

QUESTIONS DISCUSSED IN SECOND WORKSHOP WITH ANSWERS

CRIMINAL SIDE

Scope of provisions of Section 156(3), 190, 200, 201 of

Criminal Procedure Code.

Q.1. Whether the power of the Magistrate to direct investigation U/sec. 156(3) of the Code of Criminal Procedure involves incidental power to direct the proper investigation and to monitor the investigation ?

Ans. There is difference between investigation and monitoring. The Magistrate can monitor the investigation. He can fix time limit for filing the report. He can also monitor whether the order of the Court is being properly followed or not. However, the Magistrate can not direct the police officer to do proper investigation which is nothing but interference in the investigation. There are several provisions to monitor investigation. It is common experience that police do not properly investigate. This aspect has been elaborately discussed by the Hon'ble Apex Court in the case of *Sakri Vs. State of U.P., (2008) 2 SCC 171*. It is observed that Magistrate has power to ensure that his order under Sec. 156(3) is complied with.

Q.2. Whether a Magistrate can order further investigation to police after filing charge-sheet U/sec. 173(1) of the Code of Criminal Procedure ?

Ans. The Magistrate can direct further investigation or reinvestigation under Section 156(3) when the investigation so far done was incomplete or not satisfactory.

Q.3. Whether a Magistrate can direct investigation by police U/sec. 202 of Cr.p.C. where the offence complained is triable exclusively by the Court of Sessions ?

Ans. No such order can not be passed regarding the investigation

by police U/sec. 202 of Cr.p.C. The complainant and his witnesses if any have to be examined on oath. By the amendment in 2006 in Sec. 202 of Cr.P.C. now it has been made incumbent on the Magistrate to hold inquiry or investigation as the case may be when accused resides at a place not beyond the area in which he exercises his jurisdiction.

Q.4. Once an order U/sec. 156(3) of Cr.P.C. is passed, whether such order can be called back by Magistrate ?

Ans. Such order can not be called back because by the order of Magistrate firstly the police registers the crime and Magistrate can not quash it. But the Complainant can withdraw the complaint.

Q.5. Whether Magistrate can issue process without the police report only on the basis of the material placed before him?

Ans. Yes. Purpose of Section 202 Cr.P.C. is only to collect additional evidence to proceed further. The Magistrate may under this Section, can either issue the summons or order inquiry U/sec. 202.

Q.6. Whether Magistrate can take cognizance of an offence U/sec. 138 of Negotiable Instrument Act, on police Report?

Ans. No. The provisions of N.I. Act do not permit this procedure. The Magistrate can reject the complaint if the accused is ready to deposit the disputed amount. U/sec. 142 of the Act, written complaint is mandatory. *Anilkumar Vs. M.K.Iyappa, 2013 Vol.(10) SCC 705.*

Q.7. In Cr.P.C. if the Magistrate has been invested with powers to have control over investigation process then what was necessity to incorporate Sec. 156(3) ?

Ans. The role of Magistrate is very important. He is first Judicial Authority at Taluka place who can exercise his powers and provisions of 156(3) has been incorporated as part of Scheme of Chapter of Cr.P.C. If investigation of offence is required recovery or discovery of incriminating articles,

arrest of accused for investigation, evidence of Expert such as handwriting expert, Forensic expert etc. then it can be done by the police which can not be done by the Court or Magistrate. The order under this section shall not not in strait jacket formula. The Magistrate shall apply mind before passing order. He should be careful and rational while passing order under this Section. It should not be for shrinking the responsibility for taking cognizance U/sec. 190. The above aspect is observed by the Hon'ble Apex Court in the case of *Lalitakumar Vs. State of U.P.*, 2013 ALL MR (Cri)4444 (SC).

Q.8. Whether Magistrate can sou-moto take cognizance of any offence if committed in his presence ?

Ans. Yes, the Magistrate in person can take cognizance of any offence if committed in his presence. He himself may file complaint or can direct his subordinate to file such complaint. Even in office or outside the office he can use this power. A Magistrate is duty bound for 24 hours. Section 44 of Cr.P.C. is clear on this aspect. The conditions precedent are laid down U/sec. 154(3) of Cr.P.C. for taking cognizance sou-moto.

CIVIL SIDE

A) Right of daughter as coparcener in the Hindu Joint Family and coparcenary property U/se.6 of the Hindu Succession Act, as amended in the year 2005 with reference to recent case laws.

Q.1. Whether daughter can claim partition as a coparcener in case if her father died before 9-9-2005?

Ans. In view of Hindu Succession Amendment Act, 2005 the daughters are given right to become a coparcener in her own right in the same manner as the son and she has same rights in the coparcenary property as she would have had if she had been a son.

If male Hindu dies and any female heir is surviving then

	partition will be by succession. If male Hindu dies and only male heirs are surviving then partition will be by Survivorship.
	Section 6 of Hindu Succession Act 1956 amended by 2005 Amendment Act is retroactive in operation. Clause a) of amended Sect.6 (1) is proscriptive in operation and clauses (b),(c) of amended Section 6(1) and Subsection (2) of amended Sect.6 are retroactive in operation.
	For effecting partition under amended Act 2005, date of death is important

B) Framing of issues.

Q.1.	In injunction suit what should be considered either title or possession ?
Ans.	Title is to be considered but title can not be decided. Only possession is to be seen on the date of suit.
Q.2.	If possession is to be considered, whether lawful or unlawful ? If there is unlawful possession then Whether Court has to consider title ?
Ans.	Lawful possession is only to be considered. A settled possession is also to be considered and can be protected. The factors of Settled possession, actual possession, constructive possession, permissive possession are also required to be considered in injunction suit.
Q.3.	Whether the question of limitation can be framed as preliminary issue?The issue of limitation is to be framed as preliminary
Ans.	No. The issues of limitation is to be framed but it is not obligatory to decide that issue as preliminary issue before proceeding to decide other issues.
Q.4.	Whether the issues regarding bar of suit can be framed if there is no pleading in the written statement ?

Ans. The issues in respect of bar of suit including jurisdiction, limitation, non joinder and miss joinder of parties etc. can be framed as issues of "law" even through it is not pleaded in the written statement.

Suggestions sought for speedy disposal of old matters.

The Hon'ble Principle District Sought suggestions from the Judicial Officers for speedy disposal of old matters as directed by the Honourable High Court. The Judicial Officers made various suggestions as follows:

- 1] To increase the strength of Court.
- 2] Application should not be granted casually and liberally. A heavy costs may be imposed.
- 3] Middle aged advocates may be convinced for arguing the matters. A concession may be given in new cases subject to conducting old cases. The advocates should be encouraged a little in a manner so that they will show their willingness to conduct the matter.
- 4] A Special board of old cases be prepared on two days in a fortnight with due notice to the Bar.
- 3] The L.A.R. execution petition in which party has withdrawn the amount, may be disposed of, even though they are not fully satisfied with liberty to file fresh darkhast for recovery of subsequent due amount.

