

SUPERDARI

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The word “superdari” has not been used in the statutes governing our country’s criminal administration of justice. However, it in its practical prospect may be defined as the interim custody of seized property connected with an offence, or suspected to have been stolen or found under circumstances which create suspicion of any offence, to the person entitled to its possession in lieu of furnishing a surety bond by the order of the Court for its production whenever necessary.

The word which has been used in the Criminal Procedural law to cater for the concept of superdari is “Interim disposal”. Disposal of any seized property under the provision of Cr.P.C. may be either interim or final. Interim disposal is grant of custody of a seized property pending the conclusion of investigation or inquiry or trial whichever ever the case may. Whereas final disposal is ordered after investigation, inquiry or trial is over. In fact, the interim disposal of a seized property has been named and called by our Courts as superdari which, of course, is the subject under discussion today. Superdari continues till the seized property is finally disposed of under Section 517 or 523 Cr.P.C.

The order regarding superdari of a property is made when the following essential conditions are present.

1. There must have been investigation or inquiry or trial.
2. The property in respect of which the order is to be made must be one:
 - a) regarding which any offence appears to have been committed,
 - b) which has been used for commission of any offence,
3. It is alleged or suspected to be stolen or when it is found in circumstances which gives rise to a suspicion that an offence has been or is about to be committed.

4. It has been taken into custody.
5. It is produced in the Court. (The expression “ produced” has a liberal interpretation. The properties spoken of may be such as may be produced in a Court and this undoubtedly shows that the property means movable property only. The Court may order for temporary custody of the property even without its physical production before it, on satisfaction that the same has been seized. (19 DLR 522, 1972 P. Cr. L.J. 604 (Karachi)
6. Its seizure is reported to the Magistrate.

After seizure of the property by police an order for its superdari (interim disposal) can only be passed by the Court and police are expected to hold the property subject to the order of the Court which may be passed either under Section 516-A Cr.P.C. or under Section 523 *ibid*.

Under Section **516-A Cr. P.C.** superdari 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**, is produced before any criminal Court during an inquiry or trial is given pending the conclusion of inquiry or trial. Under Section **523 Cr.P.C.** an order of superdari is made when any property **not connected** with inquiry or trial is seized and its seizure is reported to the Magistrate. Section 523 Cr.P.C. is the relevant section under which an order for the interim custody of the property seized by the police can be made **during the pendency of the investigation (1970 P.Cr.L.J. 875 (Lahore)**. The seizure for the purposes of this section means seizure by the police of their own accord for instance under Sections **51, 54, 165, 166** and Section **550 Cr.P.C.** (i.e which is alleged or suspected to be stolen or found in the circumstances which give rise to a suspicion that an offence has been or is about to have been committed) and not a seizure by police under warrant issued by a Magistrate for instance under Section 96 Cr. P.C. or to the case

where the police recommends to the Magistrate that the property be seized.

**COMPARISON OF SECTION 516-A AND 523
Cr.P.C.**

U/S 516-A Cr.P.C.	U/S 523 Cr.P.C.
1. Pertains to the cases which have actually come up before the Criminal Court for inquiry or trial.	1. Where there has been no inquiry or trial in Criminal Court, the matter will be dealt with U/S 523, whichever may the Act under which the offence might have been committed, and whatever happens in connection with the seizure of property by the police during investigation without an inquiry or trial. The seizure may be U/Ss 51, 54, 165, 166 and 550 Cr.P.C. and reported to the Magistrate.
2. An order for the interim custody of the property is to be made during the pendency of the inquiry or trial as the case may be.	2. An order is to be made for the disposal of the property for the delivery of possession to the persons entitled to the possession, for instance when the case is not sent up for its trial (a stage might well arise in the case after an order passed by the Court U/S 523 Cr.P.C. during investigation delivering possession of the property to a person is made that he may be sent up for trial. In such eventuality, the Court may pass another order u/s 517 on conclusion of the inquiry or trial.

The order of superdari of a seized property is made for its proper protection and to avoid its deterioration. It cannot be

considered or taken as declaration or a verdict regarding ownership of the seized property. The order of superdari is of interlocutory nature resorted to for the purposes of temporary arrangement so that the case property may be saved from decay and is handed over to the person ex-facie found entitled to its possession which till final order is made U/S 517 or 523 Cr.P.C. In the matters where valuable and perishable property is involved or where there is an apprehension that the seized property can be misused, damaged or its utility is likely to diminish in such a situation/circumstances, the Courts should be more vigilant and on guard to save the property from devastation. Observance of the technicalities on the part of the Court may cause hardship or irreparable loss to the parties to the proceeding which may be avoided so that confidence of people in the Courts should remain intact. Red-tapism has always proved disastrous and the Courts are meant to impart justice according to the settled principles of law and they are not supposed to do any thing which may cause red-tapism which is a curse for the society. (1992 P.Cr.L.J. 988 + 2000 MLD 197 (KAR) + 2004 P.Cr.L.J. 1).

Ordinarily the Court is required to pass an order of superdari in favour of a person entitled to its possession or from whom it was recovered unless there are special circumstances which may warrant a different course. (NLR 1985 C.R.286, PLJ 1985 Cr. C. 127, 1985 P.Cr.L.J. 1175 + NLR 1981 Cr.L.J. 449 (SC) + NLR 1980 Cr. 44 + 1980 P.Cr.L.J. 574). The general rule that interim custody of movable property should be given to a person from whom it was seized by police is not inflexible and interim custody of property can be given to another person too when facts and circumstances of the case so warrant. (PLD 1985 Lahore 592). While making the order for

temporary custody, the Court, in fact, is to see entitlement of the claimant to possession of the seized property.

