

## CHAPTER-11

### **Final Disposal and Completion of Investigation**

#### **General**

- 258-1.** Section 173 Cr.P.C lays down that every investigation by police made under Chapter XII Cr.P.C shall be completed without unnecessary delay. The provisions of the section are mandatory and any avoidable delay in the completion of investigation and submission of charge sheets, final reports therefore, militates against these basic principles of law.
2. All investigations must be completed within the time limit provided under section 468 Cr.P.C as no court will take cognizance of an offence after the expiry of that period. The period of limitation is;
    - A. Six months if the offence is punishable with fine only;
    - B. One year, if the offence is punishable with imprisonment for a term not exceeding one year;
    - C. Three years, if the offence is punishable with imprisonment not exceeding three years.
  3. The prosecution will have to explain the reasons for the delay if the charge sheet is filed after the expiry of the period of limitation. The Court has to be satisfied with reasons adduced for delay.

4. Sections 469 to 472 Cr.P.C deal with the commencement of limitation, exclusion of time in certain cases etc.

5. The limitation permissible under law is quite liberal. It should not be construed to mean that the cases can be delayed up to the maximum period of limitation. The following maximum time limits are prescribed for completion of investigation for some of the cases in which accused has not been arrested.

6 months for offences u/s 120A, 120B, 121 to 130, 403 to 409, 463 to 489E IPC and in complicated cases affecting the human body, culpable homicide and murder and complicated cases of cheating;

4 months for offences u/s 363 to 374 IPC and Dacoity;

3 months for offences u/s 131 to 140, 166 to 171, 230 to 263A, grievous hurt, 339 to 348, 376 to 377, robbery, house breakings and theft, 421 to 424, 490 to 492, and 494 to 502 IPC;

1 month for offences u/s 141 to 160, 171-A to 171-I, 191 to 227, simple cases of 299, 300, 349 to 374, theft, extortion, 425 to 440, 441 to 462, 503 to 511 IPC, u/s 172 to 190, 264 to 298, hurt, 410, and 414 IPC and offences under special and local laws;

**Note:** The above time limits are prescribed with a view that no investigation shall be prolonged beyond a point. However every effort should be made to complete the investigation as expeditiously as possible.



6. As per section 167(5) Cr.P.C, when the police officer arrests a person in a summons case and if the investigation is not completed within 6 months and whether the person is on bail or in custody, the magistrate is competent to order the closure of the investigation and on such order further investigation is not allowed unless ordered by the session court. Therefore in such cases, it must be ensured that the investigation is completed within that period.
7. In cases where the accused are caught red-handed with property, there should normally be no delay at all in the submission of charge sheets. In such cases, the accused should be forwarded, in custody to the Magistrate having jurisdiction along with the charge sheet, unless the accused is a stranger and his antecedents need verification or there is information of his having committed other offences or is a member of an organized crime gang.
8. Section 167(2)(a) Cr.P.C empowers the Court to order release of the accused in custody if the charge sheet is not filed within 60 days or 90 days as the case may be. Hence, the IO should complete the investigation in the above cases within the time prescribed.
9. If the investigation could not be completed within the said period of 60 or 90 days the accused will be entitled for bail. Care must be taken to speed up investigation in such cases if the accused is to be continued in remand. However, incomplete charge sheet shall not be filed for the sake of keeping the accused in remand.
10. Sections 173(8) Cr.P.C provides for a supplementary or

additional charge sheet. This provision is not a substitute for original charge sheet. This provision is meant for filing a subsequent charge sheet only when there is fresh and further evidence about the offence or offender, which is not known at the time of filing the first charge sheet.

- 259-1.** The investigation must be completed without unnecessary delay. However, investigation in relation to rape of a child may be completed within 3 months from the date on which the information was recorded by the officer in charge of the police station. The investigating officer should scrutinize the evidence and fix the liability of each accused by independently arriving at a decision.
2. The charge sheet shall be forwarded to the court only by the officer in charge of the police station.
3. The IO should prepare report in Form giving the details of the case, discuss the nature of evidence and the liability or otherwise of each accused, the probable defense and its plausibility or otherwise and finally the action proposed by him.
4. The IO while considering the case should not act as a mere post office to transmit each and every case to the Court. At the same time it is also not desirable that he should usurp the function of the trial court by examining the evidence inch by inch. Availability of sufficient evidence does not mean sufficient ground for conviction but such evidence as would be sufficient to put the accused on trial. Where there is reasonable doubt, as to what evidence is to be believed, it is better the SHO sends the case to the Court which is the proper authority to resolve the

doubt. Where two views are possible the case should be sent for trial. A case should be charge sheeted if the following grounds exist on an overall assessment of evidence.

