Role of Magistrate in Investigation

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CONTENTS

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Law is experience developed by reason and applied continually to further experience.

- Roscoe Pound

Introduction on Investigation

It is quite obvious, the Judges serving in the Criminal Side, used to explore frequently, on the word "Investigation" to combat with day-today issues surrounded on the topic. This small piece of work, is aimed to facilitate the Judges when they held-up in quest, about the topic and make this article as a ready reckoner of decisions touching the sphere of Investigation, with limited scope. This compilation has been carried out with an endeavour to sensitize the Magistracy, as pro-active and responsive.

Before reaching the precedents on the topic, it is more appropriate to have a look on the concept and evaluations of word "investigation". As per Sec. 2 (h) of Cr. P.C., investigation has been defined in following terms :

> (h) "Investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf;

At this juncture, it pertinent to refer that there are lot of difference between the two phrases *'Investigation'* and *'Inquiry'* under Criminal Law. As stated above, Sec. 2(h) of Cr.P.C defined the word 'Investigation'. As the same way, S. 2(g) of Cr.P.C

defines the word 'Inquiry'. The definition given in Sec. 2(g) Cr.P.C extracted hereunder for reference :

> Sec. 2(g) : ”Inquiry” means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court.

Some prominent definitions on Investigation:

* A duly authorized, systematized, detailed examination or inquiry to uncover facts and determine the truth of a matter. This may include collecting, processing, reporting, storing, recording, analyzing, evaluating, producing and disseminating the authorized information.

* A criminal investigation is an official effort to uncover information about a crime. There are generally three ways that a person can be brought to justice for a criminal act. First, and probably the least likely, the individual will be driven by his conscience to immediately confess. Second, an officer of the law can catch him in the act. Third, and most common, a criminal investigation can identify him as suspect, after which he may confess or be convicted by trial. In most cases, when a crime is committed, officials have two primary concerns. They want to know who committed the crime, and what the motive was. The reason why a person breaks a law is called the motive. The motive does not always come after identifying the perpetrator in a criminal investigation. Sometimes the motive is suspected or known and used to catch the criminal. This is often true with crimes such as

kidnappings and murders. Notes or other forms of evidence may be left that reveal why the crime has been committed.

* An inquiry into unfamiliar or questionable activities; "a congressional probe into the scandal".

* The work of inquiring into something thoroughly and systematically.

It is not out of place to refer the definition expounded by the famous American Lawyer and Author, *Erie Stanley Gardner,* in his book *The Case of the Bigamous Spouse, 1961,* and he portrayed about the Investigation, as,

> An investigation conducted without definite purpose, plan, or regard to standards of propriety, in hopes of acquiring useful (and usually incriminating) evidence or information; apparently aimless interrogation designed to lead someone into incriminating himself. This expression refers to the literal fishing expedition in which, armed with basic equipment, one goes after his prey without knowing exactly what, if anything, he will catch. The more skillful and experienced the fisherman, though, the better are his chances of successfully catching his quarry.

That apart, the Code of Criminal Procedure itself defined in Sec. 157 Cr.P.C about the procedure for investigation preliminary inquiry.

Sec. 157. Procedure for investigation preliminary inquiry.

> 1. If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate

empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender;

Further more, the Chapter XXX of Tamil Nadu Police Standing Orders deals with the investigation. Especially, the Proviso to PSO 566(1) is most significant and ensure the concept of fair investigation. The relevant portion extracted hereunder :

"PSO 566. Investigation to be impartial (1) Investigating officers are warned against prematurely committing themselves to any view of the facts for, or against a person. **The aim of an investigating officer should be to find out the truth, and to achieve this purpose, it is necessary to preserve an open mind throughout the inquiry."**

The Sec 173 (1) of Cr.P.C adumbrated that the Investigation shall be completed without unnecessary delay. The relevant portion runs as :

(1) Every investigation under this Chapter **shall be completed without unnecessary delay.**

Apart from the above connotations, the manner and procedure of Investigation has been discussed and outlined by our superior courts in

various decisions. An handful of desicions are extracted and cited hereunder for easy reference.

The Full Bench of Hon'ble Apex Court in **H. N. Rishbud And Inder Singh Vs. The State Of Delhi,** reported in **1955 AIR 196 = 1955 SCR (1)1150** defined the Investigation in following terms,

> " Investigation usually starts on information relating to the commission of an offence given to an officer in charge of a police station and recorded under section 154 of the Code…
>
> …….By definition, it includes "all the proceedings under the Code for the collection of evidence conducted by a police officer". For the above purposes, the investigating officer is given the power to require before himself the attendance of any person appearing to be acquainted with the circumstances of the case…..
>
> Thus, under the Code 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."

In **Adri Dharan Das Vs. State of West Bengal [AIR 2005 SC 1057]** it has been opined by the Apex Court that:

"arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and connection of other persons, if any, in the crime."

In **Niranjan Singh Vs. State of U.P. [1957 AIR 142, 1956 SCR 734]**, it has been laid down by the Apex Court that investigation is not an inquiry or trial before the Court and that is why the Legislature did not contemplate any irregularity in investigation as of sufficient importance to vitiate or otherwise form any infirmity in the inquiry or trial.

In **S.N.Sharma Vs. Bipen Kumar Tiwari [1970 AIR 786, 1970 SCR (3) 946],** it has been observed that the power of police to investigate is independent of any control by the Magistrate. Further it was apparently held that Sec. 159 Cr.P.C. does not empower a Magistrate to stop investigation by the police.

In **State of Bihar Vs. J.A.C. Saldanha [1980 AIR 326, 1980 SCR (2) 16]**, it has been observed that there is a clear cut and well demarcated sphere of activity in the field of crime detection and crime punishment and further investigation of an offence is the field exclusively reserved for the executive in the Police Department.

