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CRIMINAL INVESTIGATION- DUTIES, POWER AND ROLE OF POLICE

Chapter XII of The Code of Criminal Procedure, 1973 (CrPC) deals with the subject of Information to the Police and their Powers to Investigate. The specific scope of the law relating to criminal investigation and the duties and role of police in such process has been discussed in brief in this article.

1. Definition of investigation

a. Section 2(h) of the CrPC defines “investigation”.

b. The Code states that any proceeding conducted by police for the purpose of collection of evidence can be termed as investigation.

c. Any person other than the police officer may be conferred the powers of investigation provided such person is not a magistrate but is authorised by a magistrate in this behalf.

d. State of Bihar vs. J.A.C.Saldanna (AIR 1980 SC 326) held that in ordinary course of matters, the judiciary shall not interfere with the power of the police to investigate.

2. Cognizable and non-cognizable offences

a. In a cognizable offence, the police officer may arrest without warrant; a non-cognizable offence is where police cannot arrest without warrant. Sections 2(c) and 2(l) define “cognizable” and “non-cognizable” offence respectively.

b. Section 156(1) empowers any officer-in-charge of a police station to investigate a cognizable case without the order of a magistrate.

3. Procedure for investigation

a. Section 157(1) provides that on receiving a report (FIR) or otherwise, the police officer may start investigating the case if he has reasons to believe that a cognizable offence was committed.

b. The police officer must forthwith, send a report informing about such investigation to the magistrate having jurisdiction to take cognizance of such offence.

c. The Courts have observed that the process of investigation under CrPC may generally consist of the following steps:

- Reaching the spot where offence was committed;
- Ascertaining the facts and circumstances available prima facie;
- Discovery and arrest of the suspect;
- Collection of evidence through examination, search and seizure;
- Formation of opinion on whether or not the relevant circumstances call for a case to be made out and the suspect/accused to be presented before a magistrate;

d. Proviso to subsection 1 provides for two circumstances when the police officer may shift from following the procedure mentioned above:

- When the name of the offender is informed and the case is not of a serious nature, the police may not proceed to the spot.

- When, on receiving an information, the police officer is of the opinion that there are no sufficient grounds for conducting an investigation.

e. Section 157(2) mandatorily requires a police officer to notify reasons in his report for not complying with the provisions of sub-section (1), i.e., not moving ahead with the investigation in terms of proviso (a) or (b).

4. Whether police should consider documents/evidences submitted by the Accused

a. Section 91 of CrPC rests a discretion upon the Court to require a person to produce a document or thing which may have relevance to the facts of the case.

b. State of Gujrat vs. Shyamlal Mohanlal Choksi (AIR 1965 SC 1251) held that under section 91, “person” does not include an accused on trial. Thus, the accused cannot be compelled to produce incrimina-



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tory documents.

c. As far as statements of the accused is concerned, section 25 of the Indian Evidence Act, 1872 (Evidence Act) provides that confessions made during police investigation are inadmissible in evidence.

d. Section 164 provides a window to that effect and states that when a confession is recorded before a magistrate, it may be used in evidence.

e. However, section 164(2), CrPC, makes it mandatory for a magistrate to explain to the person that his/her confession may be used as evidence.

5. Whether police should visit the scene before filing charge report

a. The procedure for investigation includes the provision for the police to reach the spot where the offence was committed.

b. Section 157(1) expressly empowers an officer-in-charge of a police station to proceed to the spot to investigate the facts and circumstances of the case after sending a report on the reasons of suspecting commission of an offence.

c. Further, section 165(1) authorizes a police officer to make search at any place where he has reasonable grounds for believing that the same shall be necessary for the purposes of investigation.

d. Thus, wherever necessary, the police may visit the scene and conduct the entire process of investigation, including visiting the scene prior to filing the charge report before the magistrate.

