INVESTIGATION PROCESS -ROLE OF COURTS

Paper submitted by

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"The honest policeman rigs the evidence to convict the man he knows is guilty. Perhaps it is the only way he can get a conviction. The dishonest policeman rigs the evidence to convict a man he knows is innocent."

--- Sir John Woodburn, Lieutenant-Governor of Bengal

Trial follows cognizance and cognizance is preceded by investigation.

--- H. N. Rishbud's case, AIR 1955 SC 196

I. Introduction:- 'Investigation' is the process of inquiring, bring about and getting vital information, discovery of facts and circumstances to establish the truth. The key underlying principle of investigation of a crime is a concept that is known as 'Locard's Exchange Principle'. This principle is summed up by stating "Every contact leaves a trace". For investigation to commence, registration of a FIR is not a sine qua non. (Emperor Vs. Khwaja Nazir, and Apren Joseph @ Current Kunjukunju and Ors Vs. State of Kerala, 1973 Crl.L.J 85).

Human dignity is a dear value of our Constitution. But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the Court, on being approached by the person aggrieved for the redress of any grievance has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of police echelons since human dignity is a dear value of our Constitution. (State Of Haryana And Ors vs Ch. Bhajan Lal And Ors 1992 AIR 604).

II. The Process of Investigation and Role of Courts:-

(i) The adjudicatory function of the judiciary.

On a cognizance of the offence being taken by the Court the police function of investigation comes to an end subject to the provision contained in Section 173 (8) there commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime by the police in its report to the Court, and to award adequate punishment according to law for the offence proved to the satisfaction of the Court.

There is thus a well defined and well demarcated function in the field of crime detection and its subsequent adjudication between the police and the Magistrate. See. State Of Bihar And Anr vs J.A.C. Saldanha And Ors,1980 AIR 326. The Court should be quite loathe to interfere at

the stage of investigation, a field of activity reserved for Police and the executive. See. King Emperor v. Khwaja Ahmad, [1944] L.R. 71 I.A. 203 at 213

(ii) Process of Investigation:- To understand the process of investigation succinctly, I intend to quote the an important judgment of the Hon'ble Supreme Court wherein the stages of investigation is clearly explained. If you go through this ruling in H.N.Rishbud Vs. State of Delhi, AIR 1955 SC 196, we can easily understand the process of investigation. Under the Code of Criminal Procedure,1973 investigation consists generally of the following steps:

(1) Proceeding to the spot,

(2) Ascertainment of the facts and circumstances of the case,

(3) Discovery and arrest of the suspected offender,

(4) Collection of evidence relating to the commission of the offence which may consist of

(a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit,

(b) the search of places of seizure of things considered necessary for the investigation and to be produced at the trial, and

(5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under section 173 of Cr.P.C.

Investigation under the Code thus constitutes, as interpreted by the apex court in H.N. Rishud v. State of Delhi, AIR 1955 SC 196: 1955 Cr LJ 526.

iii. (a). Registration of First information report:

After receiving the information, Officer-in-charge of the police-station verifies the contents of the first-information-report (FIR) and decides whether the contents of the information are of a cognizable offence or non-cognizable offence. See. Section 154 of Cr.P.C. The initial stage of any criminal case is investigation that is reached when a police officer either by himself [s. 156(1) Cr.P.C.] or under orders of a Magistrate [Sections. 156(3), 154, 155(3), 202(1) Cr.P.C.], investigates into a case.

See. Youth Bar Association of India vs. Union of India and Ors, 2016 SCC online SC, 914, the Apex Court has issued 10 important Guidelines on First Information Report.

Principle of law: The powers of the police officer to investigate a cognizable offence as given u/s. 156 Cr.P.C. are wide and unfettered (in strict compliance of the provisions of Chapter XII of the Code). As was held in Nazir Ahmed, (1944) 47 Born LR 245, The court has no control over the investigation, or over the action of the police in holding such investigation. However, it was held in State of Haryana v. Ch. Bhajan Lal, AIR 1992 SC 604, in case a police officer transgresses the circumscribed limits and improperly and illegally exercises his powers in relation to the process of investigation, then the Court has the necessary powers to consider the nature and extent of the breach and pass appropriate orders.

iii. 'Case Diaries' under the process of investigation:

Every investigating officer is required by law to keep a record of the proceedings of the investigation in a diary in narrative form that should be made with promptness in sufficient details mentioning all significant facts on careful chronological order and with complete objectivity which may have a bearing on the result of the case. Haphazard maintenance of a case diary not only does no credit to those responsible for maintaining it but defeats the very purpose for which it is required to be maintained. See. BhagwantSingh v. Commissioner of Police, AIR 1983 SC 826.

