

Police Investigation and Closure Reports: A Study

By

Prof (Dr) Mukund Sarda^x

1. Art 21 of the Constitution guarantees fundamental right to life and personal liberty. This article of Constitution has been interpreted by the Judiciary with widest amplitude so as to include several other rights such as right to food and shelter, and other rights and most importantly the right to fair trial which includes the right to fair investigation. In Anbaizhagan's case, the apex court observed that, 'if the criminal trial is not free and fair and not free from bias the judicial fairness and the criminal justice system would be at stake, shaking the confidence of the public in the system and woe would be the rule of law',¹ Trial should be fair to all concerned and 'denial of fair trial is as much an injustice to the accused as is to the victim and the society.'²
2. The right to fair trial includes 'Fair Investigation',³ Fair trial and fair investigation are pre-requisites to get justice which the parties deserve as per law, and one without the other cannot yield to fair justice. A victim of a crime is entitled to fair investigation⁴ and if required the case can be entrusted to a specialized agency like CBI

^x Principal & Dean, New Law College, Bharati Vidya Peeth University, Pune.

¹ AIR 2004 SC P.524.

² Best Bakery Case, for details refer to AIR 2004 SC P.3114.

³ Kalyani Baskar Vs. M.S.Sampoornam, (2007)2 SCC P.259.

⁴ Nirmal Singh Kahlon's case, AIR 2006 SC P.1367.

and the courts have enough power to do complete justice to the parties by giving appropriate directions.

3. The investigating authorities have been empowered to submit a report to the magistrate that there is no evidence or reasonable grounds or suspicion to justify the forwarding of the accused to the Magistrate and to release the accused from the custody on his executing a bond with or without surety, as the police officer direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report and to try the accused or commit for trial.⁵ The 41st report of the Indian Law Commission recommended that an accused person must get a fair trial in accordance with the principles of natural justice, efforts must be made to avoid delay in investigation and trial and the procedures should aim at ensuring fair deal to the poorer sections of the society.⁶ The report under Sec 169 Cr Pc is referred to as a 'closure report'. The Magistrate however, can direct the police to make further investigation. The scope of the power to direct further investigation when the police report states that there is no evidence to proceed further, and really there is no evidence in the case at all, whether it would be an order which can be justified or held valid needs examination.

⁵ See for details Sec 169 of the Criminal Procedure Code, 1973.

⁶ See for details report submitted in September, 1969.

4. In a case where the Director-General of Anti-Corruption Bureau gave an order and a report under Sec 169 Cr Pc and it was a 'speaking order' containing reasons that there is absolutely no evidence to prosecute the accused, the direction given by the Magistrate when the case itself does not contain any evidence to proceed further, the direction of the court has to be viewed as bad in law. This view finds support when there is a finding by Lokayukta that there is no material against the accused. As the apex court ruled that a reference is made to the investigating officer or the courts to Section 169 Cr Pc, the same has to be read as a reference to Sec 173 Cr Pc.⁷
5. The power of the court to take cognizance of a case, it is to examine whether there is sufficient ground for taking judicial notice of the offence in order to initiate further proceedings. The apex court examined this issue in Chief Enforcement Officer's case⁸ and stated thus:-

“The expression ‘cognizance’ has not been defined in the code. But the word ‘cognizance’ is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means ‘become aware of’ and when used with reference to a court or a Judge, it connotes ‘to take notice of judicially’. It

⁷ Sanjay Sinh Ram Rao Chavan Vs. Dattatray Gulab Rao Phalke (2015)3 SCC P.126 at P.133

⁸ (2008)3 SCC P.492 at P.499.

indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offences said to have been committed by someone”.

It was further elucidated thus:-⁹

- i) Taking cognizance does not involve any formal action of any kind;
- ii) It occurs as soon as the Magistrate applies his mind to the suspected commission of an offence;
- iii) It is prior to the commencement of criminal proceedings;
- iv) It is an indispensable requisite for holding a valid trial;
- v) Cognizance is taken of an offence and not an offender;
- vi) Whether the Magistrate has taken cognizance of an offence or not depends on the facts and circumstances of each case, as no universal application rule can be laid down;
- vii) Under Sec 190 of Cr Pc, it is the application of the Judicial mind to the averments in the complaints that constitutes ‘cognizance’;
- viii) The Magistrate has to consider whether there is sufficient ground for proceeding further and not sufficient ground for

⁹ Ibid, See para 20.

conviction, as the sufficient ground for conviction can be considered only at the trial;

- ix) If there is sufficient ground for proceedings, then the Magistrate can issue the process under Sec 204 Cr Pc.¹⁰ The Magistrate has the undoubted discretion, to be judicially exercised in determining whether there is a prime-facie case to take cognizance¹¹ and
- x) Despite a report of the police that no case is made out, the Magistrate can reject the report and take cognizance and to order further investigation under Sec 173 (8) Cr Pc.

6. The main object for taking cognizance is to commence proceedings against the accused. At this stage of cognizance, court is concerned with the involvement of the person and not of his innocence. When there is no material to proceed, there is no point in taking cognizance and proceeding further. The prosecution becomes futile exercise when the materials available do not show an offence is committed. The apex court observed thus:-

¹⁰ The expression Cr PC has been used for the Criminal Procedure Code, 1973 throughout this study.

¹¹ See for details Nagawwa Vs. Veeranna Shivaligappa Konjaligi (1976)3 SCC P.736.

- i) Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set in motion as a matter of course;¹²
- ii) The process of criminal court shall not be permitted to be used as a weapon of harassment. Once it is found that there is no material on record to connect an accused with the crime, there is no meaning in prosecuting him. It would be a sheer waste of public time and money to permit such proceedings to continue against such a person;¹³
- iii) Unmerited and undeserved prosecution is an infringement of the guarantee under Art 21 of the Constitution;¹⁴ and
- iv) No court can issue a positive direction to an authority to give sanction for prosecution, when there is a police report that no case is made out to prosecute, unless the court finds otherwise.¹⁵ Criminal law should not be used for vexatious prosecution. (In case where sanction is required to prosecute such as for offences under the Prevention of Corruption Act etc.

7. Thus, the fair investigation requires that the police should thoroughly examine the entire evidence to find out whether any

¹² Pepsi Foods Ltd., Vst. Judicial Magistrate (1998)3 SCC P.749 Para 28.

¹³ State of Karnatak Vs. Muniswamy (1977)2 SCC P.699 At P.803 Para 8.

¹⁴ State of Bihar Vs. P.P.Sharma, (1992) Supp (1) SCC P.222 at P.265 Para 60.

¹⁵ Mansukhlal Vithaldas Chauhan Vs. State of Gujarath (1997)7 SCC P.622 at P.635 Para 32.

prime-facie is made out against the accused. If no case is made out, there should be a closure report under Sec 169 which will be regarded as a report under Sec 173 Cr Pc.

It is again the duty of the Magistrate to find out whether there is any material on record to proceed against the accused. If there is no material to proceed further, there is no point in taking cognizance. In other words, the fair investigation and trials need the protection of an accused from unwanted and vexatious prosecutions to avoid harassment to persons concerned.