

## AMBIGUITY OF SECTION 156(3) OF Cr.P.C

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### ABSTRACT

In India, for every offence under Indian Penal Code the justice process is followed in three steps: the investigation, the inquiry and the trial as per the steps mentioned in the Cr.P.C. Investigation is the first step and an attempt to collect information regarding the offence committed and the collection of evidences. The investigation can be done by Police itself or by the order of the magistrate. In case the police don't register the FIR upon receiving the information, such victim can go to the Magistrate. Magistrate who is authorised to take cognizance under Section 190 of the Criminal Procedure Code is given the authority to order an investigation into any cognizable matter under Section 156(3) of that same code, which applies at the pre-cognizable stage. The Supreme Court ruled in *Panchabhai Popatbhai Bhutani & Others*<sup>1</sup> that a petition under Section 156(3) could not be strictly interpreted as a complaint under Section 2(d) of the Code and that the absence of a specific or improperly worded prayer or the lack of complete and definite details would not be fatal to a petition under Section 156(3) as long as it states facts that are ingredients of a cognizable offence. A petition of this nature could be lodged before the magistrate.

**Keywords:** Cr.P.C, Complaint, FIR, Magistrate, Police report, Investigation, Inquiry, Cognizable Offence, Cognizance, Criminal Case

## INTRODUCTION

Section 156 of the Code of Criminal Procedure, 1973<sup>ii</sup> grants power to Police officers to investigate any cognizable offence. Subsection 3 of 156<sup>iii</sup> is a topic of discussion and has troubled a lot. It provides the magistrate power when the police refuse to register an FIR of a cognizable offence. The magistrate can either take cognizance u/s 190 (1) (a)<sup>iv</sup> or order a police officer to register the FIR of such a cognizable offence and investigate. In this article, I will discuss section 156(3) and the power of the Magistrate in taking cognizance cases.

As per section 156(3), Magistrate can direct the police to conduct an investigation, only in respect of a cognizable offence. For initiation of a criminal case, a victim could file a complaint to the police station about the offence and if the police feel it makes out a cognizable case, the police can register an FIR [Section 154(1) CrPC]<sup>v</sup>. However, if the police of a particular police station refused to register an FIR, the victim can approach the higher police officer such as the SP, DCP, Commissioner, etc [Section 154(2) CrPC]<sup>vi</sup> with the same complaint. Even after that if no action is taken, the victim can approach the Magistrate with a complaint and affidavit, which the Magistrate has the power to entertain and direct the Police of a police station to register an FIR and investigate the case acting under Section 156(3) CrPC.

### *Research Objectives*

1. To understand Section 156(3) and the power of magistrate u/s 156(3).
2. To analyse the Steps to be complied with before using this provision and Procedure.
3. To look over the judgements supporting the understanding of Section 156(3) application.

## POWER OF MAGISTRATE UNDER SECTION 156 OF CR. P.C.

Before discussing the power of the magistrate under Section 156(3), it is necessary to understand section 190, Cr.P.C. Section 190<sup>vii</sup> empower Magistrate to take cognizance of cases on the report by police or from a person other than the police. 'Cognizance' means "to take judicial notice". "Taking cognizance" is taking notice of an offence in order to initiate proceedings under Section 190 of the Criminal Procedure Code. Under section 190 the Magistrate can take the offence into judicial notice under the following three conditions:-

1. receiving a complaint from any person other than a police officer
2. upon his own knowledge
3. upon receiving a complaint of fact which constitutes a cognizable offence

***Section 156(3):***

Section 156 of Cr. P.C as mentioned above states the power of police to investigate a cognizable offence, in which section 156(3) grants judicial power to a magistrate under 3 conditions i.e.,

1. If the police officer has not registered the FIR.
2. If the Superintendent of Police (SP) has not registered the FIR.
3. If the FIR is registered but, the proper investigation has not been done.