A copy of the diary relating to each day's investigation (along with copy of any statement that may have been recorded u/s. 161 Cr.P.C.) shall be despatched to the circle inspector the following day. In special report cases, another copy shall be sent to the Superintendent of Police. It is interesting to see that the Hon'ble Apex court observed in OmPrakash v. State, 1979 CrI.L.J 141, that "the case diary must be written at the place of investigation and not at the end of the day. See. 1980 Cr LJ N.O.C. 67 (Del.); Jagannath v. State of Himachal Pradesh, 1982, Cr LJ 2289 (H.P.)

v.(a) Collection of Evidence:- The collection of evidence involves several steps and methods that comprise the crucial task of investigation process. The object behind is this task such that is to collect all available forms of evidence, physical, documentary and circumstantial, that are necessary for a comprehensive presentation of the same with regard to successful and effective prosecution of the case.

v.(b). Recommendations of the Malimath Committee:-

The Malimath Committee of 2003 makes certain recommendations with regard to mitigating the present handicaps of the investigating units, the thanas. It attempts to make them more self-reliant and to turn them over to more comprehensive units of investigation, as its impact would also amend the prevalent police practice that has evolved without them. While favouring the use of modern and forensic technologies right from the commencement of the investigation, the Committee recommends:

1. for the creation of "a cadre of Scene of Crime Officers" for the preservation of scene of crime and collection of physical evidence there-from.
II. to provide optimal forensic cover to the investigating officers, the network of CFSL' s and FSL's in the country need to be strengthened, mini-FSL's and Mobile Forensic Units should also be set up at the district/range level and these including the finger print bureaux need to be equipped with well-trained and adequate manpower and financial resources. Forensic Medico legal Services should also be strengthened at the district and the state/central level, with adequate training facilities at the state/central level for the experts doing medico legal work.
111. The State Governments must prescribe time frame for submission of medico legal reports.
The Padmanabhaiah Committee on Police Reforms has recommended that every police station should be equipped with 'investigation kids' and every sub-division should have a mobile forensic science laboratory.

In the present context, where there is a lack of equipment for collecting physical evidence, as well as the lack of training in its use, and the failure to be alert to physical clues, the investigation Officers rely more on oral testimonies. They are, therefore, more oriented to persons and not to things.

vi. (a) Examination of Witnesses:- The examination of witnesses is only one part of the collection of evidence, included within the meaning of the word "investigation". Wadha J. Said, "A criminal case is built on the edifice of evidence, evidence that is inadmissible in law. Fir that, witnesses are required whether it is direct evidence or circumstantial evidence." See. Swaran Singh v. State of Punjab, (2000)5 SCC 68 at 678.

The procedure for examination of witnesses by the police is provided in ss. 161 and 162 Cr.P.C. It provides for the recording of statements of all those persons who are acquainted with the facts and circumstances of the case, directly or indirectly, and the use to which they may subsequently be put in the trial.

vi. (b). Magistrate is kept in the picture at all stages of the police investigation:-

In this case of State of Haryana's (1992 AIR 604), it was observed that a noticeable feature of the scheme under Chapter XIV of the Code is that a Magistrate is kept in the picture at all stages of the police investigation but he is not authorised to interfere with the actual investigation or to direct the police how that investigation is to be conducted.

Under section 161 of Cr.P.C, a police officer making an investigation can examine the person acquainted with the facts of the case, and reduce the statement made by such person into writing. No oath or affirmation is required in an examination under this section. Persons to be examined include whosoever may subsequently be accused of the offence in respect of which the investigation is made by the police officer. See. Pakala Narayana Swami, (1939) 66 IA 66: 41 Born LR 428: 18 Pat 234; Velu Viswanathan, 1971 Cr LJ 725.

It is obligatory on a person examined in the course of a police investigation to answer all questions put to it "other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture." See. s. 161(2) Cr.P.C. Consonant to this procedural law is the provision laid down in the constitution, Article 20(3) that protects one from being made witness against itself.

The person questioned is legally bound to state the truth. A person who gives false information in answer to such questions can be prosecuted under sections 202 and 203 of the Indian Penal Code,1860. See. Sankaralinga Kone, (1990) 23 Mad.

Section 161 (3) Cr.P.C. prohibits the making of precis of a statement of a witness or merely recording that one witness corroborates another. The statement, if recorded, must be recorded as made and should not be in indirect form of speech. The writing should be a record in the first person. See. Sudhir Kumar Mandai, (1950) 2 Cal 343. Where investigating officers not recording statement of witness u/s. 162 Cr.P.C. in extenso but making a note that he corroborated the FIR, its held by the court that this is not a statement but the officer's opinion. 1962 Cuttack Law Times (2) 6282/685.

