

The wide definition of inquiry to cover every inquiry short of trial would relate both to judicial as well as non-judicial inquiry under the Code. Whether an inquiry is judicial or non-judicial will however depend upon the context in each case¹².

CRIMINOLOGY AND CRIMINAL INVESTIGATION

By

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Criminology is the science that deals with crimes and criminals whereas investigation is an endeavour to discover the truth by the application of that science. The realm of criminology and criminal investigation is so manifold and diverse that it is hardly possible to touch even the fringe of the various problems within the limited scope of a single chapter. Considerable progress has been made in subjects like Interrogation, *Modus operandi* Handwriting, Finger print, Foot-print, Ballistics, Microscopy, Blood analysis *etc.*, yet nobody is in a position to say that he has known or said the last word on this vast and ever-growing science of criminology.

Prosecution and Investigation:

In countries where criminal proceedings move through the mechanism of adversary system the accused is presumed innocent until proved guilty and he has the right to assistance of a Counsel from the point where he is arrested. The procedure for determining the guilt is that of competitive presentations by the prosecution as a legal representative of the State, countered by the defense Counsel as a representative of the accused¹.

The office of the public prosecutor is responsible for a criminal case from the point where it is received from the police through its termination by trial. The prosecutor has the responsibility of determining whether a formal charge should be lodged and if so what specific crime should be charged².

A complex set of factors is involved in the decision to charge. The single most important factor is the seriousness of the crime, the prosecutor will refuse to proceed if there is dearth of evidence. He will decide to take up the case if there is strong evidence furnished to him.

In the adversary system, followed in most of the common law countries, evidence has a very important role to play, and the function of collecting the evidence is assigned to the investigating agency *i.e.*, the police. In many cases the policemen has to appear in Courts to testify as a witness, if the accused does not plead guilty. He may also be required to prosecute the charge. In the United States, it is only in very minor cases that the policemen act as prosecutors presenting the evidence against the accused. In England, the policemen act as prosecutors

12. *Mohd. Umar* Inspector General of Police (1959) All. L.J. 603.

1. Encyclopaedia of Crimes and Justice Vol 2 Page 450

2. Miller Frank, "prosecution, the decision to charge a suspect with crime". (1970) Page 14.

in all except the most serious cases. In both the countries, when the policeman does not so act, the burden of prosecution is entrusted to a professionally trained lawyer called the prosecuting officer.

In India where the adversary system is followed, evidence has a very important role to play in the administration of justice and the function of collecting the evidence is assigned to the police. The police officer has to appear as a witness before the Court. In a few cases, however, he can appear as prosecutor.

Section 302 of the Code of criminal procedure 1973 contains the following rule with regard to permission to conduct prosecution. It says;

“(1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by a person other than a police officer below rank of inspector; but no person, other than the advocate-general or Government advocate or a public prosecutor or assistant public prosecutor, shall be entitled to do without such permission:

Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.

(2) Any person conducting the prosecution may do so personally or by a pleader”.

A police officer who has taken any part in the investigation of an offence cannot be permitted to conduct the case in respect of that offence. If he does, the trial gets vitiated.

In the case *Lakshminarayan v. State*, it was held that there is nothing wrong in principle if an officer of the excise department is detailed to conduct the prosecution in a class of cases before a Magistrate. But if he has

investigated a particular case, it is improper for him to conduct it in Court, as he will in fact be a witness in the case.

Investigation and Inquiry:

Section 4(k) of the code of criminal procedure 1898 defined the term ‘Inquiry’ thus:

‘Inquiry’ includes every inquiry other than a trial conducted under this code by a magistrate or Court”.

Section 2(g) of the present code of criminal procedure defines the term ‘inquiry’ thus:

‘Inquiry’ means every inquiry, other than a trial, conducted under this code, by a Magistrate or Court;

The definition given in the present code corresponds to the one given in the old code with this change that the word ‘means’ has been substituted for the word ‘included’. The old definition was not exhaustive. Whatever else ‘inquiry’ may mean it also included every inquiry other than a trial. Under the present clause, the definition is exhaustive. The expression will mean every inquiry conducted under the code.

According to the definitions given in Section 4 of the code of criminal procedure investigation is a word confined to proceedings of the police or persons other than Magistrates and that ‘inquiry’ is a word ‘relating to proceedings of Magistrate’ prior to trial.³

The object of an inquiry is to take evidence in the case and to determine *prime facie* the truth or falsity of certain facts in order to take further action thereof. The investigation by the police officer under Section 202 is not an inquiry within the meaning of the code.

3. 40 CWN 876 (1936) C. 356

Investigation and Trial:

(i) *Trial*

The fundamental concept of trial is the determination of guilt or innocence of the person who is tried and it can and only in one or the other of the recognized forms; conviction, acquittal, discharge, that is, finding him guilty or not guilty or finding that there is no case against him or that the charge is groundless; trial is stopped by withdrawal of prosecution or tender of pardon.

