



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 4TH DAY OF OCTOBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE V. SRISHANANDA

CRL.RP No.210/2024

BETWEEN

1 . SHRI VISHAL RAMESH KHATWANI
S/O RAMESH MAYARAM KHATWANI
NO.3202, ANRIYA DWELLINGTON APARTMENT,
LOTTEGOLLAHALLI
DOLLARS COLONY
BENGALURU NORTH 560094

...PETITIONER

(BY SRI PRUTHVEEN P. KATTIMANI FOR SRI GIRIDHAR.H,
ADVOCATES)

AND

1 . STATE OF KARNATAKA
REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING
BANGALORE – 09.

...RESPONDENT

(BY SRI B.A.BELLYAPPA, SPP ALONGWITH
SRI VINAY MAHADEVIAH, HCGP)

THIS CRL.RP IS FILED UNDER SECTION 397 R/W
401 CR.P.C PRAYING TO EXAMINE THE SAME AND SET
ASIDE THE ORDER DATED 09.11.2023 AND ALLOW THE

APPLICATION DATED 02.11.2023, CONNECTED WITH THE ORDER DATED 09.11.2023 MADE BY THE LEARNED VIII ADDL. CHIEF METROPOLITAN MAGISTRATE IN CR.NO.256/2023.

THIS PETITION HAVING BEEN RESERVED FOR ORDER, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:-

CORAM: HON'BLE MR JUSTICE V SRISHANANDA

CAV ORDER

(PER: HON'BLE MR JUSTICE V SRISHANANDA)

This revision petition is filed by the applicant under Section 397 Criminal Procedure Code, 1973 with the following prayer:

Whereof the Petitioner respectfully prays that this Hon'ble Court be pleased to:

"i) call for the Records connected with the Order dated 09.11.2023 made by the learned VIII Additional Chief Metropolitan Magistrate, in Crime No. 256/2023 and examine the same and set aside the Order dated 09.11.2023 and allow the application dated 03.11.2023.

ii) and grant such other relief as this Hon'ble Court deems fit under the circumstances of the case including cost of this proceedings in the interest of Justices."

2. Facts in brief which are utmost necessary for disposal of the revision petition are as under:

Upon the complaint lodged by Smt. Komathi, W/o Nagesh, a case came to be registered in Cr.No.256/2023 by Sanjay Nagar Police for the offence punishable under Section 380 and 457 IPC.

3. Gist of the complaint averments would reveal that complainant is resident of Vijayanagar and she is working as a manager since four years in a business concern, situated in new BEL road, in the name and style of 'Gadgets club' dealing with mobile telephones and its accessories and such other electronic equipments gadgets.

4. It is her case that on 28.09.2023 at about 8.15 p.m., she closed the shop and went to her home as usual. Next day i.e., on 29.09.2023, she came back to the shop at about 9.00 a.m., as usual, when she tried to open the main door of the shop, she noticed that mobile telephone sets, laptops, smart watches, analog watches etc., were

stolen away by some unknown people by breaking open the lock of the main door.

5. A detailed list was furnished by her as to the number of items that were stolen away from the shop worth about Rs.35,00,000/- to Rs.40,00,000/-.

Sl.No.	Property type	No.of properties
1.	I –phones	29
2.	One Plus Mobile Phones	03
3.	Samsung Company Mobiles	11
4.	Google company phones	03
5.	Oppo Company Mobiles	02
6.	IQOD Company mobiles	02
7.	Huawei P-30 Pro Mobile	01
8.	Nothing company Mobile	01
9.	MAC Company laptops	06
10.	Lenovo company laptop	01
11.	Redmi Laptop	01
12.	I –watches	15
13.	Sada watches	45
14.	Samsung handy cam	03
15.	Camera	03
16.	Another company watches	202

17.	Headphones	05
18.	Video play stations	02
19.	Bluetooth speaker	01
20.	I-Phone hear buds	08
21.	Huawei company watches	02
22.	Other company speaker and buds	18
23.	I-phone keypad	17

6. Based on the said complaint, police registered the case in Cr.No.256/2023 and investigated the matter. During the course of investigation, the Investigation Officer was able to apprehend the accused persons and from their custody seized following properties.