As was pointed out in Bommabayina Ramaiah v. State of A.P., AIR 1960 AP 160:1960 Cr LJ 311, it is essential to note that each statement recorded could be read by itself without necessarily looking into the others. This is made to minimise the chances of contradiction and also avoid any allegation against the IO for having even inadvertently distorted the statement during the process of translating the statement made in a language other than in which it is recorded. If the statement is first recorded in a vernacular language and then translated into English, mere supply of a copy of the English version would not meet the requirements of law. In such a case, the statement in the vernacular being the original statement, copy of it should also be furnished to the accused. See. Muniswamy v. State, 1954 Cr LJ 905 Mysore; In re Rangaswami, 1957 Cr LJ 866 Mad.; Public Prosecutor v. Parasurama Prabhu, 958 Cr LJ 392 Mad. See R. Deb, op. cit., p. 70; Syed M. Afzal Qadri, op. cit., p. 63.

The principle embodied in s. 162 Cr.P.C. ensures that no statement made to the police which is reduced to writing be signed by the person who makes it65 and that no such statement or record of such a statement shall be used for any purpose other than those stated in the section. See. If an investigating officer obtains the signature of a witness on his recorded statement, the evidence of the witness is not thereby rendered inadmissible. It merely puts the court on caution and may necessitate an in-depth scrutiny of such an evidence. State of UP. v. M.K Anthony, AIR 1985 SC 48; Tellu v. State, 1988 Cr LJ 1063 (Del.); Zahiruddin v. Emp., 48 Cr LJ 679 (P.C.); State ofKerala v. Samuel, 1961(1) Cr LJ 505 (Kerala-F.B.)

That is, u/s. 162, a statement recorded under 161 Cr.P.C. can only be used for contradicting the particular prosecution witness by the accused as of right and also by the prosecution to contradict such witness in the manner provided by s. 145 of the Indian Evidence Act, 1872. [Hazari Lal v. State (Delhi Administration), AIR 1980 SC 873: 1980 Cr LJ 564; M.S. Reddy v. State Inspector of Police, 1923 Cr LJ 558 (AP); Mohd. Islam v. State of UP., 1993 Cr LJ 1736 (All.); Hamidulla v. State ofGujarat, 1988 Cr LJ 98 (Guj.); Fateh Singh v. State, 1995 Cr LJ 96. The statement cannot be used for the purpose of contradicting a defence witness or a court witness. Ganga, (1929) 4 Luck 726; Tahsildar Singh, AIR 959 SC 02: 1959 Cr LJ 1231; Shakila Khader v. Nausher Gama, AIR 975 SC 1324.] They cannot be used either as a substantive or corroborative piece of evidence on behalf of the prosecution. [Sat Paul v. Delhi Administration, AIR 1976 SC 294: 1976 Cr LJ 295; Rameshwar Singh v. State ofj&K, AIR 1972 SC 102: 1972 Cr LJ 15; Prakash Sen 11. State, 1988 Cr LJ 1275; jadumanikhant/4 v. State of Orissa, 1993 Cr LJ 2701 (Ori.); jahri Gope, (1928) 8 Pat 279; Sahdeo Gosain, (1944) FCR 223.] They can only be used for raising suspicion against credibility of the witness. [Chinamma v. State of Kerala, 1995 Cr LJ 171 (Ker.).]

According to section 162 (2) of Cr.P.C does not affect the provisions of section 27 of the Indian Evidence Act and therefore information leading to the discovery of a fact made to the police and admissible under section 27 of the Evidence Act , is not rendered inadmissible under this section. As also s. 162 does not affect a dying declaration recorded during investigation u/s. 32 of the Evidence Act and thus it is admissible in evidence. See. Najjam Faroqui v. State, 1992 Cr LJ 2574 (Cal.). See. R. Deb, op. cit. Satish Chandra Seal, (1944) 2 Cal 76; Safi Mohd. Hussain v. U.P., 1992 Cr LJ 755 (All.); Public Prosecutor v. P.N. Rao, 1993 Cr LJ 2789 (AP).

The practice of the investigation officer itself recording a dying declaration ought not to be encouraged. However, such a dying declaration is not altogether excluded but may be used depending upon its veracity. See. Harej Ali v. Assam, 1980 Cr LJ 745 (Gau.); jamiruddin Mol/a v. The State, 1991 Cr LJ 356 (Cal.). The police have to arrange for recording the dying declaration whenever it is necessary.

Provisions of ss. 161 and 163 Cr.P.C. emphasize the fact that a police-officer is prohibited from offering or making any inducement, threat, or promise as is mentioned in s. 24 of the lEA with a view to procureany to make a statement. See. Atma Ram, AIR 1966 SC 1736; Venu Gopal, AIR 1964 SC 33; State of Bombay v. Kathi Kalu, 1961(2) Cr LJ 856 (SC).

But a police officer or other person shall not prevent by any caution any person from making any statement which he may be disposed to make of his own free will. See. Section 163(2) Cr.P.C.

vii. Search and Seizure:--
Searches are also proceedings for the collection of evidence and

therefore part of investigation u/s. 2(h). Section 165, Cr.P.C. authorises a general search on the chance that something incriminatory might be found in connection with an offence. The procedures of the search are also stated ins. 100 Cr.P.C. See also. State of Punjab vs. Balbir Singh, 1994 SCC (3) 299 regarding serach and seizure.

