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Police and Criminal Justice System: A Critical Analysis

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ABSTRACT

The manner in which police investigations are conducted is of critical importance to the functioning of the Criminal Justice System. Not only serious miscarriage of justice will result if error or malpractice vitiates the collection of evidence, but successful prosecution of the guilty depends on a thorough and careful search for truth and collection of evidence, which is both admissible and probative. In undertaking this search, it is the duty of the police to investigate fairly and thoroughly and collect all evidence, whenever for or against the suspect. Protection of the society being the paramount consideration, the laws, procedures and police practices must be such as to ensure that the guilty are apprehended and punished with utmost dispatch and in the process the innocent are not harassed. To achieve this objective, the investigating officers must be properly trained and supervised and necessary scientific and logistical support should be made available to them. The police perceive themselves psychologically and morally bound to do everything possible to curb crime and investigate the cases successfully to meet the peoples' expectations. In this process, the police often resort to short cut methods and exhibit negative traits of police sub-culture, namely, rudeness, use of third-degree methods, defensiveness in the face of criticism, lack of innovativeness etc. Now-a-days in India Criminal Justice System is much affected by delayed disposal of cases. Public has now completely lost its confidence in law and criminal law has lost deterrent effect over prospective criminals resulting into increase in criminality in society giving rise to crime waves and ultimately the common citizenry is fearing of crime victimization. There are many reasons for delayed disposal of criminal cases, one of most important reason is that the investigating agencies are not investigating the cases promptly and effectively. Longer time period consumed during investigation is most important causation for delayed disposal of criminal cases.³

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³ Pradeep Singh, 'Delayed Investigation and Criminal Justice', *Civil & Military Law Journal*, Delhi, Vol. 45, Jan-Mar, Apr-June, 2009, p.42.

I. INTRODUCTION

“Sustainable development is the pathway to the future we want for all. It offers a framework to generate economic growth, achieve social justice, exercise environmental stewardship and strengthen governance”.

- **Ban Ki-moon**

Stressing the importance of fair and impartial investigation, their Lordships of the Supreme Court in *Jamuna Chaudhary v. The State of Bihar*⁴, observed that the duty of the Investigating Officer is not merely to booster up a prosecution case with such evidence as may enable the Court to record a conviction but to bring out the real unvarnished truth. Though it may be against the police officials⁵, the investigation should not be tainted and aimed at to save the accused and not to bring him to Justice. According to Code of Criminal Procedure, 1973, the investigator is enjoined upon to unearth the crime and as soon as he receives the information about the crime he is to proceed to spot. Ascertain the facts and circumstances of the case and arrest the suspected offender, collect the evidence relating to the commission of the offence, examine various persons including the accused, reduce their statements into writing to search the places and take into possession. The things considered necessary for the investigation and to be produced at the trial and then his opinion as to whether on the material collected from any accused is to be placed before a Magistrate for commitment and to file a charge-sheet under Section 173 of Code of Criminal Procedure⁶. The duty of the police is to prevent and detect crime and to bring the accused to justice. “In safeguarding out freedoms the police play a vital role. Society for its defense needs a well led well trained and well-disciplined force of police whom it can trust; and though of them to be able to prevent crime before it happens or if it does happen to detect it and bring the accused to justice. The police of course must act properly. They must obey the rules of right conduct. They must not extort confessions by threats or promises. They must not search a man’s house without authority. They must not use more force than the occasion warrants⁷”. In cases of crimes against women, the Criminal Justice System including the Investigating agency and the Court must also display greater sensitivity to criminality and avoid on all counts soft justice⁸. Stern action should be taken against investigating officers for false investigation⁹. In *Aziz Ahmed v. State*¹⁰, it was held by

⁴ 1974 CrLJ 890 (893): AIR 1974 SC 1822: 1974 SCC (Cri) 250: *Om Prakash v. State*, 1980 CriLJ NOC 67.

⁵ *Amrik Singh v. State of Punjab*, 1983, CrLJ 1405.

⁶ *Amrik Singh v. State of Punjab*, 1983, CriLJ 1405 (1411).

⁷ Lord Denning, Master of the Rules in his book titled “The Due Process of Law”, 1980 Edn. in Chapter 1 of part three.

⁸ *Stree Atyachar Virodhi Parishad v. Dalip Nathumal*. 1989 (1) Crimes 443 (SC).

