

CHAPTER 11
Police
PART A.—INVESTIGATION

1. Relation between Police and Magistrate:- Chapter XIV of the Code of Criminal Procedure contains the provisions of the law regarding information to the Police and their powers to investigate and the relation of the Police to the Magistrate are therein defined.

2. Police can investigate suo motu only cognizable cases:- It may, in the first place be pointed out that the Police have power to investigate suo motu only cognizable offences as defined in section 4 (f) of the Code, but under section 202 a Magistrate may, where he sees reason to distrust the truth of a complaint of an offence of which he is authorised to take cognizance, direct a local investigation to be made by a Police Officer (or other person). The limitations on this power of reference which are described in the instructions as to the examination of complainants should be strictly observed by Magistrates (*vide* Chapter 1-B, paragraph 4).

3. Police to record information in non-cognizable cases also:- Section 154 requires that every information to an officer-in-charge of a Police Station relating to the commission of a cognizable offence shall be reduced to writing, and action taken on it under sections 156 and

157. When the information relates to the commission of a non-cognizable offence, the substance of it shall be referred to the Magistrate. No police officer may, without *the express order of a duly empowered magistrate*, investigate an offence not cognizable by the Police [section 155(2)]

4. (1) Section 156 to 158 lay down the procedure to be followed by the Police on receipt of information relating to the commission of a cognizable offence and provide for the submission of reports of such information to the magistrate having jurisdiction.

(2) The following procedure should be followed in regard to F.I. Rs. in murder cases: -

- (i) The F.I.R. in murder cases should be sent to the Magistrate concerned immediately in his Court during Court hours and at his residence thereafter.
- (ii) In case the Magistrate concerned is out of station, the F.I.R. in a murder case should be submitted to the duty Magistrate.
- (iii) If the Magistrate is not available after Court hours, the copy of the F.I.R. should be left at his house by the messenger noting the date and hour of delivery on the cover containing the F.I.R., and the Magistrate should attach the cover with the contents.
- (iv) If on account of difficulties of communication or other causes the delivery is delayed, the reasons
- (v) and delay should be noted on the cover.
- (vi) As soon as the F.I.R. in murder cases, is received by a Magistrate, he should affix his initials thereto and note thereon the date and hour at which the report has been received by him. In the case of a delayed F.I.R., if he disagrees with the reasons given by the Police Officer for such delay, he should also give his own reasons for the same, if any.
- (vii) In cases where the Police Station is not situated in the same place where the Magistrate resides or where the Police Station is situated in an out-of-the-way place, the carbon copy of the F.I.R. after it has been recorded, should be posted at once at the nearest post office, addressed to the Magistrate by name, before the first clearance of the dak. In such cases the Magistrate should check that the F I R. has been dispatched by the earliest post after its registration in the Police Station as shown by the time recorded on it.

(3) The following is an extract from rule 22.48 of Chapter XXII of the Punjab Police Rules, Volume III, which prescribes the maintenance of a Daily Station Diary in accordance with Section 44 of the Police Act, 1861:

"It shall be in form 22.48(1) and shall be maintained by means of the carbon copying process. There shall be two copies. One will remain in the Police Station register and the other shall be despatched to the Superintendent or a Gazetted Officer designated by the latter every day at the hour fixed in this behalf".

" The Superintendent shall fixed the hours at which station diaries' shall be daily closed _____"

(4) Rules 24(4) (1) and (2) of Chapter XXIV of the Punjab Police Rules, Volume III, run as follows:—

"(1) If the information or other intelligence relating to the alleged commission of a cognizable offence is such that an officer-in-charge of Police Station has reason to suspect that the alleged offence has not been committed, he shall enter the substance of the information or intelligence in the station diary and shall record his reasons for suspecting that the alleged offence has not been committed and shall also notify to the informant if any, the fact that he will not investigate the case or cause it to be investigated.

(2) If the Inspector or other superior officer, on receipt of a copy of the station diary, is of opinion that the case should be investigated he shall pass an order to that effect and shall, in any case, send on the diary or an extract therefrom to the District Magistrate for his perusal and orders.

5. (i) The following opinion, which was expressed by the Chief Court of the Punjab extra-judicially on two points connected with the recording of reports made to the Police in cognizable cases, and the power of Magistrates to order the Police to investigate such cases, is, at the request of the State Government, published for the information of the Criminal Courts of the Punjab.

(ii). **Distinction between recording of reports under sections 154 and 157, Criminal Procedure Code:-** The first point was whether a distinction is to be drawn between section 154 and section 157 of the Code of Criminal Procedure in regard to the recording of reports made to the Police in cognizable cases. On this point the Chief Court was of opinion that whereas every information covered by section 154 must be reduced to writing as provided in that section, it is only information which raises a reasonable suspicion of the commission of a cognizable offence within jurisdiction of the Police officer to whom it is given, which compels action under section 157, although, of course, a report would be sent to the Magistrate.