The search should be made in their presence, and the list of things seized in the search and of the places in which they were respectively found, familiarly known as the panchanama, should be signed by them. See. Section 100(5), Cr.P.C.

It has also been held that where conditions under sub-ss. (1) and (3) of s. 165 have not been strictly complied with, it may be only an irregularity and entry in the premises for making search in discharge of official duty cannot be turned into a criminal trespass only on account of such a defect. See. B.S. Thind v. State of HP., 1992 Cr LJ 2935 (HP).

When provisions of this section and s. 100 of the Code are contravened the search can be resisted by the person whose premises are sought to be searched. See. Radha Kishan v. State, AIR 1963 SC 822: (1963) I Cr LJ 809. But even if the search be illegal, it does not justify any obstruction or other criminal acts against the person conducting the search, after search and seizure
are complete. See. Shyam La/, AIR 1972 SC 886: 1972 Cr LJ 638.

It is settled law that once it is found that the evidence of the recovery of articles is reliable, "the illegality of the search however does not make the evidence of seizure inadmissible."See. AIR 1965 Orissa 136-37. SeeArvind Verma, 1997.

According to s. 165(1) Cr.P.C., the 1O can only conduct search within the limits of its thana, but in certain cases a search within the limits of another thana is now authorized. Section 166(1) Cr.P.C. extends the power of the 1O to have such searches carried outside its jurisdiction by requiring the OIC of that thana to cause such search, and in exigencies where in the opinion of the 10 if such requirement may occasion delay that may result in evidence being concealed or destroyed then the concerned officer can go ahead with such search (See. Section 166(3), Cr.P.C.) and shall inform the OIC of the thana under whose limits such search took place.

viii. Test Identification Parade:- Evidence in regard to test identification parades (TIPs) are held in matters of person as well as property. The basic procedural norms for conducting TIPs in either case are essentially the same. The method of conducting tip is enumerated in rule 34 of the Criminal Rules of Practice and Circular Orders, 1990. The precaution that need to be taken by the police is to prevent the identifying witness(es) from seeing the recovered property or the

suspects,as the case may be, before the test identification.
The TIP has to be held without much delay and before the accused goes on bail for once on bail, there is the chance of the accused not only being seen by the witnesses but they could also be influenced by the accused at large. In case the above precautions are not taken that may greatly hamper the value of the evidence in identification.

The police should ensure that all the procedural norms are strictly followed to ensure a fair conduct of the TIP and in that regard, the police manual also prescribes that the panch witnesses need to satisfy themselves.

ix. Arrest:
The arrest and detention of a person for the purpose of investigation of an offence forms an integral part of the process of investigation. Sections 41 and 154 of the Code deal with the powers of arrest by the police. The powers of the police to arrest a person without an order from a Magistrate and without a warrant as provided in s. 41(1) is confined to such persons who are accused or concerned with the offences that are enumerated under nine categories of cases (a-i) or are suspects thereof.
The phraseology of this section entails on one hand a cognate character in consonant with s. 2(c) of the Code wherein the expression "cognizable offence" means an offence for which a police officer may arrest without warrant. Thus proceeding from s. 154, vide s. 156 of the Code, the derivative impression in correspondence with s. 41 is that the arrest of the accused is mandatory as part of the process of investigation.

> See. Arnesh Kumar Vs. State of Bihar, Rajesh Sharama Vs. UP, Judgment dated July 27,2017, and Recent case in Maharashtra-based NGO Nyayadhar's case (2017).

Section 41 Cr.P.C. is a depository of general powers of the police officer to arrest but this power is subject to certain other provisions contained in the Code as well as in the special statute to which the Code is made applicable. See. AvintiSh Madhukar Mukhedkar v. State of MahartiShtra, 1983 Cr LJ 1833 (Born.). See. Arnesh Kumar Vs. State of Bihar, (2014) 8 SCC 273.

Section 41 (l)(d) will have to be read in conjunction with the provisions contained in ss. 155 and 156. Ass. 155(2) prohibits a police officer from investigating a non-cognizable offence without an order of the

Magistrate, then in respect of such an offence a police official cannot

exercise the powers contained in s. 41 (I) (d).
But in case of a person committing or accused of committing a non-cognizable offence in the presence of a police officer does not reveal its name and residence or does so that is believed to be false, the concerned person may then be taken into custody in order that the same may be ascertained. See. Section 42(1), Cr.P.C.

Even in cases u/s. 34 Indian Police Act, 1861, the police shall exercise their powers of arrest without warrant. It is not necessary that arrest is effected only on the occasion of the commission of an offence. The police have also been armed with extensive powers to prevent commission of cognizable offences (ss. 149-151), i.e. offences for which they could arrest without a warrant. If the person so concerned is believed to have "a design to commit any cognizable offence" and "cannot be otherwise prevented," the police officer can forthwith arrest "the person so designing" (s. 151). See.] agdish Chander Bhatia v. State, 1983 Cr LJ NOC 235 (Del.)
Even in cases of bad livelihood, an officer may arrest any person belonging to one or more categories of persons as specified ins. 109 or s. 110 Cr.P.C.

