

INVESTIGATORY POWERS OF POLICE

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ABSTRACT: Police investigation is a part of criminal procedure which is provided under criminal procedure code (CrPC).sections 154 to 176 CrPC deal with Investigation by police and their powers and duties .After receiving and recording first information, the criminal investigation starts.

Steps in investigation:

1. Proceeding to the place of offence.
2. Ascertainment of facts and circumstances.
3. Tracing and arrest of suspected offender.
4. Collection of evidence.
5. Examination of witnesses and recording their statements.
6. Search of places and seizure of material objects.
7. Formation of opinion whether on the material collected there is a case to place the accused before the magistrate for trail and file charge sheet u/s 173.
8. Once investigation closes, trail begins.
- Filing charge sheet. [Sec 173]
9. Taking cognizance of offence. [Sec 190 and 193]
10. Issue of process for trail. [Sec 204]

Thus, investigation of crime is very crucial and burdensome. The investigating officers have to apply all the rules and see the investigation is not conducted in an arbitrary manner and in violation of established principles including the principles of natural justice.

Keywords: *Investigation, Police, Powers, FIR, offence, cognizable, non-cognizable, chargesheet.*

INTRODUCTION:

Section 2(h) of code of criminal procedure defines the term 'Investigation'. Investigation includes all proceedings under this code for collection of evidence conducted by police officer or by any other person [other than a magistrate] who is authorized by a magistrate.

Therefore,

- All legal proceedings under this code.
- For collection of evidence.
- By a police officer. or
- By any other person authorized by magistrate. [Here magistrate means other than a judicial magistrate].

In common parlance, 'investigation' and 'inquiry' are used as synonymous or interchangeable terms. The CrPC, however, uses them differently and with specific distinct connotations.' Investigation' includes all proceedings under this code for collection of evidence conducted by police officer or by any other person [other than a magistrate] who is authorized by a magistrate. 'Inquiry', according to the code, means every inquiry which is conducted by a magistrate or court and which is not a trail. An inquiry is never conducted by the police, though in common parlance we talk of police inquiries.

The term trail means the judicial process in accordance with law whereby the question of guilt or innocence of the person accused of any offence is determined. Therefore, where a magistrate or court conducts inquiry for deciding as to the guilt or innocence of any person accused of any offence, such an inquiry is not just an inquiry but it is termed as a trial. But where the inquiry relates to the matter other than the determination of guilt or innocence in respect of any alleged offence, such and inquiry is called not a trail but mere inquiry.

Two steps of Investigation:

1. Investigation into cognizable offence.
2. Investigation into non-cognizable offence.

Investigation into cognizable offence:

Recording FIR: [sec 154]:

On receiving first information as to the commission of a cognizable offence, the police proceed to record the information under section 154 and enter the same in a book called 'station-house diary or general diary'. A copy of the FIR shall be given to the informant free of cost. A copy of FIR also sent to the magistrate who has jurisdiction to conduct trail.[occurrence report u/s 157].

Proceeding for Investigation: [sec 156]:

Section 156 and 157 provides powers and procedure for commencement of investigation. Section 156 is Investigation by police officer may be in two ways:

1. By police officer in charge of police station on his own.
2. By order of the magistrate u/s 156(3).

By police officer on his own accord:

Sec 156(1)—the officer in charge of police station has the power to investigate into cognizable offence without the order of the magistrate upon recording FIR.

Sec 156(2)—no investigation shall be called in question on the ground that such officer was not empowered to investigate. No order shall be issued during investigation to stop investigation.

By order of Magistrate: [sec 156(3)]:

Any magistrate empowered u/s 190 may order such an investigation of offence is taken on private complaint. Where cognizance is taken on police report u/s 190 (1) (b) and accused appear before the magistrate, further investigation cannot be ordered by magistrate. Magistrate while passing order under section 156(3) is not empowered to direct police to register FIR. Magistrate has no power under section 156(3) to direct CBI to investigate any offence. [AIR 2001 SC 668].

Report to magistrate and proceed to spot: [sec 157 and 158]:

Proceed to the spot:[sec 157(1)]:if the officer in charge of a police station has reason to suspect the commission of a cognizable offence on receiving FIR—1.he shall proceed to the spot to investigate the facts and circumstances of the case. Or 2.he shall depute one of his subordinate officers to proceed to the spot. Purpose to proceed to the spot is to investigate the facts and circumstances of the case, and to take measures for the discovery and arrest of the offender.

Report to the Magistrate: The officer in charge of police station shall send a report to magistrate who is empowered to take cognizance of offence—that the officer in charge has a reason to suspect the commission of cognizable offence. That he proceed to the spot to investigate the case, or that he deposes his subordinate to proceed to the spot of offence.

