

WORKSHOP TOPIC**(Criminal)****Section 156(3), Sections 202 to 204 Of Code of****Criminal Procedure, 1973,****Scope & Difference with regard to its applicability****Introduction :**

Law is to regulate the conduct of human beings. Principally, law is divided into two categories, firstly, civil law and secondly criminal law. Breach of civil law gives rise to enforcement of one's rights through the procedure prescribed by the Code of Civil Procedure, 1908. Breach of criminal law is punishable by imprisonment and or fine through the procedure prescribed by the Code of Criminal Procedure, 1973. Criminal law can be set on motion by a complaint made to the Court or on the basis of the complaint made to the police. Sections 156, 202 to 204 contain most significant provisions relating to the powers of a Police Officer as well as a Magistrate to entertain complaints/reports and investigation thereof. This paper highlights the scope and difference with regard to these sections in a concise manner.

2. Exercise of authority or jurisdiction by these two distinct components involved in the administration of criminal justice as provided under,

[Information To The Police And Their Powers To Investigate]

Chapter XII (Sections 154 to 176)

and

[Jurisdiction Of The Criminal Courts In Inquiries And Trials].

Chapter XIII to XV (sections 177 to 203)

They operate in different fields without conflict and scope for overlapping, unless the provisions of the Code or judicial dictum have provided to the contrary. Despite passage of time such approach has prevailed with percitency. Such trust of criminal law have remained untraumatised and the objectivity of legislative or judge made law has developed towards the common goal without conflict. Pervasive approach of law relating to interpretation of procedural law can be termed as a reasonable percept of resolving impediment in proper administration of criminal justice.

TWO types of INVESTIGATION are envisaged

1. *Investigation on order u/s 156(3) of Cr.PC*

And

2. *Investigation on order u/s 202(1) of Cr.PC.*

In other words, Magistrate contemplated under the sections have power to order investigation taking recourse to above two sections. The power to direct an investigation to the police authorities is available to the Magistrate both **u/S. 156(3) Cr. P. C.** and **u/S. 202 Cr. P. C.** **The only difference is the stage at which the said powers may be invoked.**

The first[156(3)] is exercisable at the pre-cognizance stage,

The second[202 (1)] at the post-cognizance stage when the Magistrate is in seisin of the case.

3. It is necessary to know what is meant by taking cognizance. It would be helpful to understand how powers can be exercised at different stages i.e. pre-cognizance stage post-cognizance stage

4. What is meant by taking Cognizance ?

In fact , 'cognizance' or the words 'taking cognizance' has not defined in the procedural law. It is derived definite connotation from number of judicial pronouncements.

ITS PLAIN AND DICTIONARY MEANING IS

'taking note of,

'taking account of,

'to know about',

'to gain knowledge about',

'awareness about certain things' etc.

In the language of the Hon'ble Apex Court employed in its decision (R.R.Chari v. State of U.P. AIR 1951 SC 207),

"taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate as such applies his mind to the suspected commission of offence".

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.

In S.K. Sinha, Chief Enforcement Officer v. Videocon International Ltd. and Ors. : (2008) 2 SCC 492, it has been held as follows:

"The expression "cognizance" has not been defined in the Code. But the word (cognizance) is 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". It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiate proceedings in respect of such offence said to have been committed by someone."

"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. **Cognizance is taken of an offence and not of an offender.**

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.

RELEVANT SECTION ON THE ASPECT OF TAKING
COGNIZANCE.

CHAPTER XIV - CONDITIONS REQUISITE FOR INITIATION of PROCEEDINGS

190. Cognizance of offences by Magistrates -

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence—

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed

Magistrate can take cognizance of an offence in above mentioned circumstances.

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.

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.

5. ...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....

Cognizance is a process where the court takes judicial notice of an offence so as to initiate proceedings in respect of the alleged violation of law.

Pre-cognizance Stage and Post cognizance stage

Pre-Cognizance stage:-

On receiving the complaint, instead of taking cognizance of an offence the Magistrate thinks it fit that it is a case where offences are of cognizable nature and he can opt the mode of ordering investigation under section 156(3) of the Code of Criminal Procedure.

Post Cognizance State:-

If the complaint is filed by the public servant there is no need to examine the complainant. In other cases, examine the complainant on oath, his witnesses if any vide section 200 of the Code of Criminal Procedure. If there are no sufficient grounds in the complaint, The Magistrate may dismiss the complaint vide Section 203 of the Code of Criminal Procedure, if there exist sufficient grounds,, he shall issue process vide Section 204 of the Code of Criminal Procedure and proceed with the case. He can postpone issue process vide section 202(1) of the Code of Criminal Procedure. If the case is triable by the Court of Sessions, he shall examine all the witnesses of the complainant vide section 202(2) of the Code of Criminal Procedure.

