

JUDICIAL DISTRICT BEED
SECOND WORKSHOP

SUMMARY OF PAPERS

Subject in Criminal Law

Subject : Scope of provisions of Ss. 156(3), 190, 200
and 202 of Criminal Procedure Code -
A comparative study

A SCOPE OF SEC. 156(3) Cr. P. C.

01. Ch. XII of Cr. P. C. deals with information to police and their powers to investigate. Sec. 156 falling within this Ch. XII deals with power of police officer to investigate cognizable offences. Such investigation starts with the making of entry in book kept by officer-in-charge of police station. Substance of information received is being entered in book and investigation begins. It can end up only with report of police officer to be filed under Sec. 173 of Cr. P. C.

02. Above referred investigation can be commenced even without order of Magistrate. Sub-section (3) of Sec. 156 of Code enables Magistrate to order the investigation of an offence of which he could take cognizance under Sec. 190 of Code. This order could be passed at pre-cognizance stage only and not after taking the cognizance.

03. By passing order under Sec. 156(3) of Cr. P. C., there occurs neither issuance of process nor the person against whom investigation is directed could be branded as accused. This is a pre-cognizance stage.

Pavankumar Vs. State [2008(6) Mh. L. J. 691]

Panchabhai Vs. State [2010(1) Mh. L. J. 421] FB

04. In a complaint case, when Magistrate has passed order of investigation under Sec. 156(3), police officer need not seek permission for arrest during course of investigation.

Laxminarayan Vs. State [2007(5) Mh. L. J. 7] FB

05. In exercise of power under Sec. 156(3), Magistrate is not empowered to direct investigation to police officer other than one attached to police station within his territorial jurisdiction.

State of Maha. Vs. Ibrahim Patel [2008(2) AIR Bom. R. 180]

06. A Magistrate has no power under Sec. 156(3) to direct the C.B.I. to conduct investigation in to any offence.

CBI Vs. State of Rajasthan (AIR 2001 SC 668)

07. Complainant can't choose any particular agency. Magistrate can order registration of FIR and equally can monitor the investigation.

Sakiri Vs. State of UP [(2008)2 SCC 171]

08. Magistrate has power to ensure that his order under Sec. 156(3) is complied with. Once investigation is ordered under Sec. 156(3), it can't be stopped.

Vasant Vs. S. Y. Khaire [2001(3) Mh. L. J. 409]

09. Police investigation under Sec. 156(3) of Criminal Procedure Code is permissible only in cognizable offence and not in non-cognizable offence.

Swati Vs. State of Maha. [2007 ALL MR (Cri.) 1473]

10. 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] Magistrate can take the cognizance of the offence on the basis of police report under Sec. 190 of Cr. P. C., 1973.
- c] He may take cognizance of the offence under Sec. 190 of Cr. P. C. on the basis of original complaint and proceed to examine upon oath the complainant and his witnesses under Sec. 202 and thereafter he may issue process or dismiss the complaint.

H. S. Bains Vs. State [1980 Cr. L. J. 1308]

B SCOPE OF SEC. 190

01. Ch. XIV of Cr. P. C. lays down provisions containing conditions required for initiation of proceedings. Sec. 190 lays that, Magistrate can take cognizance of offence -

- upon complaint;
- upon police report; or
- upon his own knowledge.

02. Hon'ble Supreme Court 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.

Tula Ram Vs. Kishore Singh (AIR 1977 SC 2401)

03. Term 'cognizance' has not been defined in Code of Criminal Procedure. Its interpretation could be studied from *S. K. Sinha Vs. Videocon (AIR 2008 SC 1213)*.

- ❖ It merely means 'become aware of'. When it is used with reference to Court, it connotes 'to take notice of judicially'.
- ❖ It indicates point when Court takes judicial notice of offence with a view to initiating proceeding in regard to such offence said to have been committed by someone.
- ❖ Taking cognizance doesn't involve any formal action. It occurs as soon as Magistrate applies his mind to the offence.
- ❖ Cognizance is taken of offence and not of the offender. Taking cognizance is a condition precedent for valid trial.

04. If Magistrate records verification of complainant, it amounts to taking of cognizance. Taking of cognizance is a condition for valid trial.

Manisha Vs. State [2008 (1) Mh. L. J. 130]

Panchabhai Vs. State [2010(1) Mh. L. J. 421] FB

C SCOPE OF SEC. 200 AND 202

01. Ch. XV of Cr. P. C. lays down the procedure which a Magistrate has to follow when a complaint is made to him. Here, Magistrate taking cognizance has to examine the complainant and his witnesses if any. Object is to find out whether or not complaint is justifiable. Very purpose of law is to give a person an access to justice independent of police.

