**Research Note: Investigation power of Magistrate under Criminal Code of Procedure,1973**

Investigation includes all the proceedings under the Cr.P.C for the collection of evidence conducted by the police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf.

An investigation means search for material and facts in order to find out whether or not an offence has been committed.

Sometimes a police officer may not be able to conduct an investigation process properly and it may result in the conviction of an innocence so to avoid this situation the Cr.P.C also confers the Investigation power to Magistrate.

The Investigation power of Magistrate starts soon after the registration of FIR. Section 157 mandates that immediate intimidation of every complaint/information of the commission of cognizable offence shall be sent to the Magistrate having jurisdiction. If from information received the police officer has reason to suspect the commission of an offence for which he is empowered under section 156 to investigate shall send a report of the same to the Magistrate empowered to take cognizance of such offence upon a police report. This provision is designed to keep the Magistrate informed of the investigation so as to able to control the investigation and if necessary, give appropriate direction under Section 159. This is a safeguard meant to prevent police excess, embellishments, false prosecutions and non-investigation at a crucial stage.

Under Section 159 the Magistrate upon receiving the report of a police officer, may direct an investigation or if he thinks fit may at once proceed to depute any subordinate magistrate to proceed to hold preliminary enquiry. This section does not confer general power of investigation to Magistrate, but only when it appears from the police report that the police are neglecting their duties.

Section 164 lays down that any Magistrate may record any confessions/statements made during the course of investigation by competent judicial magistrates. The purpose is to ensure that the confessions/statements are made voluntarily and freely and not under any pressure or influence. The Magistrate can record confession even after the submission of police charge-sheet provided magisterial inquiry has not commenced. In state of UP vs Singhara Singh1 [[1]](#footnote-1)the court observed that the object in giving power to a Magistrate to record confession under Section 164 is that the confession may be proved by the record of it made in the prescribed manner. If proof of the confession by the other means were made permissible, the whole purpose of section 164 including safeguards contained in it for the protection of the accused would be rendered nugatory. Thus, it prohibits the Magistrate from giving oral evidence of the confession made to him. The section 164 requires the magistrate to comply with four conditions while recording a confession-

1. He should give a statutory warning that the accused is not bound to make a confession.
2. He should be first satisfied that this is being made voluntarily
3. The confession should be recorded and signed by the person making confession.
4. The Magistrate should add memorandum at the foot of the confession.

A Magistrate may ask necessary questions required from the accused.

It is a statutory obligation on the Magistrate to explain to the accused before recording his confession, that he is not bound to make it and that if he does so, it maybe used as an evidence against him. The confession made by the accused must be a voluntarily. Magistrate must satisfy the court by documentary/oral evidence that he had fully exercised his judicial mind to get the real motive which prompted the accused to make confession. If the accused is not willing to make the confession before the Magistrate, the Magistrate is not to authorize the detention of such a person in police custody. The Confession should be recorded in open court and during court hours only unless there are exceptional reasons to the contrary. Magistrate has the power to administer oath to the person whose statement is being recorded. The underlying objective is to preserve evidence, get an account of the testimony of the witness at the first instance (while it is still fresh), and to prevent retraction of testimony at a later stage. In cases where the victim is a child, the statement/confession should be recorded in the special child witness/vulnerable witness room, away from the court. The Magistrate can also take the help of visual diagrams and anatomically correct dolls with a view to ensure that the young witness, who might not be articulate or possess an adult vocabulary, is able to communicate and explain as to what happened. Wherever possible, the Magistrate must direct the Investigation Officer to make the necessary arrangements for video recording of the statement. The expectation, therefore, is of utmost sensitivity and responsiveness while recording the testimony of a vulnerable witness, being alive to the trauma & stigmatic impact that the witness has undergone.

Under Section 156(3) the Magistrate can order a police officer to investigate any cognizable offence. Magistrate may take cognizance of any offence upon receiving a complaint/police report. This power is exercised by the Magistrate only at pre-cognizance stage. This reflects a definitive shift in the thought of a Magistrate and recognition of his social function. He should not remain a mute spectator to the misinterpretation and insufficiencies of investigations, but make meaningful interventions. The Magistrate should to cease from investigating himself, as in the system we have adopted in India, the same Magistrate often conducts the trial. However, the Magistrate is empowered to monitor the investigation, with a view to ensure that it is free and just.

Under Section 173(8), A Magistrate after taking cognizance of the offence on the basis of police report and after appearance of the accused cannot order further investigation. Further investigation can be ordered only when the police is biased in order to protect the real culprits and the investigation has not been done in a proper and objective manner but is tainted, non-examination of crucial witnesses, clearing of doubts and to substantiate the prosecution case.

In S.N.Sharma Vs. Bipen Kumar Tiwari[[2]](#footnote-2), it has been observed that the power of police to investigate is independent of any control by the Magistrate. Further it was apparently held that Sec. 159 Cr.P.C. does not empower a Magistrate to stop investigation by the police.

In Sakiri Vasu vs State [[3]](#footnote-3)it was held that a Magistrate can interfere in the investigation such an investigation is not conducted properly by the police officer.

In Nupur Talwar Vs. CBI & Another [[4]](#footnote-4)the SC discussed the powers of Magistrate in this regard and held that in the present case, the Magistrate having examined the statements recorded during the course of investigation under Sections 161 and 164 of the CrPC, as also, the documents and other materials collected during the process of investigation, was fully justified in recording the basis on which, having taken cognizance, it was decided to issue process.

It is apparent that ample powers are vested in the magistrate to check arbitrary arrests, police excesses & to enable a more keen probe into the discovery of truth, at various stages of an investigation, and even after filing of the police report. Never should a judge find himself in a situation where he has to make a reluctant confession of acquitting a known culprit due to lack of evidence or investigative failures

1. [AIR 1964 SC 358] [↑](#footnote-ref-1)
2. [1970 AIR 786, 1970 SCR (3) 946] [↑](#footnote-ref-2)
3. [Appeal (crl.) 1685 of 2007] [↑](#footnote-ref-3)
4. [(2012) 2 SCC 188] [↑](#footnote-ref-4)