In **Manubhai Ratilal Patel Vs. State of Gujarat and Others, [(2013) 1 SCC 314]**, the Hon'ble Apex court held as

> "It is apposite to note that the investigation, as has been dealt with in various authorities of this Court, is neither an inquiry nor trial. It is within the exclusive domain of the police to investigate and is independent of any control by the Magistrate. The sphere of activity is clear cut and well demarcated. Thus viewed, we do not perceive any error in the order passed by the High Court refusing to grant a writ of habeas corpus as the detention by virtue of the judicial order passed by the Magistrate remanding the accused to custody is valid in law. "

When an Investigation Officer may Refuse to do Investigation ?

Section 157 (1) (b) of Cr.P.C and PSO 562 of Police Standing Orders elaborated the situations, as when an Investigation Officer may refuse to do Investigation. The following principles are laid down to guide the exercise of their discretion by Station House Officers in the matter of refusing investigation under section 157 (1) (b) of the Cr.P.C.

(a). Triviality : Trivial offences, such as are contemplated in section 95 of the Indian Penal Code. " Nothing is an offence by reason that it causes or that is intended to cause, or that it is known to be likely to cause any harm, if that harm is so slight that no person or ordinary sense and temper would complaint of such harm".

(b). Civil Nature : Cases clearly of civil nature or in which complainant is obviously endeavouring to set the criminal law in motion to support a civil right.

(c). Petty thefts : Cases of petty theft of property less than Rs. 10/- in value, provided that the accused person is not an old offender, nor a professional criminal, and that the property does not consist of sheep or goats.

(d). Injured person not wishing an inquiry : Unimportant cases in which the person, injured does not wish inquiry, unless (i) the crime is suspected to be the work of a professional or habitual offender or (ii) a rowdy element (iii) the investigation appears desirable in the interests of the Public.

(e). Undetectable simple cases: Simple cases of house-breaking or house-trespass and petty thefts of unidentifiable property, is none of which cases is there any clue to work upon or any practical chance of detection, provided that there is nothing to indicate that the offence has been committed by a professional criminal.

(f) Exaggerated Assaults: Assault in cases which have been obviously exaggerated by the addition of the other charges such as theft.

(Also Refer Dr.C.A.Mohmed Abdul Huq Vs. S.Manoharan [2013 (1) CTC 625 = CDJ 2012 MHC 6242]

Ordering Investigation U/s. 156 (3) & 202 Cr.P.C. by the Magistrate

As per Sec. 39, the Code of Criminal Procedure mandates that every person, aware of the commission of or intention of any persons to commit, any offences under the Indian Penal Code, (*as set out is Sec. 39 Cr.P.C*) shall forthwith give information to the nearest Magistrate or Police Officer of such commission or intention. Further Sec. 154 of the Code, ensures that the Information related to Cognizable Offences shall be registered and to be investigated by the Police, in a manner known to Law. In so for as, information related to Non-cognizable offences, the Police Officer can investigate the said offences, only after getting an order from the Magistrate concerned. Sub-section (1) of Sec. 156 empowers the in-charge of a Police Station to investigate any cognizable offence which Court having jurisdiction over the local area within its limit or to try under the provisions of Chapter XIII,

the power of the Magistrate to order such an investigation is vested in him who can take cognizance of the offence under Sec. 190 of the Code of Criminal Procedure. If the Station House Officer U/s. 154(1) & 156(1) Cr.P.C refuses to register the Information related to a Cognizable offence, the aggrieved can approach the Superintendent of Police in writing and by post. Even then, if he felt aggrieved, he can very well approach the Jurisdiction Magistrate for a direction relating to an Investigation by Police U/s. 156(3) Cr.P.C.

The Magistrate while dealing a Complaint filed U/s. 200 Cr.P.C under Chapter XV, empowered U/s. 202 Cr.P.C to direct an Investigation to be made by a Police Officer or by such other persons as he thinks fit, for the purpose of deciding whether or not, there is sufficient ground for proceeding U/s. 200 Cr.P.C. The power U/s.156(3) Cr.P.C. covered in Chapter XII, to direct an investigation by the police authorities is at the pre-cognizance stage and the power to direct a similar investigation U/s. 202 Cr.P.C is at the post-cognizance stage. Usually, on receipt of the Order from Magistrate U/s. 156(3) Cr.P.C, will register an FIR and then proceed with Investigation. Rather, when he received an order from a Magistrate U/s. 202 Cr.P.C, there need not be an FIR, prior to investigation. The Investigation U/s. 156 (3) Cr.P.C and Sec. 202 Cr.P.C are different in nature. The order of Investigation U/s. 156(3) Cr.P.C culminated with a final Report U/s. 173 Cr.P.C. The Order U/s. 202 Cr.P.C culminates with a Report U/s. 202 Cr.P.C.

The Magistrate on receipt of a complaint is bound to apply his judicial mind and take a decision as to whether he should take cognizance of the offence under

Section 190 of the Code or order for an investigation under Section 156(3) of the Code or in cases not falling under the proviso to Section 202, order an investigation by the police which could be in the nature of an enquiry as contemplated by Section 202 of the Code. *(See - Ajai Malviya vs State Of U.P. and others - 2001 CriLJ 313)*

In ***Devarapali Lakshminarayana Reddy*** Vs. ***Narayana Reddy***, (1976) 3 SCC 252, ***National Bank of Oman*** Vs. ***Barakara Abdul Aziz***, (2013) 2 SCC 488, ***Madhao*** Vs. ***State of Maharashtra***, (2013) 5 SCC 615, ***Rameshbhai Pandurao Hedau*** Vs. ***State of Gujarat***, (2010) 4 SCC 185, the scheme of Sections 156 (3) and 202 has been discussed in a detailed manner.

In **Rameshbhai Pandurao Hedau Vs. State Of Gujarat [(2010) 4 SCC 185],** the Apex court discussed the scope of Sec. 156(3) and 202 Cr.P.C and held as :

> 16. Reference was also made to the decision of this Court in Mohd. Yousuf vs. Afaq Jahan (Smt.) and Anr. [(2006) 1 SCC 627], where it has been held that when a Magistrate orders investigation under Chapter XII of the Code, he does so before he takes cognizance of the offence. Once he takes cognizance of the offence, he has to follow the procedure envisaged in Chapter XV of the Code. **The inquiry contemplated under Section 202(1) or investigation by a police officer or by any other person is only to help the Magistrate to decide whether or not there is sufficient ground for him to proceed further on account of the fact**

that cognizance had already been taken by him of the offence disclosed in the complaint but issuance of process had been postponed.

