

Introduction

An investigation is an important segment of criminal procedure. The first step after a crime is committed or information received by a police officer about the commission of an offence is "investigation." The purpose is to identify the offender and proceed him for trial so as to serve him with punishment as per the provisions of the Code. Section 156 of the Code of Criminal Procedure confers powers on police officers to investigate cognizable cases. In Non Cognizable cases, the police officer has no authority to investigate without warrant and has to obtain a warrant under Section 155 (2) of the Code. The term "investigation" has been defined in section 2(h) of the Code. Chapter XII (Sections 154 to 176) of the Code deals with information to police and their powers to investigate.

Meaning and Definition

The term 'investigation' has been defined in Section 2(h) of the Code of Criminal procedure, 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 authorised by a Magistrate in this behalf. [1]

The investigation of an offence consists of:

1. Proceeding to the spot.
2. Ascertainment of facts and circumstances of the case.
3. Discovery and arrest of the suspect.
4. Collection of evidence which may include:
 - Examination of persons concerned and reducing their statement to writing.
 - Search and seizure of places and things respectively considered necessary.
5. Formation of opinion as to whether there is a case for trial, and taking necessary steps accordingly. [2]

Overview of Procedure of Investigation

Cognizable and Non-Cognizable Offence

The cognizable offence has been defined in Section 2(C) of the Code, wherein a Police officer can arrest without warrant. The offence is of serious nature and is a public wrong, where the prosecution is done at the discretion of the state. Punishment is given with imprisonment of 3 years or more and with or without fine. Example – Dowry, Rape, Murder, etc.

Non Cognizable offence and case have been defined in Section 2 (I) of the Code, wherein the police cannot arrest without warrant. The offence is less serious in nature and the prosecution is done at the initiative of the parties. Punishment may be given not exceeding 3 years of imprisonment. Example – Assault, Forgery, Defamation, etc.

Information to the Police Officer

Section 154 of the code talks about when information is given as a cognizable offence. The information must be given by the informant to the officer in charge of a police station in writing or must be reduced into writing by the officer in charge of the police station. The written information has to be read over to the informant and be signed by him, which is called "First Information Report." When the information is given by a woman against whom any of the offences under Sections 326-A, 326-B, 354, 354-A to 354-D, 376, 376-A to 376-E or 509 IPC is alleged to have been committed or attempted, such statement shall be recorded by a woman police officer.

After the information has been received by the police officer, he shall start his investigation, provided he has reasons to suspect that a cognizable offence has been committed.

Power of Police to Investigate

Section 156 of the code empowers the officer in charge of a police station to investigate a case in his territorial jurisdiction without the order of the Magistrate if the offence is cognizable in nature. The officer may also initiate an investigation on the orders of the Magistrate empowered under Section 190.

Cases consisting of both Cognizable and Non-Cognizable Offences

According to Section 155(4), when two or more offences are there in a case, of which at least one is of cognizable nature, and other of non-cognizable nature, then the entire case has to be dealt as a cognizable case, and the investigating officer will have all the powers and authority as he has in investigating a cognizable case.

Procedure of Investigation

Section 157 of the Code lays down the procedure of investigation to be followed by the police, for collection of evidence. The investigation of a cognizable case begins when a police officer in charge of a police station has reason to suspect the commission of a cognizable offence on the basis of FIR or any other information so received. It requires that prompt intimation of the FIR be sent to the Magistrate. The officer shall then proceed in person to the spot for investigation of facts and circumstances, or shall depute one of his subordinate officers for the same, and if required, measures for the discovery and arrest of the person shall be taken.

When the information received by the police officer is not of serious nature, the officer need not proceed in person or depute some subordinate officer to investigate on the spot. And if no sufficient ground exists for entering on an investigation, he shall not investigate the case. And shall state in its report for not complying with the requirements of this section, and notify the informant that he will not investigate the case or cause it to be investigated.

He shall then send this report to the Magistrate empowered to take cognizance of such offence.

Sending a Report to the Magistrate (Section 158)

A report is sent to the Magistrate which is called the police report. It is sent by the superior police officer, so as to make the Magistrate aware that a particular case is being investigated by a police officer. The main objective of sending a report is to enable the Magistrate to control the investigation and give directions if required under Section 159 of the Code.

The report should be sent to the Magistrate without any delay. In *Swati Ram v. State of Rajasthan*, it was held that mere delay in sending the report does not throw away the prosecution case in its entirety.

At different stages of an investigation, different reports are to be submitted by the police to the Magistrate. These reports are:

Section 157 of the CrPC requires the officer in charge of the police station to submit a report to the Magistrate, called a preliminary report.

Section 168 of the CrPC requires a subordinate officer to submit a report to the officer in charge of the police station.

