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# SUPERDARI AND DISPOSAL OF PROPERTY

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### Meaning and object.

"Superdari" means temporary custody of the property to one i.e. owner or possessor till the final adjudication of

Superdari is meant primarily for the purpose of protection of property.

Delivery of vehicle on superdari is meant primarily for purpose of protection of property and to avoid further



deterioration and cannot be used as a proof of ownership. (1992 P.Cr.L.J. 988) Real owner should not be deprived custody as against purchaser from the thief. Open transfer letter not a valid document of title. (1991 MLD 2590) Accused claiming to be the bona fide purchaser for value of the car and apparently remained in lawful possession of the same for a period of two years, delivery of the car ordered to be given on superdari on furnishing bank guarantee. (1992 P.Cr.L.J. 2137; 1994 SCMR 70) Terms of "Superdari" can be modified. (1991 SCMR 1567) Stolen property cannot be given on Superdari to a purchaser from thief. (1991 MLD 2590).

### 3. **Doctrine of custodia legis.**

Doctrine of custodia legis" provides that when personal property is repossessed under writ of replevin, property is considered to be in custody of the court, though actual possession may be in either of the parties to the replevin action, and that property remains in custody of court until judgment in replevin action finally determines whether replevining party or prior holder is entitled to possession. (Encyclopedia Law Dictionary).

### 4. **Relevant Laws and Provisions.**

Sections 516-A to 525 of Cr.P.C. relates to the custody and disposal of property pending trial. Section 516-A Cr.P.C. is most relevant which is reproduced as under.

### 5. **Order for custody and disposal of property pending trial in certain cases.**

When any property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence 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 or natural decay, may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

“(Provided that, if the property consists of explosive substances, the Court shall not order it to be sold or handed over to any person other than a Government Department or office dealing with, or to an authorized dealer in, such substances”).

(Provided further that if the property is a dangerous drug, intoxicant, intoxicating liquor or any other narcotic substance seized or taken into custody under the Dangerous Drugs Act, 1930 (II of 1930), the customs Act, 1969 (IV of 1969), Prohibition (Enforcement of Hadd) Order, 1979 (P.O. 4 of 1979), or any other law for the time being in force, the Court may, either on an application or of its own motion and under its supervision and control obtain and prepare such number of samples of the property as it may deem fit for safe custody and production before it or any other Court and cause destruction of the remaining portion of the property under a certificate issued by it in that behalf:

• Provided also that such samples shall be deemed to be whole of the property in an inquiry or proceeding in relation to such offence before any authority or Court). (S. 516-A Cr.P.C.).

#### 6. Principle governing disposal of application for custody of disputed property.

As can be deduced from various precedent ruling, applications under Section 516-A Cr.P.C. are governed by the following principles: (i) If an article is recovered from a person against whom there is no allegation of any crime, the custody of the same be entrusted to such person on superdari, and P.R. bond; (ii) if an article is recovered from a person and if it is clear that the article was stolen, the same may be handed over to the owner against superdari, and P.R. Bond; (iii) an order under section 516-A, Cr.P.C. is an interlocutory order which can be varied by the Trial Court even before the disposal of the case, if circumstances so warrant; (iv) the criminal Courts are not competent to investigate into the question of title as their jurisdiction is confined under section 516-A Cr.P.C. or for that



matter under section 517, CrP.C. to the determination of the entitlement and not title to the property. The question of ownership is to be determined by the proper Civil Court (vi) an erroneous view taken by a Trial Court in a revisional Court while deciding an application made under 516-A CrP.C cannot attract the Constitutional jurisdiction of the High Court (PLD 1979 Kar. 430).

### 7. Summary of other Sections.

Section 517 provides that after the conclusion of inquiry or trial, the Court may make an order for the disposal, destruction, confiscation or delivery to any person of any property or document produced before it or in its possession regarding which any offence appears to have been committed which has been used to the commission of any offence.