***Steps to be complied with before using this provision and Procedure***

The FIR for a cognizable offence is directed by police u/s 154 of the CrPC. If a situation may arise where the police officer is not registering an FIR or is not taking proper investigation, at first the information passes to the SP for further enquiry. If the matter goes to SP still the FIR is not registered or even after registering doesn't generate any satisfactory result from the investigation, the person can then file an application under section 156(3).

In any case of cognizable offence, the Magistrate can direct the police officer to conduct the investigation under this section. In case the FIR is not registered or no proper investigation is done by police or SP, a person has two ways either to file a complaint under section 156(3) or section 200.

Under section 200 of CrPC,<sup>viii</sup> it is necessary to take a complaint and once the magistrate takes cognizance of matter u/s 200 he is no further allowed to take back the offence u/s 156(3) and cannot ask the police officer to investigate. If the Magistrate doesn't take the complaint under section 200 he can order the police officer to conduct the investigation and later can take cognizance of that report given by police u/s 174 CrPC.<sup>ix</sup>

***The procedure to file a case under section 156(3) of CrPC is as follows:***

1. A victim could file a complaint to the police station about the offence and if the police feel it makes out a cognizable case, the police can register an FIR [Section 154(1) CrPC].
2. However, if the police of a particular police station refused to register an FIR, the victim can approach the higher police officer such as the SP, DCP, Commissioner, etc [Section 154(2) CrPC] with the same complaint. There are two options a person can register his FIR to SP i.e., either he can go physically and look for the office of SP and register his complaint or the other option is he can post his complaint to the office by any postal service.
3. Even after that if no action is taken, the victim can approach the Magistrate with a complaint and affidavit, which the Magistrate has the power to entertain and direct the Police of a police station to register an FIR and investigate the case acting under Section 156(3) CrPC.
4. When a person approaches the Magistrate for filing a complaint the person is asked for proof that he has raised the complaint to SP, the person can show the receipt of the speed post or can show the status detail as evidence to the Magistrate's office. After looking into the evidence, the Magistrate will further file the complaint or proceed further.

***What kind of Magistrate can issue an order based on an application under Section 156(3) of the CrPC?***

According to Section 5(4) of the Prevention of Corruption Act, 1988,<sup>x</sup> a Special Judge for Prevention of Corruption is considered a Magistrate and has all the powers of a Magistrate under the Code of Criminal Procedure. After receiving a private complaint, a Magistrate can either take cognizance of the crime under Section 190 of the Criminal Procedure Code or move forward with an investigation and trial. Magistrate who has the requisite authority to take cognizance under Section 190 may nonetheless initiate an investigation under Section 156(3) of the CrPC if they so want. The Magistrate, who is empowered under Section 190 to take cognizance, alone has the power to refer a private complaint for police investigation under Section 156(3) CrPC<sup>xi</sup>. This was established in the case of *Anil Kumar Vs M.K. Aiyappa, 2013*.<sup>xii</sup>

***Which Magistrate is competent to pass order upon application u/s 156(3) CrPC?***

The Magistrate who has jurisdiction under Section 190 of the CrPC to take cognizance of offenses is the one who is competent to issue an order based on an application under Section 156(3) of the CrPC. This was established in the case of *Lokesh Kumar Dwivedi Vs. State of UP, 2016*.<sup>xiii</sup>

***When 156(3) can't be used by a magistrate?***

Under section 200 if the magistrate has already taken the complaint under cognizance or examined the complaint the investigation cannot be ordered for 156(3). Section 156(3) Crpc empowers magistrates to order police officers to investigate. When the magistrate passed orders under section 156(3), he did so without knowing the case. According to section 200 of the Criminal Procedure Code, the judge will issue an order after learning about the case. This knowledge created a material difference between the judge's order under section 156(3) and the s 200 CrPC. The findings are significant as it concludes that the court has applied its opinion and started the process.

Once the magistrate knows this, he cannot step back and disrupt the investigation. The rule is that when an incident occurs, it should be investigated. Therefore, ordering a new investigation into the same matter is not acceptable.

