

Summary of papers of Workshop to be Held on 18.10.2015
Topic: 156(3),202 and 210 of the Code of criminal procedure,1973.

1] A person, having a grievance that police officer has not registered report under section 154 of the Code of criminal procedure (for the short “Code” hereinafter) may approach Superintendent of Police, with written application, under sub-section 3 of section 154 of Code. Section 156 of the Code deals with power of police officer to investigate cognizable offence. Section 156 (3) of the Code prescribes that the Magistrate empowered under Section 190 of the Code, may pass an order directing investigation as prescribed under Section 156 (1) of the Code. Thus despite exercising the right under Section 154 (3) of the Code, if the report is not recorded, the aggrieved person may approach Magistrate concerned under section 156 (3) of the Code. **Lalitakumari Vs. Govt. of U.P. (2008)7 SCC 164.**

2] The Legislature provides specific protection in terms of Section 156(3) of the Code and gives right to a person to approach the court of competent jurisdiction for issuance of direction to the police officer to investigate the matter in accordance with law.

3] **What is meant by taking cognizance.**

According to *Black's Law Dictionary* the word ‘*cognizance*’ means ‘*jurisdiction*’ or ‘*the exercise of jurisdiction*’ or ‘*power to try and determine causes*’. In common parlance, it means taking note of.

The Hon'ble Calcutta High Court in **Legal Affairs vs Abani Kumar Banerjee, in AIR 1950 Calcutta 437,** held that when the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other

kind, e.g. ordering investigation under section 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence.

4] In R.R.Chari v. State of U.P AIR 1951 SC 207, it is observed that taking cognizance does not involve any formal action or indeed action of any kind but it occurs as soon as a Magistrate applies his mind to the allegation of suspected commission of offence.

5] At the stage of taking cognizance of a case what is to be seen is whether there is sufficient ground for taking judicial notice of an offence with a view to initiate further proceedings.

6] Similarly, in the case of S.K. Sinha, Chief Enforcement Officer Vs Videocon International Ltd. And Ors. (2008) 2 SCC 492, it is observed that the expression “*cognizance*” has not been defined in the Code but the word is not found of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means “become aware of” and when used with reference to a Court or a Judge, it connotes “to take notice of judicially”. Taking cognizance does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceedings. Taking of cognizance is thus a sine qua non or condition precedent for holding a valid trial. It is also settled that cognizance is taken of an offence and not of an offender. Therefore, it is clear that, directing investigation under section 156(3) of the Code is a pre-cognizance stage.

7] The Hon'ble Supreme Court in Tula Ram Vs Kishore AIR

1977 SC 2401, held that, it seems that there is no special charm or any magical formula in the expression. '*Taking cognizance*' which merely means judicial application of the mind of the Magistrate to the facts mentioned in the complaint with a view to take further action. Thus, what Sec. 190 contemplates is that the Magistrate is said to have taken '*cognizance*' once he makes himself fully conscious and aware of the allegations made in the complaint and decides to examine or test the validity of the said allegations.

8] Whether or not a Magistrate has taken cognizance of an offence depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance.

Pre-cognizance stage and post-cognizance stage

9] pre-cognizance stage: On receiving the complaint if instead of taking cognizance of an offence the Magistrate may, where offences are of cognizable in nature, proceed to order investigation under section 156(3) of the Code.

10] Pre-requisites to order investigation u/s 156 (3) of Code.

1. **Cognizable offence :-** Allegation in the complaint must disclose commission of cognizable offence. When the Offences are non-cognizable in nature and Complaint does not disclose commission of cognizable offence. Order of Magistrate under section 156 (3) directing investigation to the Police quashed. Ref: Tilaknagar Industries Ltd.Vs State of AP 2012 All M.R.(Cri.)721 (SC.)