⁹ *Sher Singh v. State*, 1980 CriLJ NOC 64.

a Division Bench of Allahabad High Court that they attach great importance to the impartial investigation. Investigating Officer should rule out the possibility of fabrication and his conduct should dispel suspicion. Once investigation is held as being unfair, unjust and reckless, it is bound to cast its shadows upon the veracity of the prosecution case with all its evil consequences¹¹. When role of investigating officer was found to be wholly dubious and speaks of his connivance with the accused persons, non-impalement of such accused persons creates a dent in the prosecution case¹². The Investigation officer should not adopt indifferent attitude in investigating dowry death cases¹³. To sum up where the entire evidence is of a partisan character, impartial investigation can lend assurance to the court to enable it to accept such partisan evidence. But where the investigation itself is found to be tainted the task of the court to sift evidence becomes very difficult¹⁴.

II. WHO ARE THE POLICE?

The term 'police' is a very common word but has great responsibility, and includes all personnel who shall be enrolled under the Police Act, 1861. Police deals with both accused and innocent people and they have the power to use force which is necessary to a certain extent in order to perform their duties; but in this process, the human rights and Fundamental Rights of the citizens should not be violated. Universal Declaration of Human Rights has given several important human rights to the people such as Article 3 states, "Everyone has the right to life, liberty and personal security." Further, Article 5 says that, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Also, many Fundamental Rights like Article 19 and 21 give the right to freedom and right to life to everyone. In spite of all the above cautionary measures to protect the rights of civilians, the Police are often found ill-treating prison inmates or people under custody. Human rights are violated in many forms such as illegal detention or arrest, and extreme use of force which sometimes leads to death, false implications, etc.

"Delay is preferable to error"

The main purpose of criminal law is to prevent crime and delay in criminal justice makes the system more prone to errors making it weak. Speedy investigation is a factor which is promoted by the law through the provision given in Cr.P.C. section 173, as delay in investigation will lead to delay in trial, which will in turn lead to delay in conviction.

¹⁰ 1976 CriLJ 10: 1976 SCC (Cri) 72.

¹¹ *Rajendra v. State*, 1988 All Cri R 323.

¹² *Chanra Kumar v. State of U.P.*, 1988 Cri R 296.

¹³ *Lichhamadevi, v. State of Rajasthan*, 1988 CriLJ 1812: AIR 1988 SC 1785: 1988 (3) Crimes 1.

¹⁴ *Sevi v. The State of T.N.* 1981 SCC (Cri) 679: AIR 1981 SC 1230: 1981 CriLJ 736.

Moreover, once the punishment is delayed beyond a reasonable margin, it will not have the appropriate impact on society; this is because of the time factor as with significant time lapse, the punishment becomes irrelevant, inefficient and meaningless to a large extent. Delay in investigation by police is very normal, but in cases like *State of Andhra Pradesh Vs. P V Pavithran*¹⁵ and *Sajjan Kumar Vs. CBI*¹⁶ and several more, the Supreme Court laid that speedy investigation is the main function which should be performed very effectively by the police as it is the main step that helps the court in providing proper relief to the victim. In instances where the investigation is delayed or ignored, the accused have ample time to try to spoil or alter the exact crime scene or they may disturb the evidence which will make such cases more complicated and lead to delay in justice.

The Indian legal system provides maximum protection to the accused; it requires them to be proven guilty beyond any reasonable doubt before proceeding to conviction. It provides the accused will all the possible opportunities to discharge their burden of proof. Also, Indian law does not provide much leeway to the police if it affects the rights of accused. Our law has many provisions for the accused to protect themselves from possible torture that may be inflicted by the police, but in order to prevent errors and facilitate smooth investigation, proper cooperation of police is very much needed.

III. DIFFICULTIES OF THE POLICE DURING INVESTIGATION

The work of investigation involves a visit to the location of the crime by the investigating officer, recording of testimony, making of arrest wherever possible and desirable, with the object of launching prosecution in court of law. The job of investigation, quite tough and challenging as such, is rendered even more difficult a in Indian conditions. The difficulties are mainly due to three factors. Inadequate investigating staff, lack of scientific and technical personnel and equipment and the most important of all factors, lack of social support to the police agencies¹⁷. The investigating officers have to devote time to other kinds of routine work also and, as it has been seen earlier, their number is also not very large in view of the large production with their areas and the variety of problems in the Indian set-up. This leaves the investigating officers with very little time for actual detective work. The delay in the investigation may prove fatal in quite a few cases. Very few cities in India have been provided with forensic laboratories with the result that sometimes the relevant objects are to be sent over long distances for expert analysis and report. In many police stations, there is no

¹⁵1990 AIR 1266, 1990 SCR (1) 746.