:-Pre-Cognizance stage:-

Chapter XII (Sections 154 to 176)

[Information To The Police And Their Powers To Investigate]

154. Information in cognizable cases -

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

156. Police officer's power to investigate cognizable cases

(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned

Section 156 of Cr.P.C. deals with the Police officers power to investigate cognizable cases.

Section 156(1) speaks about the investigation by police of cognizable offence without the order of a Magistrate

Section 156(3) speaks about the power of Magistrate empowered under section 190 to order such an investigation as above-mentioned.

Section 154 of Cr.P.C speaks about the recording of information by officer in-charge of police station in relation to the commission of cognizable offence. The **object of Section 154**, Criminal Procedure Code is to obtain early information of alleged criminal activity, to record the circumstances before there is time for them to be embellished or forgotten.

It means whenever information is received about the commission of cognizable offence the officer in-charge has to reduce it into writing and register the First Information Report(FIR).

Where a person has approached the police station under Section 154 but the police 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.

Despite approaching the above referred authorities if no action is taken by the authorities, a grieved person has option u/s. 156(3) of the Cr.P.C. and the magistrate is also empowered u/s.190 to order the investigation of cognizable case.

At the very outset it may be pointed out that the order under Section 156(3) Cr. P.C. is not a judicial order of the Magistrate. It is an administrative direction given to the police with a view to intimate to the police in a peremptory manner, so that the police may exercise their statutory powers to investigate into cognizable offence.

In Devarapalli Lakshminarayana Reddy and Ors. v. Narayana Reddy and Ors. the Hon'ble Supreme Court considered the scope of the powers conferred on the Magistrate under Section 156(3) Cr. P.C. At page 1678 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 charge-sheet under Section [173](#).

The direction given by the Magistrate under Section 156(3) Cr. P.C. is to intimate to the police that they have to exercise their statutory powers under Section [156\(1\)](#) Cr. P.C. Section [156\(1\)](#) does not indicate the grounds on the basis of which the police officer may exercise power under Section [156\(1\)](#) Cr. P.C. these grounds are indicated by Section [157\(1\)](#) Cr. P.C. which reads:

157. Procedure for investigation

(1) If, from information received or otherwise, an officer in charge of a police station has **reason to suspect the commission of an offence** which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, **to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender:**

What is necessary for starting investigation by the police officer is that he must have **reason to suspect that** an offence which he is empowered to investigate under Section [156\(1\)](#) Cr. P.C. has been committed. *It shows that presence of written information from any*

person is not the only material on the basis of which investigation may be started by police officer. He may have reason to suspect, that cognizable offence has been committed, even without a complaint.

“Reason to suspect the commission of cognizable offence” is necessary for the commencement of investigation by the Police under Section [156\(1\)](#) . Therefore Magistrate would also be competent to give direction under Section [156\(3\)](#) Cr. P.C. if he has reason to suspect from an Information received by him or otherwise that cognizable offence which the police officer can investigate under Section [156](#) has been committed.

:-Post-Cognizance stage:-

Chapter XIII to XV (sections 177 to 203)

[Jurisdiction Of The Criminal Courts In Inquiries And Trials].

On the other side CHAPTER XV deals with COMPLAINTS TO MAGISTRATES. It means if a complaint is made to magistrate for initiation of action for commission of any offence the Magistrate taking cognizance of offence u/s.190(a) of the Code of Criminal Procedure, follow the procedure under section 200, which speaks about the examination of complainant.

Section 202 of the Code deals with postponement of issue of process. Section 204 deals with the issue of process. If in the opinion of magistrate taking cognizance of an offence there is **sufficient ground** for proceeding, he may issue summons or warrant as the case it may be depending upon the nature of case i.e. summons case or warrant case. This clearly indicates that for issue of process u/s.204 the Magistrate has to see whether there exist sufficient ground for proceeding. This “**sufficient ground**” needs to be seen on the basis of the material collected under section 200 of the Code of Criminal Procedure. 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 under section 204 of Cr.P.C. 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. This investigation is under section 202 of Cr.P.C.

OBJECT OF SECTION 202:

In *Chandra Deo Singh -vs- Prakash Chandra Bose alias Chabi Bose* reported in AIR 1963 SC 1430, the Supreme Court has held that the object of section 202 of Criminal Procedure 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 bring to book a person or persons against whom grave allegations are made.** An enquiry under section [202](#), Criminal Procedure Code can in no sense be characterized as a trial.

Difference between investigation under S. 156(3)
and 202 Cr.P.C.

