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An Analysis of Process of Investigation under section 156 of Code of Criminal Procedure

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Abstract
In our society, a person can be a witness or a victim of the criminal offence. When any crime is committed in the society then it comes to the knowledge of the investigating officer after that the process of investigation starts. Code of Criminal Procedure, 1973, prescribes the how the process of investigation starts and where it comes to an end. But this paper only focuses how Supreme Court and High Courts interprets this section by taking different types of cases and even its scope and power of the Magistrate have been both expanded and limited in different spheres.

Keywords: *Criminal offence, Code of Criminal Procedure, 1973, Indian Penal Code, investigation*

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INTRODUCTION

In our society, anyone can either be a witness to or a victim of the criminal offence. In this way, to handle such social issue, the Code gives an exhaustive statutory component to conjuring, usage trial and punishment of a guilty under different methodologies. Keeping in mind the scope and developments in the interpretation of section 156(3) of the Code, it is pre essential to see how criminal law can be determined from the complaint made by the complainant either to the magistrate the police. As such, how the process of investigation by the organization of the police initiates.

WHEN THE COMPLAINANT/INFORMANT APPROACHES THE POLICE

According to Indian Penal Code and the Code of Criminal Procedure, there are two types of criminal offences—cognizable and non-cognizable. The drafters have made such distinction for the police investigation. The Procedure of investigation in both the offences initiates differently. A cognizable offence is an offence which comes under the purview of the cognizable case means, a case in which a police officer has the power to arrest the accused without warrant according to the First Schedule of this code or under any other law for the time being in force and also have the power to investigate the case with or without order of the magistrate [1]. At that point when an FIR lodged relating to the cognizable offence, then an officer in charge will proceed towards the process of investigation of the case according to the provisions of chapter XIII of the code [2]. Here they will proceed without an order of the magistrate [3]. To examine without any direction from Magistrate is the statutory right of the police thus cannot be meddled with or controlled by the judiciary [4]. With the conclusion of the examination, police will submit the final report to the Magistrate under section 173 of the Code. Depending on the circumstances, the latter can either take cognizance of the offence or make an order under section 202 of the Code. If the Magistrate finds no substance in the police report, he/she can reject the case. Non-cognizable offence means that the police have no authority to arrest without warrant in non-cognizable case [5]. When it is found that the information relates to the non-cognizable cases, the book which is kept by the officer in charge shall be recorded according to the format as the State Government may recommend in this behalf, and transfer the information to the magistrate [6].

WHEN THE COMPLAINANT/INFORMANT APPROACHES THE MAGISTRATE

Another scheme through which one can benefit criminal justice is by revealing the criminal offence to a Magistrate. As we all know that, the information relating to offence provided to the police is termed as FIR, but the information which is given to the Magistrate is termed as complaint [7]. It does exclude police report. However, a post-investigation police report which unveils the commission of a non-cognizable offence should be esteemed to be a complaint; and the reporting police officer shall be deemed to be the complainant. After receiving the complaint, the first step of the magistrate is to take the cognizance of the offence. The expression takes the cognizance of the complaint has been explained by the Hon'ble Supreme Court as: "The expression "cognizance" has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means "become aware of" and when used concerning to a court or a Judge, it connotes "to take notice of judicially." When magistrate or court takes judicial notice of the crime, then it is intended that it initiates the proceedings in respect of such offence [8]. It indicates a point where a court or a Magistrate takes judicial notice of a crime intending to start proceedings in regard of such offence said to have been committed by someone. Further, it is entirely a different thing from initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases/offences and not of persons [9]. Code recommends that any Magistrate (first class or second class) when empowered by the Chief judicial may take cognizance of any offence on complaint upon receiving a complaint of facts which constitutes such offence; or upon police report of such facts or; information received from any other person other than police report upon information received from any person other than a police officer, or upon his own knowledge, he got to know that such offence has been committed [10]. The Magistrate shall examine the complainant and witnesses on oath after taking cognizance. Those examinations will be reduced to writing and will be signed by the complainant and the witnesses [11]. Under section 202 of the Code, Magistrate will collect the necessary material after examination of the complainant and witnesses; if there is no sufficient ground for proceeding, then he shall dismiss the complaint [12] and shall briefly record the reason. Or; if Magistrate has the adequate ground for proceeding then he shall issue process [13]. Issue the process denotes issuance of warrant and summons for warrant case and summon case respectively. When the magistrate is unable to make absolute decision because of doubt then under section 202 he may postpone the issue of process against accused, in that case, he may either enquire himself or direct the investigating officer to investigate or direct any other such person as he thinks fit, to find out whether there is sufficient ground for proceeding or not. This is called as the post-cognizance investigation.

