



NEED FOR MAKING INVESTIGATION A PRE- TRIAL JUDICIAL PROCESS AND TO BE COVERED UP UNDER CONTEMPT PROCEEDING

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ABSTRACT

The Law Commission had observed that, the investigation staff should be separated from the Law and Order staff to enable the investigating Officer to devote undivided attention to the investigation work. The separation of the investigating machinery may involve some additional cost. We think, however, that the exclusive attention of the investigating officer is essential to the conduct of efficient investigation and the additional cost involved in the implementation of our proposal is necessary. The adoption of such a separation will ensure undivided attention to the detection of crimes. It will also provide additional strength to the police establishment which needs an increase in most of the States. And any interference by any other, except magisterial powers, should be considered as interference in courts proceeding and contempt of court proceedings to be initiated against such illegal interferences.

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INTRODUCTION

Investigation has been defined in the Criminal Procedure Code (Cr.P.C.) as the proceedings under this Code for the collection of evidence conducted police officer or by any person (other than a Magistrate) who is authorised Magistrate in this behalf. So investigation can be conducted also by a non-police officer provided he is authorised to do so by a magistrate.¹ From the very definition it follows as a matter of course that investigation is a pre-trial process which meant to be of assistance to the judiciary in conducting its enquiry or trial during the stage of court proceedings. The 1962 Royal Commission on Police too opined that investigation is a part of the judicial process (or should it be called a pre-trial process) and the police must be entirely independent in the discharge of functions which are judicial or quasi-judicial.² Thus it cannot be denied that though under the present state of law in India investigation does not strictly form a part of the judicial process, still the investigating police does "discharge certain functions the matter of collection and collation of evidence over which the court adjudicates at a later stage."³

SUPERVISORY POWERS OF COURT UPON INVESTIGATION IN INDIA

In India, the investigating police have to work under the supervision of the magisterial court even though they do not get the court's protection if there is any undue obstruction or interference, political or

¹ State of Uttar Pradesh v. Sunt Prakash, 1976 Cri LJ 274 (All.) (FB)

² Report of Royal Commission on Police in U.K., para 230 (1962)

³ R. Deb, Criminal Justice , ch. 3, p. 42 (1998)



otherwise, with their work of investigation. As a matter of fact the scheme of chapter XII of Cr.P.C too show that while investigating a case, the investigating officer acts under the control and supervision of the magistrate. Under section 156, Cr.P.C. the magistrate can ask him to investigate a case. Under section 157, Cr.P.C. the investigating officer is required to send intimation to the magistrate when a cognizable case is reported. Under sections 158 and 159, Cr.P.C. the magistrate can direct him to investigate a case which he has refused to investigate. Under section 164, Cr.P.C. he is required to get a statement or confession recorded by the magistrate, while section 165 Cr.P.C. requires him to send to the magistrate the grounds for conducting a search without a warrant. Under section 167, Cr.P.C. he is required to forward the accused to the magistrate and apply to him not only for time but also for remanding of the accused to judicial or police custody. Under sections 169, 170 and 173 Cr.P.C. the investigating officer is required to report the result of the investigation to the magistrate under different circumstances and also to forward exhibits of the case to him, and under section 174, Cr.P.C. he has to send intimation and an inquiry report to the magistrate in all cases of unnatural deaths.⁴

CONTEMPT OF COURT

Now, it is a moot point as to why the investigating police who have been so squarely placed under the supervision and control of the magistrate should not also get the benefit of protection of the law of contempt of courts in case there is an attempt to interfere with their statutory duties; for, an investigation is nothing but a preliminary step to help the ultimate judicial process before a court of law. Prior to the enactment of the new Contempt of Courts Act 1971, publication of statement which had a tendency to prejudice mankind in favour or against a party in a case under investigation amounted to contempt of court if the accused been arrested or his arrest was imminent.⁵ The same position holds good in regard the power to withdraw a case has been given under section 321, Cr.P.C. to the public prosecutor and not any political boss or to the district magistrate. On this matter the public prosecutor has to exercise his own judgment and should not act merely as a post office at the dictation of some other authority, however, high and mighty. It is also not proper for him to show the instructions of the government to the trial court. Thus, it been observed:

The other authority may bring to the notice of the Public Prosecutor certain facts and materials and suggest to him to consider whether the prosecution should be withdrawn or not; he cannot command where he can only commend.⁶

CONCLUSION

⁴NEED FOR MAKING INVESTIGATION A PRE-TRIAL JUDICIAL PROCESS, Author(s): R. Deb, Source: Journal of the Indian Law Institute, Vol. 41, No. 1 (January-March 1999), pp. 95-102, Published by: Indian Law Institute, Stable URL: <https://www.jstor.org/stable/43951699>

⁵ Supra note 4.

⁶ Subhas Chander v. State , 1980 Cri L.I 324(SC).



It is desirable to amend the law of contempt in such a way so as to throw the ring of judicial protection to cover all stages of investigation immediately after registration of the FIR and make withdrawal of session's trial cases permissible only with the consent of the High Court.

References :

1. State of Uttar Pradesh v. Sunt Prakash, 1976 Cri LJ 274 (All.) (FB)
2. Report of Royal Commission on Police in U.K., para 230 (1962)
3. R. Deb, Criminal Justice , ch. 3, p. 42 (1998)
4. NEED FOR MAKING INVESTIGATION A PRE-TRIAL JUDICIAL PROCESS, Author(s): R. Deb, Source: Journal of the Indian Law Institute, Vol. 41, No. 1 (January-March 1999), pp. 95-102, Published by: Indian Law Institute, Stable Supra note 4.
5. Subhas Chander v. State , 1980 Cri L.I 324(SC).