Sr. No.	Section 156 (3)	Section 202
1	Section 156(3) falls in chapter XII. It deals with power of Magistrate to order a police investigation in case of cognizable offences.	Whereas Section 202 falls in chapter XV. It refers to the power of a Magistrate to direct an inquiry by a police officer.
2	It is pre-cognizance stage. Means before Magistrate take cognizance of complaint under Section 190(1)(d).	It is post cognizance stage. Means after the Magistrate takes cognizance of the offence.
3	Once a Magistrate directed investigation under section 156(3), it gives wide power to police to register the offence/FIR against accused and even to arrest accused if offence is cognizable.	An inquiry under Section 202 is of limited nature. It generally remains of non-cognizable offences. It does not give power to police to arrest accused. It is just to enable the Magistrate to decide whether he is to proceed further after taking cognizance.
4	If the Magistrate is intending to pass order under Section 156(3), he shall not examine complainant on oath.	Under Section 202 the Magistrate must examine the complainant and than can order inquiry by police.
5	The concern police to whom investigation is directed under this section can file final report either under Section 169 or under Section 173 of Code of Criminal Procedure .	Under this Section police have to file report of inquiry whether there is prima facie case/grounds against accused or not.
6	Scope of the investigation as per order under Section 156(3) is wide.`	The scope of inquiry under Section 202 is extremely limited. It is only to the

		ascertainment of the truth or falsehood of the allegations made in complaint before the Court.
		The investigation referred u/s. 202 is after taking cognizance and of a limited nature. Such investigation is only for helping the Magistrate to decide whether or not there is sufficient ground for him to proceed further.
7	Section 156 falling within Chapter XII, deals with powers of police officers to investigate cognizable offences. Chapter XII of the Cr.P.C. contains provisions relating to "information to the police and their powers to investigate",	whereas Chapter XV, which contains Section 202, deals with provisions relating to the steps which a Magistrate has to adopt while and after taking cognizance of any offence on a complaint.

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." **AIR 1976 S C 1672 (Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy): AIR 2009 S C 2932 (Kishan Lal v. Dharmendra Bafna):**

APPLICABILITY /SCHEME AND THE POWER OF MAGISTRATE
WHEN COMPLAINT IS FILED AND COURSE AVAILABLE

It must be taken note of that, if the police officer investigate the matter on receipt of first information report u/s.154 of the Cr.P.C. or investigate in view of order u/s.156(3) of Cr.P.C., he has to submit the report u/s.173 of Cr.P.C.

When a report forwarded by the police to the Magistrate under Section 173(2)(i) is placed before him several situations arise:-

The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may either

- (1) accept the report and take cognizance of the offence and issue process, or*
- (2) may disagree with the report and drop the proceedings, or*
- (3) may direct further investigation under Section 156(3) and require the police to make a further report.*

The report may on the other hand state that according to the police, no offence appears to have been committed. When such a report is placed before the Magistrate he has again option of adopting one of the three courses open

- (1) he may accept the report and drop the proceeding; or*
- (2) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or*
- (3) he may direct further investigation to be made by the police under Section 156(3).*

The position is, therefore, now well-settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused.

The another eventuality is that instead of ordering investigation u/s.156 (3) of Cr.P.C. Court takes the cognizance of offence and may himself inquire the matter or call the report u/s.202 of Cr.P.C.

However, if he once takes such cognizance, he is not competent to revert back to the pre-cognizance stage and avail Section 156 (3).

When a Magistrate chooses to take cognizance on complaint he can adopt any of the following alternatives.

- (a) He can peruse the complaint and if satisfied that there are sufficient grounds for proceeding he can straightway issue process to the accused, but before he does so he must comply with requirements of Section 200 of Code, and record the evidence of the complainant and his witnesses.*
- (b) The Magistrate can postpone the issue of process and direct an enquiry by himself.*
- (c) The Magistrate can postpone the issue of process and direct an enquiry by any other person or an investigation by the police.*

In case the Magistrate after considering the statement of the complainant and the witnesses or as a result of the investigation and the enquiry ordered is not satisfied that there are sufficient grounds for proceeding he can dismiss the complaint u/s. 203 of Cr.P.C.

Conclusion :-

It is always noticed that whenever application U/s. 156 or private complaint is filed, the parties most of the times request and pray to order investigation U/s. 156(3) of Cr.P.C. excluding exception, Magistrates are passing the order after going through the complaint. It is pre cognizance stage. It is further to note that in general the words application of mind, judicious decision is used and Magistrates are supposed to pass the orders accordingly. The foremost requirement is to see whether the cognizable offence is made out or not. We also see the difference of opinion. It may happened that when the order to investigate the cognizable offence U/s. 156(3) of Cr.P.C. is passed, sometime police authorities files negative report and sometime positive report requesting the Magistrate to take cognizance of the offence. It means at the time of passing order, though the Magistrate thinks that the offence of cognizable nature is made out in the complaint, it may not be always true and after detail investigation one can gather whether there is case to take cognizance or not. On the contrary many times it happened if order to investigate U/s. 156(3) of Cr.P.C. Is not passed and proceed according to Chapter XV of the Code of Criminal Procedure, it is found that some offences of the cognizable nature are made out while issuing process. Therefore there can not be statejaket formula. The only aspect needs to consider such order should be passed prior to taking cognizance of the offence, on complaint cognizable offence must be made out. One should not encroached upon jurisdiction of other forum while passing the order.

It may be noted further that an order made under subsection(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.