SUMMARY/GIST OF THE PAPERS ON

SUBJECT :- SCOPE & OBJECT OF SECTION 156(3) OF THE CODE OF CRIMINAL PROCEDURE, 1973.

INTRODUCTION :-

Preamble of our Constitution guarantees to a citizen justice, liberty, equality and fraternity. All these are possible only when there is rule of law. The rule of law could discernibly be dissected into two well accepted concepts : (I) governance and (ii) administration of justice. They are not only the pillars of the Constitutional mandate, but are linchpin to the growth, development and independence of any nation or society. Governance obviously means good governance and it refers to the task of running the Government by effective manner. Right to a legitimate and accountable government under which fundamental rights and human rights are respected and the Government controlled by the rule of law are the basic elements of good governance. Rule of law indicates good governance which requires fair legal framework that enforce law impartially. Impartial enforcement of laws requires an independent judiciary and an impartial and incorruptible police force.

In India, the administration of criminal justice system is controlled under the provisions of the Criminal Procedure Code,1973 (hereinafter referred to as “the Code”). Like in many other parts of the world, under the Indian criminal jurisprudence, the system accepts two procedures for redressing the grievance of a victim against the offender including that by the State itself. The Criminal Procedure Code is concerned with “how the law is enforced”. Criminal law involves “what law is enforced”. The two accepted methods for enforcing administration of criminal justice system are a direct access and invocation of the Courts system, while the other is adopting the channel through (Police/Investigating agency) the State agency.

The option is available to a complainant or a victim or anybody for that matter and the provisions of the Code provide a detailed statutory scheme for invocation, implementation, trial and punishment of a guilty person under these different methodologies. In the event a person chooses to approach a police station and makes a report of a cognizable offence, the police is under an obligation to register First Information Report (FIR) except in certain exceptional cases where some kind of preliminary inquiry may be necessary in the facts and circumstances of that case before registration of an FIR. However, even there, the officer in charge of a police station is under

obligation to make an entry in the daily diary register as per police rules and thereafter within the shortest possible time must register an FIR in accordance with law. The information under section 154 of the Code of Criminal Procedure is generally known as first information report. It is pertinent to note that the word “first” is not used in section 154 of the Code. Yet, it is popularly known as “First Information Report”.

Scope & Object :-

As per provisions of Section 156 of Cr.P.Code, police officer can start investigation of any cognizable case, without order of Magistrate.

Sub-section (3) of Section 156 of Cr.P.Code enables to the Magistrate to order investigation of an offence of which, he could take cognizance U/s.190 of the Code. This order could be passed at pre-cognizance stage only and not after taking the cognizance.

When a petition or complaint is presented before Magistrate in which request is made for taking action as mentioned in Section 2 (d) of the Code, the Magistrate has to ascertain whether the contentions made in petition/complaint constitute any offence. If they constitute some offence, then the Magistrate is expected to take decision whether

the matter needs to be referred to the Police for investigation as provided U/s.156(3) of the Code or he needs to proceed further as provided in Section 200 and subsequent section of Chapter XI of the Code. There is discretion to the Magistrate in this regard. Though police officer is duty bound to register the case on receiving information of cognizable offence, the Magistrate is not bound to refer the matter to Police under section 156 (3) of the Code **State of Maharashtra Vs. Shashikant Shinde, (2013 ALL MR (Cri) 3060**)

The Magistrate can also monitor the investigation to ensure proper investigation. When there is no sufficient material on record to take cognizance of the offence, the Magistrate may refer the matter to the police U/s.156(3) of Code of Criminal Procedure, for the purpose of investigation.

When once the Magistrate after scrutinizing the complaint, the sworn statements and other material available on record, comes to conclusion that he can take cognizance of the offence. There is no need to have resort to Section 156 (3) of Cr. P. Code. There are three possibilities;

(1) The Magistrate can issue process against accused if sufficient material is available,

(2) The Magistrate may come to conclusion that there are no sufficient grounds for proceeding and dismiss the complaint, and

(3) The Magistrate can take recourse to provision of Section 202 of Cr.P.Code and direct investigation/inquiry into the matter.

The prime difference between the investigation under section 156(3) of the Cr. P. C and inquiry by magistrate or investigation by police in terms of section 202 of Cr P C is that, for the investigation under section 156(3) registration of FIR in police station is must, however in inquiry or investigation under section 202 no registration of FIR is needed. In **Devarapalli Laxminarayana Reddy & others Vs. V. Narayana Reddy and others [(1976)3 SCC 252]** the Hon'ble Supreme Court held that,

Section 156(3) occurs in Chapter XII, under the caption "Information to the Police and their powers to investigate" while Section 202 is in chapter XV which bears the heading "Of complaints to magistrate"

The power to order investigation under section 156(3) is different from the power to direct investigation conferred by section 202(1).