17. **The law is well-settled that an investigation ordered by the Magistrate under Chapter XII is at the pre-cognizance stage and the inquiry and/or investigation ordered under Section 202 is at the post-cognizance stage.** What we have to consider is whether the Magistrate committed any error in refusing the appellant's prayer for an investigation by the police under Section 156(3) of the Code and resorting to Section 202 of the Code instead, since both the two courses were available to him.

18. The power to direct an investigation to the police authorities is available to the Magistrate both under Section 156(3) Cr.P.C. and under Section 202 Cr.P.C. **The only difference is the stage at which the said powers may be invoked. As indicated hereinbefore, the power under Section 156(3) Cr.P.C. to direct an investigation by the police authorities is at the pre-cognizance stage while the power to direct a similar investigation under Section 202 is at the post-cognizance stage.** The learned Magistrate has chosen to adopt the latter course and has treated the protest petition filed by the Appellant as a complaint under Section 200 of the Code and has thereafter proceeded under Section 202 Cr.P.C. and kept the matter with himself for an inquiry in the facts of the case. There is nothing irregular in the manner in which the learned Magistrate has proceeded and if at the stage of Sub-section (2) of Section 202 the learned Magistrate deems it fit, he may either dismiss the complaint under Section 203 or proceed in terms

of Section 193 and commit the case to the Court of Sessions.

In view of the change in tendency of mind set of the litigants, the Hon'ble Apex Court mandated the Petitioner / Complainant, who approaches the Magistrate U/s. 156(3) Cr.P.C, ought to swear an affidavit related to the facts. The said legal position was enshrined in **Priyanka Srivastava & Another Vs. State Of U.P. & Others [(2015) 6 SCC 287 : AIR 2015 SC 1758]** and the relevant excerpt would runs as :

27. ….That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores. We have already indicated that there has to be prior applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. **The warrant for giving a direction that an the application under Section 156(3) be supported by an affidavit so that the person making the application should be conscious and**

also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. **We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR.**

It is pertinent to mention here that the Madras High Court in **Sugesan Transport Pvt. Ltd., Vs. The Assistant Commissioner of Police, Adyar, Chennai and another, [2016-2-L.W. (Crl.) 499]** has extensively discussed the subject covered U/s. 154 & 156 Cr.P.C as well as precedents on this score and set-forth chiseled directions in the regard. The Hon'ble High Court also guided the magistracy on various grey areas related to non compliance of Order passed by them U/s. 156(3) Cr.P.C. The relevant portion would runs thus :

(x) If the police officer does not register FIR within a period of one week from the date of receipt of the Magistrate's order, the Magistrate shall initiate prosecution against him under Section 21 read with Section 44 of the District Police Act before the Chief Metropolitan Magistrate or the Chief Judicial Magistrate, as the case may be.

Further Investigation

It is seen from the reported and circulated decisions, time and again, the Trial Courts are struck with an understanding about the concept of 'Further Investigation' and thereby it has been dealt in detail in this compilation. It can be analyzed in two phases, namely Pre-Cognizance stage & Post-Cognizance stage. This effort is aimed to throw some light on the gray areas related to the topic, with the support of precedents made by superior Courts.

The Police officer, who conducts Further Investigation derives power U/s. 173(8) Cr.P.C, after forwarding a report U/s. 173(2) Cr.P.C. The relevant portion of Sec. 173(8) Cr.P.C would runs thus :

> (8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub- section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub- sections (2) to (6) shall, as far as may be, apply in relation to such

> report or reports as they apply in relation to a report forwarded under sub- section (2).

The power to conduct further investigation by the Investigation Officer, is not exhausted with the filing of final report under Sec. 173(2) Cr.P.C and further investigation can be conducted as and when necessary and even after the commencement of the trial in the case too. The only condition prescribed by the code, is that the Investigation Officer ought to obtain further evidence, either by oral or documentary. Further, the investigation which is comprehended under Section 173(8) Cr.P.C is something different, which is the exclusive prerogative of the police. The said position of law was discussed in detail in **Union Public Service Commission Vs. S. Papaiah [(1997) 7 SCC 614 = AIR 1997 SC 3876]** and **Sri. Bhagwan Sreepada Vallabha Venkata Vishwanandha Maharaj Vs. State of A.P. [(1999) 5 SCC 740 = AIR 1999 SC 2332].**

In **Rama Chaudhary V. State of Bihar [AIR 2009 SC 2308]**, the Apex Court opined that the law does not mandate of taking of prior permission from the Magistrate for carrying out a further investigation even after filing of report. It is a statutory right of Police.

There is no statutory requirement for the police to obtain permission from the concerned court to conduct further investigation in the case. But the Hon'ble Supreme Court of India has held in the decision in **Ram Lal Narang Vs. State (AIR 1979 SC 1791)** that in the interest of independence of Magistracy and the

Judiciary, in the interest of purity of administration of Criminal Justice, and in the interest of comity of various agencies and institutions entrusted with different stages of such administration, it would ordinarily be desirable that the police should inform the Court and seek formal permission to make further investigation when fresh facts come to light. Thus it is a sort of judicial proposition of law that the police should obtain a formal permission of the court to conduct further investigation even if there is no statutory requirement to do so.

In the case of **Hasanbhai Valibhai Qureshi Vs. State of Gujarat and Ors., [MANU/SC/0302/2004 : AIR 2004 SC 2078]** the Apex Court held that:-

> "Coming to the question whether a further investigation is warranted, **the hands of the investigating agency or the Court should not be tied down on the ground that further investigation may delay the trial, as the ultimate object is to arrive at the truth.**
>
> ....
>
> In **Om Prakash Narang and another v. State (Delhi Admn.) (MANU/SC/0216/1979 : AIR 1979 SC 1791)** it was observed by this Court that further investigation is not altogether ruled out merely because cognizance has been taken by the Court. When defective investigation comes to light during course of trial, it may be cured by further investigation if circumstances so permitted. **It would ordinarily be desirable and all the more so in this case that police should inform the Court and seek formal permission to make further investigation when fresh facts come to light instead of being silent over the matter** keeping in view only the need for an early trial since an effective trial for real or actual offences found during course of proper investigation is

> as much relevant, desirable and necessary as an expeditious disposal of the matter by the Courts...

