

**CODE OF CRIMINAL PROCEDURE  
(AMENDMENT) BILL**

(Amendment of sections 516A and 517)

**Shri Subiman Ghose** (Burdwan)  
Madam Chairman, I beg to move

"That the Bill further to amend the Code of Criminal Procedure 1898 be taken into consideration"

This is a very simple and innocent matter, only to remove a difficulty that is facing us in the day to day working. At the outset, I may make it clear that I do not want to press so far as section 517 is concerned, but, I wish to confine myself, and press for its consideration so far as section 516A is concerned.

**Mr Chairman** Are we to take it that by this clause 3 is deleted?

**Shri Subiman Ghose** Yes, clause 3 of the amendment.

**Mr. Chairman** Yes the hon Member may proceed.

**Shri Subiman Ghose** So far as section 516A is concerned, I give three instances to the hon Minister. In some criminal cases, there are several accused and some property is seized. During the trial one is discharged, and the trial proceeds against the others. Will it be said that the trial has concluded or the trial is proceeding so far as the accused that has been discharged regarding the property that has been brought to court. The accused who has been discharged claims the property. So far as some accused are concerned the trial is proceeding. So far as the man who is discharged and who claims the property is concerned, will it be said that the trial is proceeding or concluded? If it is said that the trial has concluded, then, section 517 will apply. That is one position to be considered.

The second position is that a property is claimed by two persons. There are a number of accused. One is discharged and against the other, trial is proceeding. What will be the position then? Will section 516A

be applicable or will section 517 be applicable? The case arises when a property is brought by the police before the court and one man claims it. Then the police gives the objection that it should not be made over to him. In that case, the man is deprived of the right of appeal and he has however to go to the High Court and he is to incur heavy expenditure.

These three stages arise in this case. If section 516A is made appealable then there will be no anomalous position. But this section 516A is not appealable. The section 517 is appealable. Then there is the anomalous position. As I have said, at least these are two anomalous things.

Somebody is discharged and to him the property goes, if he wants to take it. Again, the property is claimed by two persons, against the one, the trial is proceeding. The other is discharged. Which section of the law will be applicable in each of these cases? To remove these anomalies and to remove these difficulties that are faced by the litigants in day-to-day working of the Act I have suggested that section 516A should be made appealable. In that case the litigants will not face any difficulty. This is a simple and innocent matter, and I think the Minister will not have any difficulty in accepting it.

**The Minister of State in the Ministry of Home Affairs (Shri Datar):** May I point out to the hon Member that orders under section 516A are of an interim or temporary nature and the final orders are passed after the conclusion of the trial of the case under section 517? Secondly he will kindly note that all orders that are passed by the subordinate courts are subject to the powers of revision by the High Court. Therefore, ordinarily, what happens is whenever an interim order has to be passed, there is no need for any appeal as such. Otherwise if every order is to be made subject to appeal, naturally the proceedings will be multiplied. So

many people will be going to the High courts or to the appellate courts only for the purpose of seeing whether this order can be reversed. Thereby, the hon. Member will see that the very object that we have in view, of having an end of all these proceedings as early as possible, will be surely lost.

Secondly, the hon. Member will realise that so far as these interim orders are concerned, they are enforced until the termination of the case and the termination of the case is not necessarily in terms of years but in terms of months. These are criminal proceedings, and at the worst, they will take a year or so. Ordinary cases, it takes three to six months to finish. Therefore, for such a short period, is it advisable to provide for the luxury of an appeal here?

As the hon. Member must have seen, section 516A makes it very clear. "...produced before any criminal court during the enquiry or trial, the court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the enquiry or trial". The hon. Member is also aware, either under the Code of Civil Procedure or under the Code of Criminal Procedure, no appeal has been provided except in a small number of specified cases. If, for example, an appeal is to be provided against all such orders, there would be no end of litigation and no end of costs and no end of trouble to the parties concerned

Therefore, I would request the hon. Member not to press this Bill. As far as possible, we have got a big Code of Criminal Procedure, and if any amendments are necessary, they should be considered as a whole and not in a piecemeal manner. There is a Law Commission, and the Law Commission might consider whether there is any such need. So far as the views of the State Governments are concerned or the views of the High Courts are concerned, there are

very few cases where an appeal is asked for or a request has been made that the Criminal Procedure Code should be amended. Under these circumstances, may I request the hon. Member not to press this Bill even in spite of section 516A, because it is only a temporary matter, and let temporary matters be not subject matters of appeal.

**Shri Subman Ghose:** My misfortune is that the hon. Minister went on sermonising without understanding my point. Both sections 516A and 517 are there. There is a trial and there is one man in favour of whom the final report is submitted; others are charge-sheeted. The man in whose favour the final report is submitted wants the property back. Which section will be applicable? Section 516A or 517? If the trial has been concluded, then section 517 will come into play. But if the trial is thought to be not concluded, then section 516A is applicable. But a man, in whose favour the final report is submitted, is not standing trial, how the language of the section will be available to him in getting back the property? What section will apply to him? Section 516A or section 517?

