Subject: Law

Production of Courseware

- Content for Post Graduate Courses

Paper: Criminal Justice Administration
Module: Pre Trial Process: Investigation by Police
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<th>Learning Objectives</th>
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<td>• After learning this module, the learners shall be able to understand the police officer’s power to investigate cognizable cases.</td>
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<td>• They are also expected to understand the Magistrate’s power to order investigation in cognizable and non-cognizable cases.</td>
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<td>• The learners shall be able to understand various processes involved in investigation.</td>
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| Pre-requisites | Basic understanding of the provisions of the Code of Criminal Procedure relating to investigation process |

| Key Words | Cognizable offence, Non-cognizable offence, Investigation, General Diary, Case Diary, |
1. Introduction:

Investigation is a pre-trial stage in the Criminal Justice System. It is conducted for the purpose of collection of evidences against the accused. It is an important stage because at this stage the prima-facie guilt of the accused is determined and if the police is able to make a prima-facie case against the accused by collecting sufficient evidences then the procedure is adopted against him and he is put to the trial stage.

All the cognizable offences are considered to have been committed against the whole State and the State investigate the case through the agency of police. With this object the Code of Criminal Procedure, 1973 gives a wide range of powers to the police officer, who is one of the important investigating agencies among other, to investigate the case.

2. Investigation: Meaning

The statutory definition of the term “Investigation” is given Section-2(h) of the Code of Criminal Procedure, 1973, (hereinafter referred to as the Code) which says that the investigation includes all the proceedings under the Code for the collection of evidences conducted by a police officer. But this is not an exhaustive definition and does not give a fair idea that what the investigation includes. Chapter-XII of the Code is devoted to the powers of police officer to investigate a case and it provides that the investigations initiates after the lodging of the information, in case of cognizable offence without the orders of the Magistrate and in case of non-cognizable offence, after the order of the Magistrate and it includes proceeding to the spot, make a preliminary inquiry, decide as to further conduction of the investigation or not to conduct the investigation, recording of the facts and circumstances of the crime scene, collecting evidences, making arrest without warrant, ordering the concerned person to appear before the investigating officer, interrogation of persons, search and seizure, filing of the closure report if the evidences are insufficient and if the evidences are sufficient then to file the Charge-sheet before the Magistrate.
The Supreme Court in the case of **H.N. Rishbud v. State of Delhi**\(^1\) has viewed that the investigation of an offence as generally consisting of:

1. Proceeding to the spot,
2. Ascertainment of the facts and circumstances of the case,
3. Discovery and arrest of the suspected offender,
4. Collection of evidence relating to the commission of the offence which may consist of-
   1. the examination of various persons (including the accused) and the reduction of their statements into writing,
   2. the search of places or seizure of things considered necessary for the investigation or to be produced at the trial, and
5. Formation of the opinion as to whether on the materials collected there is a case to place the accused before a magistrate for trial, and if so, taking necessary steps for the same by filing of a charge-sheet under Section- 173 of the Code.\(^2\)

### 3. Initiation of the Investigation:

Usually, in case of cognizable offences, the investigation is initiated by the giving of information under Section 154 to a police officer in charge of a police station.\(^3\) However, for the initiation of the investigation, lodging of FIR is not a pre-condition as Section 157 provides that when from the information received or “otherwise” the police officer has reason to suspect the commission of the cognizable offence, then he can send a report to Magistrate and conduct the investigation. Means, if from some other sources police officer comes to know about the commission of the cognizable offence then without lodging the FIR he can proceed to the spot, initiate the investigation and record the formal information (FIR) on his return to the police station.\(^4\) And there are certain circumstances in which even the Magistrate can order the investigation in relation to the cognizable as well as non-cognizable offence under Section 156.

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1. AIR 1955 SC 196
3. *Ibid* at 132
3.1 Information as to Cognizable offence (FIR):

However this term First Information Report is not used in the Code, but the information given under Section 154 of the Code is treated as an FIR. Following are the valid requirements of the information given under this Section:

(i) It is an information relating to the commission of the cognizable offence.

(ii) It is given to the officer in charge of the police station.

(iii) It is given in writing and if given in oral, then it shall be reduced to writing.

(iv) It shall be signed by the informant.

(v) If the information given in oral, is reduced to writing then it shall be read over to the informant.

(vi) The substance of the information shall be entered in a book prescribed by the State Government.

(vii) A copy of the information shall be given to the informant.\(^5\)

The information given under this Section is called the First Information Report because it is given at the earliest opportunity after the commission of the crime. It is given first in point of time. The object of the FIR is to obtain early information about an alleged criminal act and to record the circumstances before there is time for them to be forgotten or embellished.\(^6\) It should be lodged as soon as possible after the commission of the offence and there should not be any time for the concocted prosecution story. If there is a delay in lodging the FIR, that will raise a suspicion on the credibility of it.

The object is to obtain the initial information about the commission of the offence, on the basis of which the police officer officer can start the investigation without the order of the Magistrate.\(^7\) After lodging the FIR the police officer is required under Section 157 only to report the Magistrate about the receiving of the information relating to the cognizable offence.