As discussed above, the Code of Criminal Procedure, with unequivocal terms affirmed the powers of Investigation Officer to conduct further Investigation U/s. 173 (8) Cr.P.C.

Coming to the question of Magistrate's Power, in ordering 'Further Investigation' is significant and distinguished in two stages, namely Post – Cognizance stage and Pre-Cognizance stage.

Till the receipt of Final Report, the Magistrate is not empowered to supervise or monitor the Investigation by making suggestions, proposals or ideas, on the Investigation Officer about the modus of Investigation, except on the circumstances narrated in ***Sakri Vasu's Case***. The process and mode of Investigation are exclusive domain of the Investigation Officer, which is subject to assessment, when he forward a Report U/s. 173(2) Cr.P.C to the Magistrate.

The Hon'ble Supreme Court in several cases, manifestly spelled out the ways and courses open to the Magistrate on receipt of the final report forwarded to him U/s. 173(2) Cr.P.C. In **Bhagwant Singh Vs. Commissioner of Police** reported in [**1985 AIR (SC) 1285 = 1985 Cri L J 1521**], the Apex Court held as :

> Now, when the report forwarded by the officer-in charge of a police station to the Magistrate under sub-section (2)(i) of Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have

been committed by a particular person or persons and in such a case, the Magistrate may do one of three things:

(1) he may accept the report and take cognizance of the offence and issue process or

(2) he may disagree with the report and drop the proceeding or

(3) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses:

(1) he may accept the report and drop the proceeding or

(2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or

(3) he may direct further investigation to be made by the police under sub-section (3) of Section 156.

In **Popular Muthiah Vs. State of Tamil Nadu** reported in **2006 (2) MLJ (Crl) 779**, the Hon'ble Apex Court reiterated as :

'The Magistrate has jurisdiction in the event a final form is filed

(i) to accept the final form;

(ii) in the event a protest petition is filed to treat the same as a complaint petition and if a prima facie case is made out, to issue processes;

(iii) to take cognizance of the offences against a person, although a final form has been filed by the police, in the event he comes to the opinion that sufficient materials exist in the case diary itself therefor; and

(iv) to direct re- investigation into the matter. *[See Abhinandan Jha and Others v. Dinesh Mishra , AIR 1968 SC 117, see also Minu Kumari and Anr. v. The State of Bihar and Ors., 2006 (4) SCALE 329]*

The power of Magistrate, to order further Investigation, either Suo motto or at the instance of Defacto Complainant is flow from Sec. 156(3) Cr.P.C not under Sec. 173(8) Cr.P.C. Even the said powers are available only at the stage of Pre-Cognizance. Once the Magistrate took cognizance of offence and issued the process to the accused, he cannot order further investigation on his own (suo motto) or at the instance of defacto complainant either U/s. 156(3) or 173(8) Cr.P.C.

The Hon'ble Apex Court in **Reeta Nag Vs. State of West Bengal [(2009) 9 SCC 129]** discussed the concept of further investigation and also with stages, when the Court / Judicial Magistrate can entertain the request. That apart the Apex Court also held that the ordering Re-Investigation is beyond the jurisdictional competence of Magistrate. The relevant excerpt would runs as :

17. In addition to the above, the decision of this Court in Randhir Singh Rana's case [(1997) 1 SCC 361], also makes it clear that after taking cognizance of an offence on the basis of a police report and after

appearance of the accused, **a Judicial Magistrate cannot of his own order further investigation in the case, though such an order could be passed on the application of the investigating authorities.** The view expressed in Randhir Singh Rana's case (supra) finds support in the decision of this Court in the case of Dinesh Dalmia vs. CBI [(2007) 8 SCC 770], wherein while considering various provisions of the Criminal Procedure Code including Section 173 thereof, this Court held that so long as the charge-sheet is not filed within the meaning of Section 173(2) Cr.P.C., investigation remains pending. But, even the filing of a charge-sheet did not preclude an Investigating Officer from carrying on further investigation in terms of Section 173(8) Cr.P.C.

...

20. In the instant case, the investigating authorities did not apply for further investigation and it was only upon the application filed by the de facto complainant under Section 173(8), was **a direction given by the learned Magistrate to re-investigate the matter. As we have already indicated above, such a course of action was beyond the jurisdictional competence of the Magistrate.** Not only was the Magistrate wrong in directing a re-investigation on the application made by the de facto complainant, but he also exceeded his jurisdiction in entertaining the said application filed by the de facto complainant.

Recently, the Hon'ble Supreme Court in ***Amrutbhai Shambhubhai Patel Vs. Sumanbhai Kantibhai Patel & Others,*** reported in ***2017 (2) Scale 198 = 2017 SCC Online SC 86*** carefully analyzed all the judicial pronouncements in this regard, including the decision in **Vinay Tyagi Vs. Irshad Ali @ Deepak & others [(2013) 5 SCC 762]** along with Law Commission Report, has categorically held that at any rate, either suo mottu or at the instance of defacto complainant, the Magistrate cannot order further investigation after taking cognizance of Police Report. After taking cognizance, the remedy of further Investigation, is available only to Investigation Officer for the reasons adumbrated in Sec 173(8) Cr.P.C at the Post-Cognizance stage. The relevant passage runs thus :