¹⁶-(2010)9 SCC 368.

¹⁷ Ahamad Siddique. 'Criminology Problems & Perspectives', Eastern Book Company, Fourth Edition, Lucknow, 1999, p.289.

equipment to deal with fingerprints or to take photographs of various objects connected with a crime. The problem created by the lack of co-operation with the police by the people is a most serious one and of great complexity and, therefore, requires to be examined in depth. People in India are generally not willing to testify against their friends, relatives or neighbors. Unlike the highly urbanized and developed western countries, relationships of various kinds tend to be more intimate and personal and very few would risk putting strains on the sensitive relationships. relationship between the police and the public being somewhat strained, the people are ordinarily scared of the police and would, therefore, rather scrupulously like to avoid any contact with them. The witnesses have real and imaginary fears regarding the possible infliction of violence on them by the police. There is a universal tendency among people to keep away from the problems of others. This lack of social responsibility bordering on callousness is visible everywhere in the Indian society. Instances are not wanting where murders have been committed in the presence of scores of persons around in broad daylight without even one person having the courage to interfere with the offender. This tendency can be noticed even in some non-criminal situations like street accidents. Quite frequently the helpless victim may be injured for hours without anyone coming to his rescue even though the injuries may prove fatal sometimes. The people are scared of retaliation from those against whom they testify. This fear of retaliation is not only reflected in inhibited behavior in the context of tough guys and bullies but is present even in less dangerous situations. One has just to travel in a public transport bus in a city like Delhi to see how eve-teasing goes on unabated, sometimes in full view of many passengers around. People are inhibited from coming forward with evidence before the police because a witness has to face all sorts of hardships while appearing in courts. The distance a witness has to travel before reaching the courts, inadequate transport facilities and the frequent adjournments of court hearings are more than enough to curb the enthusiasm of many a witness. India being a poor country, most of the people make a day-to-day living and for many witnesses it amounts to financial hardship if they spend time in attending the courts. Though the government is supposed to pay for the maintenance and travel of witnesses, the rates of payment are extremely low and unrealistic and there is sometimes a lot of delay in even getting whatever amount is payable. Indian rural society being what the sociologists term 'sacred' and therefore, opposed to the secular concept, the villagers have their own notions of right and wrong. They may pass judgments on the wrongdoer and the victim on the basis of their moral notions which may be at variance with the legal or police view of the situation. The village community may in all earnestness believe that the victim was to blame for what happened to him or that the matter

was 'personal' between the two individuals or groups and, therefore, the police had no business to intervene. There is no cooperation possible between villagers and the police in such a situation. There is yet another difficulty experienced by the police while investigating a case against a suspect or putting him under arrest. All sorts of pressures are exerted on the police by the members of the social, caste or professional group which the suspected or arrested person belongs to, to have the proceedings dropped. It is not an unknown phenomenon that when the police arrest a sweeper for an alleged offence, within a few minutes a hundred sweepers besiege the police station. A taxi-driver is apprehended, and a lightning strike by the taxi-drivers and other operators may paralyze the transport in the city. Instances have occurred where the students have staged strikes in their institutions or have taken out processions demanding the release of some student arrested for ordinary crime. Police work is made difficult in such situations when political forces promptly appear on the scene to exploit the situation for their own ends. The problem of pre-jury has special relevance in the Indian context since it is widespread in the country. The Law Commission in its Fourteenth Report observed: "The percentage of acquittals in criminal cases has reached a high figure; and this is not always due to the police being unable to place adequate evidence before the courts. What often happens is that the witnesses when they appear to give evidence in courts display a tendency to reduce the effectiveness of their evidence by deposing to a version different from that given by them in their statements to the police. The Inspector-General of Police, Bihar, told us that at least fifty per cent of the police cases failed because the witnesses turned completely hostile under the influence brought to be upon them by the accused and his supports¹⁸." "The quality of nation's civilization", it is said, "can be largely measured by the methods it uses in the enforcement of criminal law" and going by the manner in which the investigating agency acted in this case causes concern to us. In every civilized society the police force is invested with the powers of investigation of the crime to secure punishment for the criminal and it is in the interest of the society that the investigating agency must act honestly, fairly and not resort to fabricating false evidence or creating false clues only. With a view to secure conviction because such acts shake the confidence of the common man not only in the investigating agency but in the ultimate analyses in the system of dispensation of criminal justice. Let no guilty man go unpunished but let the end not justify the means! The Courts must remain ever alive to this truism. Proper results must be obtained by recourse to proper means, otherwise it would be an invitation to anarchy¹⁹.