In the case of *Rajul Ketan Raj vs. Reliance Capital Ltd. and Ors* [14], Bombay High Court held that the principal object of the section 202 of the Code is that the unscrupulous persons do not harass innocent persons residing beyond the jurisdiction of Magistrate by filing false or vexatious complaints. It casts the duty on the magistrate to arrive at prima facie satisfaction whether or not there is sufficient ground to proceed against accused residing beyond his jurisdiction. Even in the case *Chandra Deo Singh v. Prokash Chandra Bose & Anr,*[15] The Hon'ble Supreme Court held the object of provisions of section 202 is that whether the process should be issued or not by the opinion of magistrate. To remove this hesitation from his mind, a magistrate may have felt upon the simple examination of the complaint and the thought of the complainant's evidence on oath.

Section 156(3) speaks that, after receiving the complaint, the magistrate instead of taking cognizance may order an investigation (investigation signifies that the police did an investigation in an alleged cognizable offence) by the concerned Officer in charge. Here, Magistrate is empowered under section 190 of the Code.

Indian judiciary on multiple occasions has given different usage and interpretation to section 156(3) of the Code. It is explained below with the assistance of various cases:

Whether the magistrate has the power to direct the police to register the FIR when an investigation under section 156(3) of the Code is directed or in other words whether the Magistrate is empowered to direct the police to register an FIR even when he has not taken the cognizance and without examining the complainant on oath?

In Mohd. Yousuf v. Afaq Jahan [16], Court held that any judicial Magistrate could order investigation under Section 156(3) of the Code before taking cognizance of the offence. In the event that he does as such, he is not to look at the complainant on oath since he was not taking cognizance of any offence in that. To enable the police to start investigation it is available to the Magistrate to direct the police to register an FIR; it cannot be said as illegal. Registration of an FIR includes just a way toward entering the substance of the information identifying with the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated under section 154 of the code. Regardless of whether a magistrate does not state in such a significant number of words while directing the investigation under section 156(3) of the code that FIR ought to be registered, it is the obligation of the officer in charge of the police station to register the FIR with respect to the cognizable offence disclosed by the complainant since that police could take additional steps examined in Chapter XII of the code just from thereon.

In like manner, the case of *Sakiri Vasu v. State of U.P.*[17] The Supreme Court observed that: In the event, a person has a grievance that the police station is not registering his FIR under Section 154 CrPC, at that point he can approach the Superintendent of Police under Section 154(3) CrPC by an application in writing. Regardless of, whether that does not defer any satisfactory outcome, as in either the FIR is as yet not registered, or that even in the wake of registering it no appropriate investigation is held, it is available to the aggrieved person applies to Section 156(3) CrPC before the learned Magistrate concerned. In the event an application under Section 156(3) is recorded before the Magistrate, the Magistrate can direct the FIR to be registered and furthermore can direct an appropriate investigation to be presented, in a case where, as per the aggrieved person, no proper investigation was made. The Magistrate can monitor the investigation under the same provision to ensure an appropriate investigation.

Whether the Magistrate is empowered under section 156(3) of the Code order an investigation from the Central Bureau of Investigation?

In *Central Bureau of Investigation v. State of Rajasthan and another* [18] Case; The Supreme court held that the Magistrate has no authority to order an investigation by the Central Bureau of Investigation under section 156(3) of the Code. A Court while exercising revisional powers place itself into the situation of the Court passing the reviled order and then examines the question and overhauls the order if need be. Along these lines, while exercising revisional powers this Court would not be able to order an investigation through C.B.I. or C.I.D. [19].

What is the nature of the order of the Magistrate under section 156 (3) of the Code?

In the case of *Chandra Kant Keshavlal Shah v. State of Gujarat* [20], The Supreme Court held that any order passed under Sections 200, 202 or 156(3) of the Code is nothing but interlocutory order.