(iii). **Magistrate bound to entertain complaint of cognizable offence made to him directly:-** The second question was, whether a Magistrate can refuse to take cognizance of a complaint which has been duly made to him, on the ground that it relates to an offence cognizable by the Police, and should, therefore, have been made to the Police and not to himself, and whether, either without or after taking cognizance, a Magistrate can properly order the Police to investigate such a case.

As regards the matter of taking cognizance the Chief (now High) Court was of opinion that a Magistrate cannot refuse, when properly called on to do so, to exercise jurisdiction merely on the ground that the complainant might reasonably have had recourse to the Police instead of to the Magistrate.

(iv). **Investigation by Police after the Magistrate has taken cognizance:-** As to whether a Magistrate after having taken cognizance may not properly call on the Police to assist in investigating the case, the Chief (now High) Court was of opinion that a Magistrate who has taken cognizance under section 190(1)(a), of an offence cognizable by the Police

may, after complying with the provisions of section 200, and issuing his process (if he sees no reason for doubting the truth of the complaint and otherwise finds sufficient grounds for proceedings), give information of the case to the Police officer having jurisdiction, with a view to his further investigating its facts and circumstances in the manner laid down in section 157. In such a case as is contemplated, the Police Officer would not have to take measures for the discovery and arrest of the offender, as the supposed offender would be known, and a process would have been issued by the Magistrate to compel his appearance, but in other respects it would rest with him to take steps to secure the case being properly brought before the Court and he would be responsible that the witnesses named by the complainant to the Magistrate were supplemented by any others who might be necessary to complete the case for the prosecution.

6. Procedure to be adopted by Magistrate when offender is not known to the complainant:- The foregoing remarks proceed on the assumption that the complainant to the Magistrate knows or thinks he knows, who has injured him. In cases of complaint of a cognizable offence against an unknown offender, the Magistrate would have to record, under section 203, that there were in his judgment no sufficient grounds for proceeding. It would also be open to him to communicate to the Police, the information supplied to him, or to leave it to the complainant either to apply to the Police or to take such other measures as he thought proper for discovering the offender.

7. Procedure of police when there is or is not sufficient evidence against the accused:- Section 169 of the Code of Criminal Procedure provides that if in an investigation under Chapter XIV the Police Officer finds that there is not sufficient evidence to justify the forwarding of the accused to a Magistrate, he shall release the accused on bail or recognizance, and shall submit a report through the proper officer (section 173), for the orders of the Magistrate having jurisdiction.

If, on the other hand, the evidence appears sufficient the Police Officer must forward the accused under custody, or on bail, if the offence is bailable, to the Magistrate having jurisdiction (section 170).

8. Police cannot detain in custody an accused for more than 24 hours without orders of Magistrate:- Section 61 of the Code provides that no Police Officer shall, under any circumstances, in the absence of a special order of a Magistrate under section 167; detain in custody a person arrested without warrant for a longer period than twenty-four hours, exclusive of the time necessary for the journey from the place of arrest to the Court.

9. Police remands:- When it appears that the investigation by the Police cannot be completed within the period of twenty four hours and there are grounds for the believing that the accusation is well founded, the Police officer must forward the accused to the nearest Magistrate, and also transmit a copy of the entries relating to the case in the diary of the Police Station. The Magistrate before whom the accused is brought may, whether he has or has not jurisdiction, authorise the detention of the accused in such custody as he thinks fit for a period not exceeding fifteen days. If he has not jurisdiction in the case, and considers such further detention unnecessary, he may order the accused to be forwarded to a Magistrate having jurisdiction. [Section 167 (1)].

{Provided that the Magistrate may, on the request of accused or his counsel, supply a copy of remand application to the accused, if not objected to by the Investigating Officer. However, if the request of the accused is opposed, the Magistrate shall consider the same and pass appropriate order keeping in view its impact on the investigation.}

{Proviso added vide correction slip no. 43 Rules/II.D4 dated 21.11.2022}

10. Procedure of Magistrates granting remand:- A Magistrate authorising

the detention of an accused person as above must record his reasons for doing so; and if he is not a District Magistrate or a Sub-Divisional Magistrate, he must forward a copy of his order and reasons to the Magistrate to whom he is immediately subordinate (Section 167).

[The Magistrate shall sign and date every page of the case diaries or copies thereof in token of his having seen them.]