¹⁸Law Commission Fourteenth Report, Vol. II, p.754.

¹⁹ *Ram Pal Pithwa Ramdas v. State of Maharashtra*. 1994 (1) Crimes 1017 (1031) SC.

IV. LEGAL PROVISIONS FOR PROMPT INVESTIGATION

Legislature after considering the importance of speedy investigations has prescribed detailed provision directing law enforcement agencies to complete investigation within reasonable time limit. Mainly, provisions for speedy investigation are contained in Criminal Procedure Code:

(a) Sec.157 requires²⁰ an officer in-charge to send forth with the preliminary report of the commission of cognizable offence to magistrate. After recording of FIR or receiving of information about commission of cognizable offence officer in-charge of police station will find out whether offence has actually been caused. After his satisfaction, which should always be objective, without loss of time he will immediately send the report to magistrate. The sending of report is indication about preparedness of police officer to initiate the investigation.

(b) Sec. 167(2) implicitly contains provision directing investigation be completed promptly. This section makes provision for that circumstances when investigation is not completed within twenty-four hours. About the involvement of a person investigating officer is needed to complete investigation within twenty-four hours or maximum 90 or 60 days. Criminals usually commit crime after detailed planning particularly in case of socio-economic and organized crime, there is almost impossibility to complete investigation within this time frame. That's why Sec. 167 is not making any bar on investigation after twenty-four hour or 90 or 60 days but makes pressurizing situation for law enforcement agency to complete investigation promptly that if investigation is not completed within 60 or 90 days as the case may be, person detained shall be released on bail as a matter of right.

(c) One more provision is contained in Sec.167 is directing police officer to complete investigation within reasonable time frame. In summon case, if, investigation is not completed within 6 months the magistrate is well empowered to stop the further investigation. This rule is based on premise that there should be no unnecessary delay in investigation. The outer limit of six months can only in exceptional cases, on satisfaction of the magistrate or session judge, be extended.

(d) One express provision contained in Sec.173 of criminal procedure Code directs the police officer to complete investigation promptly and speedily; "Every investigation under this chapter shall be completed without unnecessary delay." (2)(i) As soon as it is completed, the

²⁰Sec.157(1) provides that – "If from information received or otherwise, an officer in charge of police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send report of the same to a magistrate. . ."

officer in charge of police station shall forward to a magistrate empowered to take cognizance of the offence on a police report in the form prescribed by the State Government²¹ ...” Law has taken into consideration importance of speedy investigation and for this purpose either by implications or by express provisions provides direction to investigating agencies for accomplishing the work speedily. Delayed investigation frustrates its very objective; criminal elements succeeds in destroying evidences, terrorize witnesses ultimately by which criminality and crime rate increase, deterrent effect of criminal law lessened, public interest is affected and justice to the victim and accused is badly affected.

Faulty Investigation Method

The system adopted by police for doing investigation into the case has now become obsolete. Due to age old technique of investigation police is not able to collect evidences effectively and quickly resulting into delayed investigation and ultimate result is delayed disposal of the case. Now-a-days due to technological development criminals are committing crime in very planned manner by using scientifically developed measures. Such type of criminal activity may be checked and guilty person can be identified if investigating agencies are well trained in doing scientific investigation. Supreme Court observed about necessity of scientific investigation in modern technologically developed area. “The advancement in various fields of science, the coming into existence of various scientific instruments, the acceptance of scientific theories based on innumerable experiment and discovery of various chemicals has made it essential that science oriented detection of crime made a massive program of police work for our technological age nothing more primitive can be conceived of than denying the discoveries of the science as aids to come suppression and nothing cruder can retard forensic efficiencies than by

searching traditional oral evidence only than by discouraging the liberal use of scientific research to prove guilt²².”