- A. when there is a prima facie case;
  - B. when there is some legal evidence in support of the case, which if believed, may lead to a conviction;
  - C. when the evidence on both sides is equally balanced;
  - D. when the state of evidence is such that the benefit of reasonable doubt can possibly be given to the accused.
5. After completion of the investigation the SHO shall forward the file along with Form to the APP for his opinion whether the material is sufficient to charge the case and also to discuss with the APP in person. The APP after perusing the case file shall give his opinion in Form . If further investigation is necessary he shall give his opinion in accordance with the guidelines. If the material is sufficient for charge sheet, IO shall prepare a draft charge sheet and be sent for vetting to APP. On receipt of the same the SHO shall file charge sheet or investigate further as the case may be. In small and simple cases, the SHO may file charge sheet himself but where the police expect the APP to conduct the prosecution successfully and with responsibility, the above procedure shall be followed.
6. In case of all Special Report Cases and in sessions cases the

SDPO should submit the file for orders to SP with his comments. After obtaining the opinion of the SP the file shall be submitted to the Addl. PP/PP of the concerned court, and the SDPO should personally consult the Addl. PP/PP and discuss about the investigation. If the Addl. PP/PP gives opinion for further investigation; it shall be carried out and submitted again for charge sheet. The IO shall prepare a draft charge sheet, which shall be vetted by the Addl. PP/PP. This procedure shall invariably be followed in all complicated and sensational cases and cases of organised crimes.

**260-1.** On completion of investigation and scrutiny as mentioned above, a police report u/s 173(2) Cr.P.C has to be submitted whether a case is made out or not in Form . In the event of a case being made out the report is called a Charge Sheet. Where a case is not made out, the report is called a Final Report. The investigation according to law has to result in a report under 173(2) in Form .

2. All the original documents filed along with charge sheet shall be listed in Form .

**Note:** This form has to be furnished in triplicate to the magistrate along with sufficient number of copies to be supplied to the accused by the court, so that two copies will be retained by the magistrate and one copy will be returned to the investigating officer, acknowledging receipt of the same.

## **II. Charge-sheets**

**261-1.** The Charge Sheet should set forth the names of the parties with their full addresses, the nature of the information, the names

and full addresses of the persons who appear to be acquainted with the circumstances of the case, and whether any offence appears to have been committed and, if so, by whom. It should also state whether the accused, if arrested, has been forwarded in custody or has been released on his bond and, if so, whether with or without sureties. The names of such of the accused as are absconding should be entered in red ink in the appropriate column of the Charge Sheet. Care should be taken to see that all the columns in the charge-sheet in Form are filled up properly. No column should be left blank. The SHO shall communicate to the informant in form (notice to the complainant) about the action taken. The charge should be brief and clear. The date, time, place of offence and the manner of committing the offence should be mentioned therein.

2. The charge-sheet in Form should be sent to court accompanied by a separate memorandum of evidence giving the names and addresses of the witnesses cited and specifying clearly the points, each witness is called upon to prove. The original documents if not already submitted to the Court, shall be submitted along with the charge sheet.
3. Upon filing the charge sheet and when the accused appears, the SHO shall furnish to the accused copies of all the documents relied by prosecution to prosecute the accused. Non-furnishing any copy will cause prejudice to the accused and damages the prosecution case. If any document inadvertently is not furnished, it may be furnished at a subsequent stage giving him an opportunity to go through it to prepare for his cross-examination.

4. If the IO is of opinion that any part of any statement is not relevant to the subject-matter of the inquiry or trial or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall exclude such part from the copy of the statement furnished to the accused, and in such a case, he shall make a report to the Magistrate stating the reason for excluding such part; provided that at the commencement of the inquiry or trial, the Magistrate shall, after perusing the part so excluded and considering the report of the Police Officer, pass such order as he thinks fit and, if he so directs, a copy of the part so excluded or such portion thereof, as he thinks proper, shall be furnished to the accused.