According to section 518, the Court may direct property to be delivered to the District Magistrate or the Divisional Magistrate who deals with it as if it has been seized by the police.

Section 519 relates to payment to an innocent purchaser. The Court may order that out of money received by the stolen property, a sum not exceeding the price purchased by the purchaser be delivered to such purchaser.

According to section 520 any court of appeal or confirmation, reference or revision may direct any order made under section 517, section 518 or section 519 passed by a court subordinate thereat, to be stayed pending consideration by the former Court, and may modify, alter or annul such order or make any further orders that may be just.

Section 421 relates to destruction of objectionable articles. The Court is competent to make an order for the destruction of all copies of the thing in respect of which conviction has been made under sections 292, 293, 401 and 502 PPC, or (ii) had been made under section 292, 293, 401 and 502 PPC, or (iii) had been made under section 292, 293, 401 and 502 PPC, or (iv) had been made under section 292, 293, 401 and 502 PPC.

Section 522 relates to restoration of possession of immovable property of any person who has been dispossessed of immovable property by criminal force or criminal intimidation without prejudice to any right of interest to or in such immovable property, which a person may establish in a civil suit.

Section 523 and 524 relate of seizure of property by police when taken (a) under section 51 or (b) suspected to have been stolen; or (c) found under suspicious circumstances, is reported to a Magistrate who orders (a) its disposal or (b) its delivery to the person entitled; or (c) respecting its safe custody and protection. If the person entitled is known, the Magistrate may order the property to be delivered to him on such conditions as the Magistrate may think fit. If no person establishes his claim within six months and if the person in whose possession such property was found is unable to show that it was legally acquired by him, the property remains at the disposal of the Government, and may be sold under the orders of the District Magistrate. The Magistrate may direct such property to be sold if,

- (i) The person entitled to possession is unknown or absent.
- (ii) The property is subject to speedy and natural decay; or
- (iii) Its sale would be for the benefit of the owner;
- (iv) Its value is less than Rs.10/- (section 525).

**High Court Rules and Orders on custody of property.**

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

- (i) Articles including (a) counterfeit coins, together with implements for their manufacture, such as dyes, moulds,



etc., and (b) forged currency notes and implements such as dyes, moulds, etc., used in the forgery of currency notes, transmitted to the Magistrate, under section 170 of the Code of Criminal Procedure, with the Police report in cases sent up for trial.

(ii) Property seized by the Police as stolen property or upon suspicion, and ordered by the Magistrate, under section 523 of the Code of Criminal Procedure, to be forwarded to headquarters.

(iii) Property taken charge of by the Police under section 25 of Act V of 1861, and ordered by the Magistrate of the district to be forwarded to headquarters.

## **2. Custody and disposal of the Property.**

(a) With regard to property referred to in rule 1 (i) above, other than articles enumerated in (a) and (b), the Police Department will retain charge of it pending the disposal of the case. When the case is decided, the property, if not returned to the owner, will be made over to the Nazir for safe custody, or otherwise disposed of, as the Magistrate may direct.

(a) Articles enumerated in 1 (i) (a) above, will remain in the custody

of the Police Department pending the disposal of the case. At the end of the case and not till after the appeal or revision, if any, the Court shall send them to the Treasury or Sub-Treasury together with a short description of the case; and

(C) Articles enumerated in 1(i) (b) above produced in

and Confiscated by a Court shall remain in the custody of the Police Department during the trial of the case. After the decision of the case and the Appeal or Revision, if, any, from it, the Presiding Officer of the Court, State Bank of Pakistan in whose jurisdiction the forged note is/ notes are detected for entry in their books and destruction and make the remaining articles over to the Police

Department for their destruction or for such other action as may be found suitable in accordance with rules of that Department.

3. **Custody and disposal of the property.**

Property of the second kind, when sent into headquarters, will remain in the custody of the Police until the Magistrate makes an order for the issue of a **proclamation** under section 523 of the Code of Criminal Procedure, when it should be transferred to the custody of the Nazir, or otherwise disposed of as the Magistrate may direct.

