

MISCARRIAGE OF JUSTICE: LOSS OF VITAL PIECE OF EVIDENCE DUE TO IMPROPER INVESTIGATION

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ABSTRACT

Investigation plays a crucial role in the criminal judicial system as it must be conducted with efficiency to gather evidence and achieve its primary goal of assisting the court in making fair decisions and delivering justice. However, there has been a recent increase in cases closed by the police due to insufficient evidence, leading to the release of accused individuals because of the prosecution's failure to meet the burden of proof, often caused by flawed investigations resulting in the destruction of evidence by the investigating officer (IO). A Negligent or malicious investigation has also led to wrongful prosecution, while the lack of forensic investigation has contributed to the miscarriage of justice. To rectify this situation, specialized training for investigating officers is essential, along with that better policy implementation to improve the functioning of police agencies. Additionally, investing in better infrastructure for scientific investigation is crucial. This article highlights the issue of improper investigation by the police and proposes a way forward to address these challenges effectively.

INTRODUCTION

One of the important roles in a democracy is to maintain the law and order, it becomes necessary in a civilized society to develop and provide an efficient system for the maintenance of peace and order as well as for the reduction of crime. When criminal law is put into motion by reporting the crime, the very next stage plays an important role *i.e.*, the stage of the investigation.

The primary role of investigation is given to the police agency, defined under section 2 (h) of the Criminal procedure code, 1973, for the “collection of evidence”, which involves spot analysis, examination of various persons and reducing their statements, a search of the place and seizure of the things, ascertaining the facts and circumstances of the case¹. All this is to form an opinion on whether to present the accused before the magistrate based on the

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¹ R. V. Kelker, *criminal procedure*(7th edition)191

material so collected. They are empowered with wide power to investigate under CRPC depending upon the nature of the offence, cognizable or non-cognizable.

POWER AND DUTY UNDER THE CODE OF CRIMINAL PROCEDURE, 1973

Section 156 to 176 (2) in chapter 12 of the code, vests the power and duty to investigate with the police officers. Although the magistrate (empowered to take cognizance) has no role to play at this stage but is supposed to monitor, under section 156(3) of the code, keeping in mind the higher chances of abuse of such powers.

The powers should be used skillfully and with due care to achieve the intended goal. The earlier the investigation starts, the lesser the chances of losing vital pieces of evidence, e.g. - in rape cases, if the investigation is not delayed the evidence collected through the medical examination of the victim and the accused, if arrested, will ultimately help the court to arrive at a fair decision. The object is very crucial *i.e.*, to unravel the truth, ensuring that it aids the court to arrive at a just decision. The honourable Supreme Court has many a time clarified that the investigation should be conducted in a fair manner, it must consider not only the version of the incident given by the victim but also investigate the defence of the accused keeping in mind that the purpose is not to secure the conviction of the suspect.²

Both delayed and defective investigations have detrimental consequences for the justice delivery system.³ It is crucial to recognize that the evidence so collected during the investigation is intended to be presented before the concerned magistrate to determine whether an offence has been committed or not. In a situation where the investigation is faulty and presented evidence fails to demonstrate the commission of any offence, it will hinder the court's ability to decide on issuing legal proceedings or not.

The casual approach by Investigating officer while investigating any case leads to the demand for intervention by the CBI agency, which takes up any criminal case registered by the state police only on the request of the central government or consent notification issued by the state government under section 6 and section 5 of the Delhi special police establishment act, 1946 by the central government or on the order of the SC or HC.⁴ Although there is no straightjacket formula to decide the transfer of any case for an investigation that

² <https://www.livelaw.in/top-stories/madhya-pradesh-high-court-man-wrongly-convicted-compensation-malicious-investigation-198417> accessed 13 July 2023

³ Ibid

⁴ <https://cbi.gov.in/faq#> accessed 13 July 2023

should be exercised sparingly and in special circumstances only, when the court arrives at the conclusion that the fact and circumstances of the case necessitate such transfer and when there are other remedies with the appellant, no need for CBI investigation.⁵ In a recent incident, the Orissa High Court has ordered reinvestigation in a case observing, significant lapses in the police investigation. The court expressed deep concern over the inaction displayed by the police, and if there is even the slightest possibility of truth in the allegations, such disgraceful conduct by the police deserves firm condemnation. The primary responsibility of the police is to protect citizens from the undesirable elements presented in society. Nonetheless, if their actions were to make the community more vulnerable to criminal victimization, it would significantly awaken the public's confidence in the effectiveness of law enforcement.⁶