Delay in Crime Scene visitation

Investigation involves several stages and the crime scene visitation is one of the most important of them, excluding perhaps, white-collar crimes. Recognizing this need, the Police Manuals in most of the States have mandated immediate dispatch of an officer to the scene of crime for inspecting it, preserving the evidence and preparing the site plan etc. Such inspection of scene crimes should be done by a team consisting of forensic scientist, finger

²¹Sec.167(5) and (6): Criminal Procedure Code, 1973. Sec. 173(1) and (2): Criminal Procedure Code, 1973.

²² *Sam Prakash v. State of Delhi*, AIR 1974 SC 983.

print experts, crime photographer, legal advisor etc., and not just by a single investigating officer. In the National Seminar on “Forensic Science”: Use and Application in Investigation and Prosecution” held on 27 July 2002²³, at Hyderabad held under the auspicious of this Committee in which Judges, senior police officers, senior forensic scientists and Medical Jurists had participated, the forensic scientists lamented that their services were not being utilized for crime scene visitation as a result of which valuable forensic evidence is being lost.

V. EFFECT OF OMISSIONS, ILLEGALITIES AND IRREGULARITIES IN INVESTIGATION

The following are the reasons which nullify the whole investigation process conducted by the police. Consequently, it leads to delay in disposal of the criminal cases. Irregularities in conduct of investigation are not intended to vitiate the trial before the courts. The magistrates are expected to decide cases on the evidence produced before them²⁴. Their Lordships of the Supreme Court in *H.N. Rishbud v. State of Delhi*²⁵ observed as follows: “A defect or illegality in investigation however serious has no direct bearing on the competence or the procedure relating to cognizance or trial. If cognizance is in fact taken, on police. report vitiated by the breach of a mandatory provision relating to investigation there can be no doubt that the result of the trial which follows. It cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. “In another case, the Apex Court of India has held that even if there is any irregularity in the investigation that would not vitiate the trial or the conviction. In the absence of evidence that the accused has been prejudiced²⁶

No proceedings against the accused can be quashed solely on the ground of illegal investigation. The court should go into the question whether the illegal investigation had resulted in prejudice to the accused²⁷. Any irregularity even illegally committed in the course of investigation does not by itself affect the legality of the trial by an otherwise competent court unless miscarriage of justice has been caused thereby²⁸.

Non-Registration of cases by Police

Another trend of political pressure relates to non-registration of the cases by police personnel.

²³ National Seminar on “Forensic Science”: Use and Application in Investigation and Prosecution” held on 27 July 2002.

²⁴ *State v. Dhanpal*, 1967 CriLJ 1450.

²⁵ AIR 1955 SC 196; 1956 CriLJ 526.

²⁶ *Shri Durga Das v. State of H.P.* 1973 CriLJ 1138; AIR 1973 SC 1379; (1973) 1 SCWR 651; *Satlendra Nath v. State of Bihar*, 1968 CriLJ 1484; AIR 1968 SC 1292.

²⁷ *State of A.P. v. P.N. Narayana*, 1971, CriLJ 675; AIR 1971 SC 811; 1971 SCD 271.

²⁸ *A.C. Sharma v. Delhi Admn.* 1973 CriLJ 902; AIR 1973 SC 913; *Gyasi Ram v. State*, 1964(2) CriLJ 581:

Today if a good Director General of Police and a good Chief Minister were to register of crimes, the Parliament, the State Assembly and newspapers will all shout for the dismissal of both the D.G. and the Chief Minister. In many cases the police personnel get transferred and given adverse entry in their character roles for honestly registering crime²⁹.

Lack of Quality Investigation

The Standard of police investigation in India remains poor and there is considerable room for improvement. The Bihar Police Commission (1961) noted with dismay that “during the course of tours and examination of witnesses, no complaint has been so universally made before the Commission as that regarding the poor quality of police investigation”. Besides inefficiency, the members of public complained of rudeness, intimidation and suppression of evidence, concoction of evidence and malicious padding of cases. Almost in the same vein, the Punjab Police Commission (1961-62) bemoaned poor quality of police investigation. A frequent complaint relating to the method of investigation received by the Punjab Police Commission was that one officer but several officers in succession did not investigate all cases. The West Bengal Police Commission (1960-61) also referred to noticeable deterioration in the standard of investigation. The Second West Bengal Police Commission (1988) reaffirmed the downward trend and observed that during the intervening years the standard of investigation had further gone down. Many cases did remain undetected. It also observed that conviction figures had also gone down.