2) **Material ingredients of offence :-** In order to proceed under

section 156(3) of the Code, the complaint must disclose ingredients of offence. If there is flavour of Civil Nature, the same cannot be agitated in the form of criminal proceeding. Ref: **Thermax Ltd., and others Vs.K.M. Johny 2012 Cri.L.J. 438 (SC).**

3) **Invocation of the provisions of section 154 :-** As the normal proposition of law, invocation of the provisions of section 154 of the Code, in its entirety should be treated as a condition precedent to invocation of the power of the Court under section 156 (3) but there can be exceptions where the facts and circumstances of the case justify directly approaching the court by the complainant. Such as there is likelihood of evidence being destroyed, delay in investigation may prove fatal to the case of complainant. Ref: **Mr.Panchabhai Popotbhai Butani Vs. State of Maharashtra 2010(1) Mh.L.J 421.**

The Hon'ble Supreme Court in **Mr.Panchabhai Popotbhai Butani Vs. State of Maharashtra 2010(1) Mh.L.J 421** is pleased to deal with the questions which were as under,

1. Whether in absence of a complaint to the police, a complaint can be made directly before a Magistrate ?
2. Whether without filing a complaint within the meaning of Section 2(d) and praying only for an action under Section 156(3) a complaint before Magistrate was maintainable ?

We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 Cr.P.C. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to

interfere in such matters and relegate the petitioner to his alternating remedy, first under Section 154(1) and Section 36 Cr.PC before the police officers concerned, and if that is of no avail, by approaching the Magistrate concerned under Section 156(3).

If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) Cr.PC or other police officer referred to in Section 36 Cr.PC. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) Cr.PC instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.PC. Moreover, he has a further remedy of filing a criminal complaint under Section 200 Cr.PC. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies ?

It is also held in the case of Panchbhai referred above that “At least intimation to the police of commission of a cognizable offence under section 154(3) would be condition precedent.” but at the same time it is further laid down that “ We would hasten to add here that this dictum of law is not free from exception. There can be cases where non-compliance to the provisions of section 154(3) would not divest the Magistrate of his jurisdiction in terms of section 156(3). There could be cases where the police fail to act instantly and facts of the case show that there is possibility of the evidence of commission of the offence being destroyed and/or tampered with or an applicant could approach the Magistrate under section 156(3) of the code directly by way of an exception as the Legislature has vested wide discretion in the Magistrate.

4) **The application must be supported by the affidavit :-** The application under Section 156(3) of the Code is to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. Ref: **Mrs. Priyanka Srivastava and Another Vs State of U.P 2015 Cri.L.J. 2396.**

11] The Hon'ble Supreme Court in the case of **D. Lakshaminarayana v/s. V. Narayana, AIR 1976 SC 1672,** observed as follows;

"It is well settled that when a Magistrate receives a complaint, he is not bound to take cognizance if the facts alleged in the complaint, disclose the commission of an offence. This is clear from the use of the words 'may take cognizance' which in the context in which they occur, cannot be equated with 'must take cognizance'. The word 'may' gives a discretion to the Magistrate in the matter. If on a reading of the complaint he finds that the allegations therein disclose a cognizable offence and the forwarding of the complaint to the police for investigation under section 156(3) will be conducive to justice and save the valuable time of Magistrate inquiring into a matter which was primarily the duty of the police to investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence, himself."

1. Stage of issuing directions to carry out investigation under section 156 (3) is pre-cognizance stage. As held in the case between **Syed Khan Vs. Mohammad Abdul, 2012 All M.R. (Cri.) 1091. (Bom.)**

2. Once Court has taken cognizance of the complaint lodged to the Magistrate under section 200 of Cr.P.C. Then Court cannot direct the

investigation under section 156 (3) of the Code. Ref: **Blue Dark Express Ltd. Vs. State of Maharashtra 2012 All M.R. (Cri.) 2047 (Bom.)**

3. In a complaint case, when Magistrate has passed order of investigation under section 156(3), police officer need not seek permission for arrest during course of investigation. Ref: **Laxminarayan Vs. State 2007(5) Mh. L. J. 7.**

4. In exercise of power under section 156(3), Magistrate is not empowered to direct investigation to police officer other than one attached to police station within his territorial jurisdiction. Ref: **State of Maha. Vs. Ibrahim Patel 2008(2) AIR Bom. R. 180.**

5. A Magistrate has no power under section 156(3) to direct the C.B.I. to conduct investigation in to any offence. Ref: **CBI Vs. State of Rajasthan AIR 2001 SC 668.**

6. Complainant can not choose any particular agency. Magistrate can order registration of FIR and equally can monitor the investigation. Ref: **Sakiri Vs. State of UP (2008)2 SCC 171.**