> 49. Though the Magistrate has the power to direct investigation under Section 156(3) at the pre-cognizance stage even after a charge-sheet or a closure report is submitted, **once cognizance is taken and the accused person appears pursuant thereto, he would be bereft of any competence to direct further investigation either suo motu or acting on the request or prayer of the complainant/informant.** The direction for investigation by the Magistrate under Section 202, while dealing with a complaint, though is at a post-cognizance stage, it is in the nature of an inquiry to derive satisfaction as to whether the proceedings initiated ought to be furthered or not. Such a direction for investigation is not in the nature of further investigation, as contemplated under Section 173(8) of the Code. If the power of the Magistrate, in

such a scheme envisaged by the Cr.P.C to order further investigation even after the cognizance is taken, accused persons appear and charge is framed, is acknowledged or approved, the same would be discordant with the state of law, as enunciated by this Court and also the relevant layout of the Cr.P.C. adumbrated hereinabove. ... In a way, in view of the three options open to the Magistrate, after a report is submitted by the police on completion of the investigation, as has been amongst authoritatively enumerated in Bhagwant Singh (supra), the Magistrate, in both the contingencies, namely; **when he takes cognizance of the offence or discharges the accused, would be committed to a course, whereafter though the investigating agency may for good reasons inform him and seek his permission to conduct further investigation, he suo motu cannot embark upon such a step or take that initiative on the request or prayer made by the complainant/informant.** Not only such power to the Magistrate to direct further investigation suo motu or on the request or prayer of the complainant/informant after cognizance is taken and the accused person appears, pursuant to the process, issued or is discharged is incompatible with the statutory design and dispensation, it would even otherwise render the provisions of Sections 311 and 319 Cr.P.C., whereunder any witness can be summoned by a Court and a person can be issued notice to stand trial at any stage, in a way redundant.

At this juncture it is pertinent to note that the Magistrate is not empowered to specify the Post / Rank of the Police officer or the name, while ordering Further Investigation. In **Hemant Dhasmana Vs Central Bureau Of Investigation and another** reported in **(2001) 7 SCC 536 = AIR 2001 SC 2721)**, the Hon'ble Apex court held that :

> Nonetheless, we are in agreement with the observation of the learned Single Judge of the High Court that **the Special Judge or the magistrate could not direct that a particular police officer or even an officer of a particular rank should conduct such further investigation. It is not within the province of the magistrate while exercising the power under Section 173(8) to specify any particular officer to conduct such investigation,** not even to suggest the rank of the officer who should conduct such investigation.

Further Investigation by a Different Agency

The Magistrate is not supposed to order a further investigation by a different agency *(agency other than the original investigating agency)*, otherwise it will amount to re-investigation. Only the Constitutional Courts under Art 226, 32 and 136 have the power to order reinvestigation by a different agencies, such as the CBI, CBCID etc., *(see Central Bureau Of Investigation Vs. State Of Rajasthan And Another [2001 (3) SCC 333])*

Having said that, in such cases, the Magistrate is not powerless, if the magistrate suspects any foul play in the investigation, he can always pass orders to senior Police officers to supervise the investigation personally and file periodical compliance reports. The superior officers are bound to supervise the investigation as per the Police Standing Orders.

Can a Magistrate order for Investigation U/s. 156(3) Cr.P.C or further Investigation by CBI ?

The answer to query could be, apparently **negative**.

Has a magistrate power to direct the Central Bureau of Investigation to conduct investigation into any offence? is came up before the Hon'ble Supreme Court in **Central Bureau Of Investigation Vs. State Of Rajasthan And Another [2001 (3) SCC 333]** and the issue has been concluded as

> As the present discussion is restricted to the question whether a magistrate can direct the CBI to conduct investigation in exercise of his powers under Section 156(3) of the Code it is unnecessary for us to travel beyond the scope of that issue. We, therefore, reiterate that **the magisterial power cannot be stretched under the said sub-section beyond directing the officer in charge of a police station to conduct the investigation.**

At this juncture, it is pertinent to note that the Constitutional Courts alone can order CBI Probe and the said

principle has been emphasized in **State of West Bengal and others Vs. The Committee for Protection of Democratic Rights West Bengal and others [(2010) 3 SCC 571 : AIR 2010 SC 1476].**

There will be yet another question related to the topic, *Can CBI take over the investigation of a criminal case registered by the State Police?*

Yes, it can, only in the situations detailed hereunder :

(i) The concerned State Government makes a request to that effect and the Central Government agrees to it.

(ii) The State Government issues notification of consent under Section 6 of the DSPE Act (*Delhi Special Police Establishment Act., 1946*) and the Central Government issues notification under Section 5 of the DSPE Act.

(iii) The Supreme Court or High Courts being the Constitutional Courts, orders CBI to take up such investigations.

Can a Magistrate order for Investigation U/s.156(3) Cr.P.C by CBCID Police ?

Manifestly the answer could be **"No"**.

As per Chapter V Para 1 of the CB CID Manual, cases can be registered on the orders of Hon'ble High Court / Hon'ble Supreme court. The relevant portion runs thus :

"1. Regular case should be registered under the following circumstances:-

a) On the orders of the Supreme Court/High Court;

b) On the request of the State Government;

c) On the orders of the DGP/CB CID Headquarters."

The Crime Branch Manual has been approved by the Government as could be seen from G.O.Ms.No.185, Home (Pol.VIII) Department dated 16.02.2004.

Further more, Hon'ble High Court in **S.Madhiyazhagan Vs. State, rep. By the Inspector of Police, CBCID, Tirupur District (2018(1) MWN(cr)423** - https://indiankanoon.org/doc/53299318/) held that the Judicial Magistrate is not empowered under Section 156(3) Cr.P.C. to direct the Crime Branch CID to investigate an offence.

Order of Re Investigation by the Magistracy

Pursuant, to the Re-Investigation and De-novo investigation, the Magistrate at any rate, can't order Fresh, Re, or De-novo investigation. The said principle was discussed in detail by the Apex Court along with other issues and settled in **Dharam Pal Vs. State of Haryana & Others [(2014) 3 SCC 306].** The relevant portion extracted hereunder for reference :

"We may further elucidate, **the power to order fresh, de-novo or re-investigation being vested with the Constitutional Courts,** the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. It can never be forgotten that as the great ocean has only one test, the test of salt, so

does justice has one flavour, the flavour of answering to the distress of the people without any discrimination.

