

“PANCHANAMA”

The word *panchanama* is not defined anywhere in law. The Judges as well as lawyers often search for this word in the books . The word *panchanama* has significance value as day in and day out it is used by almost all the courts in number of cases in a day. Not only the Criminal Courts but also the Civil Courts rely on document named *panchanama* to check veracity and truthfulness of the action taken by Officers of State or Officers of Court. In criminal cases it is used to support the substantive evidence and in civil cases it is used to show that the decree of the civil court has been executed by handing over possession as directed in the decree. The word *panchanama* consists of two words, *panch* and *nama*. In Sanskrit the word *panch* means respectable person and *nama* a written document. In criminal cases this *panchanama* has very important value. The *panchanama* accounts state to things which were found at particular place at particular time. In criminal law the *panchanama* has corroborative value. The Code of Criminal Law, 1973 also does not define *panchanama* anywhere. But the same is incorporated in section 100 of the Code. This section 100 can be found in chapter VII which titles *Process To Compel The Production Of Things*. In this chapter the power to carryout search of particular places is given to officers as laid down sections 93, 95 , 97 and 98 of the Code. The provision of *panchanama* is made to convince

court that officer have in fact have carried out such search or made such seizure.

CONTENTS OF PANCHANAMA :-

The procedure for preparing *panchanama* is not stated in any Act. But a guidelines can be taken from section 100 subsection 4 and subsection 5 of the Code of Criminal Procedure, 1973. It is to be also noted that the panchas are to be two or more independent and respectable persons. In the case where there is no eye witness to the offence and the case totally base on circumstantial evidence then such *panchnama* carries immense value. The panch witness can also refresh his memories during the court of giving evidence as per section 159 of Indian Evidence Act, 1872.

In *Panchanama* the following things can be said to be important to be incorporated.

- Name and place of police Station,
- Name and rank of officer commencing *panchanama*,
- Name, age and address of panchas,
- Details of particular place or persons,
- Detail list of articles found in that place or from the person which are incriminating,
- Record of time when it was commenced and when it ended,

- Signatures of that officer and both of panchas.

It is also important that after preparation of *panchanama* the panchas should read its contents. If the panch is illiterate then such *panchanama* should be read over to him and there should be endorsement that the contents of *panchanama* were read over to them. In case where at time of making *panchanama* there was no source of light then it should be mentioned as to how the source of light was managed to prepare *panchanama*.

KINDS OF PANCHANAMAS.

There are many kinds of *panchanamas*. Following are the *panchanamas* which are found normally in about every criminal cases. There can also be *panchanama* other than the following list.

1. SPOT PANCHANAMA :-

This *panchanama* is generally drawn by Investigating Officer when he visits the informant or the person who has knowledge about place of crime. When such informant or such person shows the Investigating Officer place of crime then in presence of two panchas the Investigating Officer draws spot *panchanama*. In this *panchanama* there are details of what where the position of scene of crime after the crime. For example if there is allegation of theft then generally in such *panchanama* it is found that the articles on the place of crime were

scattered and cupboard or safe was broke open. So also in accident cases the tyre marks are often mentioned in this *panchanama* which shows that accused was driving his vehicle in speed or he tried to avoid accident. This *panchanama* corroborates the fact that incident had taken place.

2. MEMORANDUM PANCHANAMA :-

Generally any statement before police by accused while he is police custody cannot be taken on record and has no meaning in eyes of law. As per section 25 and 26 of the Indian Evidence Act, 1872 such statement has no value. But the exception to this section are made in section 27 of Indian Evidence Act, 1872 which states that if in consequence of the information received by accused there is discovery then such fact could be proved in court. The statement made by accused in police custody is recorded before panchas and *panchanama* is drawn such *panchanama* is called memorandum *panchanama*. If there is statement made by accused in police custody admitting the guilt and further giving information about some such things of which he only has knowledge and such thing is found in that particular place then such discovery is relevant. For example in murder case the accused in police custody can reveal as to where he had hidden the weapon of offence and in consequences of such information that weapon is found in that particular place, then such fact can be proved

in Court even if the statement is given in police custody. In memorandum *panchanama* it is always stated that accused admits the guilt and reveals the information about articles. Though such incriminating statement is there in memorandum *panchanama* and panch witness makes such statement of accused before court but that has to be excluded from evidence.

3. SEIZURE PANCHANAMA :-

Whenever the Investigating Officer finds any articles which he think that are necessary for proper investigation then such officers seized those articles from that place or person. While making such seizure he draws *panchanama* which is often called seizure *panchanama*. In one case there could be more than one seizure *panchanama*. The seizure of article can be from informant, accused or any third person depending upon the facts and circumstances of the case.

4. INQUEST PANCHNAMA :-

When any person dies due to the result of crime or under suspicious circumstances then the Investigating Officer has to draw inquest *panchanama* as per section 174 of Criminal Procedure Code, 1973. In this *panchanama* the details of how the dead body is lying and descriptions such as of any mark of injuries found on person of deceased, apparent cause of death or by what weapon or instrument

such marks appear to have been inflicted are to be mentioned. This *panchanama* helps to find out whether at the first sight of dead body it can be gathered that cause of death is unnatural.