How to submit the report u/s 157: [sec 158]:

It provides that, if a superior has been appointed, every report sent to a magistrate u/s 157 shall be submitted through such superior officer of police as the state govt.directs. Such superior officer is authorized to give such instructions to the officer in charge of the police station. The superior officer shall record such instructions on such report and transmit the same without delay to the magistrate.

Power of magistrate on receiving the report u/s 157: [sec 159]:

The magistrate may order for investigation or preliminary inquiry.

- (a) When police officer decides to proceed: when the officer in charge of police station decides to proceed to investigate at once, the magistrate has nothing to do. The power of the police to investigate any cognizable offence is uncontrolled by magistrate.
- (b) When police officer decides not to proceed: the magistrate may direct an investigation or the magistrate himself may at once proceed to hold a preliminary inquiry into or otherwise to dispose of the case as provided in the code. It may, however, be noted that if the FIR or other relevant material do not disclose an offence, an investigation cannot be permitted, as any investigation in the absence of any offence being disclosed would result in unnecessary harassment to a party whose liberty and property may be put in jeopardy for nothing. In such a case the High Court in the exercise of its powers under Article 226 of the constitution of India or under section 482 CrPC may stop and quash the investigation proceedings. The investigating agency cannot be permitted to conduct an investigation in a tainted and biased manner. Where non-interference of the court would ultimately result in failure of justice, the court must interfere.[babubhai vs state of Gujarat,(2010)12 SCC 254].

Powers of police officers conducting investigation:

1. Power to require attendance of witnesses: [sec 160]: For effective investigation the police must obtain information from persons acquainted with the facts and circumstances relevant to the commission of the offence under investigation. Therefore, the section 160 empowered the investigating police officer to require by order attendance before him any person, if the conditions are satisfied:

(a). the order must be in writing (b).the person to whom the order is made is one who appears to be acquainted with the facts and circumstances of the case; and (c).such a person is within the limits of the police station of the investigating police officer [or] within the limits of any adjoining police station.(d).The person should attend at the police station of the investigating police officer or at such other reasonable place.

Duty to attend: such person to whom the order is made is bound to attend before the police officer. If failed to attend, he shall be punished under sec 188 of IPC for disobedience of order duly promulgated by public servant.

If failed to attend—action to be taken: any person who intentionally omits to attend as required by the investigating officer is liable to be punished under section 174 IPC. The investigating officer has no authority to use force for compelling attendance of such a person; nor does the officer have any power to arrest or detain such a person. However, the investigating agency may procure the presence of the person by way of a warrant issued by a magistrate u/s 87 CrPC.

2. Power to interrogate witnesses and to record their statements: [s/161]

a. Power to Examine: [s/161(1)]: The investigating officer is given power to examine orally any person supposed to be acquainted with the facts and circumstances of the case. [S/161(1)]Such person is bound to answer truly all questions put to him relating to the case. However, he is not bound to answer such question which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture. (S/161(2))

NandiniSatpathy v. P.L. Dani, [19978 2 SCC 424]:[Right to be silent---Not to answer]

The Supreme Court held that, the accused cannot be forced to answer questions. He is entitled to keep his mouth shut if the answer has a reasonable prospect of exposing him to guilt in some other accusation, actual or imminent, even if the investigation is not with reference to that. However, he is bound to answer where there is no clear tendency to criminate. This means that the protection is available when police examines the accused during investigation u/s 161 of the CrPC. Further, the right to silence is not limited to the case for which he is examined but extends to the accused in regard to other offences pending or imminent which may deter him from voluntary disclosure of criminatory matter.

b. Recording Statements: [s/161(3)]: The investigating police officer may reduce into writing any statement made to him in the course of examination. He shall make a separate and true record of the statement of each person. If he records a joint statement of several persons—such a statement is clearly in contravention of section 161 (3). However, the statement is admissible in evidence; it can only affect the weight to be attached to their evidence. The statements recorded u/s 161 is not substantive evidence. They need support of some corroborative evidence.

c. Signing the Statement: [s/162]: There no provision for signing the statement u/s 161(a). S/161(3) does not require a person making a statement to a police officer to sign it, as that might lead to abuse of power by the police to e witness to sign. Therefore, Section 162 (1) clearly enjoins that "No statement made by any person to a police officer in the course of an investigation, shall if reduced to writing be signed by the person making it".

d. Audio-Video Recording: The CrPC as amended in 2008 proviso to s/161(3) facilitates recording of statements of witnesses by audio video electronic means.

e. Evidentiary value of the Statements recorded u/s 161: s/162 (1) declare that the statement recorded u/s 161 or a statement in police diary or any part of such statement or record, has a limited use inquiry or trial .When such statement is proved, it may be used by the accused and with the permission of the Court, by the prosecution to contradict such witness in the manner provided by section 145 of I.E. Act.[Cross-examination of witness as to previous statement in writing] The FIR, the statements recorded under section 161 and any other statements recorded by police can be considered as substantive evidence, that is to say, as evidence of facts stated therein. Because it is not made during trial, it is not given on oath, not is it tested by cross-examination.

