

# Law of Investigation under Cr. P.C

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**Abstract:** A “State” under its constitutional scheme is bound to protect the rights of its citizens, address their grievances and to ensure equal protection of law. Thus a State as constitutional machinery is the guardian of justice and fair trial and for that purpose it legislate and make rules and acts through its various agencies like Executive, and Judiciary. Therefore, under the Criminal Law the prime object the police as a State agency is to maintain peace and tranquility. Therefore the prime function that is entrusted upon the Police is of detection of crime. Thus to detect it Investigate. Police investigate as in the administration of justice though it is importance that justice should be done but at the same time it is more important that justice should not only be done but it should appear to have been done.

**Keywords:** Cr.P.C, Investigation

## I. INTRODUCTION

On the other side justice and fare play require that no one be punished without a fair trial and the fair trial requires a fair investigation because there are circumstances when a person may be a suspect and may guilty of offence, there may be evidence against him but yet he is not punished unless and until he is tired and adjudged to be guilty by the competent court without any reasonable doubt. Thus it become necessary to brought before the court for trial and all material and statements collected as evidence against him is made available to the court so that the court can adjudicate upon guilt and innocence of the accused. And all this is done through the prosecuting agencies like police and pleaders. If they fail to adhere their duty as they required then it would be difficult for us to achieve our constitution mandate. However failure of duty is one thing but there are other factors too which can result in miscarriage to justice during trial.

## II. INVESTIGATION BY POLICE

In general the pre - trial procedure followed by the police under the scheme of the Code of Criminal Procedure, 1973 is known as Police Investigation. However, the Code itself defines the meaning of the term “Investigation” as per clause (h) of Section 2, “Investigation” includes all proceedings under the code for collection of evidence conducted by the police officer or by any person (other than a magistrate) who is authorized by a magistrate. In *H.N Rishbud v State of Delhi*<sup>1</sup> The supreme court has viewed that the investigation of an offence as generally consist of the following :-

- i. Proceeding to the spot
- ii. Ascertainment of Facts and Circumstances of the case
- iii. Discovery and Arrest of Suspected Offender
- iv. Collection of evidence relating to the commission of offence which may consist :-

- a. The examination of various people (including the accused) and the reduction of their statements into writing, if the officer thinks fit.
- b. The search of such places or seizure of the things considered necessary for the investigation or to be produced at the trial; and
- v. Formation of the opinion as to whether on the material collected there is a case to place the accused before a magistrate for trail, and if so, taking the necessary steps for the same by the filling of a charge Sheet.

## III. POWER TO INVESTIGATE AND ARREST WITH WARRANT AND WITHOUT WARRANT

Under the Code of Criminal Procedure, Police as an investigating agency have been provided with ampl of wide powers but at the same time this does not mean that police is empower to evolve its own mechanism of inflicting punishment. Under the code the police are vested with the following powers to investigate:-

1. **Section 160 & 161** of the Code empowers an investigating police officer to require the attendance of any person or persons acquainted with the facts and circumstances of the case under investigation. But no male person under the age of fifteen years or woman shall be required to attend at any place other than the place in which such male person or woman resides. A police officer may examine orally any person supposed to be acquainted with the facts and circumstances of the case and may reduce into writing any statement made to him in the course of an examination if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.

<sup>1</sup> AIR 1955 SC 196

2. **Section 151:** A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

Section 41 of the Code provides for situations when Police may arrest without warrant. These situations are: -

- i. When any person is concerned in any cognizable offence, or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; or
- ii. who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or
- iii. who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or
- iv. who has been proclaimed as an offender either under this Code or by order of the State Government; or
- v. in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or
- vi. or who has in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking; or
- vii. who, being a released convict, commits a breach of any rule made under sub-section (5) of section 356; or
- viii. for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specified the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.
- ix. if a person commits an offence in the presence of a police officer or where he has been accused of committing a non-cognizable offence and refuses, on demand being made by a police officer to give his name and residence or gives false name or residence, such person may be arrested but such arrest shall be only for the limited purpose of ascertaining his name and residence. After such ascertaining, he shall be released on executing a bond with or without sureties, to appear before a magistrate if so required. In case the name and residence of such person cannot be ascertained within 24 hours from the date of arrest or if such person fails to execute a bond as required, he shall be forwarded to the nearest magistrate having jurisdiction.<sup>2</sup> Section 47 enables the police officer to enter a place if he has reason to believe that the

person to be arrested has entered into that place or is within that place. Section 48 empowers the police officers to pursue the offenders into any place in India beyond their jurisdiction. In a cognizable case a police officer can arrest without warrant but there are situations where there is information regarding commission of non – Cognizable cases. In Non Cognizable cases if any person gives information to an officer in charge of police station about the commission of a non cognizable offence then such officer to whom the information is given shall enter or cause to enter the substance of the information in a book prescribed for this purpose. he shall then refer the information to the magistrate under section 155 (1). He will not arrest unless and until the magistrate provide hit with order of arrest.