3.2 Police Officer’s power to investigate a cognizable case:

According to Section 156(1) for investigating into a cognizable case, prior permission of the Magistrate is not required. The police officer can conduct the investigation in relation to a

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\(^5\) See Section-154(1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code)
\(^7\) See Section-156(1) of the Code.
cognizable case without the order of the Magistrate. The police officer is only required to report the Magistrate under Section-157 about the registration of a cognizable case.

3.2.1 No interference by the Court:

The Court has no power to investigate a cognizable case. It is the statutory power of the police to investigate a cognizable case and Court has no power to interfere with such investigation. Court’s function begins with the filing of the charge-sheet.\(^8\)

As observed by the Law Commission in its 41\textsuperscript{st} report that a Magistrate is kept in the picture at all the stages of the police investigation, but he is not authorized to interfere with the actual investigation or to direct the police how that investigation is to be conducted.\(^9\)

In the case of King-Emperor v. Khwaja Nazir Ahmad\(^10\) the Privy Council observed, “The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with due observance of law and order is only to be obtained by leaving each to exercise its own function.” This view has also been approved by the Supreme Court in the case State of W.B. v. S.N. Basak\(^11\) and H.N. Rishbud v. State of Delhi.\(^12\)

The legal position appears to be that if an offence is disclosed, an investigation into the offence must necessarily follow in the interest of justice and the court will not normally interfere with the investigation and will permit the investigation to be completed. However, if the materials do not disclose an offence, an investigation cannot be permitted, as any investigation, in the absence of any offence being disclosed will result in unnecessary harassment to a party whose liberty and property may be put in jeopardy for nothing. It was held by the Supreme Court in the case of State of W.B. v. Swapan Kumar Guha\(^13\) that in such a case the High Court in the exercise of its powers under Art. 226 or under Section 482 of the Code may stop and quash the investigation proceedings.\(^14\)

Recently, in the case of Babubhai v. State of Gujarat\(^15\) the Supreme Court observed:

Not only fair trial but fair investigation is also part of constitutional rights guaranteed under Art. 20 and 21 of the Constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of law. The investigating agency

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8 Supra note 6 at 830
10 AIR 1945 PC 18
11 AIR 1963 SC 447
12 Supra note 1
13 (1982) 1 SCC 561
14 Supra note 2 at 123-124
15 (2011) 1 SCC 336
cannot be permitted to conduct an investigation in a tainted and biased manner. Where non-interference of the Court would ultimately result in failure of justice, the Court must interfere. In such a situation, it may be in the interest of justice that an independent agency chosen by the High Court makes a fresh investigation.

In the case of Naresh Kavarchand Khatri v. State of Gujarat & another (2008) the principle question was that Whether the High Court has the requisite jurisdiction to transfer an investigation from one Police Station to another. The Supreme Court observed that:

The power of the court to interfere with an investigation is limited. The police authorities, in terms of Section 156 of the Code of Criminal Procedure, exercise a statutory power. The Code of Criminal procedure has conferred power on the statutory authorities to direct transfer of an investigation from one Police Station to another in the event it is found that they do not have any jurisdiction in the matter. The Court should not interfere in the matter at an initial stage in regard thereto. If it is found that the investigation has been conducted by an Investigating Officer who did not have any territorial jurisdiction in the matter, the same should be transferred by him to the police station having the requisite jurisdiction.

However, in this case the order passed by the High Court for the transfer of investigation was set-aside by the Supreme Court under Art. 136 and it was said by the Court that the undue haste with which the High Court has exercised its jurisdiction, in our opinion, should not be encouraged. Whether an officer incharge of a police station has the requisite jurisdiction to make investigation or not will depend upon a large number of factors including those contained in Sections 177, 178 and 181 of the Code of Criminal Procedure. In a case where a trial can be held in any of the places falling within the purview of the aforementioned provisions, investigation can be conducted by the concerned officer in-charge of the police station which has jurisdiction to investigate in relation thereto. Sub-section (4) of Section 181 of the Code of Criminal Procedure Code would also be relevant therefor.

The Magistrate has no power to stop an investigation.\textsuperscript{16} However if the police officer decides not the conduct the investigation, the Magistrate can intervene and can either direct the investigation to be made or can himself conduct the inquiry.

\textsuperscript{16} Sharma v. Bipen, AIR 1970 SC 786
3.2.2. Sanction of the Government:

It is also important to note here that there are certain offences, as for example under Section 197 of the Code, the cognizance of which can be taken by the Court only with the previous sanction, but investigation in case of those offences also can be conducted even without such sanction.

4. Information as to Non-Cognizable offence:

Section-155 of the Code provides that when the information relating to the non-cognizable offence is given to the officer in charge of the police station then he shall record the information in a book kept for that purpose and refer the informant to the Magistrate for seeking the further orders, because in case of non-cognizable offence, the police officer has no power to conduct the investigation without the order of the Magistrate. When the order is issued by the Magistrate for the investigation in such cases then the police officer will have the same powers to investigate as in case of cognizable offences, but he shall not have the power to make arrest without warrant. This is a general rule that in case of non-cognizable offence police officer cannot conduct the investigation without the order of the Magistrate but there is an exception to this general rule, i.e. when the information reveals the commission of two or more offences, of which at least one is cognizable offence, then the whole case shall be treated as the cognizable case and the police officer will have the power to conduct the investigation without the order of the Magistrate with respect to all the offences.