**262.** Where an accused person against whom a charge sheet is being filed is absconding, the officer in-charge of the police station shall append a note to the charge sheet itself requesting the Magistrate to issue a non-bailable warrant for the apprehension of the accused. If the warrant cannot be executed within a reasonable time, the IO shall move the court for instituting proceedings under sections 82 and 83 of CrPC. If it is proved that there is no immediate prospect of arresting the accused even after action has been taken under sections 82 and 83 of CrPC, the court may, in the absence of the accused, examine the witnesses produced on behalf of the prosecution and record their depositions under section 299 CrPC. If, at any future time, the accused person is apprehended or appears before the court, the case against him shall be dealt with according to law. Any such deposition recorded in the absence of the accused may, on the arrest of such person, be given in evidence against him in the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or

incapable of giving evidence or his attendance cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

### **Absconders and Proclaimed Offenders**

**263-1.** Proclamation orders under section 82 of CrPC can be issued against any person for whose arrest the Magistrate has issued a warrant. The investigating officer has to convince the court with all details of the efforts made and that the warrantee is evading arrest and has gone into hiding, and that the warrant could not be executed. Hence, the initiative has to be taken by the investigating officer. Once the proclamation orders are issued they should be immediately promulgated. Orders of attachment under section 83 of CrPC can also be issued simultaneously along with the proclamation orders. The period of 30 days mentioned in section 82 of CrPC is the time allowed to the accused to surrender. The court issuing a proclamation may at any time order the attachment of any property movable or immovable or both belonging to the proclaimed person. Attachment should be carried out promptly after the proclamation has been properly issued and the property of the proclaimed person seized before he has time to transfer, alienate, mortgage or conceal it.

2. It is necessary that the proclamation order issued under section 82 of CrPC is widely published in the manner provided for in that section. In order to facilitate the arrest of an absconding warrantee or a proclaimed offender, it is also necessary that an effective watch be maintained over his harbourers. Persons who willfully or knowingly harbour such offenders could be prosecuted under section 216 IPC. It is, therefore, necessary that the widest publicity is given to the proclamation order issued under section 82 of CrPC

so that its knowledge can be conclusively proved against the harbourer for prosecution u/s 216 IPC.

3. The observance of formalities under sections 82 and 83 of CrPC does not serve the purpose unless the SHO and IO make all out efforts to trace the offender, not only in their jurisdiction but outside jurisdiction too. Information should be gathered through sources and action taken to work it out eliciting cooperation of Police of the place where the offender is known to be hiding.

### **Juvenile offenders**

- 264.** When a juvenile is arrested or prosecuted, information about the age of such persons should invariably be furnished to the Court by the Police Officer taking action in the case, to enable the court to determine the age of the accused with reference to the Juvenile Justice (Care and Protection of Children) Act 2000.

### **III. Conditions for initiation of prosecution**

- 265-1.** The general rule is that the criminal law can be set in motion by any person whether he is concerned with the case or not but there are certain exceptions to this rule and these exceptions are made keeping certain delicacies in view. These restrictions can be categorised into two classes;
  - A. The complaint shall be filed in court directly only by certain specified persons in respect of certain offences, which are detailed in sections 195, 196, 198 CrPC.

A. Prosecution cannot be launched against public servants and judicial officers in respect of any offence alleged to have been committed by them while acting or purporting to act in the discharge of their official duty except with the previous sanction of the government (Sec. 197 CrPC).

### **Category A**

1. For offences under section 172 to 188 of IPC including abetment, attempts and conspiracies, the complaint shall be filed directly in courts by the public servants or their superiors whose orders are disobeyed.
2. For offences under section 193 to 196, 199, 200, 205 to 211, 228, 466, 471, 475 and 476 of IPC the complaint should be filed in the court directly in writing by the court or its superior court if the offence is committed in any proceedings in that court.
3. Offences under section 182 and 211 of IPC, which are relating to false evidence or false charge, if detected during the course of investigation, the police themselves can file a complaint in the court.
4. Prosecution for offences under section 153A, 295A, 505(1) of IPC including conspiracies and abetment can be launched in

courts only after obtaining sanction from central government, or state government as the case may be.

5. Prosecution for offences under section 153B, or 505(2) or (3) of IPC and also offence under section 120B of IPC where the conspiracy is to commit an offence punishable with less than 2 years' imprisonment, shall be launched only after obtaining the sanction of the Government, or District Magistrate.
6. Prosecution for offence under section 493 to 498 of IPC which are offences against marriage shall be launched in courts directly by a complaint made only by the aggrieved persons or their guardians.
7. Offence under section 498A of IPC can be launched in courts only by a police report or by the aggrieved person or their parents or guardians.

### **Category B**

8. As per section 197 CrPC when an offence is alleged to have been committed by any public servant or by a judge or magistrate while in discharge of his official duties and if such person is not removable except by the Government, sanction of the Government, is necessary before filing a charge sheet in a court. This condition applies even where the prosecution is launched after retirement, but the offence was committed while the public servant was in service.
9. There are certain special and local Acts like Prevention of

Corruption Act, Arms Act, Explosives Substance Act, Registration of Foreigners Act 1939 etc. where prosecutions cannot be launched under those Acts without the sanction of certain authorities.