4. **Custody and disposal of the property.**

Property of the third kind should on arrival at headquarters be made over at once to the Nazir by the Police Department.

5. **Custody of coins, currency notes, etc.--**

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

6. **Responsibility of Police for safe custody. --**

Until the property is, under the preceding rules, made over to the Treasury rules, the Police Department will continue to be responsible for its safe custody. When so made



over, the responsibility for its safe custody will rest with the Nazir (or) Treasurer, as the case may be.

7. See also Volume IV, Chapter 10:  
"Forfeited and unclaimed Property."

9. Forfeited bond doesn't extinguish the custody of the Court.

Where under a bond a person engages to produce the goods in Court whenever called upon to do so and on his failure to do so, the bond is forfeited and penalty is levied, the bond on its breach cannot in any sense be so read as to extinguish the custody of the Court. The custody of the Court continues despite the bond and the Court has the necessary power to call upon the person to produce the goods either in the original or in converted form, in spite of forfeiture of bond and penalty therefore. The forfeiture cannot be pleaded in extinguishment of the Court's power to deal further with the property or its sale proceeds. (AIR 1953 All 199, Distinguished.)

10. Power of Court to cancel its order of Superdari.

Sections 516-A & 561-A--- custody of property on Superdari. Petitioner had obtained the order of Superdari of the cattle head in question from the Magistrate at a time when he was not possessed of any material supporting his claim of their ownership---Magistrate in such circumstances was amply justified in cancelling the said order subsequently on an application of the respondent who apparently had a better claim of ownership or possession of the said cattle head. (2000 YLR 3040).

11. Superdari doesn't create any right.

Granting of superdari a property to a person pending an inquiry or a trial does not create any vested right in his favour qua that property. Superdari is only a temporary arrangement and the Court granting the Superdari never loses its overall



control of the property concerned. Superdar acts only as a trustee and, therefore, he can never claim that the Court concerned cannot retake the property in question from him at any time. (2000 YLR 3041).

12. **Police have no power to seize disputed car u/s 550 Cr.P.C.**

Section 550-----Constitution of Pakistan (1973), Art. 199-----  
 - Constitutional petition----Police had taken into possession the car in dispute under, section 550 Cr.P.C.-----Authority under section 550 Cr.P.C. could be exercised by the police by seizing any property alleged or suspected to have been stolen or which might be found under circumstances creating suspicion of the commission of any offence----Dispute about the car in question revolved around its ownership and it could not be taken into possession under section 550 Cr.P.C. ----Police had coined a device to settle the dispute of civil nature of the instant category by projecting its authority---- Contesting parties could get determined their ownership of the car from the competent Court----Police had no jurisdiction to decide such dispute and was directed to return the car to the petitioner----Constitutional petition was disposed of accordingly. (2001 MLD 670).

Truck in dispute being neither a stolen property nor having been used in the commission of any offence, recovery and possession of the same by the police under section 523/550 Cr.P.C. was illegal and without jurisdiction. If the police had kept the Truck in custody under the impression that it belonged to an absconder involved in the commission of some murder, even then police could not acquire its possession without obtaining a warrant under section 88, Cr.P.C. which was admittedly not done. Petitioner claimed to be the purchaser of the Truck from the said absconder many months prior to the commission of the murder and he had an open transfer letter in his possession which fact was not rebutted by the prosecution. Truck apparently having belonged to the petitioner, it was handed over to him on Superdari. (1997 P.Cr.L.J. 908).



13. **Seized property to be given to person from whose possession it is taken.**

No inquiry or trial pending in Court of Magistrate nor police making report regarding seizure and disposal of disputed truck---- Truck seized while in possession of applicant claiming to be its bona fide purchaser---Held, property seized normally to be given to person from whose possession it is taken unless there are special reasons for doing otherwise----Order passed on basis of ownership not justified. (1973 P.Cr.L.J. 288).