Political interference in investigation

Political influence and political interference in investigation is another reason for the delay in investigation and disposal of cases. Political interference at the stage of investigation has become a routine affair so much so that, what to speak of the press and public opinion, even the Punjab Police Commission (1961-62), the Delhi Police Commission (196), the Gorey Committee on Police Training (1972), the National Police Commission (1977-80), the M.P. Public Police Relations Committee (1983), all headed by eminent judges, educationists or outstanding civil servants, have in one voice condemned political interference with the working of the police³⁰. According to the National Police Commission all political parties irrespective of their political hues, use their authority regarding promotions and transfers to compel the force to serve their interest. Alas this tendency has alarmingly, increased in recent times due to the deterioration in the quality of both the politicians and the members of the

²⁹AIR 1964 Raj. 237; *Keroo v. Maneckji* 1980 CriLJ 258; *R.Muthu v. State*, 1983 CriLJ 1309.

³⁰ Malleswari, V.B. Police Reforms – Global Perspectives, The ICAI University Press, Hyderabad, 2007, p.28.

force³¹. This growing liaison between the police and the politician is a great hindrance in the way of effective and impartial functioning of the police, and what is lost in the process of this unholy alliance is both objectivity and truth which ought to be the aim of every police investigation. A policeman, worth his sought to know that he derives his power from the law of the land and as an agent of the law he must honestly exercise his powers given by the law in accordance with the best of his discretion and conscience and not to please any executive authority however high and mighty³².

VI. IMPORTANCE OF FIRST INFORMATION REPORT

Information in cognizable cases: 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. The substance therefore shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf. A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant. Any person aggrieved by a refusal on the part of an office-in-charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer-in-charge of the police station in relation to that offence³³.

Omission of Material Facts in F.I.R.

It has been held by the Apex Court in *Ram Kumar Pandey v. State of Madhya Pradesh*³⁴, that, “omissions of important facts affecting the probabilities of the case are relevant under section 11 of the Evidence Act in judging the veracity of the prosecution case.” Where the report is lodged by a person claiming to be an eye witness to the occurrence, it is expected that he would not omit to state a striking feature about the incident. If such infirmity is found in the F.I.R., then the version of such eye witness who lodged the report is liable to be rejected;

³¹ Working paper for Seminar on Desirability of Separation of “Law Police” and “Order Police”, S.V.P. National Police Academy, para 6.

³² Statesman, 30-3-1984 (Calcutta), “Politics Causing Police Indiscipline” as quoted by R. Deb, *Id.* At 104- 5.

³³ Batuk Lal, “The Code of Criminal Procedure, 1973”, Central Law Agency, Allahabad, Second Edition, 2010, p.226.

³⁴ AIR 1975 SC 1026: (1975) 3 SCR 519: 1975 CrLJ 870: 1975 (3) SCC 815.

*State of Orissa v. Dilip Kumar*³⁵

Absence of Names of Witnesses in F.I.R.

Where the names of witnesses who witnessed the incident were not mentioned in F.I.R. but at later stage attempt was made by the prosecution to rope in innocent persons, it was held that the evidence of so called eye-witnesses is not reliable; *Yamanappa Goolappa Shirgumpi v. State of Karnataka*³⁶.

Manipulation in First Information Report

First Information Report is an important document as it often gives the untutored version of the informant on the first blush of events. Though it has been repeatedly held that a First Information Report is not meant to be an encyclopedia containing every detail of the case for the prosecution, there is still an unfortunate belief amongst most of our police officers that absence of details like names of the accused, names of the witness, list of stolen properties, etc., will ruin the prosecution case, and accordingly, there is often an attempt to add and interpolate information collected at the stage of the investigation into the body of the F.I.R. Such subsequent additions and interpolations create a doubt about the *bona fides* of investigation in the mind of the court and offender than not the prosecution case is rejected *in toto*. Instead of resorting to such malpractice's the investigating officer should fully examine witnesses in the course of their examination under section 161, Cr.P.C. and take down the genuine cause for such commissions so that the public prosecutor can take the explanation of such witnesses in the course of their evidence in court. Where there are good reasons for omissions, whether in the FIR or in the General Diary, no adverse presumption arises against the prosecution³⁷. It should never be forgotten that a list of stolen properties taken by the investigation officer subsequently on arrival at the spot when investigation has already started can never be a part of the FIR as it is hit by section 162 of the Cr.P.C. There should also never be any inordinate delay in recording of the FIR. It renders the prosecution story suspicious³⁸. If information reveals the commission of a cognizable offence, FIR must be recorded without waiting for details.