Section 173 of the CrPC requires that a final report is to be submitted to the Magistrate as after the investigation gets over.

Order of Investigation by the Magistrate

The Magistrate, under Section 159, has been empowered, if he feels necessary, after receiving the report to direct investigation, or to conduct himself or direct a subordinate Magistrate to hold a preliminary inquiry. And as held by the Supreme Court, the Magistrate has no power to stop the investigation after it has started. [3]

Attendance of Witnesses

The police officer making the investigation is empowered under Section 160 to require the attendance of any person as a witness who is acquainted with the facts and circumstances of the case. The above-mentioned section also provides that no male person or woman who is under the age of fifteen years shall be required to attend any place other than the one in which the male person or women resides. The State Government shall make rules for the payment of reasonable expenses incurred by persons for attending any place other than their residence.

Examination of Witnesses

Any police officer who is in charge of the investigation or any other officer who is acting on the request of an officer in charge shall and is empowered to examine a witness or person who is acquainted or aware of the facts and circumstances of the case put before him. Section 161 of the Code confers powers on police to examine witnesses. The statements of witnesses are important as they can make a person guilty or innocent. The persons who are being investigated are expected and bound to answer truly all the questions relating to such cases put before them. They are not bound to truly answer the questions which would expose them to a criminal charge or any other charge. After the examination, the police officer making the investigation shall reduce the number of statements given by the person in the course of the examination. And if done so, he shall keep a separate record of the same. He is not bound to reduce the statements into writing but it is preferred that he does so.

Statements to the Police not to be Signed

The statements made by the witnesses during examination need not be signed by him. Neither should be used at any inquiry or trial. The statements made by the witness can be used in the court only to contradict him, and not corroborate him. If the witness is brought from the prosecution side, any part

of his statement if proved may be used by the accused and can be used by the prosecution only with the Court's permission, to contradict him. That is, statements made under Section 161 can be used to contradict him.

However, an exception to the above section is: If any statement falls within the provision of Section 32(1) of the Indian Evidence Act, or if any statement affects the provisions of Section 27 of the Evidence Act.

Recording of Confessions and Statements

Any magistrate whether metropolitan or judicial, if he has jurisdiction or not in the case, is empowered under Section 164 to record any statement or confession made to him in the course of the investigation. But a police officer on whom powers of a magistrate have been conferred for the time being is not empowered to record the same. The magistrate, before recording the statement is required to explain it to the person giving the statement that he is not bound to give it and the statements can be used as evidence against him. The magistrate has to make sure that the person making the confession is doing it voluntarily. The Magistrate cannot authorize the detention of that person in police custody if the person refuses to give a statement at any time before the confession is recorded.

Recording of Confession When Magistrate has no Jurisdiction

A Magistrate who records statements and confession when he does not have the jurisdiction to do so, he shall forward it to the competent Magistrate who has to inquire into the case or by whom the trial is to be done.

Admissibility of Evidence

The confession recorded under section 164 can be used as substantive evidence, without being formally proved. Record of such confession is admissible as evidence. Entire confession must be brought on record. The Court must carefully weigh it with other evidence. The Court may reject part of it.. Where the confession was found rejected, the convictions based on them could not be sustained.

Non-confessional statements recorded under section 164 is not substantive evidence. But if the maker of the statement is called as a witness in the trial, his earlier statement can be used for contradicting his testimony in the Court under section 145 and 157 of the Evidence Act.

In ***Balak Ram v. The State of U.P.***, it was held that evidence of witness cannot be discarded merely because their statement was recorded under section 164. Their evidence must be approached with caution.

Search by Police Officer

A police officer is empowered under Section 165 of the Code to search for any place which he has reasonable grounds to believe that contains something necessary with respect to the investigation he is authorized to make.

The grounds for issuing a warrant for search are provided in Section 93(1) of the Code. The search is required to be noted in a diary which is prescribed for this purpose, by the state government.

Procedure of Search

A police officer has to record in writing his reasons for the search, the place to be searched and the thing that has to be searched in that place, after which he proceeds in person. If the police officer is unable to do the search himself, then he may, in writing, order his subordinate officer to conduct the search, directing him to the place to be searched and the thing to be searched for. And the subordinate officer can then conduct the search on the basis of the written order given to him. The officer should make a record of the search done and send a report of the same to the nearest Magistrate who can further furnish it to the owner/occupier of the place searched, free of cost, on application.

When Investigation is to be Done Outside India

When the investigating officer or any of his superior officer has reasons to believe that necessary evidence may be available in a place or country outside India, any criminal court shall issue a letter of request to the authority of that country or place requesting to examine orally the person who is supposed to be aware of the facts and circumstances of the case and direct him to produce all the requisite documents in his possession relating to the case being investigated and also require to forward all the documents and evidence to the court issuing such letter. The provision is given under section 166.