Sl.No.	Property type	No.of properties
1.	I -phones	29
2.	One Plus Mobile Phones	03
3.	Samsung Company Mobiles	11
4.	Google company phones	03
5.	Oppo Company Mobiles	02
6.	IQOD Company mobiles	02
7.	Huawei P-30 Pro Mobile	01
8.	Nothing company Mobile	01

9.	MAC Company laptops	06
10.	Lenovo company laptop	01
11.	Redmi Laptop	01
12.	I -watches	15
13.	Sada watches	45
14.	Sony handy cams	03
15.	Camera	03
16.	Watches belongs to all companies	202
17.	Headphones	05
18.	Video play stations	02
19.	Bluetooth speaker	01
20.	I-Phone hear buds	08
21.	Huawei company watches	02
22.	Other company speaker and ear buds	18
23.	I-phone keypads	17
24	Maruthi Eeco Goods vehicle Registration No.KA18-C-2093	01
25	Honda Activa scooter – KA03-JW-3492	01

7. Applicant being the owner of the seized material objects at serial Nos.1 to 23, filed an application under Section 451 and 457 Cr.P.C., seeking interim custody of the seized material objects.

8. Learned Additional Public Prosecutor on behalf of the State opposed the said application filed by the applicant.

9. Learned Trial Judge heard the parties and by impugned order rejected the application filed by Smt. Komathi, who is none other than the complainant.

10. Being aggrieved by the same, complainant is before this Court in this revision petition on the following grounds:

- *The Order of the learned VIII Additional Metropolitan Magistrate, Bengaluru have erred by rejecting the application dated 18.10.2023 and has resulted in miscarriage of justice in the matter of appreciation of facts and law.*
- *The orders made by the learned VIII Additional Metropolitan Magistrate, Bengaluru is without proper appreciation of documents produced by the Petitioner in substantiation of his claim for interim custody in the light of no other claim laid for interim custody and no objection report submitted by the investigation officer for releasing of the articles to the custody of the Petitioner.*

- *The learned VIII Additional Metropolitan Magistrate, Bengaluru ought to have appreciated the nature of business carried on by the Petitioner as reselling of electronic gadgets that were purchased from the sellers along with the purchase bills under which those sellers have purchased it.*
- *The Revision is preferred within the period of limitation."*

11. Sri Pruthveen P. Kattimani, appearing on behalf of Sri Giridhar H, counsel for the applicant, reiterating the grounds urged in the petition contended that the seized material objects are all electronic gadgets for which, the petitioner has supplied the necessary proof to prima-facie establish the ownership of the applicant which has been ignored by the learned Trial Judge in the impugned order and sought for allowing the revision petition.

12. In support of his arguments, he placed reliance on the judgment in the case of ***Sunderbhai Ambalal Desai vs. State of Gujarat***, reported in **AIR 2003**

Supreme Court 638. The relevant portions of the said judgment are culled out hereunder for ready reference:

"7. In our view, the powers under Section 451 Cr.P.C., should be exercised expeditiously and judiciously. It would serve various purposes, namely:

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

13. He further contended that the principles of law enunciated in the judgment of **Sunderbhai Ambalal Desai** supra would be squarely applicable to the case on hand.

14. This Court after hearing the counsel for the applicant noticed that in large number of matters, the seized material objects are not properly dealt with by the Investigating Agency and not stored in a proper manner either for want of necessary paraphernalia or on account of negligent attitude on the part of the Investigating Agency.

15. Even when they are placed before the Court, having regard to the lack of necessary infrastructure in preserving the property, the very value of the seized property would diminish drastically especially when they are vehicles, perishable items or electronic gadgets.

16. Therefore, after hearing the learned High Court Government Pleader, this Court felt the necessity of seeking assistance from the learned State Public Prosecutor so as to streamline the disposal of the property as is contemplated vis-à-vis the scheme of Cr.P.C., in relevant provisions.

17. Accordingly, learned State Public Prosecutor - Sri Belliyappa B.A., was present before the Court, satisfactorily assisted the Court with his submissions.

18. Apart from Sri Belliyappa B.A., learned State Public Prosecutor, presence of Sri Mehaboob Sab, Joint Secretary, Home Department, and Sri Ravi S., Secretary, Home Department, was secured through Video Conferencing and enquired them about the rules prevalent with regard to disposal of properties. Learned Additional Director General of Police – Sri P.Harishekarana was also present and arguments of Sri Belliyappa, learned State Public Prosecutor was heard as to the production and disposal of the seized properties/material objects in a criminal proceedings at pre-charge sheet stage and post charge sheet stage and post disposal of the main case.