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17 See Section-155(1) of the Code.
18 See Section-155(2) of the Code.
19 See Section-155(3) of the Code.
20 See Section-155(4) of the Code.
In the case of Pravin Chandra Mody v. State of Andhra Pradesh, it was held that where the information discloses a cognizable offence as well as non-cognizable offence, the police officer is not debarred from investigating any non-cognizable offence which may arise out of the same facts. He can include that non-cognizable offence in the charge-sheet which he presents for a cognizable offence.

In the case of Victor Auxilium & Ors. v. State & Anr., the information relating to the offences under Section 494, Section 498-A of the IPC and Section 4 of the Dowry Prohibition Act was given to the police officer. Of these offences the offence under Section 494 is a non-cognizable offence. Police conducted the investigation in relation to all the offences. It was held by the Court that the whole case was to be treated as a cognizable case and police can very well investigate the offence under Section 494 also, along with other offences.

5. Magistrate’s power to order the police officer to investigate the case:

There are certain circumstances in which Magistrate can order the police officer to conduct the investigation. These are as follows:

(1) When the Magistrate receives a complaint under Section 190(1)(a) then before taking the cognizance, he can order under Section-156(3) the investigation to be made in that case. On receiving the complaint the Magistrate is not bound to take the cognizance. As Section 190 uses the term “may” and if it appears to the Magistrate that before taking cognizance the investigation is required to be made then he can order the police officer to conduct the investigation. When the police report (charge-sheet) is submitted in that case and the magistrate takes the cognizance upon that report then that case is treated as a case instituted on police report and not on complaint.

(2) When the Magistrate takes cognizance under Section-190(1)(c) upon some other information received and it appears to him that an investigation in the case is required then he can order the investigation under Section-156(3).

(3) When the Magistrate receives a complaint under Section-190(1)(a) and after taking the cognizance upon that complaint, i.e. after examining the complainant under Section 200, it appears to magistrate that an investigation is required to made then he can order the investigation.

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21 AIR 1965 SC 1185.
22 2008 Cr.L.J. 774.
23 See Section-156(3) of the Code.
24 See Section-190 of the Code.
This case shall be treated as the case instituted on the complaint only, as in this situation Magistrate had already taken the cognizance upon the complaint and after that the investigation is ordered and police report is submitted.

(4) After receiving the information by the police officer relating to the cognizable offence, if there appears no reasonable ground to him to investigate the case and he does not conduct the investigation then he shall report the Magistrate in this regard under Section-157 and upon that report if it appears to the Magistrate that an investigation is required to be made in the case then he can order the investigation under Section-159 of the Code.

(5) If the Final Report or the closure report is submitted by the investigating officer under Section 169 on the discovery of insufficient evidences to prove the guilt of the accused and it appears to the Magistrate that the further investigation is required for the discovery of evidences then he can order the investigation under Section156(3) of the Code.

(6) When the investigation report/charge-sheet is submitted by the investigation officer under Section 173 and it appears to the Magistrate that there are no sufficient grounds in the report submitted for taking the cognizance, then he can order for the further conduction of the investigation under Section-156(3).

26 See Section-159 of the Code.
6. Interrogation:

Interrogation is an important part of the investigation. While conducting the investigation for the purpose of gathering the facts of the case, collection of evidences and recording of statements various person need to be interrogated. Sections 160 to 164 make the provisions in this regard, which can be discussed as follows:

6.1 Police officer's power to require attendance:

Section-160 empowers the police officer, making the investigation, to require the attendance before himself of any person acquainted with the facts and circumstances of the case by issuing a written order. Though the heading of this Section “Police officer’s power to require attendance of witnesses” suggests that only the witnesses can be ordered to appear but the main body of the Section empowers the police officer to secure the presence of any person which includes the witnesses, the victim and even the accused person for the purpose of interrogation at the police station. If the accused has not already been arrested earlier by the police officer then
even the accused person can be ordered to appear in the police station for the purpose of interrogation.\textsuperscript{27}

It is mandatory to appear in fulfillment of the order issued under this Section. As this subsection (1) provides “such person shall attend as so required” and the non-compliance with the order is punishable under Section-174 of the IPC.\textsuperscript{28}

However, there is as exception to this general power of the police officer, i.e. a male person below the age of 15 years or above the age of 65 years or a female person (of any age) or a mentally or physically disabled person cannot be ordered to appear in the police station. These persons can be interrogated by the police officer at the place of their residence.\textsuperscript{29}

In this regard the Proviso to Section-157(1), which was inserted by the Criminal Procedure (Amendment) Act, 2008, is also mentionable, which provides that in case of offence of rape the statements of the rape victim shall be recorded at the place of her residence or any other place of her choice and as far as practicable by a woman police officer in presence of her parents or guardian or near relatives or social worker.\textsuperscript{30} This provision was inserted for the protection of dignity of rape victim, as it is several times observed that so many scandalous, humiliating and obscene questions are asked by the police officers from the rape victim at the police station and because of that rape victim does not prefer to complain.