(ii) *Inquiry and trial:*

Inquiry and trial are used in many sections of the code in close juxtaposition and apparently intended to signify two different things. They are not used in any general or popular sense.

The term inquiry means inquiry before a Magistrate preliminary to trial, which regularly results in charge or discharged and does not include trial. It includes not merely the taking of evidence and on the consideration of that evidence the conclusion to charge or discharge of the accused.

Trial commences after the accused is charged. It covers the entire proceedings beginning with the case being called for hearing till the judgment is delivered. It follows therefore that a proceedings in which a Court cannot pass a final order would not be a trial.⁴

(iii) *Investigation and trial:*

At any moment in the trial of a case either by the Magistrate or a Court of session it may become necessary to throw light on a certain matter. In that case the Court may use the police to obtain further information. The Court may in its discretion instruct the prosecution to obtain further information and the prosecution would act through the police.

Such an investigation under Chapter XIV of the code of criminal procedure in the ordinary sense, but it would in effect be hardly distinguishable.⁵

The Nature of Criminal Investigation:

(i) *Investigation, is not only an art but a science also:*

The first question to be examined about the nature of criminal investigation is whether it is an art or a science. If it is an art then nothing more than precept or advice would be required to accomplish the job. If it is a science then it would require the application of laws and rigid formalities. In good old days the investigators acted on the advice and knowledge of their senior officers.

Earlier investigation was nothing but an art. The advice of experienced officers who had lot of knowledge about the techniques of inquiries and investigations sufficed the inquiring officer as to how he should conduct the investigation. But now investigation has become a science. It is governed by certain general principles and procedures. An investigator has to act in harmony with the rules laid down in the several laws. He has to abandon the orthodox methods of investigation and follow the prescribed procedure of investigation as embodies in the general and special laws of crime.⁶

An investigator basically is a collector of facts. But in attending to the job undertaken by him he has to construct the hypotheses and draw conclusions relating to the problem of who committed the crime and how it was committed. His reasoning processes have to be logical and even when he engages in speculations good judgment and common sense have to be in his control.

An investigator faced with a complex crime may be compared to a research

4. U.C. Sarkar. Commentaries on the code of criminal procedure (1973) Page 14.

5. Ibid Page 15.

6. Charles O. Hara "Fundamentals of investigation" Page 5.

scientist, employing the same resources of reason and resorting, where necessary, to imagination, ingenuity and even in-tuition.

Both inductive and deductive reasoning are applicable to investigation. By inductive reasoning (the proceeding from particular to general) the investigator develops from observed data a generalization. Explaining the relationship between the events under examination. In deductive reasoning (the proceeding from the general to the particular) he begins from a general theory, applies it to the particular instance represented by the criminal occurrence, and determines whether the truth of the instance is contained in the theory. In both processes the passage from point to point has to be managed by logical steps. In the sense investigation is not only an art but a science also.

- (ii) *The duty to investigate in most of the matters is imperative and in certain matters it is discretionary:*

Information to the police relating to offences already committed give rise to the necessity of investigation by police for taking measures for discovery and arrest of offences and for collecting evidence for trial. Those are contained in chapter XII of the code of criminal procedure which begins with Section 154 dealing with information in cognizable cases. Besides Section 154, Chapter XII contains other sections laying down the powers and duties which the police has to perform.

Section 154 of the code of criminal procedure does not leave any discretion in the police. It lays down the rule that every information relating to the commission of a cognizable offence, if given orally to the 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 book to be kept by such officer in such form as the State Government may prescribe in this behalf.

The duties cast upon the police officer to record the first information report under the above section of the code is not discretionary but is imperative. The police officer must record the information if given in a manner prescribed by the section.

Section 155(1) of the code of criminal procedure 1973 imperatively requires that when information is given to an officer-in-charge of a police station of the commission, within the limit of such station, of non-cognizable offence, he shall enter in a book to be kept the substance of such information and refer the informant to the Magistrate.

Section 157(1) of the code of criminal procedure requires that 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 the 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 to proceed to the spot, investigate the facts and circumstances for the discovery and arrest of the offender.

Of course in certain matters the police may exercise their discretion for example, the police exercise discretion when they have to use their own judgment and personal experience in deciding what to do and how to handle the law enforcement and order maintenance situation which they encounter in the performance of their duty. An officer who observes a husband assaulting his wife may exercise discretion by deciding that the best way to handle the matter is by a warning or a referral to a social service organization rather than by making an arrest. Upon

observing a moving traffic violation an officer may decide to warn the driver to make an arrest or to ignore it. (The decision to do nothing is highly discretionary). The most important of all discretionary matters is the decision to prosecute the case or not; he has to decide whether the evidence collected would be sufficient to prosecute the case or not.