When a magistrate acquires jurisdiction under section 200 of the Criminal Procedure Code, he must be convinced that all of the elements of the crime have been committed. In the event that he has reasonable doubt that a crime has been committed, he may issue an order under section 202 CRPC rather than invoking section 156(3) CRPC. The magistrate may request a preliminary inquiry by a police officer under Section 202 of the Criminal Procedure Code. The magistrate may dismiss the complaint if the results of the preliminary inquiry demonstrate that there is no evidence of an offence.

***When liable to be accepted and when liable to be rejected?***

The court can reject the liabilities of section 156(3) if the complainant knows the accused person and in cases where no further new evidence can be collected. When alleged offence is not of such heinous nature or was on the ground of falsehood the application can be rejected. The Magistrate's authority under Section 156 was to order the police to file a report and initiate

an inquiry but this power had to be exercised judiciously and not in a mechanical manner. In circumstances when the claims are not extremely serious and the complainant has evidence to establish them, an order under section 156 need not be issued.

## SUPPORTING CASE-LAWS

As per the judgement of the case *Arvindbhai Ravjibhai Patel Vs. Dhirubhai Sambhubhai*<sup>xiv</sup> which was held by the Gujarat High Court that:-

*“Magistrates should act under Section 156 (3) of the Code only in those cases where the assistance of the police is essentially required and the Magistrate is of the considered view that the complainant on his own may not be in a position to collect and produce evidence in support of the accusations.”*

There are certain conditions that are taken into consideration to accept or reject the liability of section 156(3). In *M/s. Skipper Beverages P. Ltd Vs. State*<sup>xv</sup>, it was held by the Hon'ble Delhi High Court that:-

"Section 156 empowers the Magistrate to direct police to register a case and initiate investigation but this power had to be exercised judiciously and not in mechanical manner. Those cases, where allegations are not very serious and complainant himself in possession of evidence to prove allegations, there should be no need to pass order U/s156. But cases, where Magistrate is of view that nature of allegation is such that complainant himself may not be in position to collect and produce evidence before court, and interest of justice demand that police should step into to help complainant, police assistance can be taken. Thus, where allegations of theft of cheque and forging of typing out certain portion therein, could be proved by oral evidence and by summoning original cheque from banker and leading required evidence respectively, then there was no such evidence which complainant could be unable to collect on his own. As such, declining the request to issue directions to police under Section 156(3) would be justified".

The guidelines which are issued by the Hon'ble Delhi High Court in the case of *Subh Karan Luharuka & anr Vs. State & Anr*<sup>xvi</sup>, where it was observed that:

“Of course, it is open to the Magistrate to proceed under Chapter XII of the Code when an application under Section 156 (3) of the Code is also filed along with a complaint U/s 200 of the Code if the Magistrate decides not to take cognizance of the complaint. However, in that case, the Magistrate before passing any order to proceed under Chapter XII, should not only satisfy himself with the prerequisites as aforesaid, but, additionally, he should also be satisfied that it is necessary to direct Police Investigation in the matter for collection of evidence which is neither in the possession of the complainant nor can be produced by the witnesses on being summoned by the Court at the instance complainant, and the matter is such which calls for an investigation by a State agency. The Magistrate must pass an order giving cogent reasons as to why he intends to proceed under Chapter XII instead of Chapter XV of the Code”

The guidelines and cases certainly made it clear about the conditions that are required to be fulfilled so that the court can accept or dismiss the liability of the Magistrate under section 156(3).

In the latest judgment passed by the Hon'ble High Court of Delhi titled *V.P. Sharma (Dr.) Vs. State (N.C.T. of Delhi) & Ors.*<sup>xvii</sup>, it is interalia held that:

“The insistence to direct the Magistrate to the other course of the exercise of directing registration of FIR y calling for an investigation under Section 156(3) CrPC is putting the entire CrPC on a different pedestal. It is being raised by people who do not want to lead evidence or who do not have evidence to substantiate the complaint n accordance with the law. In the present case also, the petitioner has not chosen to file a complaint under Section 200 CrPC and he wanted to adopt a shortcut. More so, when the allegation prima facie reveals that it is a civil matter.”