Presence of lawyer during interrogation of the accused:

In the case of Nandini Satpathy v. P.L. Dani\textsuperscript{31} the Supreme Court has favoured the presence of layer during interrogation of the accused as a fundamental right under Articles 20(3) and 22(1). The Delhi High Court also in the case of Ram Lalwani v. State\textsuperscript{32} has permitted the presence of a lawyer on the condition that the police shall not call a lawyer but if he is present at the Police Station, he may be allowed to watch the interest of the accused during interrogation.

Recently by the Criminal Procedure (Amendment) Act, 2008 Section 41-D has been inserted in the Code which provides for the right of the arrestee to meet his advocate even at the stage of interrogation.

Order for the production of Documents:

\textsuperscript{27} See Section-160(1) of the Code.
\textsuperscript{28} Id.
\textsuperscript{29} See Proviso to Section-160(1) of the Code.
\textsuperscript{30} See Proviso to Section-157(1) of the Code.
\textsuperscript{31} AIR 1978 SC 1025.
\textsuperscript{32} 1981 Cr.L.J. 97.
Besides persons, the documents may also be necessary evidence which the investigating officer must examine.

When for the purpose of investigation a document or thing is required, the officer in charge of the police station is empowered to issue an order under Section-91 of the Code to any person for the production of that document or thing. The non-compliance of the order is punishable under Section-175 of the IPC. However, under this Section an accused person cannot be compelled to produce any incriminatory document or the other thing.\(^{33}\)

### 6.2 Examination of witnesses by the police officer:

Though the heading of Section-161 is “Examination of witnesses by police”, but the main body of this Section suggests that the police officer is empowered to examine “any person” acquainted with the facts and circumstances of the case either at the police station or at the place of their residence or any other place.\(^{34}\) The use of the word “any person” in Section 161(1) suggests that there is nothing in this Section to exclude the examination by the Police during investigation of a person who subsequently becomes an accused, though, no statement made by such accused to a Police officer during investigation shall be admissible in evidence at the trial, by the reason of Section 162 except under Sections 27, 32 and 145 of the Evidence Act.\(^{35}\)

For the purpose of investigation police officer can ask any question from these persons and they shall be bound to give the answer truly.\(^{36}\) As the furnishing of the false information is punishable under Section-202 and Section-203 of the IPC and refusing to give the answer is punishable under Section-179 of the IPC.

However, Section-161(2) provides a protection to the person to be interrogated that the questions the answer to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture need not to be answered. This provision is in consonance with the constitutional mandate provided under Article-20(3) which provides the protection against the self-incrimination. The protection given under Article-20(3) is applicable at all the stages of criminal justice system, while the protection given under Section-161(2) only with respect to interrogation made at the stage of investigation.\(^{37}\)

In the case of Nandini Satpathy v. P.L. Dani\(^{38}\) it was held by the Supreme Court that the accused person cannot be forced to answer questions merely because the answer thereto are not

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\(^{33}\) Supra note 6 at 355  
\(^{34}\) See Section-161(1) of the Code.  
\(^{35}\) Supra note 6 at 854  
\(^{36}\) See Section-161(2) of the Code.  
\(^{37}\) Supra note 6 at 854  
\(^{38}\) (1978) 2 SCC 424
implicative when viewed in isolation and confined to that particular case. He is entitled to keep his mouth shut if the answer sought has a reasonable prospect of exposing him to guilt in some other accusation actual or imminent, even though the investigation under way is not with reference to that.\(^{39}\)

Sub Section (3) provides that the police officer can reduce into writing the statements made to him in course of examination and can make a separate record. The Investigating Officer should record the statements of witnesses promptly. Such prompt recording of the statements avoids the contradictions and suspicions. The Police Officer must make a separate record of the statements of each witness.\(^{40}\)

The proviso to this sub-section inserted by the Criminal Procedure (Amendment) Act, 2008 empowers the police officer for the recording of statements through the mode of audio-video electronic means.\(^{41}\)

**6.3 Evidentiary value of the statements made to the police officer at the stage of investigation:**

Section-162 provides that the statements made to the police officer need not to be signed by the maker of it,\(^{42}\) because these may be extracted by the police by using the unlawful means. These statements are not made of oath.

These statements cannot be used as the substantial piece of evidence at the stage of trial and the guilt of the accused cannot be determined only on the basis of these statements. But these statements can be used only for the purpose of Section 145 of the Evidence Act. As a general rule previous statements are used either for the purpose of corroborating or contradicting the statements made at a later stage. But this Section puts a restriction on the use of these statements. As this Section provides that these statements can be used by the accused or, with the permission of the Court, by the prosecution against the maker of it when he appears as a witness to contradict him.\(^{43}\) Means the these statements can be used for impeaching the credibility of the witness by establishing the contradiction between his previous statements made at the stage of investigation and the statements made before the Court at the stage of trial. But these statements cannot be used by the prosecution for the purpose of corroboration.

As a general rule these statements are not admissible as an evidence but there are two exceptions to it, i.e. (i) when the maker of it dies after making the statements and the statements

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\(^{39}\) Supra note 2 at 143


\(^{41}\) See Section-161(3) of the Code.

\(^{42}\) See Section-162(1) of the Code.