7. Magistrate has power to ensure that his order under Sec. 156(3) is complied with. Once investigation is ordered under section 156(3), it can not be stopped. Ref: **Vasant Vs. S. Y. Khaire 2001(3) Mh. L. J. 409.**

8. Magistrate has the power to direct the registration of the FIR for the purpose of police to start the investigation. Ref: **Suresh chand jain Vs state of M.P AIR 2001 SC 571.** However in case of complaint of corruption; for the registration of offence against the public servant vide section 156(3), sanction is must. Ref: **Anil Kumar Vs. M.K. Aiyappa (2013) 10 SCC 705.**

9. Magistrate has the power to order the investigation under section 156(3) when the complaint discloses the offences exclusively triable by the court of sessions. Ref: **Devrapalli reddy Vs narayan reddy AIR 1976 SC 1672.**

10. Magistrate has power to treat the application filed for the investigation under section 156(3), as a complaint and order the enquiry under section 202. Ref: **Rameshbhai Vs state of Gujrat AIR 2010 SC 1877.**

11. Magistrate having directed investigation under section 156(3) cannot tinker with or hamper the investigation started by the police by a subsequent order of re-call or his order. If he does so, he exceeds his jurisdiction and acts in a manner which is not in accordance with the procedure established by law. Ref: **Dharmeshbhai Vs. State of Guj 2009 Cri.L.J. 2969.**

12. Magistrate can direct further investigation under this section subject to condition that he has not accepted the conclusion of the investigating officer and has not taken cognizance of the offence.

13. Magistrate who is empowered under sec190 of the Code can only order investigation under section 156(3) of the Code. **Modhav Vs. State of Mah. (2013) 5 SCC 615**

14. Magistrate can forward the true copy or the certified copy of the complaint and the order passed under section 156(3) for the registration of FIR. Ref: **Ajit thete Vs. State of Mah. Criminal Application no. 1091/2013.**

15. Magistrate can direct the investigation agency to submit the report within stipulated period.

12] In the case of Union of India vs. Prakash P. Hinduja and another 2003 (6) SCC 195 it has been observed by the Hon'ble Apex Court that if the Magistrate on an application under Section 156 (3) of the Code is 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. (though he should not himself investigate).

13] The Hon'ble Supreme Court in Priyanka Srivastava Vs. State of U.P. AIR 2015 SC 1758. observe in para no. 26 and 27 that,

“At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellows citizens, efforts are to be made to scuttle and curb the same”.

“In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. 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”.

The Hon'ble High Court in State of Maharashtra Vs.

Sashikant S/o Eknath Shinde, it is held that, “In the present matter, as has already been held by us that the complaint does not disclose the ingredients to constitute the offence under the provisions of the Atrocities Act. We have no hesitation to say that the complaint and the order passed by the learned Magistrate under section 156(3) of Cr.P.C. are nothing else but an abuse of process of the Court. We have no hesitation to hold that continuance of the proceedings would amount to humiliation, harassment and persecution of the officers of the State against whom allegations have been made in the complaint and would perpetuate injustice. May be the respondent complainant has a case, insofar as his grievance of denial of promotion is concerned, but the forum he has chosen, is not one wherein he can seek redressal. We have no hesitation in observing that the respondent complainant if has genuine grievance he could have very well approached the Central Administrative Tribunal. If his contention that he was denied promotion when he was entitled was found to be unjustified by the learned Tribunal is always empowered to grant him all the reliefs including deemed date of promotion. However, the course that has been chosen by the respondent complainant is not the one, which is permissible in law.”

“Having come to the considered conclusion that the complaint so also the order passed under section 156(3) of Cr.P.C. and subsequent registration of First Information Report by police is nothing, but an abuse of process of law, the application deserves to be allowed”.

15] **Maintainability of revision against order under Sec.156(3) and whether accused has right of hearing in revision.**

1. Order under Section 156(3) of Code merely means that alleged cognizable offence should be investigated. Interference by

superior courts with an order of Magistrate under Section 156(3) should normally be confirmed to cases in which there are some very exceptional circumstances. This is observed in a case reported case of in **Shivaji Vithalrao Bhikane Vs.Chandrasen J.Deshmukh 2008 Cri.L.J. 376.**

2. In the case of **Narayandas Hralalji Sarda Vs. State of Maharashtra 2009 (2) Mh.L.J.426** : It is held that, order passed by Magistrate directing police to submit report under section 156(3) of Code is revisable and writ petition is not tenable.

