

**Remand on Holidays in Special Acts like NDPS,
SC/ST,Act, PC Act, POCSO Act,**

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Concept of Remand – Article 22(2) of the constitution of India and section 57 of the CrPC contain provisions that any individual arrested and has been detained in custody should be produced before the Magistrate within 24 hours of his arrest . There shall be unlawful detention beyond 24 hours without the order or permission of the Magistrate. This permission taken from the Magistrate is known as remand .

Concept of remand has been provided under section 167 of the CrPC. Permission by the Magistrate is given u/s 167 of the CrPC.

Remand in Special Acts

Some special Acts have been enacted by the legislature to deal with same Category of cases. Following are some special criminal Acts-

- POCSO Act
- » SC & ST Act
- » NDPS Act
- » PC Act etc .

These acts provide stringent punishment .

Under these special Acts for speedy trial of offences special courts as may be necessary has been established.

Sec. 193 of CrPC provides that – no court of session shall take cognizance as a original jurisdiction unless the case has been committed to it by magistrate. But Special court can take cognizance of offence upon complaint or police report without the accused being committed to him for trial.

most confusing part is that the special court can exercise any power u/s 167 CrPC for ramand of the arrested accused .

In the normal circumstances provisions u/s 56, 57, and 167 of CrPC deal with after the arrest of any person.

Section 4 and 5 of CrPC are important in this situation-Proceeding in respect of offences under other laws is governed by section 4 and 5 of CrPC.

Section 4,- Trial of offences under the Indian Penal Code and other laws -

(1) All offences under the Indian Penal Code , 1860 shall be investigated, inquired into, tried, and otherwise dealt with according to the provision hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions , but subject to any enactment for the time being in force regulating the manner or place of investigating , inquiring into , trying or otherwise dealing with such offences.

Section 5 Saving-Nothing contained in this code shall, in the absence of a specific provision to the contrary, effect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.”

It is clear unless the special Act provides some different procedure, we have to follow the provisions of CrPC .

We have to see whether the special act provides any other provision for remand of the accused or not.

Section 36-A Of NDPS Act – offence triable by special courts-

- (1) Notwithstanding anything contained in the code of Criminal Procedure , 1973
- (a) All offences under this Act shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more special courts than one for such area ., by such one of them as may be specified in this behalf by the Government .
- (b) where any person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub section (2) or sub section (2-A) of section 167 of the Code of Criminal Procedure , 1973 (2 of 1974), such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate.

Provided that where such Magistrate considers :-

(1) when such person forwarded to him as aforesaid ;or

(ii) upon or at any time , before the expiry of the period of detention authorised by him ,

- That the detention of such person is unnecessary, he shall order such person to be forwarded to the special court having jurisdiction ;
- (c) the special court may exercise , in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure , 1973(2 of 1974), in relation to an accused person in such case who has been forwarded to him under that section ;
- (d) a special court may, upon perusal of police report of the facts constituting an offence under this Act or upon complaint made by an officer of the central Government or a state Government or a state Government authorised in his behalf , take cognizance of that offence without the accused being committed to it for trial.
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POCSO Act

Section 42A of POCSO Act states that “ the Act cannot be in derogation of other laws in force . In case of any inconsistency , the provisions of this Act will overrule the other law to the extent of such inconsistency , the provisions of this Act will overrule the other law to the extent of such inconsistency . “

This implies that the POCSO Act will overpower the CrPC to the extent that it provides the procedure for trial . Chapter V of the Act deals with the ‘ Procedure for reporting of cases’ . The Act provides for filing of the complaint and taking of cognizance . It , however , fails to establish the procedure for remand of accused. In the absence of special provisions, the procedure for remand specified under the CrPC will be followed .

- **State of T.N. VS Krishnaswami Naidu** -the Supreme Court made certain elongated observations with regard to the remand u/s 167 of the CrPC which shall also be applicable under cases concerning POCSO.

SC & ST Act

Sec. 14 of this provides that-”for the purpose of speedy trial , the state Govt. , with the concurrence of the Chief Justice of the High Court , by notification in the official Gazette, specify for each district a court of session to be a special court to try the offences under this Act...

Provided further that the courts so established or specified shall have power to directly take cognizance of offences under this Act.

Sec 17 (2) the provisions of chapter VIII, X, XI Of the code applicable

PC ACT

Chapter II Section 3-6 of PC Act provide the appointment of Special judge .

Sec 5, (1) – A special judge may take cognizance of offences without the accused being committed to him for trial.

Sec 5(3) provides that -save as provided in sub section (1)or sub section (2) the provisions of the code of criminal procedure, 1973 , shall so far as they are not inconsistent with this Act , apply to the proceeding before a special judge .

Sec 51 of the NDPS Act- provisions of the CrPC shall apply in so far as they are not inconsistent with the provisions of this Act.

Provisions are almost same regarding applicability of the CrPC in all special acts .

- But in these acts do not have any direct provision regarding remand of the accused.
- In **State of T.N. VS V. Krishnaswami Naidu (1979) 4 SCC 5**

The Hon'ble Supreme Court while dealing with power of special judge u/s 167 and Criminal Law Amendment Act 1952, made following observations-A special judge under Criminal Law amendment Act , 1952 can exercise powers of magistrate u/s 167 CrPC.

section 167 CrPC also provides for the word 'nearest judicial Magistrate' and not the term 'magisrtrate who has the authority to take cognizance of the matter'. And also under sec. 167(2), expressly lays down that the Magistrate to whom the accused is forwarded and the materials are transmitted may have or not have the jurisdiction to try the case .

So it is not necessary that the 'nearest magistrate' empowered under sec . 167 CrPC must have the jurisdiction to try the case.

The judicial magistrate can in the frist instance authorise the detention of the accused in such custody i.e.either police custody or judicial custody from time to time , but total period of detention cannot exceed 15 days in whole. Such magistrate may or may not have jurisdiction to try the case.(**CBI, SPECIAL INVESTIGATION CELL-I VS Anupam kulkarni**)

Above referred provisions make the situation clear that even the magistrate does not have jurisdiction to commit or try the case , on the frist production of the accused , such magistrate may authorise detention irrespective of his jurisdiction .

REMAND ON HOLIDAYS IN SPECIAL ACTS

- **The CJM** , in consultation with the District & Session Judge deposes any magistrate to discharge the remand / urgent work on holidays. Such magistrate is called duty/ remand magistrate.

After considering all the provisions it is clear that any person/ accused arrested under any special law triable by special court or court of session , if the special court is not available due to holiday shall be produced before duty magistrate / nearest magistrate irrespective of any jurisdiction. This situation applicable to all special acts .

Upon expiry of first 15 days , the 'initial magistrate' has to forward the accused to the 'special court' having jurisdiction.

- Generally the remand magistrates authorise the accused in custody , in offences triable by special judge , till next working day and direct the investigating officer to produce the accused before special judge along with relevant documents and material including C.D..

But situation is different regarding Juvenile Justice (care and protection) Act, 2015.

Child in conflict with law/ juvenile shall be produced before Principle Magistrate or member of JJB even on holiday. It is duty of Principle Magistrate to make arrangements regarding remand work.

But before a magistrate authorises detention under sec. 167 crpc , he has to be frist satisfied that the arrest made is legal and in accordance with law and all the rights of the person arrested satisfied.

Various judgements of Hon'ble Supreme court must be followed-

- Joginder kumar vs State of UP
- DK Basu vs state of west bengal
- Arnesh kumar vs state of Bihar
- Satendra kumar antil vs CBI

» THANK YOU