19. Sri Belliyappa, placed on record standard operating procedure which has already been issued by the State Government for disposal of the seized vehicles in this regard.

20. For ready reference and for the sake of clarity the standard operating procedure issued by State Government is culled out here under:

*"Government of Karnataka
(Police Department)*

No.CRM-3/30/2024

*Office of the
Director General and
Inspector General of Police,
Nrupathunga Road,
Bengaluru-01
Dated :26.08.2024*

*STANDARD OPERATING PROCEDURE RELATING TO
DISPOSAL OF PROPERTIES CONCERNED WITH
SECTION 497 OF BHARATIYA NAGARIKA SURAKSHA
SANHITA, 2023*

In view of the directions issued by Hon'ble High Court of Karnataka in Criminal Revision Petition No.210/2024 this Standard Operating Procedure relating to disposal of properties concerned with Section 497 of Bharatiya Nagarika Suraksha Sanhita, 2023 is prepared and issued with the instructions to comply with the following procedures by all Station House Officers and Investigation Officers of the Karnataka.

A. As per Section 105 of the Bharatiya Nagarika Suraksha Sanhita, 2023 all search and seizure of places and seizure of properties shall be done under

the audio video recording. Further it is made mandatory to submit such recorded audio video visuals to the Judicial Magistrate or the Executive Magistrate as the case may be at the earliest within 48 hours along with the copy of respective Mahazar. Accordingly all the Investigation Officers and Seizing Officer shall comply with the mandatory provisions laid down U/s 105 and 185 of the Bharatiya Nagarika Suraksha Sanhita, 2023 with the strict compliance.

1. That, whenever the Seizing Officer or Investigation Officer during the course of any search finds any property which he infers and deems necessary to seize for the purpose of investigation as evidence or considering it as crime proceeds or offending material, then he is empowered U/s 103 or 106 of the BNSS to seize such properties under the Panchanama/Mahazar in the presence of two independent witnesses and recording the process of search and seizure by audio videograph.

2. The Investigation Officer shall specifically mention the details and descriptions of the seized property in the Mahazar.

3. If the property seized is golden/silver ornaments or motor vehicles or other material objects like mobiles, laptops, etc., then the Seizing Officer shall mention the brief description of those seized properties with their unique identities or serial numbers for their proper identification. Subsequently

the Seizing Officer shall take the photo copies covering all the four dimensions of such seized properties and get the signatures of the person from whose custody those properties are found and seized on the photographs with time and date.

4. The Seizing Officer or Investigation Officer shall mention the approximate value of the seized properties and their durability specifically in the Mahazar. If the seized property is perishable in nature, then he shall mention the duration of its life in the Panchanama and in the PF specifically. Further he shall request the court to dispose such perishable property at the earliest or permit him to dispose of such property at the earliest.

5. The SHO/Investigation Officer shall forward the seized properties along with proper PF containing details and descriptions of the seized properties in consonance with the seized properties along with copy of Mahazar and photocopies and audio video visuals so obtained.

6. That, the Investigation Officer shall request the court to dispose of or take the steps for releasing the seized properties ad-interim to the proper and legitimate claimant within 14 days from the production of such PF and properties. Such request shall be enclosed with the statement of the property as per the format given here with.

7. That, if the Investigation Officer identifies the legitimate claimant of such seized properties and deems necessary to handover the possession of such properties for immediate purposes, then he shall request the court to deliver the such seized properties to the identified legitimate claimant by getting Indemnity Bond executed. Upon the court order the Investigation Officer may deliver ad-interim custody of the seized property to such claimant.

8. While delivering ad-interim custody of seized property either by the court or by the Investigation Officer upon the court order, he shall ensure that the property so delivered is having description as per the statement of the property which is already prepared during the course of Mahazar. The photo copies of delivering seized properties shall be taken along with signatures of the claimant there on and compliance report be submitted to the court by enclosing all relevant documents and photographs.

9. That, upon conclusion of trial or disposal of case, the Investigation Officer shall ensure that the ad-interim custody whether made absolute or not or whether the property seized is confiscated or forfeited to the state or not. If no such orders are found either in judgment or in any orders, then the Investigation Officer shall request the concerned Judicial Courts to pass suitable order for final disposal of the properties

as per the provisions of Bharatiya Nagarika Suraksha Sanhita, 2023.