#### IV. POWER TO RE INVESTIGATE OR POWER TO FURTHER INVESTIGATE

The Code of criminal procedure do not prescribe any procedure or power to police for reinvestigation of any matter that has been investigated earlier by the investigating agency and where after investigating the cases police has file hits report under section 173 of the Code. However, section 173 (8) of the code provides that 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). Thus, the code prescribes for further investigation by police in the same matter which has been investigated earlier.

Therefore through an application under section 178(3) Crpc, 1973; further proper investigation and collections of evidence by same investigating agency or by some higher one can be requested before Court where chargesheet has been filled. Also the Hon'ble Supreme Court in *Rubabuddin Sheikh v State of Gujarat and others: (2010) 2 SCC (Cri) 1006*, had held as follows:-

“38. Subsequent to the aforesaid decision of this court, another decision of this court, namely, *Union of India v Sushil Kumar Modi* was relied on by Mr. Rohatgi, learned Senior counsel, in which this court observed after considering and following the decision in *Vineet Narain* case that once a charge-sheet is filed, the adequacy of otherwise of the charge – sheet and the investigation cannot be gone in to by this court under Article 32 of the Constitution of India *and the only remedy which can be pursued in an*

<sup>2</sup> Section 42, The Code of Criminal Procedure, 1973

*aggrieved party feels that in some areas the investigation is inadequate is an application under Section 173(8) of the Code of Criminal Procedure.”*

In State of Punjab v Central Bureau of investigation & Ors: (2011) 11 S.C.R 281. The Hon’ble Supreme Court had held as follows:

“15. The investigating agency and/or court exercises their jurisdiction conferred on them only in terms of the provision of the code. The courts subordinates to the high court even do not have any inherent power under section 482 of the Code of Criminal Procedure or otherwise. The pre-Cognizance jurisdiction to remand vested in the subordinate courts, therefore, must be exercised within the four corners of the code. It is clear from the aforesaid observations of this court that the investigating agency or the court subordinate to the high court exercising powers under Cr.P.C. have to exercise the powers within the four corners of the Cr.P.C. and this would mean that the investigating agency may undertake further investigation and subordinate court may direct further investigation in to the case where the charge – sheet has been filed under Sub- section (2) of Section 173 of the Cr.P.C. and such further investigation will not mean fresh investigation or reinvestigation. But these limitations in sub – section (8) of Section 173 of the Cr.P.C. in a case where charge – sheet has been filed will not apply to the exercise of inherent powers of the High Court under section 482 of Cr.P.C. for securing the end of justice.

#### V. CONCLUSION

The Code of Criminal Procedure along with the Indian Penal Code laid down the Investigative powers and responsibilities of the police of India and further the Indian Evidence Act forms its bedrock. But in India the Police system has become a dump of unhealthy pressures and influences from political, executive or other extraneous sources as a result of which police performance consequently falling off from the standards required by truth, law and justice. Under the Indian federal structure every state government establishes its own police force which is formally enrolled. The Police Act, 1861 along with the Code of Criminal Procedure provides that it shall be the duty of every police officer to collect and communicate intelligence affecting the public peace; to prevent the commission of offences and public nuisance; to detect and bring offenders to justice and to apprehend all persons whom he is legally authorized to apprehend, and for whose apprehension sufficient grounds exist today the concept of human rights is expanding. Law commission in its consultation paper on law relating to arrest stated that the Courts in the country have been receiving complaints about violation of human rights because of indiscriminate arrests.

Article 21 of the Constitution of India guarantees fair trial; be it in favour of the accused or against him and a fair trial is impossible if there is no fair investigation. In order to be a fair investigation, the investigation must be conducted thoroughly, without bias or prejudice, without any ulterior motive and every fact, surfacing during the course of investigation, which may have a bearing on the outcome of the investigation and, eventually, on the trial, must be recorded contemporaneously by the Investigating Officer at the time of investigation.