Also refer the decision in Reeta Nag Vs. State of West Bengal [(2009) 9 SCC 129], discussed supra.

Monitoring of Investigation

Though there is no such procedural law enables the Judicial Magistrate to monitor the investigation in an explicit manner, the Hon'ble Apex Court in **Sakiri Vasu Vs State Of U.P. and Others [(2008) 2 SCC 409],** adumbrated that the Magistrate can monitor the investigation. It should be exceptional in nature, not a routine and casual. The excerpt would runs thus :

> 15. Section 156(3) provides for a check by the Magistrate on the police performing its duties under Chapter XII Cr.P.C. In cases where the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can issue a direction to the police to do the investigation properly, and **can monitor the same**.
>
> ...
>
> 18. It is well-settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary to its execution.

The above position also discussed in an earlier occasion in **Union of India Vs. Prakash P. Hinduja and another [2003 (6) SCC 195]** and it has been observed by the Hon'ble Apex Court that, a Magistrate cannot interfere with the investigation by the police. However, in our opinion, the ratio of this decision would only apply when a proper investigation is being done by the police. If the Magistrate on an application under Section 156(3) Cr.P.C, satisfied that proper investigation has not been done, or is not being done by the officer-in-charge of the concerned police station, he can certainly direct the officer in charge of the police station to make a proper investigation and can further monitor the same.

We the judges, must bear in mind that the decision of Apex Court in Sakiri Vasu's case does not empower the magistrates to intervene or usurp into the process or flow of investigation, or to direct the police to conduct the investigation in a particular manner. The power is very limited intended to monitor investigation within limits prescribed, as permissible and the same should be exercised cautiously and judiciously to meets the ends of Justice.

Issuing Process to the persons, who are all not shown as accused in the Charge sheet

A three Judge Bench of Hon'ble Apex court in **M/s. India Carat Pvt. Ltd. Vs. State of Karnataka and another** reported in **(1989 (2) SCC 132)** has held that even if the police report is to the effect that no case is made out against the accused, after analyzing the materials brought before him, if the Magistrate seen incriminating materials can take cognizance of the offence complained of and order the issue of process to the accused. The relevant portion would runs thas :

> The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) **a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused.** The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer ;and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, in exercise of his powers under Section 190(1)(b) and direct the issue of process to the accused.

In **Rajinder Prasad Vs. Bashir & Others, [2002 SCC (Cri) 28 = (2001) 8 SCC 522]** the Hon'ble Supreme Court held that the Magistrate can find out who the real offenders were and if he comes to the conclusion that apart from the persons sent by the police.

> " While dealing with the scope of Section 190 this Court in Raghubans Dubey v. State of Bihar [1967 (2) SCR 423] held that the cognizance taken by the Magistrate was of the offence and not of the offenders. Having taken cognizance of the offence, a Magistrate can find out who the real offenders were and if he comes to the conclusion that apart from the persons sent by the police some other persons were also involved, it is his duty to proceed against those persons as well."

In **Nupur Talwar Vs. CBI & Another (2012) 2 SCC 188,** the Apex Court intricately discussed the powers of magistrate in this regard and held :

> 12. Therefore, in the present set of circumstances, **the Magistrate having examined the statements recorded during the course of investigation under Sections 161 and 164 of the Code of Criminal Procedure, as also, the documents and other materials collected during the process of investigation, was fully justified in recording the basis on which, having taken cognizance, it was decided to issue process. . . . . The Magistrate's order being speaking, cannot be stated to**

have occasioned failure of justice. The order of the Magistrate, therefore, cannot be faulted on the ground that it was a reasoned order.

Adding of accused by the Court of Sessions

In **Nisar & Another Vs State Of U.P** reported in **[1995 SCC (2) 23 = JT 1995 (1) 135]** the Hon'ble Apex Court reiterating the law laid-down in ***Kishan Singh's Case***, held that after committing the case to Court of Sessions, the bar U/s. 193 Cr.P.C is lifted and the Court of Sessions can summon the Person or Persons, who are all not shown as accused in the Final report, based on the materials available before it.

> As regards the other contention of appellants we may mention that this Court has in Kishan Singh v. State of Bihar 1993 (2) SCC 16 categorically rejected a similar contention with the following observations:
>
> > " On the Magistrate committing the case under Section 209 to the Court of Session the bar of Section 193 is lifted thereby investing the Court of Session complete and unfettered jurisdiction of the court of original jurisdiction to take cognizance of the offence which would include the summoning of the person or persons whose complicity in the commission of the crime can prima facie be gathered from the material available on record."

The above legal position was once again discussed in detail, along with law laid-down in **Ranjit Singh Vs. State of Punjab [(1998) 7 SCC 149]**. After due analysis on the subject, the full Bench of Hon'ble Supreme Court in **Dharam Pal & Others vs State Of Haryana & Another,** reported in **(2014) 3 SCC 306** once again confirmed the law laid-down in *Kishan Singh's Case.* The relevant portion would runs thus :

> 28. In that view of the matter, we have no hesitation in agreeing with the views expressed in Kishun Singh's case (supra) that the Session Courts has jurisdiction on committal of a case to it, to take cognizance of the offences of the persons not named as offenders but whose complicity in the case would be evident from the materials available on record. **Hence, even without recording evidence, upon committal under Section 209, the Session Judge may summon those persons shown in column 2 of the police report to stand trial along with those already named therein.**
>
> 30. The Reference to the effect as to whether the decision in Ranjit Singh's case (supra) was correct or not in Kishun Singh's case (supra), is answered by holding that the decision in Kishun Singh's case was the correct decision and **the learned Session Judge, acting as a Court of original jurisdiction, could issue summons under Section 193 on the basis of the records transmitted to him as a result of the committal order passed by the learned Magistrate.**

The above facet of Law, again revisited and supported by our Apex Court in its recent decision in **Balveer Singh and another Vs State of Rajasthan and another [Crl. Appeal No. 253 of 2016]** reported in **2016 SCC Online SC 481.**

Offering reasons, while taking the Case on file

Is it mandatory for the Judicial Magistrate to pass a detailed order, while taking cognizance and issuing process to the accused? The said question came-up before the Hon'ble Apex Court in **Dy. Chief Controller Of Imports & Exports Vs. Roshanlal Agarwal & Others,** reported in **(2003) 4 SCC 139,** and it was held that at the stage of issuing the process to the accused, the Magistrate is not required to record reasons.