Govind Prasad v. W.B., 1975 Cr LJ 1249 (Cal.). It has been held in Virna/ Kumar Sharma v. State ofU.P. [1995 Cr LJ 2336 (All.)] that a person who has been arrested must be informed of the grounds of arrest with greatest despatch as soon as possible however, it may nor be immediately.

The Hon'ble Full Bench of the Allahabad High Court [vikram v. State, 1996 Cr LJ 1536 (All.)] held that the arrested person must be informed of the bare necessary facrs leading to his arrest including the facts that in respect of whom and by whom the offence is said to be committed, date, rime and place of occurrence of the offence and if this is contested by the accused of being nor informed, it is the burden of the prosecution to establish that the requirements of section 50(1) Cr.P.C. and Art. 22(1) of the Constitution have been fully complied with.

Section 51 of the Code prescribes for passing a receipt in respect of articles seized, other than necessary wearingapparel, from the search of the person arrested under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail, as a precautionary measure for accounting for the articles. Where the accused is not given the grounds of such arrest as per section 50 of the Code, the search under such

conditions becomes illegal.

Section 54 of the Cr.P.C confers the right on an arrested person to have his medical examination done. It is the duty of the Magistrate to inform the arrested person about his right to get himself medically checked and direct the examination of the body of such person by a registered medical practitioner, when an arrested person alleges, either when he is produced before a Magistrate or at any time during the period of his detention in custody that the examination of his body will afford evidence which will disprove the commission by him of any offence or which will establish the commission by any other person of any offence against his body.

Section 56, 57 and 76 of Cr.P.C. has the constitutional sanction vide Art. 22(2) of the Constitution of India which directs that the person arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest excluding the time necessary for journey from the place of arrest to
the Court of the Magistrate.

Section 56 provides that a police officer shall on making an arrest without warrant produce the concerned before a Magistrate having jurisdiction in the case or before the OIC of the thana.

Section 57 echoes clause 2 of Art. 22, mentioned above, but it is to be read with s. 167, as stated in rule 172(a) of the Orissa Police Manual that requires that an accused shall be sent forthwith to the nearest magistrate, together with the copy of the entries in the case diary, within the stipulated time period.

The counterpart of s. 57, s. 76 becomes applicable in case of a person arrested under a warrant. Section 57 and 76 empowers the police officer to keep the arrested person in its custody for a period not exceeding twenty-four hours for investigation in relation to the case for which such arrest has taken place.

In D.K Basu v. State of West Bengal, (1997) 1 SCC 416, the Apex Court lamented the growing incidence of torture and deaths in police custody and felt necessary as it laid down that in addition to the statutory and constitutional requirements, it would be useful and effective to structure an appropriate mechanism for contemporaneous recording and notification of all cases of arrest and detention to bring in transparency and accountability. To that effect, the court issued 11

commandments "to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures."

x. Bail:

The police has on hand another prescriptive process that follows the arrest of an accused or suspect with or without a warrant and that is its decision to either forward the arrestee to the Court or take bail from such person. The Code of Criminal Procedure lays down the provisions as regards bail for which purpose they are broadly classed into two categories in consonance with the classification of the offences, bailable and non-bailable. The police powers to admit to bail is contained in ss. 436, 437, 438, and 441 of the Code.

The basic rule is to release him on bail unless there are circumstances suggesting the
possibility of his fleeing from justice or thwarting the course of justice.
See. State of Rajasthan v. Balchand, AIR 1977 SC 2447: 1978 Cr LJ 195; Gudikanti Narasimhulu v. Public Prosecutor, A.P.,
AIR 1978 SC 429: 1978 Cr LJ 502.

Another area is concerned, Section 441 Cr.P.C. It contemplates furnishing of a personal bond by the accused person and a bond by one or more sufficient sureties conditioned with the time and place for his appearance.

The critical aspect about this section is the discretionary power of the police officer to fix the amount of the bond for such sum of money that it thinks sufficient that shall be executed by such person to be released on bail. It has been held that
an accused person is entitled as of right to bail, provided the necessary conditions prescribed by law are fulfilled and under this section that contemplates the execution of a bond with sureties, the amount of the bond is not to be excessive and is to be fixed with due regard to the circumstances of each case. The amount of the bond should be in accordance with the position in life occupied by the person to be released on bail. Further, not monetary suretyship but undertaking by relations of the petitioner or organisations to which he belongs may be better and more relevant. See. Daulat Singh, (1891) 14 All. 45; Rajballam Singh, (1943) 22 Pat. 726; Niamat Khan, (1950) 30 Pat. 886; Banarashidas, (1937) Nag. 168; State of Rajasthan v. Balchand, AIR 1977 SC 2447: 1978 Cr LJ 195; Mohd Tariq v. Union of India, 1990 Cr LJ 474: 1989 All LJ 85. See Syed H. Afzal Qadri, op. cit., pp. 99, 101;