Recording of confessions and statement by magistrate: [sec 164]

What to record u/s 164:

1. Statement of accused [confession]
2. Statement of victim [dying declaration]
3. Statement of witness [statement of evidence]

Confession is a statement made by an accused person accepting that he has committed an offence. So, it is a self incriminatory statement. Any self incriminatory statement made to police is not admissible in evidence, but the same if made to a magistrate u/s 164 CrPC, it is valid and is admissible in evidence against the person making such statement. The accused makes confession. It is in the course of investigation or at any time after commencement of investigation, but before the commencement of the inquiry or trial. Confession may be made to metropolitan magistrate or any judicial magistrates of first class or second class. Such magistrate may or may not have any jurisdiction in the case. No maybe made to metropolitan magistrate or any judicial magistrates of first class or second class. Such magistrate may or may not have any jurisdiction in the case. No police officer on whom any power of a magistrate has been conferred under law is entitled to record confession. Confession must be in writing. The magistrate records the confession in writing on oral examination of the person. In case of statement, other than a confession, the magistrate shall have the power to administer oath to the person whose statement is so recorded.

Search of places for certain things: [sec 165 and 166]:

Search of places permitted in two ways:

1. Search by the investigating police officer.
2. Search by other police officer.

a. Search by the investigating police officer of the concerned police station: [sec 165]:

S/165 authorizes the officer in charge of the police station or a police officer making an investigation to search or cause search to be made in any place within the limits of such station.

Conditions for Search: [s/165(1)]:

1. When he believes that something necessary for the purpose of investigation may be found in any place.
2. The police officer permitted to conduct search suo moto.
3. Such place is within the limits of the police station of which he is in charge or to which he is attached.
4. And that he is of the opinion that without search, such thing cannot be obtained without undue delay.
5. He records in writing the reasons of his belief and specifies the thing for which search is to be made.
6. The police officer should conduct the search in person, if practicable. [s/165(2)]
7. He may require any officer subordinate to him to make the search, if he is unable to conduct the search in person. In such case he is required to record in writing the reasons for so doing. [s/165(3)]
8. He delivers an order in writing to the subordinate—specify the place to be searched and the thing for which search is to be made.
9. All rules relating to search warrants under section 100 shall apply to a search made under this section 165 (4).
10. Copies of record made u/s 165 (1) and (3) shall be sent to the nearest Magistrate empowered to take cognizance of the offence. [s/165 (5)]
11. The Magistrate shall furnish a copy of such record, free of cost, to the owner or occupier of the place on his request.

b. Search by Police officer of another police station: [s/166]

Where the place to be searched is beyond the jurisdiction of the investigating police officer, he may require an officer in charge of another police station, whether in the same or in different district, to cause a search to be made in any place under the jurisdiction of such police officer. [S/166 (1)] Such officer of another police station shall proceed to cause a search to be made according to the provisions of section 165 and shall forward the things found to the officer at whose request the search was made. [S/166(2)]

In case of emergency: [s/166(3)] : The investigating police officer himself may search or cause a search to be made, in such place under the jurisdiction of another police station, without requiring an officer in charge of such another police station. Emergency is understood as:

- a. Delay in making request.
 - b. There is a threat that, important evidence may be concealed or destroyed.
- Other conditions: a. Send a notice of the search to the officer in charge of such other police station. b. Also send a copy of the list of things found as required to be made u/s 100. c. Also send the above copies along with record u/s 165(1) and (3) to the nearest Magistrate empowered to take cognizance of the offence. d. Also furnish to the owner or occupier of the place, above copies free of cost on his request.

Producing accused before Magistrate and order for remand or custody. [S/167]

• Section 167 deals with the procedure to be followed when investigation cannot be completed within 24 hours.