Upon this view of the matter, I hold that the applicant from whose possession the truck was seized was the person entitled to the possession of the same. I therefore, direct that the truck should be delivered to him pending the investigation in respect of the offence alleged to have been committed by Lutufur Rehman in connection with this truck. At the conclusion of inquiry or trial it will be open to the trial Court to pass any order regarding the disposal of the truck in question. (1973 P.Cr.L.J. 291).

14. **Distinction between sections 516-A & 517 Cr.P.C.**

The provisions relating the property in respect of which the offence is committed are contained in sections 516-A and 517 Cr.P.C. Both these sections deal with the disposal of the property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence. Section 516-A contemplates the passing of an interim order during the pendency of inquiry or trial for the proper custody of such property, whereas section 517 comes into play when the inquiry or trial is concluded and the final order is passed for the disposal of the property. Of course both these sections reveal that the property in respect of which an order can be passed is produced before the Court. In order to meet this objection it may be pointed out that the doctrine of implied power is applicable. From this principle it follows that the power to pass an order in respect of the property regarding which an offence has been committed



includes ancillary power to call for the property so that the necessary order may be passed for its proper custody during the pendency of the proceedings and final order on the conclusion of the proceedings. No such order can be passed unless the property is before the Court. (1972 P.Cr.L.J. 604).

### 15. Title of property.

Question of title to property concerned is hardly desirable to be decided under section 517 (1), Cr.P.C. The Court is not competent to decide it either. The question of title if any should be left to be decided by an ordinary civil Court of competent jurisdiction. (PLD 1970 SC 343).

Courts not to go into title of property, which is to be decided by a competent civil court. Property u/s 517, Cr.P.C. is to be handed over to person from whose possession it was taken over by the police. Bona fide purchaser handed over the possession from whose possession the tractor was taken by police. (PLJ 1990 Cr.C. (Kar) M. Saleem Khan.)

Superdari continues till the case property is disposed of under section 517, Cr.P.C. Mere recommendation of police for cancellation of case does not automatically put superdari to an end and entitle superdar to retain property as of right (SC) 1974 SCMR 238 Khan Mohammad V. Mohammad Abdullah.

Section 522 and 517. Under section 517 only person claiming to be entitled to possession of property can ask for the delivery to him, while under section 522 person asking for restoration of property need not claim to be entitled to its possession. Court acting section 522 need not enter into question of right of possession for restoration of property. (PLD 1963 Lah. 467 Muhammad Bakhsh V. Ashiq Hussain).

### 16. Stolen property.

Accused who was acquitted of the charge of possession of stolen property, claiming to be his own. Order of appellate Court returning the same to the accused not illegal. (1991 P.Cr.L.J. 2068) Person coming into possession of the tractor



through bona fide purchaser, it is not open to criminal Courts to go into question of title. (1991 P.Cr.L.J. 285).

### 17. Determination of ownership.

Purpose of section 516-A Cr.P.C. being a limited one, such proceedings only tentatively determine as to whom during a criminal trial, the possession of disputed property, be handed over. Such determination was not an equivalent of conclusive or eve provisional determination of ownership which even in criminal proceedings must be determined u/s 517, Cr.P.C. and in contentious matter would be determined in civil proceedings which have independently, to adjudicate upon that matter. (1990 CLC 502; 1972 SCMR 159). Order of disposal of property u/s 517, Cr.P.C. no right in property or finally determined by such order, question of title if any should be left to be decided by ordinary civil Court or competent jurisdiction. (PLD 1970 SC 343).

### 18. Person holding open Transfer Letter.

An open Transfer Letter, Registration Book and a Computer Checking Slip is sufficient to give the vehicle on Superdari to the person from whom it was taken possession of (1999 MLD 1676) According to Peshawar High Court transfer letter alone does not confer any title. (1999 P.Cr.L.J. 1354). Vehicle used by an offender for going to or running from place when offences committed by him, cannot be said to have been used for the commission of that offence and the same cannot be taken into possession by the Police as case property. (1999 MLD 1676).