3. In the case of **Manharbhai Kakade and another Vs.Shailesh Bhai Patel and another 2013 Cri.L.J.144** Revision was filed against the order of Magistrate dismissing case under section 203 of Code. It was held by three Judges of Hon'ble Apex Court that, the accused or the person suspected to have committed crime, has right to be heard, whether the order under challenge is at pre-process stage or at post-process stage is unsequential.

4. Complainant requested to forward the complaint for investigation under Section 156 (3) but Magistrate ordered to put it for verification under Section 200 of the Code of Criminal Procedure, In the case of **Yogesh Vilas Dalvi V. State of Maharashtra, 2015 ALL MR (Cri) 1097,** Hon'ble Division bench of Bombay High court held that, revision against such interlocutory order is not tenable.

16] After submission of the report under section 156(3) which is in the form of charge sheet under section 172 of the Code, Magistrate can directly issue the process. However in case police officer files negative report, Magistrate has three options.

- A] He may decide that there is no sufficient ground and drop the proceedings against the accused.
- B] He may take the cognizance of the offence on the basis of police report under Sec. 190 of Code
- C] On the basis of original complaint he may proceed to examine upon oath the complainant and his witnesses under Sec. 202 and thereafter he may issue process or dismiss the complaint. Ref: **H. S. Bains Vs. State 1980 Cri. L. J. 1308.**

17] In the latest judgment of Hon'ble Supreme Court in the case of **Ramdev Food Products Pvt. Ltd. V. State of Gujrat, AIR 2015 SC 1742** important guidelines are given that, "power under Section 202 is of different nature. Report sought under the said provision has limited purpose of deciding 'whether or not there is sufficient ground for proceeding'. If this be the object, the procedure under Section 157 or Section 173 is not intended to be followed. Section 157 requires sending of report by the police that the police officer suspected commission of offence from information received by the police and thereafter the police is required to proceed to the spot, investigate the facts and take measures for discovery and arrest. Thereafter, the police has to record statements and report on which the Magistrate may proceed under Section 190. This procedure is applicable when the police receives information of a cognizable offence, registers a case and forms the requisite opinion and not every case registered by the police."

In the above judgment Hon'ble Apex Court has further observed that, the direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone instance of

process and finds a case made out to proceed forthwith, direction under the said provision is issued. In other words, where on account of credibility of information available, or weighing the interest of justice it is considered appropriate to straightaway direct investigation, such a direction is issued. Cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine “existence of sufficient ground to proceed”. Subject to these broad guidelines available from the scheme of the Code, exercise of discretion by the Magistrate is guided by interest of justice from case to case.

18] The case of Anil Kumar Vs. M. K. Aiyappa reported in (2013) 10 SCC 705 is also necessary to be referred here. In said case, The appellants filed a private complaint against the first respondent, a public servant, under Section 200 Code. Alleging commission of offences punishable under Sections 406, 409, 420, 426, 463, 465, 468, 471, 474 read with Section 120-B IPC and Section 149 IPC and Sections 8, 13(1) (c), 13(1)(d), 13(1)(e), 13(2) read with Section 12 of the Prevention of Corruption Act, 1988 (PC Act). On receipt of this complaint, the Special Judge for Prevention of Corruption passed an order referring the matter for investigation to the Deputy Superintendent of Police, Lokayukta, in exercise of his powers under Section 156(3) Cr.PC.

The Hon'ble High Court in a writ petition filed by the first respondent quashed the order passed by the Special Judge as well as the complaint on the ground that the Special Judge could not have taken notice of the private complaint against a public servant unless the same was accompanied by a sanction order under Section 19(1) of the PC Act, irrespective of whether the court was acting at a pre-cognizance stage or

the post-cognizance stage. Aggrieved by the same, the complainants had filed the present appeals.

While dismissing the appeals, Hon'ble Supreme Court has held that, "Where jurisdiction is exercised on a complaint filed in terms of Section 156(3) or Section 200 Cr.P.C., the Magistrate is required to apply his mind, and in such a case, the Special Judge/Magistrate cannot refer the matter under Section 156(3) Cr.P.C. for investigation against a public servant without a valid sanction order under Section 19(1) of the Prevention of Corruption Act, 1988 (PC Act). The application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order, will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156(3) Cr.P.C. should be reflected in the order, though a detailed expression of his views is neither required nor warranted. The Special Judge/Magistrate in the present case, has stated no reasons for ordering investigation."