Procedure when Investigation cannot be Completed within 24 Hours

Section 167 deals with the procedure when investigation cannot be completed within 24 hours. The purpose of this section is to ensure liberal democratic ideology. The object is to protect the accused from atrocities of the police and to give the opportunity to the Magistrate to decide the question of further custody, to facilitate the investigation, and no detention without trial. For this purpose, it has been provided that the accused or arrested person cannot be detained for more than 24 hours. Section 167 is attracted in the following circumstances:

1. When the accused is arrested without a warrant and is detained by the police officer in his custody.
2. More than 24 hours needed for an investigation.
3. There are grounds to believe that accusation or information against him is well-founded.
4. The officer in charge of a police station or the investigating officer not below the rank of sub-inspector forwards the accused for remand before the Magistrate.

The judicial Magistrate to whom the accused is so forwarded may authorize the detention of such person in such custody for a term not exceeding 15 days. If the Magistrate does not have the jurisdiction to try the case and considers further detention unnecessary then the accused shall be further forwarded to the Magistrate having jurisdiction to try the case.

The Magistrate shall authorize the detention of the accused (but not in police custody) if he has reasons and grounds to believe the necessity of doing so. But in any situation, the Magistrate cannot order detention for a period exceeding:

1. 90 days, when the person is accused of an offence punishable with imprisonment for a period not less than 10 years or imprisonment for life or death.
2. 60 days, when accused of any other offence. And on the expiry of the period of 60 days or 90 days, whatever the case may be, he shall be released on bail if he is able to furnish sureties.

This period is to be calculated from the date of detention and not from the date of arrest.

If the Judicial Magistrate is absent, the Executive Magistrate or the Metropolitan Magistrate on whom the powers of a Judicial Magistrate have been conferred for the time being will act. The Executive Magistrate shall order for detention for a period not exceeding 7 days. If further detention is to be made, the accused shall be forwarded to the competent Magistrate.

If the order is given by any Magistrate other than the Chief Judicial Magistrate, he shall forward a copy of his orders also stating the reasons for making so, to the Chief Judicial Magistrate.

In a Summons Case, if the investigation is not complete within 6 months, the Magistrate is required to order to stop the investigation unless he has reasons and grounds to believe that further investigation is necessary for the interest of justice. If the Magistrate has ordered to stop the investigation and an application is made to the Sessions judge against the order, then the sessions judge is empowered under Section 167(6) to discard the order given by the Magistrate under subsection 5, if reasonable grounds exist for doing so.

Procedure to be followed on completion of Investigation (s.169-s.173)

On completion of the investigation, the following procedure is to be followed:

Release of accused when evidence is deficient

When there is not sufficient evidence and reasonable grounds to justify the forwarding of the accused to the Magistrate, the police officer shall release him on him executing a bond, with or without sureties, and may direct him to appear before the magistrate when required.

Cases to be sent to Magistrate when evidence sufficient

When the police officer has sufficient evidence and reasonable grounds, he shall forward the accused to the Magistrate, so that the Magistrate can take cognizance of the offence and try the accused or commit him for trial. If the offence is bailable, the accused shall be given security and be released on bail, only to appear before the Magistrate when required, and for his day to day attendance before the Magistrate.

Diary of proceedings in an investigation (section 172)

This section relates to the contents of a case diary, which every police officer making an investigation has to maintain. The object of this section is to enable the Magistrate to know what was the day to day information by a police officer who was investigating the case. Oral statements of witnesses should not be recorded in this case diary. This diary may be used at trial or inquiry, not as evidence, but to assist the court in proceeding with the case.

Report of police on completion of the investigation

Final report of a police officer after the completion of the investigation is to be sent to the Magistrate under Section 173. This report is generally called a "Chargesheet" or "Challan".

Where a superior officer has been appointed by the State government, the report shall be sent by him to the Magistrate. And while the orders of the Magistrate are pending, he shall direct further investigation to the officer in charge of the police station.

If according to the police officer, a part of the statement in the report submitted by him is not relevant, he shall request the Magistrate to exclude that part and not consider it. Also, further investigation can be made even after the submission of the report to the Magistrate.

Power to Summon Persons

This section empowers the police to summon witnesses at the inquest to testify the injuries which the investigating officer has found on the body of the deceased person. But it is not at all necessary for him to record the statements of the witnesses or get the inquest report signed by them. The person examined at an inquest is bound to answer truly all the questions except those which would be incriminating him. Refusal to answer questions is punishable under Section 179 IPC and deliberately giving a false answer is punishable under Section 193 of IPC. The inquest report is not substantive evidence but may be used for corroborating the evidence given by the police officer making the inquest report.

Conclusion

An investigation is an extremely thorough process in criminal law and is done in a procedure established by law.