Police Remand

'Police Remand' is one of the important stage in investigation of a criminal case. Section 167(2) of Criminal Procedure Code deals with Police Remand. 'Police Remand' means the

³⁵ 1987 CrLJ 1242.

³⁶ 1981 CrLJ 164 (SC); AIR 1981 SC 646; 1981 SCC (Cri) 271.

³⁷ *Awadhi v. State of Bihar*, 1971 CrLJ 23 (SC); *State of A.P. v. M.V. Ramana Reddy*, 1991 CrLJ 2703 (SC).

³⁸ *G.B. Patel v. State of Maharashtra*, 1979 CrLJ 51 (SC).

magistrate sent the accused person to the custody of the police in the form of 'Police Remand' on the request of police officer, for the purpose of investigation of the case.

(i) Section 167 (2) Cr.P.C., provides for a maximum of 15 days in police custody. It is not possible to fully investigate serious crimes having inter-state ramifications in this limited period. The law should be amended to provide for a maximum police custody remand of 30 days in respect of grave crimes where punishment is more than five years.

(ii) As per section 167 Cr.P.C., the accused is liable to be released on bail if the charge sheet is not filed against him within 90 days from the date of his arrest. It is not always possible to investigate a case comprehensively within this period particularly cases having inter-State or trans-national ramifications. This results in accused involved in grave crimes being enlarged on bail. It would be desirable if the law is amended to provide another 90 days to the investigating agencies in case of grave crimes if, on the report of the investigating officer, the court is satisfied that there are sufficient reasons for not filing the charge sheet within the initial period of 90 days.

(iii) Under Section 167(2) an accused cannot be taken on police custody remand after the expiry of first 15 days from the date of his arrest. This has emerged as a serious handicap in sensitive investigations. This issue was deliberated upon by the Law Commission of India which recommended in their 154 report that the law should be amended to enable the CBI to take the accused in the police custody remand even after the expiry of the first 15 days so long as the total police custody remand of the accused does not to exceed 15 days. In our view, such discrimination between the State Police and CBI would not be justified. The law, therefore, is required to be amended to on the lines permitted to C.B.I.

(iv) Many times, accused are admitted in Hospitals during police custody on health grounds and stay there for several days. During this period interrogation of accused is not possible. Thus, the police officer is handicapped in investigation. To overcome this difficulty a suitable provision be made in Section 167(2) to exclude the period of hospitalization or such other cause for computing the period available for police custody. This one of the problem for the delay in investigation and interrogation of the accused by the police.

VII. GENERAL CAUSES FOR THE DELAY IN DISPOSAL OF CASES BY THE

Police

Rapid growth in population: In spite of many measures taken by the government for the speedy disposal of criminal cases and to distribute justice to the victims speedily, it could not

be achieved because of rapid growth in population. The population of India has increased almost three-fold during the last 60 years and the density of population per square kilometer has also been steadily increasing. Consequently, there is a corresponding increase in the crime figures of the country. It is worth noticing that the percentage contribution of property crimes to the total crimes continues to be on the decline whereas the “violent crimes” and “economic crimes” have

shown an upward trend. Millions of cases were reportedly pending trial in the courts. With a rapid increase in the population and urbanization, policing becomes more difficult in the cities and towns. There is an increase in traffic on roads, increase in influx of people of the cities and towns for employment, lack of housing and basic civic amenities, lack of potable water and power supply, slums, shortage of transport and increase in unemployment. Anyone can imagine the traffic problems and pollution level in the metropolitan cities if no drastic steps are taken at this stage itself. India is a rapidly developing society and new problems continue to crop-up at every stage of development. The Indian Police, as the most visible arm of the government, will have to face increased social tensions consequent upon increasing in population, urbanisation, consumerism, unemployment and caste conflicts. Rapid modernization and liberal economic policies are also revolutionizing the social structure of our society thereby seriously affecting the very values of Indian culture. Minor vices like drinking, gambling etc., are no longer looked down upon by the society and, with the backing of unaccounted money, the unscrupulous elements keep on their efforts to gain respectability in the society. Offences like evasion of taxes, racketeering in drugs and narcotics, consumer cheating and adulteration play silent but active role in the growth of crimes. Large scale of organized crimes in the country, over the past five decades, has been drifting towards electronic, economic, monetary and fiscal domains. However, the change that came about in organized crime activity in the country over the past five decades did not relate only to addition of new areas of operation, but also to scope and technology³⁹.