\(^{43}\) See Proviso to Section-162(1) of the Code.
reveals the cause of his death or the circumstances in which his death was caused then the statements are admissible as evidence under Section-32(1) of the Evidence Act, and (ii) when these statements leads to discovery of certain articles or things then those statements are admissible as an evidence under Section-27 of the Evidence Act.44

In the case of Dinesh Borthakur v. State of Assam45 the Supreme Court made certain observations with regard to the evidentiary value of dogs tracking used in the investigation. The Court observed that there are certain objections which are usually advanced against the reception of the evidence of dog tracking. First, it is manifest that the dog cannot go into the box and give his evidence on oath, and consequently submit himself to cross-examination, the dog’s human companion must go into the box and report the dog’s evidence, and this is clearly hearsay. Secondly, there is a feeling that in criminal cases the life and liberty of a human being should not be dependent on canine inferences. There are inherent frailties in the evidence based on sniffer and tracker dogs. The possibility of error on the part of the dog or its master is the first among them. The possibility of a misrepresentation or a wrong inference from the behavior of the dog cannot be ruled out. Last, but not the least, is the fact that from the scientific point of view, there is little knowledge and much uncertainty as the precise faculties which enable the police dogs to track and identify criminals. Investigating exercises can afford to make attempts or forays with the help of canine faculties but judicial exercise can ill-afford them.

The law in this behalf is settled that while the services of a sniffer dog may be taken for the purpose of investigation, its evidence cannot be taken as evidence for the purpose of establishing the guilt of the accused.

6.4 No inducements to be offered:

At the stage of the investigation police officers are empowered to interrogate any person and can any question and that person is bound to give the answer truly but for extracting the answers no police officer shall make any inducement, threat or promise to the person to be interrogated.46 The statements made by the persons to the police officer must be out of their own free will. However it is not required that the police officer shall caution a person from making any statement which he makes out of his own free will.47

6.5 Recording of confessions and statements by the Magistrate:

Section-25 of the Evidence Act provides that a confession made to the police officer is not admissible as evidence. If at the stage of the investigation a confession is made by the

44 See Section-162(2) f the Code.
45 (2008) 5 SCC 697
46 See Section-163 of the Code.
47 See Section-163(2) of the Code.
accused to the investigating officer or any other police officer that cannot be used against the accused at the stage of trial. Section-164 of the Code provides a solution to this problem and it empowers the judicial magistrate or the metropolitan magistrate for the recording of the confession and statement at the stage of the investigation and that shall be admissible as evidence. Means, whenever an accused is willing to make a confession at the stage of investigation, the police officer can produce him before the judicial magistrate, whether having jurisdiction or not, and that magistrate can record the confession and forward it to the concerned judicial magistrate. But before recording the confession the magistrate is required to inform the accused that he is not bound to make the confession and if he makes it, it can be used against him and even after giving this information if the accused is willing to make the confession only then he shall record it.\textsuperscript{48} The magistrate shall make an endorsement in this regard at the foot of the confession as is provided in Sub Section (4) of this Section, which is as follows:

"I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed) A. B.Magistrate".

Before recording the statement the magistrate must satisfy himself that the accused is making the confession out of his own free will and without any threat by the police officer.\textsuperscript{49}

As far as possible, the confession should be recorded in the language of the accused or in the language of the Court. But the contents must be shown to the accused and be explained to him in his language by the Magistrate. Thereafter, it should be signed by the accused and the Magistrate who will also certify that he has recorded the confession truthfully and nothing has been left over or added.\textsuperscript{50}

In the same way the statements made by the witnesses to the police officer at the stage of investigation are not admissible as evidence because of the effect of Sectio-162 of the Code. But Section-164(5) provides that if those statements are recorded by the magistrate then that is admissible as evidence. So, whenever it appears to the police officer that the statements of some witness are relevant at the stage of trial, he can produce them before the magistrate who can record the statements.

\textsuperscript{48} See Section-164(2) of the Code.
\textsuperscript{49} Supra note 40 at 240.
\textsuperscript{50} Supra note 40 at 241.
It was provided by the Criminal Procedure (Amendment) Act, 2008 by the insertion of a proviso that the Magistrate can record the confessions and statements under this Section through the audio video electronic means.\(^{51}\)

It must be remembered that the confession recorded by the Magistrate is not a substantive piece of evidence. It has to be fully proved in trial court by the Magistrate who recorded it and it may be tested by cross-examination of the Magistrate.\(^{52}\)

Section-164 applies only to the statements made before a Magistrate, during investigation and before the inquiry and trial. When a confession is made during trial, the provision of Section 281 is applicable.

### 7. Arrest at the Stage of Investigation:

After lodging the FIR, the police officer can arrest the accused or the suspected person. As Section 41(1)(a) authorizes the police officer to arrest without warrant in case of commission of cognizable offence. It provides that the police officer may arrest any person who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned.

However, this power should not be exercised with the blind eyes only on the ground of lodging of the FIR. First of all police officer should make a reasonable inquiry as to credibility of the information. At the same time in case of information as the cognizable offences police officer is not bound to arrest the accused or the suspected person. He can make the arrest for the purpose of investigation. But the accused otherwise cooperates in the investigation then there is no need to make the arrest.

In the case of Joginder Kumar v. State of U.P.\(^{53}\) it was held by the Supreme Court that:

“No arrest can be made because it is lawful for the police officer to do so. The existence of the power is one thing. The justification for the exercise of it is quite another. No arrest should be made without a reasonable satisfaction reached after some investigation about the genuineness and bona fides of a complaint and a reasonable belief both as to the person’s complicity and even so as to the need to effect arrest. Denying a person his liberty is a serious matter.”