Hence all the Investigation Officers and Station House Officers of the State of Karnataka shall follow the above procedures relating to the properties seized and for their respective disposal.

All unit officers and other supervising officers shall ensure compliance."

21. Pursuant to the order passed in W.P.No.21503/2022, the learned State Public Prosecutor brought to the notice of this Court the amendment to Section 232 (G) of Karnataka Motor Vehicles Amendment Rules. The amendment to the said rule is culled out here under for ready reference:

"As per the Karnataka Motor Vehicles (Amendment) rules 2018:

Section 232G: Prohibition against release of motor vehicles involved in accident

Section 232G(1): No court shall release a motor vehicle involved in an accident resulting in death or bodily injury or damaged to property, when such vehicles is not covered by the policy of insurance against third party risks taken in the name of

registered owner fails to furnish copy of such insurance policy despite demand by investigating police officer, unless and until the registered owner furnishes sufficient security to the satisfaction of the court to pay compensation that may be awarded in a claim case arising out of Section 232(2): Where the Motor Vehicle is not covered by a policy of insurance against third party risk or when registered owner of the Motor Vehicle fails to furnish copy of such policy, in circumstance mentioned in sub rule(1), the Motor Vehicle shall be sold off in public action by the Magistrate having jurisdiction over the area where accident occurred, on expiry of three months of the vehicle being taken in possession by the investigating police officer and proceeds there off shall be deposited with the Claims Tribunal having jurisdiction over the area in question, within fifteen days for purpose of satisfying the compensation that may have been awarded or may be awarded in a claim case arising out of such accident.

The above provisions are helpful in disposing uninsured vehicles involved in the accidents. To ensure a systematic approach and effective compensation for affected parties, and also to dispose the vehicles which are lying in the police station premises and to prevent undue delay in their disposal, the following protocol is proposed:

1. Possession and Sale of Vehicles:

- ❖ *Vehicles involved in accidents that do not have insurance coverage, once taken into possession by the Investigation Officer (IO), shall be held for a period of three months.*
- ❖ *After the expiration of this period, the Magistrate with jurisdiction over the area where the accident occurred will oversee the public auction of these vehicles.*

2. Deposit of Auction Proceeds:

- ❖ *The proceeds from the auction of these uninsured vehicles shall be deposited with the Claims Tribunal having jurisdiction over the area in question.*
- ❖ *The deposit must be completed within 15 days following the auction.*

3. Police officers role in disposal:

- ❖ *If authorized by the Magistrate, the Investigation Officer may conduct the public auction through the MSTC (Metal Scrap and Trading Corporation, a Gol Miniratha company) portal.*
- ❖ *The proceeds from the auction should be deposited into the account head specified by the jurisdictional Magistrate.*

This procedure ensures that uninsured vehicles are managed efficiently while securing funds for compensating accident victims.

The above inferences are drawn from the Government notification dated 04.10.2018 which is appended to this note.

Therefore suitable orders may be issued by Hon'ble High Court to all the magistrates dealing with motor vehicles accident cases to dispose uninsured vehicles as per the provisions of Section 232G of the Karnataka Motor Vehicles Act within the specified time frame."

22. This Court also noted that sophisticated material objects namely; laptops and such other electronic equipments/gadgets, high end mobile telephones when seized by the police, at the police station level there is no proper infrastructure to store them in a proper manner. Many times, those material objects may throw sufficient light in unearthing the truth in the alleged crime. Therefore, the same needs to be properly stored without causing damages to the storage media available in the gadgets like Data card, Hard Disk etc.

23. Many times, the Constables, Head Constables, Assistant Sub-Inspectors who usually handle the seized material objects, may not have requisite knowledge in

properly handling the seized material objects which are delicate and sophisticated in nature. Exposing the seized material objects to extreme weather conditions or while sealing the material objects in the usual form with cloth and sealing the same, may damage the material objects not only resulting in the diminishing value of the seized material objects, but also the loss of the material evidence which could be retrieved from those material objects.

24. Hence, this Court felt the necessity of issuing proper directions while handling the material objects.

25. Sri Sandesh J Chouta, learned Senior Counsel assisted the Court as Amicus Curiae as he was representing in a similar matter which was thereafter tried by some other Court having regard to the change in the roster.