In this case, the Court demonstrated an uncompromising posture to any such police deviance in the following citation: In Advocate General Bihar v. M.P. Khari Jndustries, AIR 1980 sc 946: this Court held that" .... It may be necessary to punish as a contempt a course of conduct, which abuses and makes a mockery of the judicial process and which thus extends its pernicious influence beyond the parties to the action and affects the interest of the public in the administration of justice. The

public have an interest, an abiding and a real interest and vital stake in the effective and orderly administration of justice, because unless justice is so administered, there is the peril of all rights and liberties perishing. The Court has the duty of protecting the interest of the public in the due administration of justice and so it is contempt of Court not in order to protect the dignity of the Court against 'Contempt of Court' may seem to suggest, but to protect and to vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfered with. "

xi. Remand:

When any investigation cannot be completed within 24 hours of the arrest of an accused vide s. 57 of the Code and that there are reasonable grounds for believing that the accusation or information is well-founded and the station officer is further in a position to show satisfactory grounds for the application for a special order for the detention of the accused in police custody u/s. 167 Cr.P.C., (for detailed discussion on 'police custody', refer to 'CBI Vs. Anupama Kulkarni, 1992 SCR (3) 158) the SHO of the police station or the investigation officer not below the rank of sub-inspector shall forward the accused to the nearest Judicial Magistrate (whether or not he has the jurisdiction to try the case), together with a copy of the entries in the case diary relating to the case, and report the matter to the Superintendent, but in no case shall the accused remain in police custody for a longer time than is reasonable without the authority of a Magistrate. See. Article 22(2), Constitution ofindia; Section 167(1), Cr.P.C.

Where a Judicial Magistrate is not available, it is the Executive Magistrate that does the needful with the procedures remaining the same except that the detention will be for a term not exceeding seven days and any further extension of the remand will be done by the competent Magistrate with the Executive Magistrate transmitting all the records of the case to the nearest Judicial Magistrate. Section 167(2A), Cr.P.C.

Where the accused surrendered in the Court and the prosecution applied for police custody, but the prayer could not be granted till the expiry of first fifteen days, it was held that the Magistrate rightly refused police custody (Bhajan Lal v. State of U.P., 1996 Cr LJ 460 (All.).

Where members of the army or the para-military come in aid of civil authorities for maintenance of law and order, they have absolutely no authority or power of investigation or interrogation. The Court has held that the remand of accused to the army custody on prayer of IO is highly improper, illegal and ultra vires of the Constitution. Shri joyanta Borbora v. State of Assam, 1992 Cr LJ 2147 (Gau.)

In Khatri v. State of Bihar, popularly known as the "Bhagalpur Blinding

case," [(1981) 1 SCC 632: AIR 1981 SC 928: 1981 Cr LJ 470], that the Magistrate or Sessions Judge before whom the accused appears is under an obligation to inform the accused that if he is unable to engage a lawyer on account of poverty, he is entitled to obtainfree legal service at the cost of the State. The Supreme Court has given necessary directions to Magistrate,Sessions Judges and State Government with guidelines to be followed in this regard.

The police have no right to refuse to allow the legal adviser of an accused person, remanded to their custody, to interview him, or his relatives to supply him with food and clothing, as long as they satisfY themselves that no objectionable articles are supplied. [Llewelyn Evans, (1926) 28 Born LR 1043: 50 Born 741] The right of the accused to consult and to be defended by a lawyer of his choice is guaranteed under Art. 22(1) of the Constitution of India.

In Khatri v. State of Bihar, Sandip Kumar Dey and Hussainara Khatoon cases, it was held that the Magistrates need to see that the accused is produced before the court when the remand order is passed and cautioned the Magistrates that in granting remand they should not act mechanically.

xii. Interrogation:

Interrogation is an engagement process that represents one of the first points of contact between the police and the 'publics' related to the case, as s. 161 of the Code do not distinguish those who are interrogated as complainant, victim, accused, accomplices or witnesses. See also. Criminal Law (Amendment) Act,2013.

Section 162, Cr.P.C. does not affect the provisions of s. 27 of the Indian Evidence Act, 1872 and therefore information leading to the discovery of a fact made to the police and admissible ufs. 27 of the Evidence Act, is not rendered inadmissible u/s. 162 and do not offend against Art. 14 of the Constitution oflndia. Ramakrishna v. State of Bombay, 1955 Cr LJ 196 (SC).

The process of interrogation comprises of the act of an impeller-custodian against a person in its custody by arrest, police remand, or even where the custody per se is unauthorised. The police habit of charging the people, then beat up with standardised crimes even got the name of mock crime. The larger problem is that the victims of the commonly reported incidents of police violence are generally the poor alleged in case of petty crimes.

xiii. Investigation: its subsequent adjudication between the police and the Magistrate.