\(^{51}\) See Proviso to Section-164(1) of the Code.

\(^{52}\) Supra note 40 at 239.

Recently in the case of Arnesh Kumar v. State of Bihar and another\textsuperscript{54} (July, 2014) once again it was said by the Supreme Court that:

We believe that no arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so. Apart from power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation.

In pith and core, the police office before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed, the power of arrest needs to be exercised.

By the Criminal Procedure (Amendment) Act 2008 in the amended clause (b) of Section 41(1) in case of less serious offences, i.e. punishable up to the imprisonment of 7 years or less, the arrest should be made if the following conditions are satisfied:

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;
(ii) the police officer is satisfied that such arrest is necessary—
(a) to prevent such person from committing any further offence; or
(b) for proper investigation of the offence; or
(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or
(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or
(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured,
and the police officer shall record while making such arrest, his reasons in writing.

And in case of serious offences, i.e punishable with death penalty or the imprisonment of more than 7 years, clause (ba) provides that the police officer must have reason to believe on the basis of that information that such person has committed the said offence.

8. Search by the police officer:

Police officer is also empowered to make a search of any place under the search warrant issued under Section-93 of the Code. This Section provides that the search warrant can be issued in the following circumstances:

(i) When the order or the summons issued under Section-91 is not obeyed by the person,
(ii) When the Court has reason to believe that the order or the summons will not be obeyed,

(iii) Where the document or the thing is not known to the Court to be in possession of any person,

(iv) When the general search is required for the purpose of investigation, inquiry or trial.\textsuperscript{55}

Section-165 is an exception to the foregoing provisions and it empowers the police officer to make the search without any warrant. When for the purpose of investigation the search a place is required and the delay occasioned in obtaining search warrant will defeat the purpose of search, then the police officer is empowered to make the search without obtaining the warrant.\textsuperscript{56} This Section authorizes the police officer to make the search for a particular document or thing or any specified material necessary for the purpose of investigation. This Section does not authorize a general search.\textsuperscript{57} This power can be exercised by the police officer only in case of cognizable offences and only after the registration of the case, not before that. This power should be exercised by the police officer with great caution and only in those cases in which the production of the document cannot be secured by adopting the procedure given under Section 91 and Section 93.

9. Procedure when the investigation cannot be completed within 24 hours:

When a person is arrested without warrant, he is required to be produced within 24 hours before the nearest Judicial Magistrate according to the provisions of Section-57 of the Code. Article 22(2) provides that no person can be detained beyond the period of 24 hour without producing him before the nearest Magistrate. Section-167 of the Code fulfils this constitutional mandate. It provides the procedure when the detention of a person is required beyond the period of 24 hour.

When a person is arrested and the investigation can be completed within the period of 24 hours, he can be produced before the Judicial Magistrate along with the charge-sheet. But when the investigation cannot be completed within 24 hours and the detention of the person is required beyond that period then the procedure is given under Section-167. In that case the police officer shall produce that person before the nearest Judicial Magistrate and can demand for the detention/remand of the accused. In that case it is the responsibility of the police officer to satisfy the Magistrate why the detention of the accused beyond the period of 24 hours is required. If the Magistrate is satisfied he can authorize the detention either in police custody (police remand) or the judicial custody (judicial remand) maximum for the period of 15 days.\textsuperscript{58} Under this provision

\textsuperscript{55} See Section-93(1) of the Code.
\textsuperscript{56} See Section-165(1) of the Code.
\textsuperscript{57} Supra note 2 at 106.
\textsuperscript{58} See Section-167(2) of the Code.
the arrestee can be produced before any Judicial Magistrate, whether he has the jurisdiction or not. If the Magistrate authorizes the police custody, then he has to record the reasons for the same.59 Before authorizing the detention beyond the period of 24 hour, the Magistrate must apply his mind and should not authorize the detention only on the application of the police officer. When the accused is produced before the Magistrate then there are several options are open to Magistrate.

![Procedure when the investigation cannot be completed within 24 hours](image)

As it was held in the case of Ramesh v. State of Bihar60 that when the accused is produced before a Magistrate it becomes the Court’s responsibility and power to order whether he is to be remanded to further custody or granted bail or released altogether. This power of the Court cannot be exercised only on the discretion of the investigating agency.61

If the investigation cannot be completed within the period of 15 days and the detention of the accused is required beyond that period, then the accused need to be produced before the

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59 See Section-167(3) of the Code.
61 Supra note 6 at 922.
Judicial Magistrate having jurisdiction and such Magistrate, if satisfied as to why the further detention is required, may authorize the further detention in the judicial custody. The detention beyond the period of 15 days cannot be authorized in police custody. No Magistrate shall authorize the detention of the accused person for a total period of exceeding:

(i) 90 days, in case of the offence punishable with the death penalty or life imprisonment or imprisonment for a term not less than 10 years,

(ii) 60 days, in case of the other offences. 62

This period of 90 days/ 60 days is inclusive of the first 15 days period of remand. Means after the completion of the 15 days of remand, the accused can be detained maximum for a further period of 75 days/ 45 days. Another question arises in our mind that this period of 90 days/ 60 days remand shall be computed from the date of the first remand order or from the date of his arrest. The answer to this question was given by the Supreme Court in the case of Chaganti Satyanarayana and others v. State of Andhra Pradesh 63. It was held by the Court that the words used in proviso (a) to Section-167(2) are “no Magistrate shall authorize the detention of the accused person in custody, under this paragraph for a total period exceeding i.e. 90 days/ 60 days.” Detention can be authorized by the Magistrate only from the time the order of remand is passed. The earlier period, when the accused is in custody of a police officer in exercise of his power under Section-57, cannot constitute detention pursuant to an authorization issued by the Magistrate. It, therefore, stands to reason that the total period of 90 days/ 60 days can begin to run only from the date of order of remand.

