

conducting investigation into offences in cognizable cases vests with the police officer. Section 156(3) empowers a Magistrate to direct such officer-in-charge of the police station to investigate any cognizable case. But when a Magistrate orders investigation, he can only direct an officer-in-charge of a police station to conduct such investigation and **not a superior officer**

In case Central Bureau of Investigation v/s State of Rajasthan, 2001 Cri.L.J. 968 (1)

Brief facts of the case

Before the decision of this case, the various High Courts were of the different views. One set of High Courts was of the view that Magistrate has power to direct the CBI to conduct the inquiry. Another set of the High Courts was of the contrary view.

To settle this controversy, the Hon'ble Supreme Court *suo moto* decided to consider the following question of law:-

Question of Law

Whether Magistrate has power to direct the CBI to conduct an inquiry?

Findings of the Hon'ble Supreme Court

While deciding this case, the Hon'ble Supreme Court laid down the following principles of law:-

- A. Magistrate has power only to order 'officer-in-charge of a police station' to conduct investigation.

While laying down this principle, the Hon'ble Supreme Court observed as under:-

Para "6. If the power of a Magistrate to order investigation by the CBI in non-cognizable cases cannot be traced in the above provision, it is not possible to trace such power in any other provision of the Code. What is contained in sub-section (3) of Section 156 is the power to order the investigation referred to in sub-section (1) because the words "order such an investigation as above-mentioned" in sub-section (3) are unmistakably clear as referring to the other sub-section. Thus the power is to order an "officer-in-charge of a police station" to conduct investigation.

7.

8. It is clear that a place or post declared by the Government as police station, must have a police officer-in-charge of it and if he, for any reason, is absent in the station-house, the officer who is in next junior rank present in the police station, shall perform the function as officer-in-charge of that police station. The primary responsibility for conducting investigation into offences in cognizable cases vests with such police officer. Section 156(3) of the Code empowers a Magistrate to direct such officer-in-charge of the police station to investigate any cognizable case over which such magistrate has jurisdiction."

B. Magistrate cannot direct CBI to conduct inquiry

While laying down this principle of law, the Hon'ble Supreme Court further observed as under:-

Para "15. As the present discussion is restricted to the question whether a Magistrate can direct the CBI to conduct investigation in exercise of his powers under Section 156(3) of the Code it is unnecessary for us to travel beyond the scope of that issue. We, therefore, reiterate that the magisterial power cannot be stretched under the said

Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases as indicated in State of Haryana v. Bhajaj Lal (1992 AIR SCW 237 : AIR 1992 SC 604 : 1992 Cri LJ 527) (supra)."

b) On the ground of falsity of facts mentioned in the FIR

Or

c) On the plea of counterblast of complaint lodged by petitioner against the complainant of the new FIR.

In case Chittappa & others v/s The State, 2001 Cri.L.J.3555

Brief Facts of the Case

One Rathnamma and Bhagyamma along with others assaulted the petitioner on the ground that he had informed to the press people about the incident of rape alleged to have been committed by one Manjunatha. The said incident took place on 17-10-2000 at 9.00 a.m. in Magadi village. The police registered the case in Crime No. 163/2000 for the offences punishable under sections 143, 147, 148, 504, 114, 323, 324, 353, 355 and 506 read with Section 149 of IPC. The investigation was still pending.

On the same day at 2.30 p.m., on the complaint of Rathnamma, a case was registered in Crime No. 172/2000 against the petitioners alleging that they have indulged in acts of assault against Rathnamma and Bhagyamma and committed offences punishable under Sections 323, 324, 352, and 355 read with Section 149, IPC. The contents of FIR relating to Crime No. 172/2000 were that on 17-10-2000 at 2.40 p.m. Rathnamma and her daughter Bhagyamma were standing at N.M.C. Hotel. The petitioners/accused formed themselves into an unlawful assembly, came and assaulted Bhagyamma and Rathnamma. At the intervention of the persons named in the FIR, they were saved.

The petitioner/accused filed a petition U/s 482 Cr.P.C. for quashing the FIR No. 172/2000.

Proceedings before the Hon'ble Karnataka High Court

Plea of the petitioner/accused

The contention of the petitioners was that the lodging of FIR in Crime No. 172/2000 actuated with malice and as a counterblast to the complaint lodged by the first petitioner. A false case was set up against them. It was further contended that the entire version set out in the complaint of Rathnamma is false and liable to be quashed.

Question of Law

Whether veracity of the contents in the subsequent FIR can be disbelieved only on the basis that an FIR, earlier to the FIR in question, was registered against the complainant party?

Findings of the Hon'ble High Court

The Hon'ble High Court held that till the conclusion of investigation, an FIR cannot be quashed on the ground of falsity of facts.

