

“Panchanama”

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Panchanama is a Sanskrit word ‘Panch’ means respectable person; ‘nama’ means a written thing.

A written account of some transaction, which had taken place in the presence of respectable persons (two or more than two). The same can be used for refreshing their memory and it can also be used as evidence in a court proceeding as a supporting document to their oral evidence given by them in the court of law as witness.

It is a contemporary record of transaction in the presence of respectable persons in order to remember or refresh their memory. It can be used as corroborative evidence in the court when that respectable person gives evidence in the court of Law u/s 157 of Indian Evidence Act. They can give evidence of the recorded transaction by seeing it as to refresh their memory u/s 159 of Indian Evidence Act.

Nowhere it is stated about the word Panchanama but it can be construed from the language of the certain provisions of Cr. P.C. viz, Section 100 & 174 Cr.P.C.

The procedure laid down in Section 100 Cr.P.C. will be followed for conducting search of a closed place with warrant issued by the court u/sec 93,94,95,97, and without warrant issued by the court u/Sec 165, 166.

For ascertaining the cause of the un-natural death inquest will be held in the presence of Panchas by observing the dead body and examining the witnesses who acquainted with the facts of the case.

In the above said two instances the presence of two or more than two persons for observation, seizure and recording of the same would arise.

The intention of the legislative is to guard against possible chicanery and unfair dealings on the part of the officers entrusted with the execution of the search with or without warrant and to ensure that any thing 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 and also any thing should not be stolen by any member of the search party during the search.

The then British Rulers of India gave much importance to the personal rights of citizens and they regarded personal rights of the citizenry as sacred rights. In those olden days there were neither international organizations to think about personal liberties of citizens nor there was any constitution guaranteeing fundamental rights of the citizens in India. They being foreigners ruling our country realized the personal security and safety of the citizens from the hands of public servants.

They felt that there should not be any feeling of insecurity among the public in the hands of officers, who can search any place at any time, as they like on the pretext of discharging duties. To control or check the malpractices of the officers, the presence of independent and respectable persons is made compulsory for search of a place and seizure of article found there in. Even to see that the officers should not knock away any articles under the pretext of search.

In order to create confidence and feeling of safety and security among the public, Section 100 Cr.P.C. is incorporated to make real and true search and seizure from any place.

Sec 100 (4) to (8) stipulated the procedure with regard to search in presence of two or more respectable and independent persons preferably from the same locality are

required. Respectable means a person who is not dis-reputed. Search proceedings should be recorded by the I.O. or some other person under his supervision. The occupant or some other persons on his behalf should be allowed at every stage of proceedings of search and seizure.

A copy of the seizure of article should be given to the occupant of the house. The Police Officer can demand the assistance of any person to stand as witness to the search by issuing a written order and disobedience to such order amount to an offence U/s 187 I.P.C. If the house, which is found locked, is to be searched, the I.O. can gain entrance as per Sec.47 Cr.P.C. by breaking the door or in any other mode for gaining entrance. The persons occupying the house concealed any thing in their possession for which search is going on; the I.O. has got power to search the body of such suspected person for any article and seize it. He has to give a copy of the articles seized to such persons from whom they were seized

To create confidence in the mind of court as nothing is implanted and true search is made and things seized were found real, all the necessary steps for personal search of officer (Inspecting party) and panch witnesses should be made. Any over writings, corrections, and erasures, in the panchanama should be attested by the witnesses.

All the proceedings of the search should be recorded very clearly stating the identity of the place to be searched, all the spaces which are inspected searched and descriptions of all the articles seized and also if any sample is drawn for analysis purpose should be stated clearly in the Panchanama. The I.O. can take the assistance of his subordinates for search of place etc. If any superior officers are present they should also sign the Panchanama after the signature of the main I.O. There is no need to examine in the court of law all the officers who present at the time of search.

If a search is conducted without warrant of court u/s 165 Cr.P.C. the I.O. has to record reasons and search memo should be issued. There is no need to give the copy of search memo to the inmates of the house.

If any search is conducted out side the court limits, the I.O. should deposit the things seized in the nearest local court to the place of search as per Sec.101 Cr.P.C.

The Panchanama recorded either by the I.O. or other person under his supervision should not hit by Sec.162 Cr.P.C. As such the I.O. has to record the search proceedings as if it were written by the panchas. It should not be recorded in the form of examining witnesses as laid down u/s 161 Cr.P.C.

True observation of panch witnesses and what is heard by them, those things incorporated in the panchanama at the first person as if it were written by the panchas.