### 19. Bona fide purchaser.

Tractor seized from bona fide purchaser held, interim custody of such property should go to the person from whom it is recovered. (1976 P.Cr.L.J. 747).

Truck seized from bona fide purchaser. Property seized normally to be given to person from whose possession it is taken unless there are special reasons for doing otherwise. Order



passed on basis of ownership are not justified. (1973 P.Cr.L.J. 288).

Question as to the chassis number alleged to be welded is a matter of evidence which can be seen at the time of trial. Retention of vehicle in police custody for an indefinite period is not wanted by law. (2003 YLR 791). Applicant can claim custody of vehicle on the basis that he was bonafide purchaser for consideration. (2003 YLR 2744). Owner of the car producing original registration, vehicle in question admittedly given to Rent-a-Car service from where accused had obtained the same a day before the date of occurrence. Such fact corroborated by recovery of authority letter from the dashboard. There is no restriction in law not to release the vehicle to the bona fide owner who is neither accused nor his associate. (PLD 2003 Pesh. 87).

20. **When Superdari cannot be given.**

**Superdari of Truck.** Case registered under section 420, 406 PPC for cheating about the truck. Held, the truck should not have been recovered from the person possessing it unless a strong case of cheating was made out. ((SC) 1970 SCMR 665).

**Purchaser of stolen property** from a thief cannot be given superdari of property pending the decision of the case. (PLD 1976 641)

21. **Hire purchase.**

Taxi car acquired on the basis of hire purchase agreement but all installments not paid, cannot be said that the purchaser had become owner of the property. Car given to the owner on Superdari subject to furnishing bank guarantee. (1972 P.Cr.L.J. 678).

22. **Rash and negligent driving.**

A driver is prosecuted for rash and negligent driving. His car cannot be detained as case property. (AIR 1931 Lah. 565). In case of rash and negligence driving vehicle involved cannot be deemed to have been implied as a weapon of such



offence within meaning of section 517 Cr.P.C. It is the duty of the trial court to dispose of such property in accordance with law. (1984 P.Cr.L.J. 1935).

**23. Verdict of Civil Court.**

Application of complainant and accused for the possession of the property alleged to be stolen, pending decision in Court, the complainant mean while filing declaratory suit in civil Court. Magistrate not deciding the case but referring the parties to obtain the verdict of civil Court. Held, the Magistrate should have disposed of the application independent of the civil suit pending between the parties. (PLD 1966 Lah. 678 Bashir).

**24. When Superdari should not be refused.**

Car used in commission of the offence owned and claimed by the person not doing anything to advocate commission of offence. Court bound to release such property for "proper custody" under section 516-A Cr.P.C. Order of Magistrate withholding custody of car from its owner, held entirely unjustified. (1970 P.Cr.L.J. 1215).

Car used in commission of offence is no ground for refusing its custody to its owner who is not connected with crime. (NLR 1989 Cr. 445).

**25. Registration book not sine qua non of ownership.**

Petitioner purchasing vehicle from its last registered owner and got a transfer letter executed in his favour. Traffic Magistrate declining to implement the superdari order on the crude pretext that neither the applicant's name nor that of the petitioner figures in the registration book of the vehicle. Registration of the vehicle held not the sine qua non of its ownership or title. SHO on having come to know that the petitioner had purchased the vehicle and held the transfer letter executed by the last registered owner ought to have handed over the vehicle to him or his agent on furnishing the requisite surety as desired by Judicial Magistrate in the Superdari order. (1998 P.Cr.L.J. 1089).

### Release of gun.

26. Gun in question licensed in name of accused neither used in incident nor treated as instrument used in commission of alleged offence. Trial Court has no jurisdiction to forfeit gun but should release and deliver to the person from whom secured along with licence. (1984 P.Cr.L.J. 1571).