The two operates in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage. The second at post cognizance stage when the magistrate is in seizin of the case.

An order made under section 156(3) of the Cr. P. C. is in the nature of pre-emptory reminder or intimation to the police to exercise their plenary powers of investigation under section 156(1) of the Cr. P. C Such an investigation embraces the entire continuous process which begins with the collection of evidence under section 156 of Cr. P. C and ends with the report either under section 173 or section 169 of Cr. P. C.

Where a person has approached the police station under Section 154 of the Code, but the police station does not register FIR as contemplated under law, he has a right to make a complaint to the higher authorities in terms of Section 154(3) of the Code and such higher authority exercising the powers of an officer in charge of a police station would investigate the matter himself or direct the investigation to be conducted by another police officer subordinate to him. In the event the information of any kind received by the police officer in charge of a police station relates to commission of a non cognizable offence, he is obliged to proceed in accordance with the provisions of Section 155 of

the Code. The Legislature provides a 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. Once the investigation is completed by the investigating agency, it is required of the said agency to file appropriate report in terms of Section 173 of the Code, whereupon the Court competent, to try such an offence would take cognizance and conduct the trial and punish the offender, if found guilty, in accordance with law.

It is expected that every person to give information to the police of commission of any cognizable offence and the police is normally bound to register an FIR if a commission of a cognizable offence is made out or at least make a daily diary entry and then register an FIR if a commission of a cognizable offence is made out within a short time. Despite such information having been received by the police officer, if an FIR is not registered under section 154(1) of the Code, the remedy to the aggrieved person is provided under section 154(3) of the Code. If action is not taken by the superior officer under section 154 (3) of the Code, then any person has a right to invoke the power of the court under Section 156(3) of the Code. Section 154 of the Code relates to providing of an information to a police officer in charge of the police

station, who then in case of a cognizable offence has the power to start investigation forthwith in terms of Section 156(1) of the Code, where he does not need an order of a Magistrate directing investigation.

Procedure :-

The Hon'ble Supreme Court of India in **Lalita Kumari vs State of U.P.& Oth.,(2014(2) SCC 1),** held that the registration of First Information Report is mandatory in Cognizable offences and action will be taken against the police officer for his failure to register a First Information Report on the complaint of a cognizable offence.

The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation. The Hon'ble Supreme Court in **Mohd. Yousuf vs. Smt. Afaq Jahan & another,(AIR 2006 SC 705)**, observed that, any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code of Criminal Procedure. If he does so, he need not to examine the complainant on oath because he was 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 the first information report. There is nothing illegal in doing so. After all

registration of the first information report 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 of Criminal Procedure. Even if a Magistrate does not say in so many words while directing investigating under Section 156(3) of the Code of Criminal Procedure that a first information report should be registered, it is the duty of the officer in charge of the police station to register the first information report regarding the cognizable offence disclosed by the complaint. The same view was taken by the Hon'ble Supreme Court of India in **Dilawar Singh vs. State of Delhi,(MANU/SC/3678/2007)**.

In **Devarapalli Laxminarayana Reddy and ors. Vs Narayana Reddy and ors. (MANU/SC/0108/1976)**, the Hon'ble Supreme Court explained the powers of the Magistrate under Section 156(3),200 and 202 of the Code of Criminal Procedure. Wherein it is held that, 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

forwarding of the complaint to the police for investigation under Section 156(3) of the Code , will be conducive to justice and save the valuable time of the Magistrate from being investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence, himself.

No format is provided for the making of complaint under Section 156(3) of the Code of Criminal Procedure. In **Mr. Panchabhai - vs State of Maharashtra, (2010 All M.R. (Cri.) 244)**, the Hon'ble Bombay High Court held that "A petition under Section 156(3) cannot be strictly construed as a complaint in terms of Section 2(d) of the Code and absence of a specific or improperly worded prayer or lack of complete and definite details would not prove fatal to a petition under Section 156(3) of the Code, in so far as it states facts constituting ingredients of a cognizable offence. Such petition would be maintainable before the Magistrate". While dealing with the complaint, the Magistrate is not bound to direct investigation under Section 156(3) of the Code. He may direct the investigation under Section156(3) of the Code or take the cognizance of the complaint. But it is not open to the Magistrate to take cognizance of the complaint as well as direct the investigation under Section 156(3) of the Code of Criminal Procedure Code.