Evidentiary value for corroboration u/s157 of IEA by the prosecution and contradiction u/s145 of IEA by the accused. In case of hostile the prosecution has got power to contradict the pancha witnesses against panchanama, with the permission of the court u/s154 IEA.

The panch witnesses has got right to refresh their memory during the course of giving evidence in the court by seeing it as per Sec.159 of IEA.

As per Sec.155 of IEA the credit of a witness may be impeached and also a witness may be testified to a fact mentioned in any such document, as per Sec.162 IEA the adverse party has got right to cross examine as to writing used by the witness to refresh memory.

Place, name of the Police Station, Officer Rank (I.O) time commencing and ending must be mentioned in it. Full particulars of panch witnesses and also the title should be mentioned.

If the panchas are literate after complete recording all the matters pertaining to search, the following should be written as follows.

I have gone through it and found the contents, which is in tune with what I have seen there, they are one and the same. Hence, I have attested as panch witness.

In case the witnesses are illiterate: -

I have been read out the contents and found that they are the same as I have seen. Hence, I have attested as panch witness.

If above said thing is not recorded the very panchanama document may hit by Sec.162 Cr.P.C. depending upon the evidence of the Investigating Officer and panchas in the course of trial deposed in the court.

It is the duty of the I.O. to create confidence in the mind of the court as a real search is being taken place.

Any deviation from the procedure the entire panchanama cannot be discarded and the proceedings are not vitiated.

If any deviation from the procedure due to practical impossibility that should be recorded by the I.O. in his C.D. file as to enable the I.O. to answer during the time of his examination as witnesses in the court of law. Where there are no availability of panch witnesses the I.O will conduct a search and seize the articles without panchas and draw report of the entire such proceedings which is called as 'Special Report' 1958 Cr.L.J. 830 at page 832 AIR 1957 AP 286. Where panchas are not available due to lonely place or midnight etc, in such case without panchas the I.O. himself can draw the report of search and seizure.

As per Sec.100 Cr.P.C. in case of search of a closed place then only this procedure will be adopted. As Sec.2 (P) Cr.P.C. says place includes a house, building, tent, vehicle and vessel.

But now a days for any search other than the closed place and seizure the same procedure is being adopted though there is no stipulation of such procedure under Cr.P.C. This is being done only to support or authenticate the acts of the I.O. and to make believe the court. Now courts are also insisting the same.

I.O. has got power to depute any of his subordinate Police Officer who is competent to investigate for conducting search, if he could not conduct search personally.

If any special and local laws stipulate any special procedure for a search or seizure that procedure should be adopted. Those laws over ride the general law procedure as laid down under Cr.P.C.

CITATIONS ON PANCHANAMA

AIR 1978 SC. 933

It is settled law that every deviation from the details of the procedure prescribed for search does not necessarily lead to the conclusion that search by the police renders the recovery of the articles pursuant to illegal search, irrelevant evidence nor the discovery of the fact inadmissible at the trial. Weight be attached to such evidence depends on facts and circumstances in each case. The court is required to scan the evidence with care and to act upon it when it is proved and the court would hold that the evidence would be relied upon.

AIR 1956 SC. 411

Sunder Singh vs. State of Uttar Pradesh

A three-Judge bench of this Court held that U/s. 103 (New Sec. 100 Cr.P.C.) of the Cr.P.C. 1898 though respectable inhabitants of the locality were not associated with the search, that circumstance would not invalidate the search. It would only affect the weight of the evidence in support of the search and the recovery. At the highest, the irregularity in the search and the recovery would not affect legality of the proceedings.

AIR 1963 SC. 8221.

196 (1) CrL. LJ. 809 (S.C.) Radha Krishna vs. State of U.P.

This court held that the evidence obtained by illegal search and seizure would not be rejected but requires to be examined carefully. Earlier view of the Supreme Court over ruled by implication by this Judgement.

AIR 1980 SC. 593

Even if the search was illegal, it will not affect the validity of the seizure and further investigation of the authorities the validity of the trial or which followed on the complaint by the customs official.

1999 AIR S.C.W. 422

Unlawful possession of contraband - seizure Panchanama, would be admissible in evidence - At the stage of filing charge sheet it can not be said that, there is no evidence - Discharge of accused by Magistrate or Sessions Judge on ground of non-compliance or failure to observe the provisions relating to the search does not make the evidence relating to the search inadmissible.

Radha Krishna

AIR 1963 SC. 822

Cr.L.J. 465

1976 Cr.L.J. 274, at P. 287, 288

The house search shall be made in presence of the witnesses. Before entering into the house, the search party shall give their personal search to the witnesses. Similarly, the witnesses give their search in the presence of one another.