26. He has also furnished sufficient inputs in this regard which is placed on record with appreciation. He relied upon the principles of law enunciated in the case of ***Sri Prashant Rao v. The Chief Secretary Government***

of Karnataka, W.P.No.21503/2022. The order dated 08.02.2024 in the said writ petition reads as under:

"Heard Shri Prashant Rao, petitioner/party-in-person and Shri K.Shashi Kiran Shetty, learned Advocate General.

Perused the affidavits dated 01.02.2024 and 06.02.2024 filed by Shri Anucheth, Joint Commissioner of Police (Traffic), Bengaluru and Shri Tushar Giri Nath, Chief Commissioner, BBMP respectively. Learned Advocate General submitted that in the joint meeting held on 31.01.2024 between officers of BBMP and officials of Police Department (Traffic), following four areas have been identified:

"i) Removal of encroachments on the footpaths, pavements.

ii) Regulating street vendors as per the "Street Vendors (Protection of livelihood and regulation of street vending) Act, 2014 and the "Karnataka Street Vendors (Protection of Livelihood, Regulation of Street Vending and Licensing) Scheme, 2020.

iii) action to be taken in respect of vehicles parked on footpaths, pavements.

iv) the mode of identifying and disposal of abandoned/unclaimed vehicles within the city of Bengaluru."

Learned Advocate General further submitted that abandoned vehicles on the road shall be towed away and owners of vehicles shall be contacted through Regional Transport Officer. Thereafter, permission will be sought by jurisdictional Magistrate to auction the vehicles. Adverting to the proceedings in PF No.53/2022 on the file of the Metropolitan Magistrate, Traffic Court-I, Mayo Hall, Bengaluru, which is annexed to the affidavit filed by Shri Anucheth, Joint Commissioner of Police (Traffic), learned Advocate General submitted that learned Magistrates are permitting sale of unclaimed vehicles after expiry of 6 months. He submitted that this Court may consider reducing the time duration as storage of unclaimed vehicles will cause administrative hazard. We see some force in his arguments. In our considered view, vehicles which are beyond 15 years old can be sold after 30 days, vehicles which are 1 to 5 years old after 3 months and vehicles which are 5 to 15 years old within 2 months, after following all procedures and taking permission from jurisdictional Magistrate. The Government may seek appropriate directions based on further development in the matter. Registrar General shall communicate this order to the learned Magistrates in Bengaluru City.”

27. In the light of the above legal principles and factual aspects and the arguments that are put forth on behalf of the parties, this Court perused the impugned order.

28. In the first place, the Investigating Agency failed to incorporate the value of the seized material objects in the First Information Report itself. Complainant has clearly stated that the properties worth Rs.35,00,000/- to Rs.40,00,000/- were stolen away from the shop of the complainant.

29. The details of the stolen material objects were also mentioned as referred to supra. Whereas in the First Information Report the police had shown the value of the stolen material objects as nil.

30. When the properties were placed before the learned Trial Magistrate by way of a Property Folio Memo ('P.F. Memo' for short), again the value of the property was not at all shown.

31. Pertinently, in a casual manner, the learned Trial Magistrate permitted the Investigating Agency to retain the seized material objects. The request made by the Investigation Officer is again in a usual manner without assigning as to why the material objects are to be retained by the Investigating Agency and purpose of retaining them.

32. In column No.4 of P.F. Memo, it is incumbent for the Investigating Agency to mention the details of the seized material objects so as to distinctly identify them during the trial and also value thereof.

33. Why the Investigation Officer who submitted the P.F. Memo to the learned Trial Magistrate dated 02.10.2023, failed to mention the value of the seized material objects is not forthcoming on record. It is also noted that the learned Trial Magistrate permitted the seized property to be retained by initialling the said P.F. Memo on 06.10.2023 without application of judicial mind.

34. This depicts that the seized material objects were handled by the Investigating Agency in a very casual manner. Learned Trial Magistrate also did not bestow his attention while permitting the Investigating Agency to retain the seized material objects.

35. Admittedly, there were twenty nine I-phones and three 1+company manufactured mobile telephones, eleven Samsung company manufactured mobile telephones and six number laptops manufactured by Apple company, Sony company manufactured handy cams are forming the part of the seized material objects apart from other small gadgets.