19] In the case of *Subryamanian Swamy Vs. Manmohan Singh and another (2012)3 Supreme Court Cases 64* it is observed that, "There is no provision either in the Prevention of Corruption Act, 1988 or Code of Criminal Procedure, which bars a citizen from filing a complaint for prosecution of a public servant who is alleged to have committed an offence. The appellant private citizen has the right to file a complaint for prosecution of Respondent 2 Union Cabinet Minister in respect of the offences allegedly committed by Respondent 2 under the 1988 Act."

It is further held that, "Time-limit of three months for grant of

sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General (AG) or any other law officer in the AG's office.

In future every competent authority shall take appropriate action on the representation made by a citizen for sanction of the prosecution of a public servant strictly in accordance with the direction contained in Vineet Narain Case and the CVC Sanction for Prosecution Guidelines, 2005. ”

It is further observed that, “Grant or refusal of sanction is not a quasi-judicial function and the person for whose prosecution the sanction is sought is not required to be heard by the competent authority before it takes a decision in the matter. What is required to be seen by the competent authority is whether the facts placed before it which, in a given case, may include the material collected by the complainant or the investigating agency prima facie disclose commission of an offence by a public servant. If the competent authority is satisfied that the material placed before it is sufficient for prosecution of the public servant, then it is required to grant sanction. If the satisfaction of the competent authority is otherwise, then it can refuse sanction. In either case, the decision taken on the complaint made by a citizen is required to be communicated to him and if he feels aggrieved by such decision, then he can avail of appropriate legal remedy.”

20] As per sec. 202 (1) of the Code where the complaint discloses the offences exclusively triable by the court of sessions and Magistrate took the cognizance of the offence; it is mandatory to record the statement of the complainant and the witnesses by holding enquiry by the Magistrate himself. It is not necessary that he should record the statement

of each witness. when Magistrate comes to a conclusion that there is sufficient ground to proceed ; he may issue the process in the form of summons or warrant as the case demands. The Magistrate is not precluded from recording of the statements of the witnesses when he has already ordered the enquiry through the police/state agency and the report is submitted by them.

21] An enquiry under this section can in no sense be characterized as a trial for the simple reason that in law there can be one trial for an offence.

22] The presence of the accused is not necessary under section 202 of Code. Thus, as per this section Magistrate has to make a mind whether to summon the accused or to dismiss the complaint. The report made under Sec.202 of Code has been exhausted and thereafter Magistrate can only look at the evidence as such produced before him.

23] The scope of the inquiry under section 202 is extremely limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint (i) on the materials placed by the complainant before the Court (ii) for the limited purpose of finding out whether a prima facie case for the issue of process has been made out and (iii) for deciding the question purely from the point of view of the complainant without at all advertting to any defence that the accused may have.

24] The statements recorded during an investigation under Sec.202, Code can be used for contradiction as per section 145 to impeach his credit under section 155(3), to corroborate his testimony under

Sec.157, and to refresh his memory under Sec. 159 of the Evidence Act.

25] The locus-standi of the accused in a revision against the order passed under Section 203 of the Code has been considered by the **Hon'ble Apex court in the case of Manharibhai Muljibhai Kakadia Vs Shaileshbhai Mohanbhai Patel 2013 CriLJ 144**. It has been held that, in a case where the complaint has been dismissed by the Magistrate under Section 203 of the Code either at the stage of Section 200 itself or on completion of inquiry by the Magistrate under Section 202 or on receipt of the report from the police or from any person to whom the direction was issued by the Magistrate to investigate into the allegations in the complaint, the effect of such dismissal is termination of complaint proceedings. On a plain reading of sub-section (2) of Section 401, it cannot be said that the person against whom the allegations of having committed offence have been made in the complaint and the complaint has been dismissed by the Magistrate under Section 203, has no right to be heard because no process has been issued. Once a challenge is laid to such order at the instance of the complainant in a revision petition before the High Court or Sessions Judge, by virtue of Section 401(2) of the Code, the suspect gets right of hearing before revisional court although such order was passed without his participation. The right given to "accused" or "the other person" under Section 401(2) of being heard before the revisional court to defend an order which operates in his favour should not be confused with the proceedings before a Magistrate under Sections 200, 202, 203 and 204. In the revision petition before the High Court or the Sessions Judge at the instance of complainant challenging the order of dismissal of complaint, one of the things that could happen is reversal of the order of the Magistrate and revival of the complaint.