What is the course of actions available to a person who has a grievance that the police station is not registering his FIR under Section 154 of the Code?

In the case of *Sakiri Vasu v. State Of U.P. and Others* [21], Court held that; there are two options open to such person which can be availed if either one of them is not yielding a satisfactory result. They are:

He/she can approach the Superintendent of Police under Section 154(3) of the Code by an application in writing or;

Under section 156(3) of the Code he/ she can apply before the concerned Magistrate who can bring into motion the provisions of Chapter XII of the Code.

Whether the Magistrate can interfere with the investigation ordered by him under section 156(3) of the Code?

In *State of Bihar vs. A.C. Saldanna* [22], Supreme Court held; the following points:

a. When a Magistrate receives a complaint, he is not bound to take cognizance of the offense from the facts alleged in the complaint made under section 200 of the Code. It is clear from the use of the word "may" used in the section 190(1) of the Code.
b. The power under section 156(3) is to save the valuable time of the court and shift the task of checking the integrity of the matter to the investigating agency of police.

Whether the petition filed under section 156(3) of the Code constitute a complaint?

In *Popotbhai Bhutani & Ors. v. State of Maharashtra* [23], Court held that a Petition under Section 156(3) cannot be strictly construed as a complaint in terms of Section 2(d) of the Code and absence of a specific or improperly worded prayer or lack of complete and definite details would not prove fatal to a petition under Section 156(3), in so far as it states facts constituting ingredients of a cognizable offence. Such petition would be maintainable before the Magistrate. However, the Magistrate has the power to treat the application for investigation under section 156 (3) as a complaint and order the inquiry or investigation as the case may be under section 202 of the Code [24].

Gour Hari Jana v. State of West Bengal [25], the court disposing of a criminal appeal in 2016, the Calcutta High Court directs Magistrates in the State to make sure that order for investigation under section 156(3) of the Code must arrive at Police station immediately. The court addressed the issue that the complaint which was to be treated as F.I.R. for investigation entered the police station after one month and one week of lodging the complaint. The court went on to say that – In our view, if such practice is not disallowed now the criminal justice system in the State might be genuinely influenced. Delay will be caused at the beginning of the police investigation, and vital evidence may vanish due to the lapse of time which will obstruct in unfolding the truth because there is no restriction of time as mentioned under Section 156 (3) Cr.PC. for communicating the order for an investigation to the officer-in-charge of a police station, the undue delay causes irregular instead of illegal in this case. Such irregularity can be cured by the judicial pronouncements in the interest of justice.

Whether the Magistrate after taking the cognizance of the offense under section 190 of the Code direct an investigation under section 156(3) of the Code?

Blue Dark Express Ltd. v. State of Maharashtra [26], Court held that the magistrate isn’t allowed to act in the pre-cognizance stage once he/she has taken the cognizance.

What shall be the format of an application filed to the Magistrate under section 156(3)?

*Pandharinath Narayan Patil & Ors. vs. State of Maharashtra & A*nr [27]. Bombay High Court held that neither the Code nor any law prescribes any particular format for application under this provision. It doesn’t even or contemplates verbatim reproduction of the factual allegations or all the ingredients of the alleged offence. However, the application shall contain two things in particular. Firstly, the facts disclosing commission of the cognizable offence. Secondly, the police have failed to exercise powers under section 154 despite strong intimation.

In same case [28], there was another issue; what approach shall the Magistrate follow while dealing with the application under section 156(3)?

Here, the court held—it is thus well settled that the powers under section 156(3) of the Code cannot be exercised mechanically but are required to be exercised judiciously. The magistrate is not required to embark upon an in-depth roving enquiry as to the reliability or genuineness of the allegations; nonetheless, he has to arrive at a conclusion that the application discloses necessary ingredients of the offence for which investigation is intended to be ordered. Furthermore, the reasons for arriving at such conclusion should be reflected in the order.

Whether the applications under section 156(3) of the Code has to be supported by an affidavit by the applicant?
In the case of *Priyanka Srivastava and Another v. State of U.P.* [29], the Supreme Court has given the landmark judgement, which from now all the applications under section 156(3) of the Code has to be supported by an affidavit duly sworn by the applicant who looks for invocation of the jurisdiction of the Magistrate. The Supreme Court intends to eliminate the false applications routinely made to harass the innocent citizens. It will create a sense of responsibility towards the malicious complainant.