Under Section-167 the accused can be ordered to be detained only at the stage of investigation. Once the Magistrate takes the cognizance of the matter after the completion of the investigation then at the stage of trial the detention of the accused can be authorized under Section-309 of the Code.

If no Judicial Magistrate is available then the accused can be produced by the police officer before the Executive Magistrate and he is also empowered to authorize the detention of the accused maximum for a period of seven days. 64

If the investigation cannot be completed within the period of 90 days/ 60 days and the accused is in custody then after that period he shall be entitled to be released on bail. In that circumstance it is not the discretion of the Court but the right of the accused to be released on bail. 65 But this is applicable before the filing of the charge-sheet. Once the investigation is

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62 See Proviso to Section-167(2) of the Code.
63 AIR 1986 SC 2130.
64 See Section-167(2A) of the Code.
65 See Proviso(a) to Section-167 of the Code.
complete, the charge-sheet is filed and the Magistrate takes the cognizance then the bail cannot be claimed as a matter of right under Section-167. If the period of 90 days/60 days is complete and the bail application is not filed and in the mean time the charge-sheet is filed then it shall not be the right of the accused to be released on bail.

10. Release of accused when evidence insufficient:

Section-169 of the Code provides that when on the completion of the investigation it is found by the investigating officer that the evidences against the accused are not sufficient for forwarding him before the Magistrate for trial, then he can submit a report in this regard under this Section. This report is called “the Final Report or the Summary”. It is also called “Closer report or Khatma Chalaan”. Then the Magistrate may accept this report and shall release the accused on his executing a bond for his appearance when so required. It is the jurisdiction of the investigating officer whether to file the final report under Section-169 or to file investigation report/charge sheet under Section-173. The Court cannot compel the investigating officer to file the charge-sheet under Section-173.

After perusal of the final report, the Magistrate may call for the case diary of the investigating officer to make up his mind whether the investigation has been properly conducted.66

The Magistrate is not bound to accept the Final Report. When the report is filed under Section-169 the Magistrate has various options open. Either he can accept the Final report and close down the case and release the accused, or if it appears to him that the further investigation is required for the collection of evidences then he can order the investigation under Section-156(3), or he can take the cognizance of the matter under Section-190(1)(c) or on the initial complaint.

However, before releasing the accused under Section-169, the Magistrate is required to give a notice to the informant or the victim.

When a Final Report is filed under this Section the informant or the victim can file the “Protest petition/ Naraazgi” against that report and the Magistrate can treat it as a complaint and can take cognizance of the case.

Recently, in the case of Rakesh Kumar and another v. State of U.P. and another (2014) the question was raised that whether a Magistrate after accepting a negative final report submitted by the Police can take action on the basis of the protest petition filed by the complainant/first informant? The above question having been answered in the affirmative by the Allahabad High Court, the appeal was filed by the accused in the Supreme Court. But the appeal

66 Supra note 40 at 269.
was disallowed by the Supreme Court. In this case Supreme Court referred the view expressed by it in the case of Gangadhar Janardan Mhatre v. State of Maharashtra & Ors. -

“…The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case.”

11. Case Diary:

Section-172 provides for the maintenance of the case diary by the investigating officer while conducting the investigation. While conducting the investigation police officer performs various functions such as proceeding to the spot, sketching the map, ascertaining the facts and circumstances of the case, recording the statements on the spot, issuing orders under Section-160, recording the statements under Section-161, making searches etc. Theses all steps taken by the investigating officer need to be recorded in the case diary. For making the whole process of investigation accountable on the part of the investigating officer, this Section provides for the maintenance of the case diary.

Case diary is maintained on day-to-day basis. All the dates, time and other details of the work done in relation to the investigation need to be mentioned in this diary. The time at which the information reached to the investigating officer and the time at which he began and closed the investigation need to be mentioned. All the places visited by the investigating officer are mentioned in it. The statements of the witness recorded by the investigating officer are copied in it. All the expert reports obtained at the stage of investigation are mentioned in it. At the last after the completion of the investigation the grounds on which the investigating officer forms his opinion for submitting the charge-sheet is mentioned in it.\(^67\)

11.1 Evidentiary value of Case Diary:

The case diary is not a substantial piece of evidence; it can be used only as secondary evidence. It is not a substantive piece of evidence of any date, time, fact or statement contained in it. The Court cannot make use of anything contained in the Case Diary in support of the judgment. The Diary may be given to the Investigating Officer to refresh his memory. But the accused will not have a right to inspect the case diary, even though that is referred by the Court as aid at the inquiry or trial. The accused gets the right to cross examine the Investigating Officer with regard to the case diary, if it is used by the IO to refresh his memory or by the Court for the purpose of contradicting the IO.\(^68\)