> The second reason given by the High Court for allowing the petition filed by the respondents (accused) is that the order passed by the Special Court taking cognizance of the offence does not show that the learned Magistrate had even perused the complaint or that he had applied his judicial mind before taking of the cognizance. The order passed by the learned Magistrate reads as under :
>
> ***"Cognizance taken. Register the case.***
>
> ***Issue summons to the accused."***
>
> In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not, whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at

the trial and not at the stage of inquiry. **At the stage of issuing the process to the accused, the Magistrate is not required to record reasons.** This question was considered recently in U.P. Pollution Control Board v. M/s Mohan Meakins Ltd. & Ors., AIR 2000 SC 1456 and after noticing the law laid down in **Kanti Bhadra Shah v. State of West Bengal, AIR 2000 SC 522,** it was held as follows :

> "The legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a Magistrate for passing detailed order while issuing summons. The process issued to accused cannot be quashed merely on the ground that the Magistrate had not passed a speaking order."
>
> This being the settled legal position, the order passed by the learned Magistrate could not be faulted on the ground given by the High Court.....

The said legal position was once again affirmed by the Hon'ble Supreme Court in **Bhushan Kumar & Anr vs State (NCT Of Delhi) & Another** reported **(2012) 5 SCC 424 = AIR 2012 SC 1747** and it was reiterated as

> 16) This being the settled legal position, the order passed by the Magistrate **could not be faulted with only on the ground that the summoning order was not a reasoned order.**

The above analogy applies to the cases, which are all taken on file, based on the Police Report U/s. 173 Cr.P.C. In so for, case instituted otherwise than on Police Report, the court taking Cognizance ought to record proper reasons for its action. In simple, cognizance order must be brief and reasoned one, pursuant to the cases taken on file based on the Private complaints. We can easily realize the legal mandate behind it. In the case instituted otherwise than on Police Report, there may not be any statutory probe / inquiry into the facts, which are codified in Criminal Procedure Code. In this parlance, we may have a look on the stare decisis touching on this issue.

In **Pepsi Foods Ltd. And Another Vs. Special Judicial Magistrate and Others** reported in (1998) 5 SCC 749, in paragraph No.28, the Hon'ble Supreme Court has held as :

> **"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course.... . The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused."**

Power to Stop the Investigation

The Code of Criminal Procedure empowers the Magistrate to stop further Investigation U/s. 167(5) Cr.P.C. The relevant portion runs as :

> **Sec. 167(5)** If in any case triable by a Magistrate as a summons-case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.

Furthermore, a similar power also conferred on the Magistrate U/s. 210 of Cr.P.C to stay the Proceedings instituted otherwise than a Police Report.

Be that as it may, the Code never gives any power to the Magistrate, to stop the Investigation except U/s. 167(5) Cr.P.C. In **S.N. Sharma Vs Bipen Kumar Tiwari And Others [1970 AIR 786, 1970 SCR (3) 946],** the Hon'ble Apex Court held that Section 156(3) Cr.P.C never conferred any power on the magistrate to stop the investigation. The excerpt runs as :

> "It may also be further noticed that, even in sub section (3) of section 156, the only power given to the Magistrate, who can take cognizance of an offence under section 190, is to order an investigation; **there is no**

mention of any power to stop an investigation by the police.

... In such cases, the police may engineer a false, report of a cognizable offence against the Judicial Officer and may then harass him by carrying on a prolonged investigation of the offence made out by the report. It appears to us that, though the Code of Criminal Procedure gives to the police unfettered power to investigate all case's where they suspect that a cognizable offence has been committed, in appropriate cases an aggrieved person can always seek a remedy by invoking the power of the High Court under Art. 226 of the Constitution under which, if the High Court could be convinced that the power of investigation has been exercised by a police officer mala fide, the High Court can always issue a writ of mandamus restraining the police officer from misusing his legal powers. The fact that the Code does not contain any other provision giving power to a Magistrate to stop investigation by the police cannot be a ground for holding that such a power must be read in section 159 of the Code.

Effect of Defective Investigation

As discussed supra, on the receipt of final report if the Magistrate finds defects in the final Form / Report, he can very well exercise his powers U/s. 156(3) Cr.P.C as the courses adumbrated in ***Bhagwant Singh 's case [1985 Cri L J 1521], Popular Muthiah's case [2006 (2) MLJ (Crl) 779] as well as Nupur Talwar's Case [(2012) 2 SCC 188].*** On the culmination of Trial, if the court finds that the acquittal is the result of callous attitude of the Investigation officer, can follow

the mechanism formulated in **State of Gujarat Vs. Kishanbhai [(2014) 5 SCC 108].**

> 21. On the culmination of a criminal case in acquittal, the concerned investigating/prosecuting official(s) responsible for such acquittal must necessarily be identified. **A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the concerned official may be withdrawn from investigative responsibilities, permanently or temporarily, depending purely on his culpability.** We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly, we direct, the Home Department of every State Government, to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive. The instant direction shall also be given effect to within 6 months.