02. After above referred examination, question of issuance of summons comes in. Magistrate can either issue the summons or order inquiry under Sec. 202. When matter is at the stage whether or not process should be issued, accused has no right of being heard.

Laxmi Vs. State [1993 Mh. L. J. 609]

Sunil Vs. Asha [2007(6) AIR Bom. R. 613]

03. If evidence collected above is found insufficient to take decision, Magistrate may either inquire himself or direct investigation by police officer under Sec. 202(1) of Code. Such investigation is only for helping the Magistrate to decide whether or not there is sufficient ground to proceed further. Purpose of inquiry is to see whether there is sufficient ground to proceed and not to see whether there is sufficient ground of conviction.

CEO Vs. Videocon [(2008) 2 SCC 492]

04. After receiving the report of investigation under Sec. 202, the Court will consider whether there is sufficient ground to proceed. If there is no sufficient ground to proceed, the Court shall dismiss the complaint under Sec. 203. If there is sufficient ground to proceed, then the Magistrate will issue summons or warrant, as the case may be.

D COMPARATIVE STUDY

01. Distinction between power under Sec. 156(3) and Sec. 202(1) could 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 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 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 complaint because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.

02. Difference between these two provisions also has been laid down by Hon'ble Bombay High Court in *Suhas Vs. Chandrakant [2001(1) Mh. L. J. 328]* referring to *Devarapalli Vs. V. Narayana (AIR 1976 SC 1672)* as under.

“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 police investigation under Section 156(3) is different from the power to direct investigation conferred by Section 202(1). The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage, 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) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1) (a). 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). It may be noted further 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 charge-sheet under Section 173. On the other hand, Section 202 comes in at a stage when some evidence has been collected by the Magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the Magistrate is empowered under Section 202 to direct within the limits circumscribed by that section, an investigation for the purpose of deciding whether or not there is sufficient ground for proceeding. Thus the object of an investigation under Section 202 is not to initiate a fresh case on police report but to assist the Magistrate in completing proceedings already instituted upon a complaint before him.

It is therefore clear that a Magistrate is not making reference to the police for report under Section 202 Criminal Procedure Code for the purpose of taking cognizance of the offence which he has already taken but only to proceed further in the matter. On the other hand, reference under Section 156(3) is only to activate the police to investigate about the complaints whereas reference under section 202 is to collect further materials for the Court to proceed further.

E OPTIONS AVAILABLE

01. 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 :

If the complaint on the background of facts does not at all make out any offence, then the Magistrate may reject the complaint. This power of rejection at the pre-cognizance stage is inherent and it cannot be mistaken for the power of dismissal available under Sec. 203 of Cr. P. C. since the said power of dismissal is one which can be exercised only at pre-cognizance stage.

b. Order of investigation under Sec. 156(3) :

Where the complaint is not rejected at the threshold, the Magistrate may without taking cognizance of the offence, order an investigation by the police under Sec. 156(3) of Cr. P. C. and forward the complaint to the officer-in-charge of the police station concerned, provided that the complaint alleges the commission of a cognizable offence. Such a course can be adopted by the Magistrate only at the pre-cognizance stage. In Tukaram Vs. Kishorsing (AIR 1977 SC 2401), it was held that, even a complaint alleging the commission of offences exclusively triable by Court of Sessions can also be so forwarded under Sec. 156(3) of Cr. P. C. This power of the Magistrate under Sec. 156(3) of Cr. P. C. can't be exercised by him after taking the cognizance.

c. Taking cognizance of the offence :

Where the Magistrate does not order investigation under Sec. 156(3) of Cr. P. C. and does not return the complaint, the Magistrate may proceed under chapter XV of Cr. P. C. and thereby take cognizance of the offence. Where Magistrate chooses to take cognizance of the offence, he may adopt the alternatives given in Ss. 200 and 202 of Code.

d. Issuance of process :

If upon examining the complainant and witnesses under Sec. 200 of Cr. P. C. and after conducting an inquiry or directing an

investigation under Sec. 202, the Magistrate is of the opinion that there is sufficient ground for proceeding, he shall then issue summons or warrant against the accused under Sec. 204(1) depending on the nature of case.

e. Dismissal of the complaint :

If after considering the statements on oath of the complainant and witnesses, if any, and the result of the inquiry or investigation, if any, under Sec. 202 of Cr. P. C., the Magistrate is of the opinion that there is no sufficient ground for proceeding, he shall then dismiss the complaint after briefly recording reasons for doing so under Sec. 203 of the Cr. P. C.