While holding so the Hon'ble High Court observed as under:-

Para "3. After hearing the counsel for the petitioners and the learned S.P.P. for some time, I feel the petition lacks merit and no relief can be granted. There is nothing illegal on the part of the police registering the FIR when a commission of cognizable

CHAPTER 13

Prosecution for Offences Relating to Documents given in Evidence

Relevant Provisions of Law

1. Section 195(1)(b)(ii) : Prosecution for offences relating to documents given in evidence.

2. Section 340 : Procedure in cases mentioned in Section 195

Note:- Corresponding provisions of Section 195(1)(b)(ii) in the old code was 195(1)(c) and of Section 340 was Sections 476 and 476-A.

a) Section 195(1)(c) in the old code was as under:-

“No Court shall take cognizance -

(a) and (b)

(c) of any offence described in section 463 or punishable under section 471; section 475 or section 476 of the same Code, when such offence is alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding, except on the complaint in writing of such Court, or of some other Court to which such Court is subordinate.”

b) Section 195(1)(b)(ii) in the new code is as under:-

“ (a) No Court shall take cognizance -

(a) and (b)(i)

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476 of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or”

Difference between the two

The only difference in these two provisions is the omission of the words “by a party to any proceeding in any Court”.

Basic Principles of Law

1. Prohibition of Section 195 is applicable only to the offences mentioned therein. For other offences accused can be tried even without the complaint of the concerned Court.
2. Prohibition of Section 195 is applicable only when such offences have been committed in respect of a document produced or given in evidence i.e. while the document was in the custody of the Court. If the forgery was committed before the production of the documentary record then the accused can be tried even

Object

The object of the provision is to do justice to the accused, to the prosecution and also to the society.

The Court examines evidence under this section neither to help the prosecution nor to help the accused. It is done neither to fill up gaps in the prosecution evidence nor to give the prosecution any unfair advantage against the accused.

In case *Om Parkash Vs. State of Rajasthan, 2003 Cri.LJ 4704*, the Hon'ble Rajasthan High Court while pointing out these objects, observed as under:-

*"Para 12. This section is divisible in two parts. In the first part, discretion is given to the Court and enables it, at any stage of an inquiry, trial or other proceedings under the Code, (a) to summon anyone as a witness, or (b) to examine any person present in the Court, or (c) to recall and re-examine any person whose evidence was already been recorded; on the other, the second part appears to be mandatory and requires the Court to take any of the steps mentioned above if the new evidence appears to it essential to the just decision of the case. **The object of the provision, as a whole, is to do justice not only from the point of view of the accused and the prosecution but also justice from the point of view of orderly society. The Court examines evidence under this section neither to help the prosecution nor to help the accused. It is done neither to fill up any gaps in the prosecution evidence nor to give it any unfair advantage against the accused.**"*

Applicability/Test

This provision applies when examination of a witness is essential for the just decision of the case.

In case the *State of West Bengal v/s Tulsidass Mundhra 1964 (1) Cri.L.J.443*, the **Full Bench of the Hon'ble Supreme Court** laid down this principle of law as under:-

Para "9. It would be noticed that this section confers on criminal Courts very wide powers. It is no doubt for the Court to consider whether its power under this section should be exercised or not. But if it is satisfied that the evidence of any person not examined or further evidence of any person already examined is essential to the just decision of the case, it is its duty to take such evidence. The exercise of the power conferred by S. 540 is conditioned by the requirement that such exercise would be essential to the just decision of the case."

1. (a) **Recalling of a witness for further cross examination, without a specific reason, is not permissible.**
- (b) Recalling a witness to resile from the earlier statement to facilitate compromise is no ground to recall a witness.

In case *Kunwar Pal Vs State of U.P., 2002 Cri.LJ 3647*

Brief Facts of the case

In this case, an application was moved by the accused before the trial court for recalling two witnesses for further cross examination. It was alleged that by mistake the witnesses could not be cross-examined regarding the place of incident and manner of firing. It was also alleged that the accused have changed their Counsel who found that the witnesses have not been cross examined on material points. It was further alleged that the parties have compromised and that the offence under section 307 IPC is not

CHAPTER 38

Test Identification Parade of Accused, and of Articles

Relevant Provision of Law

1. Section 9 of the Evidence Act : Facts necessary to explain or introduce relevant facts

Basic Principles of Law

1. Identification of accused is of two types. Test identification parade is conducted during investigation and Dock Identification is conducted during the trial.
2. The purpose of test identification parade is to enable the witnesses to satisfy themselves that the accused whom they suspect is really the one who was seen by them at the time of commission of the crime.
3. Another purpose is to satisfy the investigating authorities that the suspect is the real person.
4. Dock Identification is the substantive evidence.
5. If the Dock Identification is clear, cogent and trustworthy prior test identification is not necessary.
6. If accused refuses to stand the test of identification on unreasonable grounds, then, if the evidence is otherwise reliable, he loses the right to challenge the Dock Identification on the basis of reliability of dock identification.

The holding of identification parades has been in vogue since long. Its main purpose is to determine whether an unknown person accused of an offence is really the culprit or not.

Types of Identification Tests

1. Identification Tests:- These are conducted by the Investigating Officers, during investigation.
2. Dock Identification:- These are conducted during trial, by the eye-witnesses while giving evidence.

Object, Purpose and Importance of Test Identification Parade

(i) In case *Suraj Pal v/s State of Haryana*, 1995 (2) SCC 64, a Full Bench of the Hon'ble Supreme Court explained the object, purpose and importance of the test of identification as under:-

Para "14. The object, purpose and importance of the test identification parade.

It may be pointed out that the holding of identification parades has been in vogue since