## CONCLUSION & SUGGESTIONS

### *Conclusion*

The filing of "FIR" is, thus, very crucial to the proper functioning of our criminal justice system. The same applies to the order in which things are done. The first step is for the complainant to submit a First Information Report (FIR) under Section 154 of the Criminal Procedure Code. When the police decline to file a First Information Report (FIR) under Section 154, the complainant can file a written complaint under Section 154(3). If a FIR isn't filed as required by statute, the complaining party can nonetheless file a complaint in court using Section 156(3).

It is well-established that if the police refuse to take a complaint, one can file a FIR under section 156(3). There will be an automatic dismissal of the petition if the petitioner goes straight to the High Court to have the FIR registered, either by filing a writ petition/application under Article 226 of the Constitution of India or section 482 of the Criminal Procedure Code. Hence, in light of the foregoing legal scheme of provisions, the core of the matter is to exhaust the remedies in a sequential, categorical, and cautious manner.

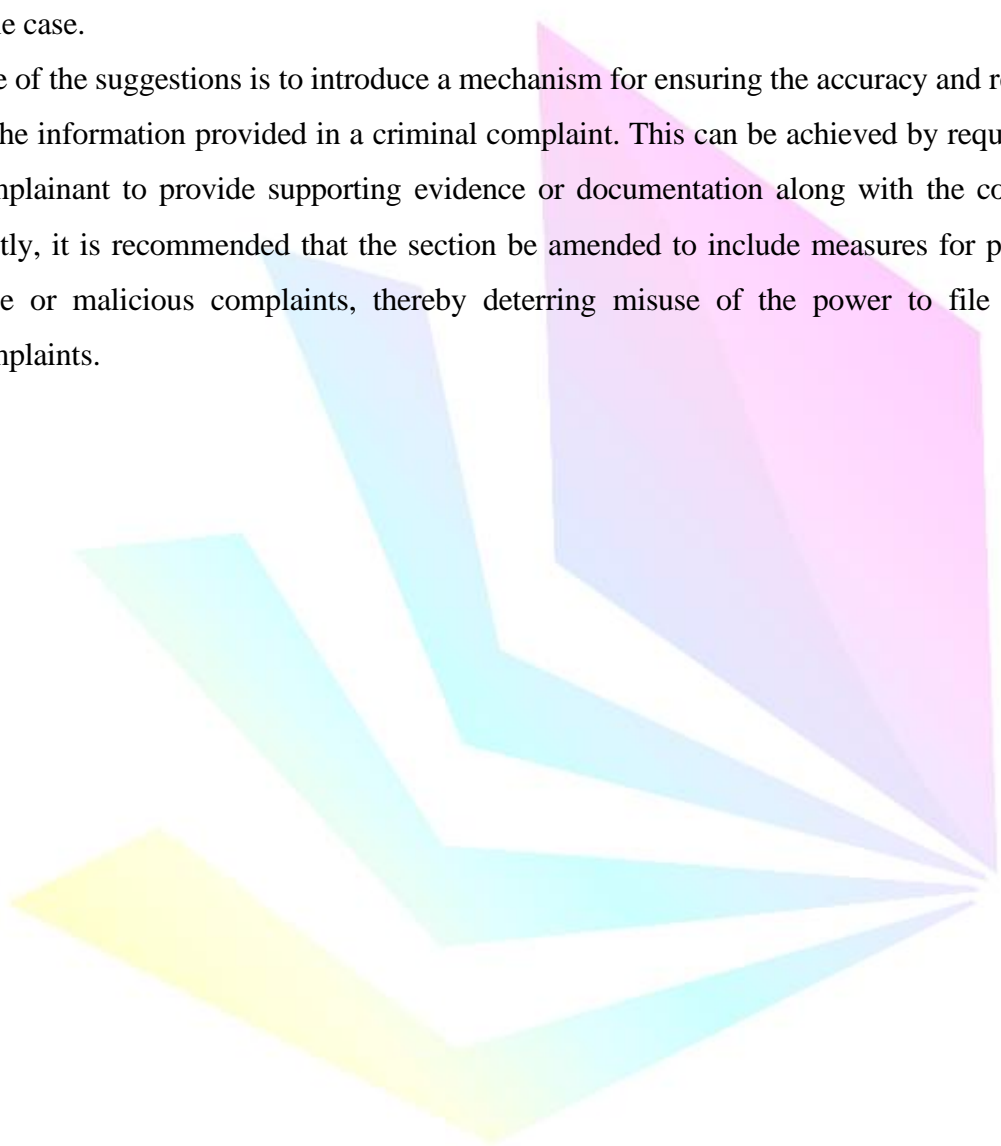
### *Suggestions*

- This section provides an avenue for any individual to approach the magistrate's court for the registration of a criminal complaint. However, this section also has several loopholes that can be exploited. For instance, if the information provided by the complainant is vague or nebulous, the magistrate may refuse to order an investigation, leaving the victim with no remedy.
- A clearly defined standard of what constitutes as "vague or nebulous" information should be established, leaving very little room for the magistrate to deny a request based on subjective interpretations.
- There needs to be more clarity and guidance provided to the magistrate regarding the application and interpretation of the section to ensure uniformity and consistency in its implementation, because there are many officers who are unaware of the circumstances.
- There are instances where police officer don't register an FIR to reduce the count of crimes committed under there area and hence the complainant goes to the magistrate, when the FIR



