

SUMMARY**WORKSHOP OF THE JUDICIAL OFFICERS AT GONDIA****2014-15****Topic of Paper :- SCOPE OF SECTION 156 (3) OF THE CODE OF CRIMINAL PROCEDURE**

01. *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 in an 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.*

02. *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.

03. *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”.

04. 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 incharge 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 incharge 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.

05. 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 incharge 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. The Hon'ble Supreme Court of India in case of Lalita Kumari -vs- State of U.P. & Oth., reported in 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.

06. The Hon'ble Bombay High Court in case State of Maharashtra -vs- Shashikant Shinde, reported in 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 the petition

/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.

07. *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 section 156(1) of the Code are independent. In the case of **State -Vs- Bhajan Lal, AIR 1992 SC 604**, it has been observed by the Hon'ble Supreme Court 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.”*

08. ***The Hon'ble Supreme Court in CBI & another vs. Rajesh Gandhi and another, reported in 1997 Cr.L.J. 63, held***

that no one can insist that an offence be investigated by a particular agency. This view was agreed in Sakiri Vasu vs State Of U.P. & another, reported in 2008 (2) SCC 409. In this case it is further held that if a person has a grievance that the police is not registering his first information report under Section 154 of the Code of Criminal Procedure then he can approach the Superintendent of Police under Section 154(3) of the Code of Criminal Procedure by an application in writing. Even if that does not yield any satisfactory result in the sense that either the first information report is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156(3) of the Code of Criminal Procedure, before the learned Magistrate concerned. If such an application under Section 156(3) of the Code of Criminal Procedure is filed before the Magistrate, the Magistrate can direct the first information report to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made.

09. 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, reported in AIR 2006 SC 705, it is 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 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 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 case Dilawar Singh vs. State of Delhi, reported in MANU/SC/ 3678/2007.

10. It is only in case of deciding that the material is not sufficient to take cognizance of the offence the magistrate may refer the matter to the police under section 156(3) of the Code of Criminal Procedure for the purpose of investigation. Therefore, when once the Magistrate after scrutinizing the complaint, the sworn statements and other material comes to the conclusion that he can take cognizance of the offence, there is no need to have a

resort to section 156(3) of the Code of Criminal Procedure. There would be three possibilities after the examination of the complainant and the witnesses, if any, on oath, as contemplated under section 200 of the Code. The first would be that the Magistrate may come to the conclusion about sufficiency of grounds for proceeding against such accused persons or some of them and issue process. The second would be that the Magistrate may come to the conclusion that there are no sufficient grounds for proceeding and dismiss the complaint. The third would be that the Magistrate would neither be able to form an opinion about sufficiency of the grounds for proceeding further, nor would he be able to come to the conclusion that the complaint deserves to be dismissed. It is only in such a case that he would take recourse to the provisions of section 202 of Code and direct investigation and/or inquiry into the matter. In this regard reliance can be placed on the latest Judgment of the Hon'ble Bombay High Court in case Subhash Kanade -Vs- State of Maharashtra, Writ Petition No.4300/2013, dated: 2nd September, 2014.

11. 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 offence under section 190(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 case Legal Affairs -vs- Abani Kumar Banerjee, reported 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.

12. Similarly, in the case of S.K. Sinha, Chief Enforcement Officer -Vs- Videocon International Ltd. And Ors. MANU/SC/7011/2008:(2008) 2 SCC 492, the Hon,ble Supreme court explained that 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 "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 quo 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.

13. *Therefore, it is clear that, directing investigation under section 156(3) of the Code of Criminal Procedure is a precognizance stage. The Magistrate exercising his power under section 156(3) of the Code, can direct registration of an First Information Report and his jurisdiction is not only limited to a direction to investigate the offence. We would hasten to add here that this dictum of law is not free from exception. There can be cases where noncompliance to the provisions of Section 154(3) of the Code, would not divest the Magistrate of his jurisdiction in terms of Section 156(3) of the Code. There could be cases where the police fail to act instantly and the 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.*

14. *No any format is provided for the making of complaint under Section 156(3) of the Code of Criminal Procedure. **The***

Hon'ble Bombay High Court in the case of Mr. Panchabhai -vs- State of Maharashtra, reported in 2010 All M.R. (Cri.) 244. 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 Section 156(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. In the case of 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.

15. *After passing of order of investigation under Section 156(3) of the Code of Criminal Procedure, it is necessary for the Magistrate to forward a true copy or certified copy of the complaint along with the communication of the order passed by the Magistrate under Section 156(3) of the Code of Criminal Procedure to the concerned police station and shall keep original record with the court which could be used for various purposes in future. Certain guidelines are also issued by the Hon'ble Bombay High Court in this regard in the case of Ajit S/o. Ramrao. Thete and ors. -Vs- 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.

16. *It may be noted further that an order made under sub-section (3) of Section 156 of the Code is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1) of the Code. Such an investigation embraces the entire continuous process which begins with the collection of evidence under section 156 of the Code and ends with a report or charge sheet under section 173 of the Code. On the other hand, section 202 of the Code 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 of the Code 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 of the Code of Criminal Procedure 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.*