Investigation conducted by single Investigation officer

It has been observed that investigations of even grave and sensational crimes having inter-State and even trans-national ramifications are being conducted by a single IO. The Committee feels that by virtue of the nature of such cases, application of a single mind is not enough to respond to the modern needs of the art and science of investigation – may it be inspection of site, picking of the clues and developing them and handling of other

³⁹ Radha Kalyani, G. “Socio-Legal Constraints of Police”, *Police Reforms Global Perspectives*, ed.

multidimensional related matters⁴⁰.

Investigation not conducted by the designated police officer

It may be apt to point out that the rank of the IO investigating a case also has a bearing on the quality of investigation. The minimum rank of an SHO in the country is SI. However, the officers of the rank of Inspector head some of the important police stations. It has been observed that lower-level officers, namely, HC and ASI etc, mostly handle investigations. The senior officers of the police stations, particularly the SHOs generally do not conduct any investigations themselves. This results in deterioration of quality of investigations⁴¹.

Problems regarding Criminal Procedure Code, 1973 and Evidence Act, 1872

One of the most serious problems that the police is facing today is that, despite the lapse of time, there has been no serious re-examination of the existing laws and procedures. The Criminal Procedure Code was amended in the year 1973 about 34 years ago, the Indian Penal Code and the Evidence Act have not been touched at all in this respect. Presently, the police are facing many problems, which are flowing out of certain provisions of the Criminal Procedure Code and the Indian Evidence Act. Under the Criminal Procedure Code it is required that whenever the police enter any premises for the purpose of search and seizure, at last two respectable inhabitants of the locality must accompany them⁴². Since it is not always possible to find two respectable persons willing to associate with the police for the purpose, the police find themselves in a difficult situation and hence try to observe the formality with the cooperation of some 'respectable' persons who might be of dubious character and reputation. Courts being aware of such police practices treat the evidence produced by search and seizure with utmost suspicion and even genuine prosecution cases are adversely affected in the process⁴³.

Another provision in the criminal procedure Code bans the use of any statement made by a person to a police officer in the course of investigation at any inquiry or trial in respect of any offence under investigation at the time when such statement was made⁴⁴. It is however permissible to use the statement for the limited purpose of contradicting a witness if there is an inconsistency between his statement made before the police and the subsequent testimony

⁴⁰ *Ibid*

⁴¹ *Ibid*.

⁴² Section 100(4).

⁴³ Prasad, K.N. "Police Process; Its Concepts, Functions and Strict ion", *The Indian Police Journal*, October-December, 1978, p.9.

⁴⁴ Section 162.

in court⁴⁵. The Evidence Act, 1872 contains the provision that a confession made to a police officer is not admissible as evidence in a court of law⁴⁶. This provision though enacted with good motive nevertheless creates unnecessary hardships to the police in prosecution work.

VIII. CONCLUSION

The speedy disposal of criminal case is the cornerstone of fair trial, otherwise the dream of justice would be greatly damaged. Investigation of criminal case plays very crucial role and makes foundation of the case, whole trial is completely depending on investigation, therefore, it should be properly, effectively and promptly done. For this purpose Criminal Procedure Code expressly and by implication makes very detailed provisions. Prompt and proper investigation is necessary for the purpose of tackling the problem of criminality. If there will be delayed investigation in criminal cases, criminal law will lose its deterrent effect resulting into increasing the rate of crime. It also hampers justice consideration towards aggrieved person, accused and ultimately to society in large. Despite the provision of criminal procedure code giving direction for speedy investigation, the reality situation is that law enforcement agencies are unable to complete investigation within reasonable time. The reasons are varied such as delay in lodging First Information Report, police officers do not have willingness to investigate into the case, overburdening of police officers and most important reason is that the police officers have no proper training in modern technological tools of investigation, they have no expertise and skill in using forensic science in investigation⁴⁷. This situation is creating greater problem before the Criminal Justice System.

⁴⁵ Section 145 of Evidence Act.

⁴⁶Section 25 of Evidence Act, 1872.

⁴⁷Pradeep Singh. "Delayed Investigation and Criminal Justice", *Civil & Military Law Journal*, Vol.45, No1+2, April-June, 2008, p.46.