1. The executive function of the police department.

Investigation of an offence is the field exclusively

> reserved for the executive through the police department, the superintendence over which vests in the State Government. The executive which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed it is its bounden duty to investigate into the offence and bring the offender to book. Once it investigates and finds an offence having been committed it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the Court requesting the Court to take congizance of the offence under section 190 of the Code its duty comes to an end subject to the provision contained in Section 173 (8).

xiv. Whether a magistrate could direct the police to submit a charge-sheet, when the police, after investigation into a cognizable offence, had submitted a report of the action taken under s. 169, Cr.P.C., that there was no case made out for sending up the accused for trial.

> "Magisterial vigil does not terminate on the filing of the police report on the conclusion of the investigation and the court is not bound to accept the results of an investigation conducted by the police. In the case the police concludes that no case is made out against the accused, the Magistrate has to issue a notice to the informed/victim and hear him out. After hearing the informant, the court can, notwithstanding the closure report, choose to proceed with the matter, as a case based on police report or even a prior complaint."

1. There was no such power conferred on a magistrate either expressly or by implication. See. Abhinandan Jha & Ors vs Dinesh Mishra, 1967 SCR (3) 668

2. When a cognizable offence is reported to the police they may after investigation take action under s. 169 or s.170 Cr.P.C. If the- police :think there is not sufficient evidence against the accused, they may, under s. 169 release the accused from custody on his executing a bond to appear before a competent magistrate if and when so required; or, if the police think there is sufficient evidence, they may, under s.170, forward the accused under custody to a competent magistrate or release the accused on bail in cases where the offences are bailable. In either case the police should submit a report of the action taken, under s.173, to the competent magistrate who- considers it judicially under s. 190 and takes the following action :

> (1) If the report is a charge-sheet under s.170 it is open to the magistrate to agree with it and take cognizance of the offence under s.190 (1) (b); or to take the view that the facts disclosed do not make out an offence and decline to take cognizance. But he cannot call upon the police to submit a report that the accused need not be proceeded against on the ground that there was not sufficient evidence.
> (2) If the report is of the action taken under s.169, then the magistrate may

agree with the report and close the proceeding. If he disagrees with the report he can give directions to the police under s.156 (3) to make a further investigation. If the police, after further investigation submit a charge-sheet, the magistrate may follow the procedure where the charge-sheet under s.170 is filed; but if the police are still of the opinion that there was not sufficient evidence against the accused, the magistrate may agree or disagree with it. Where he agrees, the case against the accused is closed.

(3). Where the magistrate disagrees and forms the opinion that the facts set out in the report constitute an offence, he .can take cognizance under s.190 (1) (c). The provision in s.169 enabling the Police to take a bond for the appearance of the accused before a magistrate if so required, is to meet such a contingency of the magistrate taking cognizance of the offence notwithstanding the contrary opinion of the police. The power under s.190 (1) (c) was intended to Secure that offences may not go unpunished and justice may be invoked even where persons individually aggrieved are unwilling or unable to prosecute, or he police either wantonly or through a bona, fide error do not submit a charge-sheet. But the magistrate cannot direct the Police to submit a charge-sheet, because the submission of the report depends entirely upon the opinion formed by the police and not on the opinion of the magistrate. The magistrate, if he disagrees with the report of the police, can. himself take cognizance of the offence under s.190 (1) (c) or (c), but, be cannot compel the police to form a particular opinion on investigation and submit a report according to such opinion. In Abhinandan Jha's case, State of Gujarat v. Shah Lakhamshi, A.I.R. 1966 Gujarat 283 (F.B.); Venkatusubha v. Anjanayulu, A.I.R. 1932 Mad. 673; Abdul Rahim Vs. Abdul Muktadin, A.I.R. 1953 Assam 112 ;Amar Premanand Vs. State, A.I.R. 1960 M.P. 12 and A.K.Roy vs. State of West Bengal. A.I.R. 1962 Cal. 135 (F.B.) approved. State Vs. Muralidhar Govardhan, A.I.R. 1960 Bom. 240 and Ram Wandan v. State, A.I.R. 1966 Pat. 438, disapproved.

xv. Investigation by Police-Further investigation in case in which one investigating officer had submitted a final report under Section 172 (2) of Criminal Procedure Code, 1973, but on which the Court had not passed any order-

Section 156 enables the officer in-charge of a Police Station to investigate without the order of a Magistrate into a cognizable case committed within the area of the police station. Section 173 (8) enables an officer-in-charge of the Police Station to undertake for their investigation in a case where he has already submitted a report under sub-section (2) of Section 173 and if in course of such further investigation he collects additional oral or documentary evidence, he has to forward the same in the prescribed form to the Magistrate. See. State Of Bihar And Anr vs J.A.C. Saldanha And Ors,1980 AIR 326.

xvi. Magistrate Can't Order Further Investigation At Post Cognizance Stage:- On 2 February, 2017, a two Judge bench of the Hon'ble Supreme Court in Criminal Appeal No. 1171 OF 2016 (Arising out of S.L.P (Criminal) No.3338 OF 2015),

Amrutbhai Shambhubhai Patel Vs.Sumanbhai Kantibhai Patel and Ors,held that Magistrate cannot order further investigation

after the cognizance has been taken, process has

been issued and accused has entered appearance in response thereto. Similarly, In Nandita Sethi vs. State of Orissa, Crl. Revision no. 478 of 2016, the Hon'ble Orissa High Court held that Magistrate Can't Direct Further Investigation On Defacto Complainant's Plea.