The Criminal Courts are not competent to investigate the question of title. Their jurisdiction is confined to the determination of entitlement to possession and not to title of the property. The question of title has to be determined by the Civil Court . Where the Civil Court has determined the question of title, the Criminal Court must give custody of the property only to the person in whose favour the Civil Court has decided the question. (PLD 1979 Lahore 378 and 613, 1980 P.Cr.L.J. 574). If there is a dispute between rival parties claiming a return of the property, the Court should not help a party whose object is to endeavour to obtain its judgment upon a question which ought to be determined in a civil Court. (AIR 1924 Cal. 455 + PLD 2004 Pesh. 91). Therefore, where there is a ‘doubt as to ownership’ of property, or where a question **of bonafide title by purchase or otherwise arises**, the duty of the Criminal Court is to leave the parties to their remedy in Civil suit and the articles in dispute should be kept in the custody of the police till the decision of the Civil Court. (PLJ 1972 SCMR 159 + PLJ Cr.C. 207) (PLD 1961 Lahore 205, PLD 1963 Dacca 864). Even where the Criminal Court orders delivery of property to one of the persons the order only concludes immediate right to possession but does not conclude the right or title of any person to ownership of the property.

As a general rule, the Court can exercise its discretion and pass orders for disposal of the property produced before it, on the basis of evidence already given in the Court **without making a separate inquiry** for the purposes of finding out the validity of the claim of the claimants but the Court may make an inquiry for that purpose. Duty of the Court or a Magistrate is not simply to restore the property to

the person from whom it was taken but to deliver it to the person entitled to its possession. Where there is nothing to show that who has title to the property, there is a presumption of title in favour of the person actually in possession thereof. Even where a civil suit is pending between the parties for possession of seized property, the Magistrate to whom an application for superdari is made must dispose of that application by ordering delivery of property to the person entitled to its possession notwithstanding the Civil suit. He should not refer the parties to the Civil Court to obtain a verdict as to the interim disposal. (PLD 1966 Lahore 678 + 1992 SCMR 1454). A Court cannot indefinitely postpone or defer order regarding interim custody of the property seized till evidence is recorded.(1976 P.Cr.L.J. 621 + 2003 YLR 791). **The rule of best right to possession must be applied** while passing an order of superdari. Though it is incumbent upon a Magistrate to make an inquiry to find out who is the person entitled to the property seized but **it is not necessary that a judicial inquiry should be held on oath before passing an order of superdari.** He can pass an order on police report and papers without an independent inquiry. (1976 P.Cr.L.J. 632).

Both sections i.e 516-A and 523 Cr. P.C. empower a Magistrate to make such an order '**as he thinks fit**'. The discretion given by these words must be judicially exercised. There is always a presumption that a person actually in possession of the property is, unless contrary is shown, the owner thereof. Therefore, in the absence of any thing to show title to the property, it should be ordered to be delivered to the person in whose possession it had been at the time of its seizure. **An order for its handing over the property to another person should not ordinarily be made without giving an opportunity to the person from whom it was recovered to place**

his case before the Court. The order passed behind the back of such person may not amount to illegality yet it would amount to an impropriety. (1973 P.Cr.L.J. 617).

The order of superdari/interim custody should be made subject to **appropriate terms and conditions.** It is always the jus of the Court/Magistrate which determines and formulates the terms and conditions with reference to every preposition to be imposed for the purposes of achieving the objects of superdari i.e **preservation of the seized property and its availability for the purposes of its effective final disposal on conclusion of investigation, inquiry or trial.** The terms and conditions so formulated must form part of the surety bond in lieu of which the seized property is to be released.

An order for interim custody either passed under Section 516-A or 523 Cr.P.C. is an interlocutory order which can be varied even before the disposal of the matter if circumstances so warrant. (PLD 1979 Lhr 613 + PLJ 1980 Cr.C. 207 + PLJ 1979 Lhr 378). It is competent for the Court or Magistrate to cancel the order of superdari if the superdar fails to produce the case property which has been entrusted to him as an interim measure. (1980 P.Cr.L.J. 574). However, the order should not be cancelled exparte without giving opposite party an opportunity to defend himself. Whatever the allegations are, the superdar be given an opportunity to defend the earlier order. (1980 SCMR 54 + 2001 SCMR 795).

Points to be kept in mind while passing the order of superdari.

- a. interim custody/superdari be given to the person entitled to its possession.**

- i) **Question of title is not to be decided. The principle of best right to possess is to be followed.**
 - ii) **The order for interim custody is not to be deferred for a long period.**
 - iii) **The order for interim custody be passed on the basis of available evidence.**
 - iv) **The discretion in this regard should judicially be exercised.**
 - v) **The question of entitlement to possess must be decided by the Court/Magistrate and it should not be left for police or other authority which had seized the property.**
- b. A bond in the sum ordinarily equal to the value of the property being given on superdari with or without surety should be obtained.**
- i) **The terms and conditions imposed by the Court must be narrated in the wording of the bond.**
 - ii) **The bond must be taken in the Court.**
 - iii) **A register containing all the particulars of the property and superdar should be maintained, the entries of which should be got signed by the superdar as token of acceptance of the liabilities. Maintenance of such register rules out the probability of playing foul with the judicial record pertaining to superdari.**
- c. The record of superdari should be kept in prescribed manner. Superdari of vehicles is to be given subject to filing of prescribed superdari name alongwith the bond.**

- i) The record of superdari be ordered to be kept with Ahlmad for the purposes of annexing the same on receipt of challan.**
- ii) Necessary care should be taken to annex the record of superdari with the challan file whether the matter is to be tried by the Court itself or is to be sent up under Section 190 Cr.P.C.**

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