**Property.** Section 517 is applicable to all sorts of properties. It does not relate only to movable property, but includes immovable property also. (PLD 1963 Lah. 467). The term "property" as used in this section includes property not only with which offence or offences appear to have been committed but also any property into or for which the same may have been committed or exchanged or anything acquired by such conversion or exchange either immediately or otherwise. (PLD 1951 AJ & K 6).

### 27. Custody of vehicle used in transporting narcotics.

Section 74 of CNSA having barred the release of any vehicle used for the purpose of transportation of narcotics, custody of the said tractor should not be given to the applicant pending trial of the case. (2001 MLD 358). Car in question admittedly belonging to the petitioner including the accused who had been acquitted in the case. Petitioner entitled to the possession of the case. Order of confiscation of the car in favour of the State recalled. (1996 P.Cr.L.J.688).

Car in question admittedly was given to Rent a Car service from where accused had obtained the same a day prior to the date of occurrence. Such fact corroborated by recovery of authority letter. No restriction in law that such a vehicle would not be released to the bona fide owner of the vehicle who is neither accused nor associate of the actual accused. (PLD 2003 Pesh. 87).

### 28. Property allegedly used for commission of offence.

In order to avoid any likelihood of misuse or improper use of vehicle and to maintain its machinery property, it was



desirable that vehicle should be kept in such condition that engine or body was not kept in such condition that engine or body was not subjected to any natural and unnatural decay till conclusion of trial. Trial Court delivered Jeep on Superdari to brother of accused with condition that superdar would produce Jeep in court when ever so required and in default to do so he would be liable to deposit stipulated amount in Government treasury. Law, of course, did not postulate modalities or restrictions pertaining to custody of property used for commission of offence, but that custody had to be delivered to a suitable person by taking all measures of care of ensure safety, protection and required conditions of property, including consideration of its production before Court during trial. No doubt vehicle in the case was delivered to custody of supardar on condition that a default of production of Jeep in Court, stipulated amount should be deposited by supardar in Government treasury, but order of trial Court did not provide guarantee of safety, security and protection of vehicle. (1991 MLD 2056).

**Perishable property.** In the matter where valuable and perishable property is involved or where there is apprehension that property can be misused damaged or its utility is likely to be diminished, in such a situation Courts should be more vigilant and on guard to save the property from devastation. The technicalities or delay on the part of the court may cause hard ship or irreparable loss to the parties to the proceedings which may be avoided so that confidence of people in the courts should remain intact. (2000 MLD 197).

**Superdari of cattle.** Magistrate before passing the order of superdari of cattle is required to satisfy himself that they were of case property and the circumstances which they were seized by the police and the person who was entitled to their custody. Magistrate without taking notice of the relevant provisions of law carelessly handling the matter, order declared to be unlawful. (1993 P.Cr.L.J. 1004).



29. **No limitation is prescribed.**

No limitation is prescribed for an application under section 517(1), Cr.P.C. for the disposal of case property. Court can pass such order till case property is disposed of. (1976 P.Cr.L.J. 116).

No limitation is prescribed for making application under section 520. The proceedings are special nature. It is neither appeal nor in the nature of appeal. (PLD 1966 Lah. 918).

30. **Summary Procedure**

Section 517 of the Code provides summary procedure regarding the disposal of the property and an order under this section does not decide the question of ownership of the property. It simply decides a right to possession till a civil Court decides the question of ownership. (PLD 1951 AJ & K 6).

If the case property is a dangerous drug or intoxicant or liquor or any other narcotics substance, specific procedure has been stipulated u/s 516-A, second proviso Cr.P.C. Only prerequisite for the exercise of jurisdiction to allow such application is the obtaining and preparing number of samples of the property by the court under its supervision and control and thereafter issuing a certificate for the destruction of the remaining property. (2002 P.Cr.L.J. 646, 837).

Proceedings of securing samples and destruction of case property conducted by Magistrate who was not competent to try case, would be illegal and of no evidentiary value. SHOs should submit application for securing samples and destruction of case property to only those Courts, which are competent to try case to which case property belongs. (NLR 1995 SD 374).