6. Whether police should take statements of witnesses- examination of witness by police

a. Section 161 of the CrPC provides for the procedure of examination of witness by police.

b. The provision states that in the course of investigation under Chapter XII, any police officer may orally examine any person who may be acquainted with the facts and circumstances of the case.

c. However, such person shall not be bound to answer questions which may expose him to criminal charge by virtue of his right against self-incrimination, as provided under Section 161(2) of CrPC.

d. Any statement made in the process defined above, may be (non-obligatorily) reduced into writing and shall be made a separate and true record.

e. Section 162(1) further upholds the right granted under section 161(2) and states that no statement made under 161(1) needs to be signed by the person making such statement and the same may not be used for any other purpose other than at any inquiry or trial.

f. Ram Swaroop vs. State of Rajasthan (AIR 2004 SC 2943) held that statements made during police investigation have no evidentiary value.

g. Statements recorded by police under section 161(1) can only be used for contradiction and not corroboration. Moreover, hearsay statements (when a person has no personal knowledge of an incident but hears the same from someone else) under section 161 would not be accepted.

7. Duty to investigate beyond the complaint

a. In ordinary course, the investigation is entered upon by the police only on the receipt of an information to the effect of com-

mission of an offence.

b. However, the language of section 157 of CrPC elaborates on the legislative intent to mean that an investigation by police may be made even beyond the complaint or without receipt of a complaint or information.

c. Section 157(1) reads as "... from information received or otherwise ...", which means that receiving an information may not be the only way for police to commence investigation.

d. The investigation may be conducted with or without an information report. Receiving an information is not a condition precedent for investigation, as has been held in State of UP vs. Bhagwant Kishore (AIR 1964 SC 221).

e. However, the police must have reasons to suspect the commission of an offence and must believe such offence to be cognizable in order to effect investigation against such offence.

f. Tapinder Singh vs. State of Punjab (AIR 1970 SC 1566) held that a police officer may collect information of an offence even without registering a case in order to ensure that a cognizable offence has been committed which calls for an investigation.

8. Duties of police in Investigation

a. The duties of a police conducting investigation may be understood through the provisions of the Model Police Act, 2006.

b. Section 57 of the said Act lays down the roles, functions and duties of the police.

c. Among other roles, it is inevitable for police to promote and preserve public order, prevent crimes, accurately register complaints, be first responders in providing help to citizens and to create and maintain feeling of security in the community.

d. Additionally, the police has also been conferred certain social responsibilities as mentioned under section 58 of the Model Police Act.

e. In Yashwant vs. State of Maharashtra (2019) 18 SCC 571, the Supreme Court clearly stated that police have the primary responsibility to protect and uphold law and that their duty to administer criminal law is not a duty merely towards the individual accused but also to the State and the community at large.

f. Code of Conduct for the police in India were issued in the form of guidelines by the Ministry of Home Affairs.

g. It mentions a list of directions for the police to bear in mind while imparting their duties.

h. These directions include (non-exhaustive):

- Police must bear faithful allegiance to the Constitution of India;
- Police must recognize and respect the limitations of their powers and functions;

- The prime duty of the police is to prevent crime and disorder.

i. The Guidelines also speak of the importance of integrity as the fundamental basis of the prestige of the police and why the same may be hampered due to police corruption.

j. Such guidelines are not binding but merely directive in nature.

9. Duty to investigate fairly, independent and in an unbiased manner

a. The duty to act fairly is applicable to all administrative and quasi-judicial bodies in order to prevent the practice of bias and arbitrariness and to ensure impartial, just and fair decisions and

actions actions

b. In *Kishore Chand vs. State of Himachal Pradesh* (AIR 1990 SC 2140), the Court held that the investigation must be done on the proper lines and all the relevant evidence must be collected.

c. In this regard, it may also be mentioned that the accused shall be at liberty to bring to the notice of the court any act of the police that he believes to be biased and consisting of an element of malice leading to impartial investigation.

d. Section 163 restrains any police officer from making any inducement, threat or promise in the course of investigation. Section 24 of the Evidence Act states that any confession caused by inducement, threat or promise shall be irrelevant and carry no value in a criminal proceeding.

e. The investigation officer is not to act on the preconceived idea of the guilt of the accused and must investigate justly and fairly, as has been held in *State of Bihar vs. PP Sharma* (AIR 1991 SC 1260).