This is an anomalous position, 517 has been made appealable. Now, if section 516A is also made appealable, this anomalous position would be removed. That is what I intended to say. It is not a case of withdrawing or anything of that kind or multiplication of suits or cases

Another instance I have cited also remains unanswered by the hon. Minister. If he accepts my amendment, this anomalous position would be removed. Let us now take the second case. Two persons are standing trial. The trial has proceeded to some length. At the time of trial one is discharged and the other man has to stand on trial. The man who has been discharged wants back the property. The man standing trial, he also wants back the property; that is to say, both are claiming the property.

[Shri Subiman Ghose]

Which section will be applicable? Section 516A or 517? That is another anomalous position.

There is no case law on this point. It is to remove the anomalous position I have sought the amendment of section 516A. If that is done, heavens will not come to the earth. There will not be multiplication of suits. Now it appears a man who has been discharged, in whose favour the final report has been submitted, has to go to the High Court by incurring a lot of expenditure. Is it the intention of the Legislature that a man should be asked to incur heavy expenditure for going to the High Court? Should he not be given a cheap remedy?

Suppose a case goes on for three months, six months or a year. One person has been discharged. He is not in the trial. He wants to get back his property. If the court refuses his property, it is an anomalous position for him. I want that to be clarified. Instead of clarifying that, the Minister has been telling us that it will add to the multiplication of suits. I fail to understand how it will add to the multiplication of suits. Rather, it makes the remedy cheaper and easier

Shri Datar: May I make the position clear? My hon. friend has not read the earlier portion of section 516A. Where any property regarding which an offence appears to have been committed, if there are more than one person and more properties, if in respect of one property specifically a man has been discharged because he was concerned with it, I would conceive without necessarily hazarding an opinion that in such cases he would be entitled to file an application under section 517A, because, so far as he is concerned, he has been discharged. So far as the specific property in which he was interested is concerned, that property also is no longer the subject-matter of the criminal proceeding. Because, the wording is, 'where any property regarding which an offence appears to

have been committed'. If, for example, there is one property in respect of which there are some accused who are discharged and some accused against whom the proceeding is to go on, then, he would agree that he is not entitled to any order about such property at all.

Mr. Chairman: Is it the contention of the hon. Minister that if it is one property and there are 2 or 3 people who are accused and there are one or a few others who are discharged, the property will be held on until such time as the entire proceedings are over?

Shri Datar: Quite correct. If, for example, in respect of a property an offence has been committed by more persons than one, and if one person has been discharged, it does not mean that the property is also free

Mr. Chairman: The answer to the point made by the hon. Mover is, whether it would not be better to allow him to refer an appeal to the Sessions court.

Shri Datar: In such a case, it will be clear that he should not have any right of appeal at all, because, all these circumstances will be taken into account. If, for example, as I said, there is one lot of independent property in respect of which an offence was alleged to have been committed by a person or persons and that person or persons are discharged, then, that property cannot be called, after the order of discharge, to be a property in respect of which an offence has been committed. Because, there, the court must have come to the conclusion that that property is not property in respect of which an offence was committed. Therefore, whatever the order at an earlier stage by way of an interim order, still he can proceed under section 517. But, if, for example, there is one property in respect of which more than one person have committed an offence, some of them having been discharged, they will not be entitled

to any order so far as that property is concerned. There must be a final conclusion of the trial and then an order would be passed under section 517.

**Shri P. E. Patel (Mehsana):** May I seek an information from the hon. Minister? I beg to submit a case. Police investigation is against four. At the end of the investigation, the police charge-sheets only three and does not charge-sheet the fourth. The property is claimed by the person who is not charge-sheeted. The trial begins against three. At the end of the trial, the court may pass any order about the property. The court may hand over the property to either of the accused before the court or to the complainant. Is there any provision in the law to order that the property be handed over to a person who has not been charge-sheeted? Is there anything in the law? Furthermore, suppose an order is passed that out of the three accused before the court, the property be handed over to accused C—out of accused A, B and C—, A and B can appeal against the order. Even the complainant can. Is there anything in the law which gives the right of appeal to a person who had not been charge-sheeted by the police? He claims the property. What is the remedy in law: I ask the hon. Minister.

**Shri Datar:** I do not think that the case that the hon. Member has in view comes within the purview of section 516-A. Section 516-A should be read, especially the earlier portion.

**Shri Subiman Ghose:** We have read it many times.

**Shri Datar:** I would read to explain my point. If the hon. Member does not want, I will not read.

When any property regarding which any offence appears to have been committed the word 'appears' has reference to the court. And then, 'or which appears to have been used for the commission of any offence, is produced before a criminal court'.

In the particular case that the hon. Member has in view, he believes or possibly I understand him to say that the man was not charge-sheeted at all.