Cognizance :-

The power to order police investigation under section 156(3) of the Code is different from the power to direct investigation conferred by Section 202(1) of the Code. The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage and the second at the post cognizance stage when the Magistrate is in seisin of the case. That is to say in the case of a complaint regarding the commission of a cognizable offence, the power under Section 156(3) of the Code can be invoked by the Magistrate before he takes cognizance of the offenceundersection190(1)(a)of the Code. But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of section 156(3) of the Code. What is 'taking cognizance 'has not been defined in the Code of Criminal Procedure. However, the Hon'ble Calcutta High Court in **Legal Affairs vs Abani Kumar Banerjee, (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 can not be said to have taken cognizance of the offence.

The Hon'ble Bombay High Court in **State of Maharashtra -vs- Shashikant Shinde ,(2013 All MR (Cri) 3060)**, held that when a petition or complaint is presented before the Magistrate, in which a request is made for taking action as mentioned in section 2(d) of the Code, the Magistrate is expected to apply his mind. The Magistrate has to ascertain as to whether the contentions made in thepetition/complaint constitute any offence. If they constitute some offence then the Magistrate is expected to take decision as to whether the matter needs to be referred to police for investigation as provided in section 156(3) of the Code or he needs to proceed further as provided in section 200 and subsequent sections of Chapter XV of the Code. There is a discretion with the Magistrate in this regard. Though police officer is duty bound to register case on receiving information of cognizable offence, the Magistrate is not bound to refer the matter to police under section 156(3)of the Code.

The proceeding under section 156(3) are at a pre cognizance stage and the accused has no right to participate. The Magistrate cannot recall the order by way of stay under section 210. He has no jurisdiction to stay the investigation by police. The Magistrate cannot stay the arrest of the accused.

In Sessions Cases :-

The Magistrate has no power to take cognizance of an offence on basis of private complaint that resulted in submission of the report under section 173 consequent upon reference under section 156 (3) when once he has accepted negative police report and closed the proceedings, **S D Soni v State of Gujarat, [(1991) Cr LJ 330 (SC)**].

Rejection of prosecution case on ground of illegality or irregularity was held to be not proper **Leela Ram v State of Haryana, [1999 (8) Supreme 631].** Conclusion of Court cannot not be allowed to base solely on the probity of investigation **State of Karnataka v K Yarappa Reddy, [1994 (8) SCC 715**]

In the case triable by Court of Sessions, the Magistrate on the receipt of the complaint instead of conducting the inquiry himself under Section 202 Cr.P.C. may order investigation by police under Section 156(3) **Jogendranath Vs. State of Orissa (2004 (20) AIC 592)** but in **Nariji Ram Vs. State of M.P. (2008(4) Crimes 292 MP.**) contrary view was taken. Magistrate has no jurisdiction to direct investigation under 156(3) when offenses are exclusively triable by court of Sessions. He has to make inquiry himself under Section 202 of the Cr.P.C. **Laxmidhar Vs. State of Orissa [2004 Cr.L.J. 2816**].

Investigation :-

Under Section 156 of the Code of Criminal Procedure, the police have statutory rights to investigate the circumstances of an alleged cognizable offence without any authority from the Judicial Officers. Neither the magistrate nor even the High Court can interfere with those statutory rights by exercising the inherent jurisdiction of the Court. The powers of the police officers under section156(1) of the Code are independent. In **State - vs- Bhajan Lal,(AIR1992 SC 604)**, the Hon'ble Supreme Court held that "The field of investigation of any cognizable offence is exclusively within the domain of the investigating agencies over which the Courts cannot have control so long as the investigation proceeds in compliance with the provisions relating to investigation."

Special Judge has power of Prevention of Corruption Act, 1988 to direct the police to investigate on a private complaint but a Sessions Judge cannot order investigation. But Special Court has no power to direct investigation by CBI. If there is complaint and counter complaint. It is to be registered separately but same I.O. Should conduct investigation **Babu Vs. State of Karnataka (2007 Cr.L.J. 3802 DB**).

There is an implied power in Magistrate to order registration of criminal offence and to direct officer in charge of concerned police station to hold the proper investigation and to take all such necessary steps that may be necessary for insuring a proper investigation including monitoring the same. **Sakeri Wasu Vs. State of U.P. (AIR 2008 SC 907**).