> The power of the Magistrate under section 156 (3) to direct further investigation is clearly an independent power and does not stand in conflict with the power of the State Government. The power conferred upon the Magistrate under section 156 (3) can be exercised by the Magistrate even after submission of a report by the investigating officer which would mean that it would be open to the Magistrate not to accept the conclusion of the investigating officer and direct further investigation. This provision does not in any way affect the power of the investigating officer to further investigate the case and even after submission of the report as provided in section 173 (8). See. State Of Bihar And Anr vs J.A.C. Saldanha And Ors,1980 AIR 326.

xvii. "inquiry" and "investigation"-Difference between.

Investigation is a matter for the police under the scheme of the Code. Judicial opinion seems to be settled and there are several authorities of the Supreme Court where interference by the Court into police investigation has not been approved. There is however. residuary jurisdiction left in the court to give directions to the investigating agency when it is satisfied that the requirements of the law are not being complied with and investigation is not being conducted properly or with due haste and promptitude. The court has to be alive to the fact that the scheme of the law is that the investigation has been entrusted to the police and it is ordinarily not subject to the normal supervisory power of the court. See. State Of West Bengal & Ors. Etc vs Sampat Lal & Ors. Etc, 1985 SCR (2) 256.

"The main distinction, therefore, was that inquiry was a magisterial process while investigation was the process of collection of evidence through the police machinery."

"When an unnatural death occurs or a prima facie case of the commission of a cognizable offence is brought to the notice of the police authorities, it is their duty under the Code of Criminal Procedure to conduct an investigation and ascertain the cause of the death. See. State Of West Bengal & Ors. Etc vs Sampat Lal & Ors. Etc, 1985 SCR (2) 256.

III. Conclusion: According to A.S. Gupta, the bad reputation of the police had led to the recommendation by the Second Law Commission in 1855 that they should not have any authority to record the confession of an accused person. See. A.S: Gupta, The Police in British India (1861-1947), Concept Publishing Co., New Delhi, 1979, p. 204. Bench of the Hon'ble Supreme Court, consisting of Justice Doraiswamy Raju and

Justice Arijit Pasayat, described the acquittal of the 21 accused by the High Court that upheld the fast track court's judgment, as nothing but a travesty of truth and a fraud on the legal process. It also said that "no sanctity or credibility can be attached and given to the so-called findings." The Hon'ble Bench noted that "the investigation (in the case) appears to be perfunctory and anything but impartial, without any definite object of finding out the truth and bringing to book those who were responsible for the crime."

Inasmuch as the cutting edge of the rule of law that wields so great a power, there was the only one thing in the police that affected the people and the government the most and according to Sir John Woodburn, Lieutenant-Governor of Bengal, "the evil is essentially in the investigating staff. It is dishonest and it is tyrannical ... ". According to him, "The honest policeman rigs the evidence to convict the man he knows is guilty. Perhaps it is the only way he can get a conviction. The dishonest policeman rigs the evidence to convict a man he knows is innocent." That the process of investigation characterizes the nature of policing to a great extent and constitutes as one of the most important occasions for bringing the police and 'publics' into contact. The process is not an indivisible whole, but involves many interactional stages assuming different forms of contact appropriate to each. There prevails a serious crisis of confidence that afflicts public opinion toward the police. Thus, to minimize the improprieties in the process of criminal investigation, it requires a holistic approach that studies the issues and problems of police work in its wider organizational and societal contexts to formulate meaningful schemes in significantly altering the contemporary practice of police investigation, a fortiori, an illegal investigation does not vitiate trial.

"Trial judge as the kingpin in administration of Justice.."

--- See. All India Judges Association vs Union Of India (Uoi) And Ors.

Citations: AIR 2002 SC 1752, 2002 (3) ALD 39 SC, 2002 (4) ALT 41 SC, 2002 (2) AWC 395 SC, 2002 (2) BLJR 1144, 2002 (5) BomCR 242, 2002 (93) FLR 628, (2002) 3 GLR 2017, 2002 (2) JCR 248 SC, JT 2002 (3) SC 503, 2001 (2) SCALE 327, (2002) 4 SCC 247, 2002 2 SCR 712, 2002 (2) SCT 735 SC, 2002 (2) SLJ 480 SC, (2002) 2 UPLBEC 1246.

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