36. In the impugned order learned Trial Judge did not bestow his attention to at least mention the details of the seized material objects and its value thereof.

37. Paragraph No.3 of the impugned order reads as under:

"3. Heard. The petitioner claims to be the owner of the aforesaid properties. The accused

persons were stolen the aforesaid properties by break open the shop. In order to prove the ownership of the aforesaid properties the petitioner has produced registration certificate of establishment of shop styled as "Gadgets Club" and he is the owner of the aforesaid shop. In support of his application he has produced some photographs and also bills to show the purchase of the seized properties".

38. As could be seen, the learned Trial Judge has doubted the genuineness of documents which are produced to prima-facie establish the ownership of seized material objects.

39. It is pertinent to note that there was no rival claim in respect of the seized property. Thus, in the absence of the rival claim, all that the learned Trial Magistrate was required to consider was, if the material objects are returned to the applicant who is none other than the complainant, would it hamper the investigation and whether those material objects would be available for identification during the trial.

40. Whenever, interim custody of the seized property is permitted to be given by the Court or by the Investigation Officer upon the Court order, the releasing officer shall ensure that property released shall have a proper description which should be inconsonance with the details of the property seized under the mahazar. Releasing Officer shall retain photographs/photocopies of the seized properties and documents of the released vehicles with the signature of the claimant. Compliance report shall be submitted to the Court enclosing the relevant documents and photographs.

41. The learned Trial Magistrate ought to have taken into account that in the absence of rival claim, the seized properties could have been released in favour of the applicant with conditions like taking the photographs and retaining the documents pertaining to the seized material objects and indemnity bonds/bank guarantee to the extent of the value of the seized property.

42. Learned Trial Magistrate also possesses sufficient discretionary power to ensure that the seized property is not alienated and identity thereof is not altered. Wherever necessary direction can also be issued to produce the same as and when required during the trial can also be issued while passing release order. Without adhering to the any of the above, in a casual and mechanical manner, the learned Trial Magistrate has dismissed the application of the applicant resulting in miscarriage of justice.

43. Therefore, in the facts and circumstances of the case on hand, the impugned order needs to be set aside by exercising the revisional power vested in this Court and application needs to be allowed.

44. Having said thus, this Court felt the necessity of issuance of general directions insofar as the release of the seized material objects and also for proper preservation of the material objects before its release either at the crime stage or after the charge sheet is filed

or when the properties are deposited into the Court along with the charge sheet.

45. Further, it is noticed that State Government is required to frame necessary rules which would be in consonance with the power of the Court for disposal of all the seized properties including the electronic devices, digital devices, seized medical samples, food items, adulterated petroleum products which are highly inflammable in nature, perishable objects, precious metals like gold and silver etc.

46. Till such time, the directions issued by this Court would serve as model guidelines for the Trial Magistrate while dealing with release of the seized properties either under Section 451 and 457 Cr.P.C., or under Section 497 of BNSS.

47. As such, the following directions are issued which would cover in general the disposal of the properties as is contemplated under Section 451 and 457 of Cr.P.C., and presently under the provisions of Section 497 of

Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS' for short).

Directions/Guidelines:

- (1) Description of the seized property shall be incorporated in the seizure mahazar so as to distinctly identify the seized property at all stages in the criminal trial.
- (2) Mahazar shall include, serial numbers, make of the seized property, manufacturers name, if any, distinctive marks, if any, hall mark, if any, on the gold and silver articles with distinct numbers.
- (3) Mahazar shall include, approximate value of the seized property (estimation of valuation to be obtained from the registered valuers wherever necessary). It shall accompany the P.F. Memo when it is placed before the learned Trial Magistrate.

- (4) Trial Magistrate shall verify the contents of mahazar with aforesaid details and personally examine the seized properties and satisfy that the seized properties are tallying with the description made in the mahazar and P.F. Memo.
- (5) Unless a specific grounds/reasons are made out by the Investigating Agency, seized property shall not be allowed to be retained by the Investigating Agency.
- (6) Even if the request for retention is allowed, the learned Trial Magistrate instead of passing a mechanical order by initialing on the readymade seal with words 'permitted to retain', pass a suitable speaking order in the order sheet of the case, directing the Investigating Agency that they would be retaining the property as a 'Bailee' and ensure that proper care is taken to preserve the seized property.