1. Produce within 24 hours: [s/167(1)] --Where the accused is arrested and detained in the custody and the investigation cannot be completed within the period of 24 hours the officer in charge of the police station or the police officer making the investigation shall forward the accused to the nearest Magistrate. [Whether the Magistrate jurisdiction or not having jurisdiction].
2. Forward entries in the case diary:
 - To Judicial Magistrate: Where there are grounds for believing that the accusation or information is well-founded, the police officer making investigation not below the rank of Sub-inspector shall forthwith transmit a copy of the entries in the case diary to the nearest Judicial Magistrate, and also forward the accused to such a Magistrate. [S/167(1)]
 - To Executive Magistrate :Judicial Magistrate is not available, the copy of the entries in the case diary as well as the accused person as mentioned above may be transmitted to the nearest Executive Magistrate on whom the powers of a Judicial Magistrate or Metropolitan Magistrate have been conferred. [S/167 (2-A)]
3. Action by magistrates and order for detention:
 - Detention of accused may be two types:
 1. Police custody
 2. Judicial custody.

A Judicial Magistrate is authorized to order for detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding 15 days in the whole. [S/167(2)] An Executive Magistrate is authorized to order for detention in such custody as such Magistrate thinks fit, for a term not exceeding 7 days. [S/167 (2-A)] No Magistrate shall authorize detention in any custody under this section unless the accused is produced before him. [S/167(2) (b)]. Even for extending the period of custody--production of accused is mandatory. Extending detention without production of the accused on the ground of want of police guard, is illegal. [Subash v. State of M.P. 1989 CriLJ 1553] Obtain the signature of the accused on the order of detention as a proof of his production before the Magistrate.

Police Diary: [sec172]

Section 172(1) imposes a duty on every police officer making investigation to maintain a diary to enter the proceeding of the investigation. The diary is also called 'case diary' or 'special diary'.

Contents in police diary: section 172 (1)

A police diary shall consist of the following information—

- a. The time of receiving the first information.
- b. The time at which he began and closed the investigation.
- c. the place or places visited by him, and
- d. A statement of the circumstances ascertained through his investigation.

Court's authority in respect of Police diary: [s/172(2)] 1. Any Criminal Court, while inquiring or conducting trial of a case, may ask for Police diaries of such case. 2. Court may use such diaries to aid it in such inquiry or trial. 3. But cannot use as evidence.

Rights of accused in respect of Police diary: [s/172(3)] 1. The accused or his agents are not entitled to call for such police diaries. 2. They have no right to see them, even though the court has called for such diaries 3. However, if the police uses the diary to refresh his memory—the provisions of sections 145 to 161 of Indian Evidence Act shall apply. It means, accused can also refer the diary.

Charge sheet: [sec 173]

Submission of Final report on completion of investigation: [sec 173]

The final report of the police on completion of investigation is popularly known as Charge Sheet or Challan. The police report has to be filed within the time limit. Unless the court takes the report on record and keeps it on its file or examines it for deciding whether cognizance should be taken or not, it cannot be said that a police report is filed as contemplated under section 173(2). Magistrate cannot compel police to file a charge sheet.

Who shall file the charge sheet?

- a. By the officer in charge of police station u/s 173(2)
- b. Through the superior officer u/s 173(3).

Treatment of charge-sheet by Magistrate: .1. A charge-sheet contains the facts and conclusion drawn by the police. 2. The Magistrate is not bound by the conclusions drawn by the police. 3. The Magistrate has to apply his judicial mind to the report. He may differ from the police report. 4. Protest: -The police need not submit the report in accordance with the Version of the informant. In such case the informant may protest against investigation report by filing 'Memo of Protest'. In case of such protest, the Magistrate can deal with the protest u/s 200-204 as if it is a complaint. [Ashok v. State of U.P CriLi 2132 (All)]. If Magistrate decides to discharge the accused, the complainant must be given reasonable opportunity to be heard.

Investigation into non-cognizable offences**Non- cognizable offence: [non –cognizable case]**

Section 2(I) : non- cognizable offence means an offence for which, and non – cognizable case means a case in which, a police officer has no authority to arrest without warrant.

Nature of Non-Cognizable Offence: NCOs are usually less serious. They are in the nature of private wrongs and, therefore, the collection of evidence and the prosecution of the offender are left to the initiative and efforts of private citizens. Sanction of a Judicial Magistrate is necessary for arrest and investigation. [u/s 155(2)] .Arrest only with warrant of Magistrate. Once the Magistrate ordered for investigation, the police officer shall have same powers of investigation which an officer in charge of a police station may have in case of a cognizable case.

Conclusion:

We can draw the conclusion that the powers of the police during the course of investigation must be given utmost importance. Such powers of the police has been listed out systematically in the criminal procedure code, 1973. The procedure of investigation as well as the method in which the investigation must be followed by the police while handling any given case has been provide under the code.

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