26] In Devarapalli Reddy and Ors. v. Narayana Reddy AIR 1976 SC 1672 the Hon'ble Supreme Court considered the scope of the powers conferred on the Magistrate under Section 156(3) of the Code. Their Lordships observed: "It may be noted that an order made under Sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or chargesheet under Section 173."

27] The "sufficient ground" needs to be seen on the basis of the material collected under section 200 of the Code. If after examination of complaint, the Magistrate is of the opinion that in order to issue process no sufficient material is available, he may postpone the issue of process, and if he thinks fit he may inquire case himself or direct an investigation to be made by police officer for the purpose of deciding whether or not there is sufficient ground for proceeding,.

28] In Chandra Deo Singh-vs-Prakash Chandra Bose alias Chabi Bose AIR 1963 SC 1430, the Supreme Court has held that the object of section 202 of Code is to enable the Magistrate to scrutinize carefully the allegations made in the complaint with a view' to prevent the person named therein as accused from being called upon to face an obviously frivolous complaint. But there is also another object behind that provision and it is to find out what material is there to support the allegations made in the complaint. It is the bounden duty of the Magistrate while making an enquiry to elicit all facts not merely with a view to protect the interests of an absent accused person, but also with a

view to book a person or persons against whom grave allegations are made.

29] Under Section 190 of the Code, it is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the Magistrate has to be satisfied 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 enquiry. If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process Under Section 204 of the Code.

30] **In Smt. Nagawwa v. Veeranna Shivalingappa Kinjalgi and Ors: (1976) 3 SCC 736,** the extent to which the Magistrate can go at the stage of taking cognizance has been discussed. It is observed that, “It is true that in coming to a decision as to whether a process should be issued the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant in support of the allegations but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a prima facie case against him. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. Once the Magistrate has exercised his discretion it is not for the High Court, or even this Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused.”

31] **Comparative study of 156(3) and 202 of the Code.**

Distinction between power under section 156(3) and section 202(1) can be studied from **Suresh Chand Vs. State of M.P. (2001) SCC (Cri.) 377 and Dilawar Singh Vs. State of Delhi AIR 2007 SC 3234.** Hon'ble Supreme Court held as under.

“The investigation referred to therein is the same investigation, the various steps to be adopted for it have been elaborated in Chapter XII of the Code. Such investigation would start with making the entry in a book to be kept by the officer-in-charge of a police station of the substance of the information relating to the commission of a cognizable offence. The investigation started thereafter can end up only with the report filed by the police as indicated in Sec. 173 of the Code. The investigation contemplated in that chapter can be commenced by the police even without the order of a Magistrate. But that does not mean that when a Magistrate orders an investigation under Section 156(3), it would be a different kind of investigation. Such investigation must also end up only with the report contemplated in Section 173 of the Code. But the significant point to be noticed is when a Magistrate orders investigation under Chapter XII, he does so before he takes cognizance of the offence.

But a Magistrate need not order any such investigation if he proposes to take cognizance of the offence. Once he takes cognizance of the offence, he has to follow the procedure envisaged in Chapter XV of the Code. A reading of Section 202(1) of the Code would convince that the investigation referred to therein is of a limited nature. The Magistrate can direct such an investigation to

be made either by a police officer or by any other person. Such investigation is only for helping the Magistrate to decide whether or not there is sufficient ground for him to proceed further. This can be discerned from the culminating words in Section 202(1) i.e. “or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding”.

This is because he has already taken cognizance of the offence disclosed in the complaint, and the domain of the case would thereafter vest with him. The position is thus clear. Any Judicial Magistrate, before taking cognizance of offence can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he is not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation, it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer-in-charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer-in-charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.”