31. **Article seized by Investigating Officer.**

As soon as Investigating officer seized any article, he should "forthwith" inform the Magistrate and on his orders he may leave these goods in the locality with a man taking a surety bond under the orders of the Magistrate. The plainest duty of the I.O. is to report the seizure of the properties u/s 550 of the



Cr.P.C. to the Magistrate and to await the Magistrate's order regarding the custody or disposal of the seized articles. He cannot exceed his power in leaving the seized articles in the custody of surety without any order from Criminal Court. (PLD 1951 Dacca 33).

### 32. Disposal of case property.

Section 516-A, Cr.P.C. read with the observation given by Supreme Court in Ali Muhammad's case reported as 2003 SCMR 54, gives a valuable right to the accused to object against the destruction of the allegedly recovered property from his possession and to plead that he having not been issued such a notice and not been afforded with due opportunity of being heard in this regard, stands seriously prejudiced. (PLD 2003 Kar. 606).

### 33. Notice to prosecution.

It is obligatory to give notice and also to hear prosecution when a superdari application is entertained by a Magistrate. Order without such notice would be liable to be set aside. (NLR 1994 SD 394; 2001 SCMR 795). An order passed under this section without hearing is not sustainable under the law. (2001 P.Cr.L.J. 1063; PLD 1995 S.C. 90; PLD 1987 S.C. 304 ref.).

### 34. Status of Superdar.

Superdar acts only as a trustee and, therefore, he can never claim that the Court concerned cannot retake the property. Superdari is only a temporary arrangement and the Court granting superdari never loses its overall control of the property concerned. (2001 MLD 197).

### 35. Cancellation of order by Magistrate.

Magistrate having passed a lawful order u/s 516-A Cr.P.C. is left with no more jurisdiction either to cancel his own order or to pass fresh order in super session of his earlier orders (1986 P.Cr.L.J. 332; 1996 MLD 2948). Magistrate after having given the vehicle on superdari to the petitioner cannot cancel the same subsequently without notice to him. (1993 P.Cr.L.J. 1706).

2001 SCMR 795). However, a Magistrate, although after having made his earlier order cannot review or revise same on account of bar of section 369 Cr.P.C. yet mere fact that order passed u/s 523 Cr.P.C. had attained finality would not preclude trial Magistrate from passing an appropriate order u/s 516-A Cr.P.C. challan expected to be submitted within a couple of days interference declined by High Court in constitutional jurisdiction. (1984 P.Cr.L.J. 2440).

**36. Recalling of order of superdari.**

Trial Court canceling the superdari of stolen cash already granted to the petitioner for non-production of the same as case property in the Court without providing any opportunity of hearing to him and his surety. Such order being void ab initio could be recalled on reconsideration after hearing the parties.

**37. Last possession.**

Petitioner having been found last in possession of property at time of commission of offence held entitled to interim custody of the same. (1985 MLD 1376). Vehicle taken into possession from A whom allegedly purchasing it from person who prima facie obtained its title by fraud. Interim custody of vehicle if given to A would not be proper. (1988 MLD 2763). Person from whose possession goods seized, possesses a right to make an application u/s 516-A for custody of such property on superdari. Such property ordinarily to be returned to such person on superdginama pending disposal of case if there is no dispute as to ownership. (1982 P.Cr.L.J. 306). Property though to be restored to party from whom taken yet such rule of law can be departed from under special circumstances. (1980 SCMR 954).

Where accused obtained delivery of tractor by forging documents and signatures, getting it transferred in his own name and thereafter sold it to "A". Forged signatures and document would be wholly inoperative and would confer absolutely no title on the person in whose favour such document was executed. (1988 MLD 2663). Criminal Courts are not



competent to determine question of title or ownership of the property, which fall within the exclusive domain of the Court of plenary jurisdiction. (2004 P.Cr.L.J. 1).