\(^67\) Supra note 40 at 281
\(^68\) Supra note 6 at 953, 956.
11.2 General Diary:

Case Diary differs from Station Diary or the General Diary as in the General Diary all the events of a police station are mentioned. General Diary is maintained under Section-44 of the Police Act. It is maintained by the Officer-in-charge of the Police Station, while the Case Diary is maintained by every police officer investigating the case. The following are the contents of the General Diary:

(i) All complaints made and the information given at the Police Station,

(ii) The names of the complainants or the informants,

(iii) The names of all the persons arrested,

(iv) The offences alleged to have been committed by them,

(v) The arms and weapons forfeited,

(vi) The names of witness examined.

12. Report of the police officer on completion of investigation:

After the completion of the investigation if there are sufficient evidences against the accused, then the IO shall forward him before the Magistrate along with a report prepared under Section-173. This report is commonly known as “the Investigation Report/ Charge-Sheet/ Challan”. Following are the ingredients of this report:\(^69\)

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, weather with or without sureties;

(g) whether he has been forwarded in custody under section170.

On the basis of this report Magistrate is empowered to take the cognizance of the case under Section-190(1)(b). However he is not bound to take the cognizance on the basis of this

\(^{69}\) See Section-173(2)(i) of the Code.
report. When the report is filed then either he can take the cognizance or if it appears to him that there are no reasonable grounds for taking cognizance on the basis of the report then he can order for the further investigation under Section-156(3).

The IO shall also communicate the action taken by him under this Section to informant. In the case of Bhagwant v. Commissioner it was held that on the consideration of the police report, if the Magistrate is not inclined to take cognizance of the offence, he must give the informant an opportunity to be heard at the time when the report is considered by the Magistrate, so that the informant may make his submissions.

12.1 Further Investigation:

After the submission of the investigation report under Section-173(2) if the IO discovers some new facts and it appears to him that a further investigation is necessary for the purpose of collection of some new evidences then he is empowered to do so under Section-173(8) of the Code and can submit an additional report, this is called “the Supplementary Report or the Supplementary Challan”. This Sub Section (8) empowers the IO only to conduct the further investigation and does not empower the Magistrate to order the further investigation under this Section after taking cognizance of the case. This is the discretion of the IO and it cannot be demanded by the prosecution or the informant as a matter of right. The Magistrate can order the further investigation under Section-156(3) before taking cognizance of the case on the basis of investigation report if it appears to him that prima facie no offence appears to have been committed in the report.

13. Inquest Report:

The report given after investigation under Section-174 of the Code is called as “the inquest report”. The object of this report is to reveal the apparent cause of the death of a person. Section-174 provides that when the officer in charge or some other police officer specially empowered receives an information that a person has committed suicide, or has been killed by another or by animal, or by machinery, or by an accident, or has died under circumstances raising a reasonable suspicion that an offence has been committed in relation to him then he shall immediately inform the nearest Executive Magistrate, empowered to hold inquest, about the information received and proceed to the spot to conduct the investigation. On the spot of death the police officer shall conduct the investigation in presence of two or more respectable member of that locality to ascertain the apparent cause of the death describing such wounds, fractures,

70 See Section-173(2)(ii)
71 AIR 1985 SC 1285
72 Supra note 6 at 968
73 See Section-173(8) of the Code.
bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument, such marks appears to have been inflicted. In case of death of a woman in suspicious circumstances within seven years of her marriage, the police officer shall send the body for post-mortem by the nearest Civil Surgeon.

The object of the inquest is to ascertain the apparent cause of the death and not to conduct the detailed investigation for the purpose of ascertaining the names of accused or for arresting the accused or for ascertain the names of witnesses. It is not a substantial piece of evidence but can be used only for the purpose of contradiction under Section-145.

14. Summary:

At the last we can present the summary of this module. As this module deals with the police officer’s power to investigate in cognizable case, the information given to the police officer under Section 154 relating to the cognizable offence which is first in point of time is treated as the FIR. After lodging the FIR according to the provision of Section-156 the police officer is empowered to investigate without the orders of Magistrate. But if the information is relating to non-cognizable offence then police officer shall refer him to the Magistrate as provided in Section-155. As a general rule it the power of police to investigate and the Court cannot interfere in it but there are certain circumstances in which Magistrate can order the police officer to investigate as provided under Section-156(3), Section-159 and Section-202. Then Sections-160,161,162,163 deal with the police officer’s power to interrogate, Section-164 deals with the confession to the Magistrate at the stage of investigation. Section-165 empowers the police officer to make search without warrant at the stage of investigation. When the detention of the accused is required beyond the period of 24 hours then the Section-167 provides the circumstances in which the further detention can be authorized. After completion of the investigation if the evidences are not sufficient then the Section-169 provides for the filing of the Final Report and if the evidences are sufficient then Section-170 provides for the forwarding of the accused before the Magistrate and Section-173 provides for the filing of the Charge-Sheet.

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74 See Section-174(1) of the Code.
75 See Section-174(3) of the Code.