32] As per the provisions of Narcotic Drugs and Psychotropic

Substances Act, the investigation has to be done according to special procedure under the Act and the Executive Police will not be able to embark upon a separate investigation Ref:**State of H.P. Vs. Vidya Devi-1993 Cr. L.J. 3556 (H.P.- FB.)**

33] Magistrate can direct the Police to register the case and conduct the investigation under section 156(3) of the Code, and then the police will follow requisite steps under Chapter XII of Code. Under the heading “information to the Police and their power to investigate”. The contention that Magistrate has no power to issue such order in view of section 201 of the Code is not acceptable. Ref:**Dilip Khedekar and others Vs. State of Maharashtra, 2012 All M.R. (Cri) 3095 Bom.**

34] In the case of **Nilesh S. Rane vs. Ravikanth Yadav, 2015 ALL M.R. Cri. 1080** it is held that, in the complaint against the Police Officer alleging offence under Prevention of Corruption Act, Magistrate has no power to take cognizance of the offence under Prevention of Corruption Act. Magistrate cannot pass an order under section 156 (3) of the Code, in respect of offences which Special Judge alone is competent to try.

35] Options which are available to the Magistrate after receipt of complaint could be summarized thus. Following five options are available to the Judicial Magistrate who is competent to take cognizance of the case.

- a. Rejection of the complaint.
- b. Pass the order of investigation under Sec. 156(3) of the Code.
- c. Taking cognizance of the offence.
- d. Issuance of process.
- e. Dismissal of the complaint.

36] **Sec 210 – Amalgamation of the Cases :-** When there is police report and also a private complaint in respect of same occurrence it is permissible to hold a joint trial of the accused named in the police report and the accused named in the private complaint amalgamating the two even though the accused in the police report may not all be the same as those in the complaint. The provisions laid down in Section 210 of the Code are mandatory in nature. If the report is not submitted within reasonable time it is not expected of the Court to keep the complaint case shelved for an indefinite period helplessly waiting all the time for the investigating agency to file its report as and when it chooses to do so. On the failure of the investigating officer to file that report within a reasonable time the Court can proceed with the complaint case in accordance with law.

37] Section 210 sub clause (2) of the Code in clear terms provides that the complaint shall be deemed to be a police report in regard to the accused persons common to both the cases. There is nothing in the Code to suggest that once police investigation is done in respect of certain accused persons, then the jurisdiction of the Magistrate to hold enquiry under section 202 in respect of those accused persons is completely ousted.

38] The object of section 210 is not to harass a person twice and also not to authorize a person to vindicate his honour when the case is being investigated by the police. Sub-section (2) is a cure and sub-section (1) is a preventive measure.

39] It is held by the Hon'ble Patna High Court in the case of M/s. Bhawan Alankar Vs. State of Bihar and another 2015 Cri.L.J.

752. “The object of enacting Section 210 of the Code is three fold - (i) it is intended to ensure that private complaints do not interfere with the course of justice ; (ii) it prevents harassment to the accused at once and (iii) it obviates anomalies which might arise from taking cognizance of the same offence more than once. Such a provision was enacted because the makers of the Act thought in their wisdom that sometimes when serious case is under investigation by the police, some of the persons may file complaint and may quickly get an order of acquittal – either by cancellation or otherwise. Thereupon the investigation of the case becomes infructuous leading to miscarriage of justice in some cases. To avoid this, it has been provided that where a complaint is filed and the Magistrate has information that the police is also investigating the same offence, the Magistrate stays the complaint case. If the police report (under section 173, of the Code) is received in the case, the Magistrate would try together the complaint case and the case arising out of the police report. But, if no such case is received, the Magistrate would be free to dispose of the complaint case. This new provision, as noticed earlier, is intended to secure that private complaints do not interfere with the course of justice.”

40] It is appropriate to take note of a judgment delivered by the Apex Court in the case of *Sankaran Moitra Vs. Sadhna Das 2006 (4) SCC 584* where the provisions of Section 210 of the Code and the invocation of that provision has been discussed in the following words :

“ A bare reading of the above provision makes it clear that during an inquiry or trial relating to a complaint case, if it is brought to the notice of the Magistrate that an investigation by the police is in progress in respect of the same offence, he shall stay the proceedings of

the complaint case and call for the record of the police officer conducting the investigation.”

CONCLUSION :-

As discussed above, Magistrate has discretion to pass appropriate order for issuing process. It needs to be noted that issuing process is a serious matter, therefore, discretion is required to be used by application of judicial mind. Any mistake is likely to cause irreparable damage to reputation, status, well being, comfort and money of concerned person.

Thanking You.

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