The Magistrate cannot issue direction to the police to conduct it in a particular way. Magistrate will be justified in prescribing a time limit for the police to complete the investigation and send a report. If lethargy is exhibited by police, the Magistrate can address the head of the police to facilitate and expeditious report. **N.A.S. Ansari Vs. Mohd. Ali, (1990 Mad. Law W. (Cri.) 201**)

Magistrate cannot direct investigation by CBI **Anil Sharma Vs. State of Rajasthan (2005 Cr.L.J. 713(Raj.**) Magistrate cannot refer the complaint to the C.O.D. Police for investigation and report, the order is per se illegal, **Narasimhaiah Vs. State of Karnataka [(2002) 3 Crimes 704]**. The power can be exercised, even after submission of report under Section 173 . To entertain an application under this Section it is not a pre-condition that applicant must have approach the police station and to furnish a proof that, he has applied to the Superintendent

of Police under 154(3) Cr.P.C. An investigation was/ is permissible for only cognizable offenses. The Magistrate can direct the investigation only through the police station of the area and not to any other police station or police officer.

A Magistrate cannot interfere with the investigation by the police. If the Magistrate on an application under Section 156(3) Cr.P.C. 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. **UOI vs. Prakash P.Hinduja [2003(6)SCC195]***)*

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.

The power in the Magistrate to order further investigation under Section 156(3) is an independent power, and does not affect the power of the investigating officer to further investigate the case even after submission of his report vide Section 173(8).

The Magistrate can order re-opening of the investigation even after the police submits the final report, as observed by the Hon'ble Apex Court in **State of Bihar vs. A.C. Saldanna [AIR 1980 SC 326]**.

The Hon'ble Apex Court in ***A.C. Saldanna*** (supra) further held that "Section 156(3) Cr.P.C. is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an F.I.R. and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) Cr.P.C., though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation".

The Hon'ble Apex Court in ***A.C. Saldanna*** (supra) further held that “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".

Remedy against rejection :-

The order under 156(3) is a judicial order and he is amneble to revision **Ajay Malviya Vs. State of U.P. (2001 Cr.L.J. 303 ALL DB**), but in some cases it was held that the order is interlocutory and not a final order. Hence, revision is not maintainable **Gangadhar Vs. State of Orissa (2008 Cr.L.J. 839 Orissa**.)

Conclusion :-

Thus, to sum up the scope and object of section 156 (3), Cr.P.C. :

1) A Judicial Magistrate has to exercise discretionary power U/s.156(3) of Cr.P.Code judiciously on proper grounds and not in mechanical manner.

2) Section 156(3) of Cr.P.Code empowers the Magistrate to refer and direct the police to investigate the cognizable offence.

3) When the allegation made in complaint does not disclose cognizable offence, the Magistrate has no jurisdiction to order police investigation under the provisions of Sec.156(3) of Cr.P.Code.

4) The Magistrate is expected to apply judicial mind for determining whether in the facts and circumstances of the case investigation by police machinery is actually required or not.

5) When allegations are not very serious and complainant himself is in possession of evidence to prove allegations there is no necessity to pass order u/s.156 (3) of Cr.P.Code.

6) Magistrate has to assign brief reasons for the order.

7) A certified copy of complaint is required to be sent to police along with communication of the order passed by the Magistrate.

8) For the purpose of enabling the Police to start investigation, it is open to Magistrate to direct the Police to register FIR. There is nothing illegal in doing so.

Thus the discretion of the Magistrate would determine the fate of application under this section, which invariably covers section 192 of the Code as a guiding canon.

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Case Laws for discussion

In **Priyanka Shrivastava -vs- State of U.P. [2015 Cri.L.J. 2396]**, it is held that, "power under section 156(3) warrants application of judicial mind. Litigant cannot at its own whim invoke authority of Magistrate. Thus, application under section 156(3) are to be supported by affidavit duly sworn by the applicant seeking invocation of jurisdiction of Magistrate under section 156(3)".

Raviprakash Singh @ Arvind Singh -vs- State of Bihar [AIR 2015 SC 1294] Cri.P.C. S 167, release on bail – computation period of 90 days – date on which accused was remanded to judicial custody is to be excluded, charge sheet as such filed on 90th day – there is no infringement of section 167 sub section 2.