10. The investigating officers should note that sanction orders are necessary for the courts to take cognizance, but there is no bar to register cases and make investigations.
11. Where sanctions are necessary, the I.O. should make out a case and place all the material and documents before the sanctioning authority. According sanction is not a mechanical process under law. The sanctioning authority is expected to apply his mind and therefore, it is necessary that the entire case file is placed before him.
12. If the law requires the sanction of the District Magistrate, the IO shall forward his requisition along with relevant material to the District Magistrate through the SDPO with a copy to the SP. If the sanctioning authority is the Government, the same procedure is followed through the DGP.
13. Any delay in obtaining sanction may prove costly as the courts cannot take cognizance of offences if they are barred by limitation. Therefore, sanctions wherever necessary must be obtained without unnecessary procedural delays.

#### ***IV. Final Reports***

**266-1.** Some times, the investigation may not end in a charge sheet and is fit to be dropped. In such a case a Final Report treating the

case as undetectable, unoccurred, without sufficient evidence or mistake of fact shall be made under section 173 CrPC.

2. Whenever a case is referred, it shall be forwarded to the magistrate in Form for his acceptance and proceedings.

3. Reports are referred under various categories

- A. Non-Cognizable
- B. Mistake of Fact
- C. Civil nature
- D. False
- E. Undetectable
- F. Evidence not sufficient to charge sheet the case
- G. Any other

**267-1.** When a final report is sent to the magistrate u/s 173(2) CrPC, the magistrate may or may not accept it. If he accepts the same he will issue proceedings and the matter will be dropped. If the magistrate does not accept, he may send it back directing further investigation, in which case the SHO shall investigate further and send report.

2. If further investigation as directed by the magistrate does not improve the position, the SHO may send it again with his findings but the magistrate cannot direct the SHO to file a charge sheet. He may take cognizance suo-moto on the report.

3. When a final report is sent to the magistrate the SHO shall inform the complainant about the action. The magistrate also shall send notice to the complainant directing him to show as to

why the report should not be accepted. Before acting on the Final Report, the magistrate shall hear both the police and complainant. On the orders of magistrate, the aggrieved party can go to the higher courts for revision.

### ***Reopening of the Case***

**268.** When the magistrate has issued proceedings closing a criminal case and at a later stage the SHO finds some credible evidence about the case forth coming, he can re-open the case after obtaining the formal permission of the court.

### **Prosecution of complainant in false cases**

**269.** When the investigating officer reports a case as willfully or maliciously false, he should state in the final report whether he intends to proceed against complainant or not, and if not, he should give his reasons for not doing so.

### **Withdrawal of cases - Procedure**

**270-1.** Section 321 CrPC lays down that the PP or APP may with the permission of court before the judgement is pronounced withdraw prosecution against any person in respect of one or more offences for which he is tried. Three requisites are laid down to make the withdrawal order by the court valid.

- A. The application for withdrawal should be filed by PP/APP who is competent to make the application; i.e. he must be in charge of the case;

- B. The application should get the consent of the court before which the case is pending. The prosecutor has to apply his mind before and the decision to withdraw should be bonafide. The sanction of Central Government is necessary in respect of cases relating to executive power of the Union Government, cases handled by CBI, cases in which Central Government funds or Central employees are involved.
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- 2. The following guidelines regarding the procedure to be adopted for withdrawal of the case.
    - A. All application or proposals or requests for withdrawal shall be processed by the Home Department.
    - B. The views and comments of head of the prosecuting agency shall be called for in the first instance. Incase the matter is initiated on an application received from an accused in the case, a copy of the applications shall be forwarded to the concern agency while seeking its views/comments.
    - C. On receipt of the views/comments of the prosecuting agency, the Home Department shall put up the proposal during incorporating the views and comments of the prosecuting agency, to the Minister In-charge of the Home Department, through the Chief Secretary.
    - D. In-case the State Government decides to withdraw from prosecution in a case in public interest, necessary instructions shall be conveyed in writing to the Public Prosecutor/Assistant Public Prosecutor in-charge of the case for taking appropriate steps in accordance with Law.
    - E. The Public Prosecutor/Assistant Public Prosecutor in charge of the case may, on the written permission of the State Government to that effect (which shall be filed in the Court),

with the consent of the Court, withdraw from prosecution at any time before the judgment is pronounced.

- F. The Provision of section 321 of the CrPC and the principles governing the same as laid down in binding judicial precedents shall be kept in view by the Public Prosecutor or the Assistant Public Prosecutor in advising withdrawal or withdrawing from the prosecution of any person.