(iii) *Certain aspects of investigation are regarded as judicial proceedings resulting in penal liability:*

Certain things done by the investigation officers in the course of investigation are treated as judicial proceedings.

Section 2(1) of the code of criminal procedure 1973 defines 'judicial proceeding' to include —

“any proceeding in the course of which evidence is or may be legally taken on oath”.

Earlier, the code of criminal procedure 1898 defined 'judicial proceeding' as follows:

“Judicial proceeding means any proceeding in the course of which evidence is or may be taken, or in which any judgment, sentence or final order is passed on recorded evidence”.

The significance of treating investigation as a judicial proceeding is that there is a penal liability under the penal code if a person makes a false Statement or fabricates a false Statement, or obstructs or interrupts the public servant sitting in a judicial proceeding.⁷ The following provisions of the Penal Code are relevant to the matter.

Section 193: Punishment for False Evidence:

“Whoever intentionally gives false evidence in any stage of 'judicial proceeding' or fabricates false evidence for the purpose of being used in any stage of judicial

proceeding shall be punished with imprisonment of either description for term which may extend to 7 years and shall also be liable to fine; and

Whoever gives a fabricates false evidence in any other case shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

Explanation 1: A trial before a Court martial is a judicial proceeding.

Explanation 2: An investigation directed by law preliminary to a proceeding before a Court of justice is a stage of judicial proceedings through that investigation may not take place before a Court of justice.

Explanation 3: An investigation directed by a Court of justice according to law and conducted under the authority of a Court of justice is a stage of judicial proceeding though that investigation may not take place before a Court of justice.

Section 228: Intentional insult or interruption to public servant sitting in judicial proceedings:

“Whoever intentionally offers any insult or causes any interruption to any public servant while such public servant is sitting in any stage of judicial proceeding shall be punished with simple imprisonment for a term which may extend to six months or fine which may extend to one thousand rupees or both”.

It is a settled law for a long time that an investigation under Chapter XII of the Code of criminal procedure is a stage of judicial proceeding and a person who makes on oath Statements which he knew to be false before a Magistrate conducting the investigation gives false evidence and commits an offence under Section 193 of the Indian Penal Code.⁸

7. Nelsons I.P.C. 7th Edition (1989) Page 242.

8. *Soundarajan & Co. A.K.Sankarapandia Nadar* (1957) MLJ Cr. 528.

Investigation consists of a series of acts. It is conducted not only by police officers but by others also as per orders of the Magistrate. Whether done by the police officers or by other categories of officers, all the things done by them are not considered as judicial proceedings. Only a few things done by the investigating officers in the course of investigation are treated as judicial proceedings in the course of investigation are treated as judicial proceedings. They are the following:

1. *Proceedings in which the Statement of a witness is recorded under Section 164:* According to Section 164 any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or Statement made to him in the course of an investigation under this chapter or under any other law for the time afterwards before the commencement of the inquiry or trial.
2. When a Magistrate takes up the charge-sheet and takes cognizance of the offence mentioned therein he is said to be acting judicially. Similarly, when he agrees with the report of the police that no further proceedings need be taken against the accused, he is said to be acting judicially. If he disagrees with the report of the police and orders the police to further investigation he is not acting judicially.
3. When a Magistrate passes a bail order, he is said to be acting judicially.
4. Investigation proceedings under Section 202 conducted by a subordinate magistrate on a complaint which was taken cognizance of by another Magistrate and sent to him for inquiry and report is considered as judicial proceedings.

According to Section 202, any Magistrate, on receipt of a complaint of an offence of

which he is authorized to take cognizance or which has been transferred to him under Section 192 may, if he thinks fit, for reasons to be recorded in writing, postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or, if he is a magistrate other than a Magistrate of the third class, direct an inquiry or investigation to be made by any magistrate subordinate to him, or by a police officer, or by such other person as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint.

Investigations conducted by certain agencies under the special laws are treated as judicial proceedings, for example under Section 3 of the Commissions of Inquiry Act, 1952 the appropriate Government may appoint a commission of inquiry for the purpose of making an inquiry into any definite matter of public importance and to do any other matter. The subject-matter of the inquiry can only be a definite matter of public importance.

While Section 4 of the Commissions of Inquiry Act describes the powers of the commission, Section 5 of the act describes the additional powers. It says:

“(3) the commission or any officer not below the rank of a Gazetted Officer may enter any building or place where the commission has reason to believe that any books or account or other document relating to the subject-matter of inquiry may be found and may seize any such books or account or documents.....”

According to sub-section 5 of Section 5 “any proceeding before the commission shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code.