**38. Vehicle seized by the police u/s 550.**

Court is competent to order for proper custody of the property seized u/s 550 pending conclusion of inquiry or trial. Proper course for aggrieved person is to approach Magistrate u/s 516-A for temporary custody. (NLR 1998 Cr. 272). Oil tanker kept in the police station in an open space without any shade or cover and if it remained there for an indefinite period it was likely to go bad and rusty. Custody given to the owner of the tanker with direction to produce the same in Court as and when required. (2002 P.Cr.L.J.25).

**39. Powers of Magistrate.**

A Magistrate or a competent criminal Court can pass superdari order in a case triable by Sessions Court. Petitioner being owner of car was entitled to get possession of car on superdari specially when she was not accused in abduction case. (NLR 1985 Cr. 353)

**40. Narcotics cases.**

Vehicle seized in offences under CNSA. Section 74, CNSA, no doubt, prohibits the grant of custody of a vehicle used in the import, export or transportation of narcotic substance to the accused or any of his associate or relatives or any private individual till the conclusion of the case but this provision by no cannons of interpretation can be extended to cover an owner who has no hand or involvement in the crime as it cannot be construed independently of the provisions of section 32 of the Act which protect the right of the owner who has no conscious hand in the commission of the offence. (2002 P.Cr.L.J. 666).



**Custody of vehicle used in transporting narcotics.**

41. Section 74 of CNSA having barred the release of any vehicle used for the purpose of transportation of narcotics, custody of the said tractor should not be given to the applicant pending trial of the case. (2001 MLD 358). Car in question admittedly belonging to the petitioner including the accused who had been acquitted in the case. Petitioner entitled to the possession of the case. Order of confiscation of the car in favour of the State recalled. (1996 P.Cr.L.J.688).

**42. Remedies.**

**Revision.** A magistrate is not competent to revise his own order passed earlier nor he can review the same. (PLD 1990 Kar. 236). Mares not shown to have been stolen nor any FIR on record. Proper course is to hand over the mares to the person having valid receipts, for the same. Custody to stranger improper impugned order set aside u/s 561-A. (2004 YLR 148).

Revision petition u/s 520, Cr.P.C. suspending the order of Magistrate u/s, 516-A and granting superdari is not competent as revision u/s 520 is competent only against the orders passed by the Magistrate u/ss 516, 517, 519, Cr.P.C. (2003 YLR 324).

**45. Remarkable Judgments.**

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|-------------------------|---------------------|--------------------|
| PLD 1970 SC 343         | 1992 SCMR 1454      | 2005 SCMR 735      |
| PLD 1963 Lah 467        | 1996 SCMR 1544      | 2004 YLR 148       |
| PLD 1965 Lah 425        | 1998 P.Cr.L.J. 1089 | 2004 P.Cr.L.J. 1   |
| 1974 SCMR 238           | 1995 MLD 335        | 2001 P.Cr.L.J.1863 |
| PLD 1961 Lah 205        | 1996 P.Cr.L.J. 688  | PLD 2003 Pesh 87   |
| 1972 SCMR 159           | 1997 P.Cr.L.J. 500  | 2001 SCMR 795      |
| 1980 SCMR 954           | 1998 SCMR 2542      | 2001 YLR 2150      |
| PLD 1976 Lah 641        | PLD 1991 Kar. 200   | 2000 MLD 197       |
| PLJ 1974 Cr.C.(Lah) 53  | 1991 SCMR 1567      | 2002 P.Cr.L.J. 666 |
| 1970 SCMR 665           | 1994 SCMR 70        | 2002 P.Cr.L.J. 25  |
| 1971 SCMR 774           | 1998 SCMR 867       | 2004 P.Cr.L.J. 159 |
| PLD 1973 Lah 45         | 1990 SCMR 486       | 2001 MLD 358       |
| PLD 1974 Cr.C.(Lah) 421 | 2003 YLR 791        |                    |
| PLD 1987 SC 304         | 2003 SCMR 54        |                    |