- (7) Learned Trial Magistrate shall ensure that proper infrastructure is available with the police for preservation of the seized material objects and must report to the Court as to its status when the charge sheet is filed.
- (8) If the seized property is sent to the Forensic Science Laboratory, Investigating Agency shall ensure that the property is sent in a proper sealed condition and seals are intact, at all levels.
- (9) Whenever the property is ordered to be retained by the Investigating Agency, and if an application seeking release is rejected, after the investigation, and if the need of retaining property is not imperative, the Court may pass suitable orders with regard to the interim disposal of the property.
- (10) Learned Trial Magistrates/learned Sessions Judges are hereby directed to ensure the disposal of the property in respect of Narcotic

drugs and psychotropic substances as per the directions of the Hon'ble Supreme Court in the case of ***Union of India vs. Mohanlal and another***, reported in **(2016) 3 Supreme Court Cases 379**.

- (11) In case of seizure of the vehicles, the standard operating procedure and the amendment to the Rule 232G of Karnataka Motor Vehicles (Amendment) Rules, 2018 shall be borne in mind by the learned Trial Magistrate while disposing the application filed under Section 451 and 457 Cr.P.C., or under Section 497 of BNSS.
- (12) In respect of the electronic and digital material objects, the learned Trial Magistrate shall ensure that the same to be retained by the police under retention order to ensure that the same are not exposed to the atmospheric moisture, resulting in damage to the seized electronic equipment or data stored therein.

- (13) Necessary directions in this regard shall be made in the order while P.F. Memo is filed into the Court seeking retention of the seized electronic items, Compact Disc, Pendrives and such other storage media when produced and ordered to be retained shall be properly preserved by taking necessary precautions so as to avoid the damage to the data stored therein which may have a direct bearing on the merits of the trial.
- (14) Precious items like Gold, Silver shall not be ordinarily to be retained with the Investigating Agency unless the same is required for investigation purpose like identity, finger print examination etc., and wherever it is necessary, photographs/videographs of the seized material objects can ordered to be returned to the applicant after deciding the rival claim, if any.

- (15) In respect of the explosives, inflammable substances, like adulterated petroleum products, gas cylinders etc, the learned Trial Magistrate shall ensure the safety of the seized material objects, not only the safety of seized material objects and possible accident in the place where it is stored and pass suitable orders.
- (16) In respect of perishable items, the learned Trial Magistrate without loss of time, shall consider the application and pass suitable orders like auctioning the perishable items and directing the auction money to be kept in 'escrow account' subject to the final result of the criminal proceedings.
- (17) In respect of the seized material objects under the special enactments like Essential Commodities Act etc., learned Trial Magistrate, shall strictly adhere to the rules and

regulations under the special enactment and pass appropriate orders as early as possible.

(18) In respect of seized cash, photograph/ videograph of the currency notes to be taken and serial numbers of the seized currency notes shall be written in a mahazar. Immediate steps are to be taken to deposit the currency notes to Reserve Bank of India and value of the currency notes thereof shall be ordered to be returned to the successful party at the end of the trial.

48. These directions are only indicative and not exhaustive and would serve and guide broadly the power to be exercised by the learned Trial Magistrate or Revisional Courts as the case may be in disposal of the seized properties under Section 451 and 457 Cr.P.C., and 497 of BNSS.

49. In view of the above discussion, following order is passed:

ORDER

Criminal Revision petition is allowed.

The application filed by the applicant seeking interim custody of the above referred material objects is allowed on following conditions:

- (1) Revision petitioner shall execute an indemnity bond to the tune of Rs.40,00,000/-.
- (2) Revision petitioner is hereby directed to take the photographs and videographs of the seized material objects, for which the Investigating Agency shall cooperate and produce the same before the Court in a pendrive.
- (3) Revision petitioner shall not alter the identity of the seized material objects and in case, if there is a deterioration in value, may apply for sale of the material objects after the same is identified before the Court of law by examining

the mahazar witnesses inasmuch as the charge sheet is already filed.

- (4) If any such application is made, learned Trial Magistrate is at liberty to pass appropriate order.
- (5) Revision petitioner shall produce the material objects as and when directed.

**Sd/-
(V.SRISHANANDA)
JUDGE**

MR