Whether discretion of the Magistrate to call for a report under Section 202 instead of directing investigation 156(3) is controlled by any defined parameters?
Recent case of *Ramdev Food Products (P) Ltd. v. State of Gujarat* [30]**,** Supreme Court observed thus: under Section 156(3), the direction is to be issued, simply after use of mind by the Magistrate. At that point when the Magistrate does not take cognizance and does not think that it's important to postpone the issuance of process and finds a case made out to continue forthwith, a direction under the said provision issued. As it were, where on account of credibility of information accessible, or measuring the enthusiasm of justice it is viewed as suitable to a straightaway direct investigation, such a direction is issued.

Another issue has risen in the above case, i.e., whether in the course of investigation in pursuance of a direction under Section 202; the Police Officer is entitled to arrest an accused?

Here court said that the police have no power to arrest under section 202 of the Code.

Whether registering of F.I.R by the police is mandatory when an investigation under section 156(3) of the Code is directed by the concerned Magistrate?
In the case of *Hemant Yashwant Dhage v. State of Maharashtra* [31], it is available to the Magistrate to direct the police to register an F.I.R. and even where a Magistrate does not do as such in unequivocal words but directs for investigation under Section 156(3) of the Code, the police should register an F.I.R. since Section 156 falls in chapter XII of the Code which deals with the powers of the police officers to investigate cognizable offences, the police officer concerned dependently be in a superior position to take further steps contemplated in Chapter XII once F.I.R. is registered in regard to the concerned cognizable offence.

Whether revision petition filed under section 397 of the Code against the order of the Metropolitan Magistrate passed under section 156 (3) of the Code is maintainable or not?
In the case of *Nishu Wadhva v. Sidharth Wadhva & Anr* [32], the revision petition is maintainable because of only the directions under section 156 (3) of the Code have been issued and no cognizance has been taken. The Court also said that if revision petition is not allowed it would go against the stand of the Supreme Court (*Amar Nath v. State of Haryana* and *Raghu Raj Singh Rosh v. Shivam Sundram Promotors Pvt. Ltd. & Anr* [34])

In the same case, another issue has risen whether the Metropolitan Magistrate had territorial jurisdiction to entertain the application under section 156 (3) of the Code and pass orders thereon as the investigation had been transferred? Court held that there is no element of territorial jurisdiction under section 154 of the Code; however, it is present in the investigation under section 155 and 156 of the Code. Hence, the Magistrate is bound by the territorial jurisdiction and allowed to direct the officer-in-charge of a police station to investigate a cognizable offence under section 156 (3) of the Code which is within the jurisdiction of its local area only.

Whether an order directing further investigation under Section 156(3) of the Cr.PC. can be passed in relation to a public servant in the absence of valid sanction?
In the case of *L. Narayana Swami v. State Of Karnataka & Ors* [35], the Apex court placing its reliance upon section 19(1) of the Prevention of Corruption Act, 1947 and two of the landmark cases of *Anil Kumar vs Aiyappa* [36] and *Manharibhai Muljibhai Kakadia and*

Anr. v. Shaileshbhai Mohanbhai Patel and Ors [37] reiterated that once it is noticed that there was no previous sanction, the Magistrate cannot order an investigation against a public servant while invoking powers under section 156(3) of the Code. In the present case, the Bench held that there was an absence of valid sanction so that a magistrate can order for an investigation.

CONCLUSION

Over the course of time, it is evident that the section 156(3) has been interpreted by different High Courts and the Supreme Court in different fashions. Its scope and power of the Magistrate have been both expanded and limited in different spheres. Since the law is an evolving subject, the Code being a significant procedural statute will be used and applied in different spheres of life as per the circumstances, so will its section 156(3).

As discussed above, there are two other courses available to a person who seeks remedy for a cognizable and non-cognizable offence. The option regarding going directly to the Magistrate and get an order under section 156(3) is still not common knowledge. The state, as well as judiciary, shall take up steps to spread this awareness so that, no reasonable victim of crime cannot be harassed by the police in an order to set the criminal law in motion.

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