**Shri P. E. Patel:** Yes.

**Shri Datar:** During the investigation, the man was discharged. Then, this section does not apply at all. The wording is "is produced before any criminal court". The magistrate or the court has the authority, is seized of it, only when such property is produced in court. So, the case that he contemplates is not covered by this section at all. It has to be governed by other provisions, and in such a case the magistrate is seized of the matter only when it comes before him; otherwise, he need not enter into that matter at all.

And then the magistrate has to pass an interim order. Assuming, for example, out of three persons, he hands over for the time being the possession of the property to "C", and suppose for example he is a tenant in actual occupation of a land under dispute, then, in that case, it is not such a serious order as to be made the subject-matter of an appeal.

Therefore, such small things have to be left where they are, because these interim orders are without prejudice, they do not affect his rights at all.

**Shri Subiman Ghose:** I may make myself clear. The hon. Minister thinks this is a small matter. It is not a small matter. It may be a small matter to him, but might be a life and death question to somebody.

Supposing a lorry has been seized by the police during the commission of an offence from somebody. He stands the trial, and another who is supposed to be the owner of this property is also arrested, and ultimately when the trial proceeds, the magistrate frames a charge against the person from whom the lorry was seized and discharges the owner. The

[Shri Subiman Ghose]

owner puts in a petition for the return of the lorry. The court grants the prayer, but where is his remedy if the accused in whose custody the lorry was is acquitted after some time, after three, four or five months, where does the remedy lie? The so-called owner takes away the lorry. It is not in the custody of the court. He is acquitted, then where will he have to go? So far as the owner is concerned, the trial has been concluded, so far as the man in possession of the property is concerned, the trial has not been concluded. That is the anomalous position. I wish only to remedy this anomaly. There is nothing damaging, nothing of the kind. Only it is the day-to-day working difficulty that is being faced by the people concerned. That should be removed. There is nothing, no Arms Act, no politics or any kind here.

Mr. Chairman: I think the matter has been sufficiently clarified by the hon. Mover and also replied to as far as possible by the hon. Minister. Now, I think, the question is: would the hon. Mover like to press it?

Division No. 4]

Barua, Shri Hem  
Bharucha, Shri Naushir  
Chakravartty, Shrimati Renu  
Chavan, Shri D. R.  
Dige, Shri

Achar, Shri  
Ayyakannu, Shri  
Barupal, Shri P. L.  
Basappa, Shri  
Bhargava, Pandit Thakur Das  
Chaturvedi, Shri  
Chettiar, Shri R. Ramanathan  
Daljit Singh, Shri  
Das, Shri Ramdhani  
Dasappa, Shri  
Dessai, Shri Mearji  
Deshmukh, Shri K. G.  
Dwivedi, Shri M. L.  
Gandhi, Shri M. M.  
Hem Raj, Shri  
Jhulan Sinha, Shri

Galkwad, Shri B. K.  
Ghose, Shri Subiman  
Gounder, Shri Shanmuga  
Nair, Shri Vasudevan  
Panigrahi, Shri

Jogendra Sen, Shri  
Kasiwal, Shri  
Keshava, Shri  
Madida Ahmed, Shrimati  
Maiti, Shri N. B.  
Mandal, Shri J.  
Mehta, Shrimati Krishna  
Naldurgker, Shri  
Nehru, Shrimati Uma  
Pahadia, Shri  
Palchoudhuri, Shrimati Ila  
Raghunath Singh, Shri  
Ramanand Shastri, Swami  
Ramaswami, Shri S. V.  
Rameshwar Rao, Shri  
Ranbir Singh, Ch.

The motion was negatived.

Shri Subiman Ghose: Yes.

Mr. Chairman: The question is:

"That the Bill further to amend the Code of Criminal Procedure, 1898, be taken into consideration." Those in favour will say "Aye".

Some Hon. Members: Aye.

Mr. Chairman: Those against will say "No".

Some Hon. Members: No.

Mr. Chairman: I think the "Noes" have it.

Shri P. E. Patel: The "Ayes" have it.

Shri Raghunath Singh (Varanasi): The "Noes" have it.

Mr. Chairman: Division has been claimed by the Opposition. Let the lobbies be cleared.

Shri M. B. Thakore (Patan): We are in a majority.

16.52 hrs.

[MR DEPUTY-SPEAKER in the Chair]

The Lok Sabha divided.

Ayes 15; Noes : 47

16.53 hrs.

#### AYES

Patel, Shri P. R.  
Sonule, Shri H. N.  
Thakore, Shri M. B.  
Warior, Shri  
Yadav, Shri

#### NOES

Rao, Shri D. V.  
Reddy, Shri Viswanatha  
Roy, Shri Biahwanath  
Sahu, Shri Rameshwar  
Samanta, Shri S. C.  
Samentanhar, Dr.  
Sambandam, Shri  
Sarhadi, Shri Ajit Singh  
Selku, Shri  
Sernai, Shri Vasuvas  
Sharma, Shri D. C.  
Siddanappa, Shri  
Siva, Dr. Gangadhara  
Subbarayan, Dr. P.  
Umrao Singh, Shri