5. **ARREST PANCHNAMA :-**

Whenever the police officer carry out arrest of any person then such *panchanama* is drawn. In this *panchanama* the physical appearance, identification marks and articles found on arrested person is mentioned.

6. **OTHER PANCHNAMAS :-**

The *panchanama* can also be found in the case of Prevention of Food Adulteration Act and cases under Essential Commodities Act. In Prevention Of Food Adulteration Act for safety and to give authenticity to their actions, the Food Inspectors prepared *panchanama* in presence of two panchas of all the action taken by them. This has two advantages, first it corroborates the fact that on that particular day such visit was in fact made by Food Inspector in that particular place and other is that it shows that the food Inspector had followed proper procedure as prescribed in the Prevention of Food Adulteration Rules. One can also find importance of *panchanama* in Forest Offences. In offences under Forest Act the confession made by accused before Forest Officer is not hit by Section 25 of Indian Evidence Act. Such confession stands in Court of Law. Forest Officer

records such confession before two panchas. This gives more reliability to such confession. *Panchnamas* are also done of test identification of accused or for identifying property involved in crime. Specimen handwritings, specimen signatures, sample of blood are also taken in presence of panchas by drawing *panchnamas*. In anti-corruption cases pre-trap *panchanama* and post-trap *panchanama* are common. In accident cases the *panchanama* about the condition of vehicles involved in accident have special importance.

EVIDENTRY VALUE OF PANCHNAMA :-

The *panchanama* is merely a record of what a panch sees and the only use of which it can properly be put is that when the panch goes into the witness box and swears as to what he saw, the *panchanma* can be used as a contemporary record to refresh his memory.

The primary intention behind the *panchanama* is to guard against possible tricks and unfair dealings on the part of the officers entrusted with the execution of the search with or without warrant and also to ensure that anything incriminating which may be said to have been found in the premises searched was really found there and was not introduced or planted by the officers of the search party. The legislative intent was to control and to check these malpractices of the officers, by making the presence of independent and respectable

persons compulsory for search of a place and seizure of article.

The *panchanama* can be used as corroborative piece of evidence. It is not substantive piece of evidence. In absence of any substantive piece of evidence only relying upon *panchanamas* on record there cannot be conviction.

IMPORTANT CASELAWS :-

1. In case of *Vishnu Krishna Belurkar -vrs- The State of Maharashtra, (1974) 76BOMLR627*, the question whether the *panchanamas* are hit by the provisions of section 162 of the Code of Criminal Procedure, 1973. The question was referred to Hon'ble Full Bench of High Court of Bombay. In para 8, the Hon'ble Full Bench has observed that

“In our view, the fact that panchanama is written out by the police officer or the police scribe as dictated to him by the panchas would not make any difference, for, that would merely be a mode in which the panchanama is recorded. Of course, if a panchanama does incorporate a statement which amounts to a statement intended as a narration to a police officer during his investigation, it would fall within Section 162 and will have to be excluded but that is the duty which the court must perform every time a panchanama, is tendered in evidence.”

2. In case of *Yakub Abdul Razak Memon -Vrs- State of Maharashtra*, decided by Hon'ble Supreme Court of 21st March 2013,

one of the ground challenging conviction was that the recoveries which were made was not made in proper procedure and seizure panchanamas were not in accordance with the procedure as laid down in section 27 of Indian Evidence Act,1872. The Hon'ble Supreme Court in para 218 have observed that,

“Panchnama is a document having legal bearings which records evidence and findings that an officer makes at the scene of an offence/crime. However, it is not only the recordings of the scene of crime but also of anywhere else which may be related to the crime/offence and from where incriminating evidence is likely to be collected. The document so prepared needs to be signed by the investigating officer who prepares the same and at least by two independent and impartial witnesses called 'Panchas' as also by the concerned party. The witnesses are required to be not only impartial but also 'respectable'. 'Respectable' here would mean a person who is not dis-reputed. One should also check if the witnesses are in their senses at the time of panchanama proceedings. Only majors are to be taken as witnesses as minors witness my not withstand the legal scrutiny.”

Further in para 224 the Hon'ble Supreme Court observed that,

“on any deviation from the procedure, the entire panchanama cannot be discarded and the proceedings are not vitiated. If any deviation from the procedure occurs due to a practical impossibility

then that should be recorded by the I.O. In his file so as to enable him to answer during the time of his examination as a witness in the court of law. Where there is no availability of panch witnesses, the I.O. Will conduct a search and seize the articles without panchas and draw a report of the entire such proceedings which is called a 'Special Report'.

From the above two authorities it can be seen that the Hon'ble High Court of Bombay and the Hon'ble Supreme Court had given in form of observations guidelines as to how the panchanamas should be and who should act as panchas.

Submitted with respects

(Mahesh S. Lone)

Chief Judicial Magistrate, Bhandara