Nature of orders passed U/s. 156(3) & 173(8) Cr.P.C

In the foregoing topics, we have discussed about the powers of the Magistrate vis-a-vis Investigation. An interesting question came-up before the Full Bench of Madras High Court, about the nature of the order passed by the Magistrate in those provisions of Law. The Full Bench of Madras High Court in **Chinnathambi @ Subramani Vs. State Rep. by the Inspector of Police, Tirupur,** reported in **CDJ 2017 MHC 1028, categorically** settled the issue and enunciated with following conclusions :

> 44. We sum up our conclusions as follows:-
>
> (i) An order of the Magistrate taking cognizance of offences on a police report is a judicial order.
>
> (ii) An order of a Magistrate ordering further investigation on receiving a police report is a non judicial order.
>
> (iii) An order of a Magistrate accepting a negative police report after hearing the parties is a judicial order.
>
> (iv) An order of a Magistrate recording the report of the police as "undetectable" is not a judicial order.
>
> (v) The power of the Magistrate to permit the police to further investigate the case as provided under Section 173(8) of the Code is an independent power and the exercise of the said power shall not amount to varying, modifying, or cancelling the earlier order of the Magistrate on the report of the police, notwithstanding the fact whether the said earlier order

is a judicial order or a non judicial order of the Magistrate.

(vi) For seeking permission for further investigation under Section 173(8) of Cr.P.C. by the police, the earlier order, either judicial or non judicial, passed by the Magistrate on the report of the police need not be challenged before the higher forum.

(vii) The power to grant permission for further investigation under Section 173(8) of Cr.P.C. after cognizance has been taken on the police report can be exercised by the Magistrate only on a request made by the investigating agency and not, at the instance of anyone other than the investigating agency or even suo motu. [vide judgment of the Hon'ble Supreme Court in Amrutbhai Shambhubhai Patel v. Sumanbhai Kantibhai Patel, 2017 (2) Scale 198].

(viii) The power to grant permission for further investigation under Section 173(8) of Cr.P.C. can be exercised by the Magistrate before accepting the negative police report thereby acting on the protest petition by the victim or the de facto complainant. [vide Kishan Lal v. Dharmendra Bafna and another, (2009) 7 SCC 685]

(ix) We clarify that anyone who is aggrieved by any order made by the Magistrate on a police report as aforesaid in sub-paragraphs (i) to (iv) hereinabove may approach the higher forum for remedy, if any.

Right of the accused before or during Cognizance

In **Union of India Vs. W.N. Chaudhary,** reported in **1993 CriLJ 859 : 1992 (3) SCALE 396 : AIR 1993 SC 1082,** the Apex Court discussed the right of the accused during investigation as well as prior to cognizance and categorically held as :

> 91. More so, **the accused has no right to have any say as regards the manner and method of investigation. Save under certain exceptions under the entire scheme of the Code, the accused has no participation as a matter of right during the course of the investigation of a case instituted on a police report till the investigation culminates in filing of a final report under Section 173(2) of the Code** or in a proceeding instituted otherwise than on a police report till the process is issued under Section 204 of the Code, as the case may be. Even in cases where cognizance of an offence is taken on a complaint notwithstanding that the said offence is triable by a Magistrate or triable exclusively by the Court of Sessions, the accused has no right to have participation till the process is issued. In case the issue of process is postponed as contemplated under Section 202 of the Code, the accused may attend the subsequent inquiry but cannot participate. There are various judicial pronouncements to this effect but we feel that it is not necessary to recapitulate those decisions. At the same time, we would like to point out that there are certain provisions under the Code empowering the Magistrate to give an opportunity of being heard under certain specified circumstances.

In **Rakesh Puri And another Vs State Of Uttar Pradesh and another** reported in **2006 (56) ACC 910,** it was held as :

> It is preposterous even to cogitate that a person has a right to appear before the Magistrate to oppose an application seeking a direction from him for registration and investigation of the offence when he has got no right to participate in the said ex-parte proceeding. **If permitted this will amount to killing of foetus of investigation in the womb when it was not there at all.** Such a power has not been conferred under the law on the prospective accused.

The Full bench of Allahabad High Court in **Father Thomas Vs. State Of U.P. & Another** reported in **2011(1) ADJ 333 (FB),** held that at the pre-cognizance stage, when only a direction has been issued by the Magistrate under Section 156(3) Cr.P.C. to investigate, the prospective accused has no locus standi to challenge such direction for investigation of a cognizable case before cognizance or the issuance of process. An order under Section 156(3) Cr.P.C, passed by a Magistrate directing a police officer to investigate a cognizable case is not an order which impinges on the valuable rights of the party. An order by the Magistrate for investigation is an ancillary step in aid of investigation and trial, and is interlocutory in nature, similar to orders granting bail, calling for records, issuing search warrants, summoning witnesses and other like matters which do not infringe upon valuable rights of a prospective

accused and hence not amenable to challenge in a criminal revision in view of bar the contained in Section 397(2) of the Code.

That apart, even at the stages mentioned U/s. 202 & 204 Cr.P.C, the accused had no role to play, especially before cognizance. The Apex Court in **Smt. Nagawwa Vs. Veeranna Shivallngappa Konjalgi** reported in **1976 SCR 123** held that :

> " At any rate, at the stage of Sec. 202, or Sec. 204 of the Code of Criminal Procedure as the accused had no locus standi the Magistrate had absolutely no jurisdiction to go into any materials or evidence which may be produced by the accused who could be present only to watch the proceedings and not to participate in them. Indeed if the documents or the evidence produced by the accused is allowed to be taken by the Magistrate then an inquiry under Sec. 202 would have to be converted into a full dress trial defeating the very object for which this section has been engrafted, the High Court in quashing the order of the Magistrate completely failed to consider the limited scope of an inquiry under Sec. 202. "

Furthermore, the prepositions laid down in **Satish Mehra Vs. Delhi Administration and Another [(1996) 9 SCC 766]** was overruled and resettled by Full bench of Apex Court in **State of Orissa Vs. Debendra Nath Padhi, [2005(1) SCC 568 = AIR 2005 SC 359]** holding as the law is that, at the time of framing charge

or taking cognizance, the accused has no right to produce any material.

> "As a result of aforesaid discussion, in our view, clearly the law is that at the time of framing charge or **taking cognizance the accused has no right to produce any material.** Satish Mehra's case holding that the trial court has powers to consider even materials which accused may produce at the stage of Section 227 of the Code has not been correctly decided."

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(This Compilation was made by S.Prakash, B.Sc., LL.M., XI Metropolitan Magistrate, Saidapet, Chennai 600 015)

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