. In that case, there would be no remedy for the aggrieved person, except to approach the High Court under Section 482 Cr. P.C. or Article 226 of the Constitution, which would be a difficult task for people living in far flung areas and those belonging to the weaker sections of society. In that event, Section 457 Cr. P.C. would become redundant. After considering the decisions of the Apex Court and the various High Courts alongwith Section 457 Cr. P.C., we are of the considered opinion that the words “and such property is not produced before a Criminal Court during an inquiry or trial”, appearing in sub-Section (1) of Section 457 Cr. P.C., cannot be restricted to mean that the stage of inquiry or trial is a condition precedent, for a Court to have jurisdiction for exercising power under Section 457 Cr. P.C. at the investigation stage. We are of the view that the words “and such property is not produced before a Criminal Court during the inquiry or trial” appearing in Section 457(1) Cr. P.C. would have to be considered to be a reference to a stage of investigation and not the stage of inquiry or trial. Further, we are bound by the decision of the Apex Court in *Ram Prakash Sharma* (supra), in terms of Article 141 of the Constitution of India, as it is the mandate of the Constitution that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. Also, in the case of *Anil Kumar Neotia v. Union of India*, reported in (1988) 2 SCC 587 : AIR 1988 SC 1353, it has been held that the High Court cannot question the correctness of the decision of the Supreme Court, even though the points stated before the High Court were not considered by the Supreme Court.

60. In view of the reasons stated above, we answer the reference by holding that at the investigation stage, seized articles cannot be released by a Court under Section 451 Cr. P.C. However, under Section 457 Cr. P.C., the Criminal Court has the jurisdiction to give custody of seized property/articles at the stage of investigation, when those seized property are not produced before the Court.

61. The reference is answered accordingly and the matters may be placed before the appropriate Bench.

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† Principal Bench at Guwahati

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