[Added vide Correction slip no. 8 Rules/XXIII-A-7 dated 21.01.1966]

11. Arrest by Police to be reported. When Police may discharge persons once arrested:- Sections 62 and 63 require that Police Officers shall report to the magistrate of the district or, if he so directs to the Magistrate of the division of a district the cases of all persons apprehended without a warrant within the limits of their respective stations, whether such persons shall have been admitted to bail or other- wise, and that no person who has been apprehended shall be discharged, except on bail or on his own recognizance, or under the special order of a Magistrate.

12. Control of Magistrate over the arrests by the Police:- The object of these sections is that the Magistrates should promptly exercise authority, if necessary, with regard to all arrests by the Police; and they seem to have been framed with this view that as no person can be released without the order of a Magistrate, except on bail or recognizance, the Magistrate should be responsible as well as the Police if a person illegally arrested remains unnecessarily in custody.

13. Police diary to be kept and sent up regularly:- Section 172 requires that a Police Officer making an investigation under Chapter XIV shall record his proceedings day by day in a diary. The Magistrate of the district should see that the diary is regularly kept up, and that each day's diary has been forwarded to and has regularly reached the Superintendent of Police of the district in course of post, this being the only security against the contents being antedated. The directions of the High Court as to the inspection of these diaries in criminal trials by the Court and by other persons will be found in Chapter 12 of this volume. The directions there given should be strictly observed.

14. Duty of Magistrates to supervise Police investigation. ¹[Magistrates are bound to see that the provisions of the Code are attended to any departmental practices notwithstanding. The law has provided that the Magistrate should either expressly order (section 202), or receive immediate intimation of (section 157) every criminal investigation that is set on foot in the district, and he is not at liberty to relax the supervision which the law intends that he should exercise. Every first information report received by a Magistrate of the 1st Class under Section 157 of the Code shall be entered in Registers No. XXIII and XXIV of First information Reports prescribed in Rules and Orders of the High Court, Volume VI, Part B. The Magistrate concerned shall see that these registers are maintained by the Ahlmad attached to his court properly and every entry pertaining thereto is correct. He shall also ensure the observance of the following instructions with regard to the maintenance of both the aforesaid registers:-

1. Two separate registers No. XXIII and XXIV, should be kept for each police station to avoid confusion.

2. The date and time of the receipt should be entered in the copy of the First Information Report by the Magistrate in his own hand and signed or initialed immediately on receipt of the same, and this should not be left to the ministerial staff.

3. Entries in registers should be made according to serial number of the First Information Report. If a later 'First Information Report' is received and the earlier one is not forthcoming, the column for the entry of earlier report

should be left blank and a reminder issued to the State House Officer concerned. In this way one can find at a glance the numbers of the First Information Reports which may not be forthcoming on a particular date.

4. The dates of presentation of challans and registration of cases should invariably be entered in Register No. XXIV in the relevant column.

5. The registers should be inspected by the presiding Officer at least once a month to ensure their proper maintenance and be signed by him in token of having done so.]

[Substituted vide correction slip no. 8 Rules/Xii-F-2dated 22.11.1965]

15. Magistrates must have among his own records the means to supply statistical information:- From the quarterly statistical returns it sometimes transpires that the Magistrate is not informed of the number of persons arrested by the Police during the month. If the points above alluded to are properly attended to, the Magistrate must have among his own records the means to supply the statistical information; for the reports severally made to him of intimation of the occurrence of an offence (section 157), of there being no sufficient evidence (section 169), of there being sufficient evidence (section 170), must be in writing, and, whatever may be the mode of communication with the Police, must leave a trace in the Magistrate's office sufficient to enable the statistical writer to make out his returns.

16. Police to send to the Magistrate copies of records made under section 165, Cr. P.C.:- Magistrates of districts should also insist on the Police authorities adhering closely to the law laid down in sections 161 to 163 and 165 of the Code of Criminal Procedure. They should see that the Police forthwith sends to the nearest Magistrate, empowered to take cognizance of the offences, copies of any record made under sub-section (1) or (3) of section 165 of the Criminal Procedure Code at the time of making search.

17. Power of Police to summon witnesses and to arrest offenders:- The issuing of a warrant or summons, properly so called in criminal cases, is the prerogative of the Magistrate only and no writ from a Police Officer, as such is to bear either of these designations; but, under section 160, any Police Officer making an investigation under Chapter XIV may by 'order in writing' require the attendance of any person who appears to be acquainted with the circumstances of the case, and such person shall be bound to attend. In view of the proviso recently, inserted by Act No. 26 of 1955, no male person below the age of fifteen years or a woman can be required by the Police Office to attend at a place, other than his or her residence.

The arrest of an accused may also be effected by a Police Officer of any rank to whom, an order in writing has been issued by the officer-in-charge of the police station; but such processes are never, either officially or in common parlance, to be called 'warrants' or 'summons'.