is not registered the case doesn't come under their record, which is directly a misuse of the power. So, the section should include provisions to empower the magistrate to take action against law enforcement officials who misuse this section for their personal gain.

- Additionally, the magistrate should be given clearer guidelines on when to order an investigation, such as in cases where the information provided is credible and has a prima facie case.
- One of the suggestions is to introduce a mechanism for ensuring the accuracy and reliability of the information provided in a criminal complaint. This can be achieved by requiring the complainant to provide supporting evidence or documentation along with the complaint. Lastly, it is recommended that the section be amended to include measures for punishing false or malicious complaints, thereby deterring misuse of the power to file criminal complaints.



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## ENDNOTES

<sup>i</sup> Panchabhai Popatbhai Bhutani & Others Vs. State of Maharashtra (2010) All MR (Cri) P.244.

<sup>ii</sup> Section 156, Code of Criminal Procedure, 1973.

<sup>iii</sup> Section 156(3), Code of Criminal Procedure, 1973.

<sup>iv</sup> Section 190(1)(a), Code of Criminal Procedure, 1973.

<sup>v</sup> Section 154(1), Code of Criminal Procedure, 1973.

<sup>vi</sup> Section 154(2), Code of Criminal Procedure, 1973.

<sup>vii</sup> Section 190, Code of Criminal Procedure, 1973.

<sup>viii</sup> Section 200, Code of Criminal Procedure, 1973.

<sup>ix</sup> Section 174, Code of Criminal Procedure, 1973.

<sup>x</sup> Section 5(4), Prevention of Corruption Act, 1988.

<sup>xi</sup> S.S. Upadhyay. *Registration of Fir u/s 156(3) CrPC*, Institute of Judicial Training & Research, UP, Lucknow, 2014.

<sup>xii</sup> Anil Kumar Vs M.K. Aiyappa, 2013, 10 SCC 705, 2013.

<sup>xiii</sup> Lokesh Kumar Dwivedi Vs. State of UP, 2016, (93) ACC 818, 2016.

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<sup>xv</sup> M/s. Skipper Beverages P. Ltd Vs. State, CRI. L. J. NOC 333(Delhi), 2002  
<sup>xvi</sup> Subh Karan Luharuka & anr Vs. State & Anr, DLH-2010-7-152, 2010.  
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