Certain guidelines are also issued by the **Hon'ble Bombay High Court** in this regard in **Ajit S/o. Ramrao Thete and ors. ...Vrs... State of Maharashtra and ors. Criminal Application No. 1091/2013**. The Magistrate can direct the investigation under Section 156(3) of the Code of Criminal Procedure and can direct the police to register FIR and to file charge sheet or final report. After completion of investigation the police may file charge sheet under Section 173 of the Code of Criminal Procedure or file final report. But the final report is not binding on the

Magistrate. Where a Magistrate orders investigation by the police before taking cognizance under Section of 156(3) of the Code and receives the report thereupon he can act on the report and discharge the accused or straightaway issue process against the accused or apply his mind to the complaint filed before him and take action under Section 190 of the Code of Criminal Procedure as described above.

In ***Shivaji Vitthalrao Bhikane Vs. Chandrasen Deshmukh, (2008 Cr.L.J. 376),*** it is held that an order for investigation under Section 156(3) of the Code merely means that alleged cognizable offence should be investigated. Interference by superior courts with an order of Magistrate under Section 156(3) of the Code should normally be confirmed to cases in which there are some very exceptional circumstances.

Rajinder Singh Vs. State of Panjab (**AIR 2015 SC 1359**) (A) Penal Code, S. 304B-Dowry Prohibition Act-S.2, 4-Dowry Prohibition Act (28 of 1961)-Demand of Dowry-Statute must be given fair, pragmatic, and common sence interpretation-Any money or property or valuable security-Demanded by any of the persons mentioned in S.2 of 1961 Act, at or before or at any time after marriage which is reasonably connected to death of married women-Would necessarily be in connection with or in

relation to marriage unless, facts of a given case clearly and unequivocally point otherwise.

(B) Penal Code (45 of 1860) S. 304B-Dowry death-Expression "soon before her death" in S.304B-Is a relative expression-" Soon before" not synonymous with "immediately before"-Time lags may differ from case to case-Demand for dowry should not be stale but should be continuing cause for death of married woman under Sec. 304B.

(C) Penal Code (45 of 1860), Sec. 304B-Dowry death-Demand for money made shortly after one year of marriage-Fifteen days before her death she visited parents house on being mal-treated-Thereafter deceased, married woman, died by poisoning-Evidence of her father not shaken-Concurrent finding as to guilt of her husband, accused-No interference.

Shreya Singhal Vs. Union of India (AIR 2015 SC 1523)

(A) Information Technology Act (21 of 2000) S. 66 A – Sending offensive messages online-Punishable for Freedom of speech and expression-Provisions of S. 66A are in its entirety violative of Art. 19(1) () of Constitution-Not saved under Art.19(2) of Constitution.

Abdul Razzaq Vs. State of U.P. (AIR 2015 SC 1770) Juvenile Justice (Care and Protection of Children) Act (56 of 2000), S. 7-A, Juvenile Justice (Care and Protection of Children) Rules (2007), R.12 – Juvenility – Claim of – Person below 18 years at time of incident can claim benefit of Act any time – Such relief can be claimed even if a matter has been finally decided-Accused above 16 years but below 18 years of age on date of occurrence-Is entitled to benefit of Act.

Kirshna Texport & Capital Markets Ltd., Vs. Ila A. Agrawal and others,(**AIR 2015 SC 2091)** Negotiable Instruments Act (26 of 1881), S. 138, 141- Dishonour of cheque-Offence by company-Issuance of notice – there is no requirement of sending of individual notices to Directors of Company.

Roxann Sharma Vs. Arun Sharma, (AIR 2015 SC 2232) (A) Guardians and Wards Act (8 of 1890) S. 7 – Hindu Minority and Guardianship Act (32 of 1956), S. 6, Proviso-Custody of infant-Should be "ordinarily" with mother-Order giving interim custody to father on ground that mother has not established her suitability to be granted interim custody of infant-Not valid-Proviso places onus on father to prove that it is not in welfare of infant child to be placed in custody of his/her mother-Wisdom of Parliament or Legislature should not be

trifled away by curial interpretation which virtually nullified spirit of enactment. Interpretation of Statutes-Sperit of enactment.

(B) Guardians and Wards Act (8 of 1890), Sec. 14-Custody disputes pertaining to minor-Required to be dealt with only by one court-Order in writ petition by single Judge of High Court regarding visitation rights of mother-Trial court accordingly for carrying on that order, passed order about weekend visitations to mother-Writ petition, against-Another single Judge found trial court's order erroneous for adjudication de novo-Thus, order passed previously by co-ordinate Bench was nullified-Not justified.-Precedent-Coordinate benches must respect prior orders.

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