ABUSE OF POWER BY POLICE: WRONGFUL PROSECUTION

Wrongful prosecution means when an innocent person is booked for an offence maliciously or negligently by police or prosecutorial and is ultimately acquitted, by the court, who should not have been subjected to this prosecution in the first place⁷. In *CBI v. Om Prakash Aggarwal & Ors*⁸, a special CBI court observed, that the case involves excess abuse of discretionary powers of the IO (investigating officer) who booked an innocent person in bank fraud, filed a chargesheet against him, where he was released about 14 years later due to lack of any incriminating evidence. Such careless investigation leads to a violation of Article 21 of the innocent person. Faulty investigation of any case not only affects the victim but in many a case the accused suffers a lot, where the whole case was based upon circumstantial evidence, the accused was acquitted after spending 13 years in jail, and the court observed that the police was partisan in its investigation and clearly bent upon convicting the Appellant. There was no clear explanation for the delayed seizure of the car about 15 days when it was in the possession of the prosecution witnesses. The investigation was completed in a hurry which is suspicious, and the case was decided in less than a year, making the cloud even more dense. The accused in this case lost his whole youth in jail, he was 23 back then and now he is 36, and no monetary compensation can ever replenish that.⁹

⁵*Royden Harold Buthello & Anrv State of Chhattisgarh & Ors* (CrI)154/2023

⁶*BandhnaToppo v. State of Orissa & Ors.* (CrI)1462/2023

⁷Law Commission report, Report No. 277 “*Wrongful Prosecution (Miscarriage of Justice): Legal Remedies*”, August 2018, para 5.17

⁸(CrI) 39/2016

⁹*ChandreshMaraskole v The State of Madhya Pradesh* (CrI) 580/2009

The procedural misconduct or misuse of the powers occurs by -

- Submitting false or incorrect record evidence in a judicial or any other proceeding.
- Administering an oath, coercing to make false statements, when bound to state the truth.
- Planting or fabricating evidence.
- Tampering and destroying any evidence to prevent its production.
- Illegally confining a person contrary to law.¹⁰

The Supreme Court in many cases has shown its concern about the way the police agency conducts its investigation. Recently while expressing its displeasure the Jharkhand High Court, in a case ordered the DGP of the state to provide a list of the investigating officers in the state, to undergo training for investigating efficiently.¹¹ While entertaining a bail application in the above case, the court held that the investigating officer was supposed to record the statement of the victim, who sustained an injury on his vital body part and apart from him there were no other eyewitnesses of the incident. Here, the non-recording of the statement might have created a hindrance for the applicant to show the commission of the alleged offence and highlighted that the role of the concerned magistrate is not to act mechanically but to monitor the investigation judiciously.

LOSS OF VITAL EVIDENCE

Lack of proper investigation: Our country lacks a specialized agency other than the police to deal with criminal cases with much-needed standards for investigation. They are not trained up to the required standard to investigate and in many cases, courts have observed negligent or deliberate misconduct in an investigation by the police agency failing of the object of this stage.

In a recent case, where the accused was charged with the offence of rape, it is alleged that he forced himself on his junior colleague and was released, granting the benefit of the doubt. The court held that the prosecution failed to discharge the burden of proof. Here, highlighted that the investigation was faulty and defective, the evidence was destroyed by the IO

¹⁰ Law Commission report, Report No. 277, para 5.19 (n 6)

¹¹ <https://www.livelaw.in/news-updates/jharkhand-high-court-bail-police-investigation-not-fair-judicial-academy-scheme-training-198394> accessed 14 July 2023

deliberately, the late seizer led to the destruction of vital evidence, the CCTV footage as well as there was no corroborative evidence to sustain the conviction.¹²

Lack of forensics in the criminal investigation: In a case with complexity and lack of physical evidence, it becomes necessary for the investigating agency to apply forensic science which will help the court to arrive at a conclusion. Analyzing fingerprints, and biological matters such as hair, nails, blood, and other techniques to examine documents, computers, mobile phones, etc. will ultimately help in doing justice with evidence derived through the application of science and techniques which are more reliable. In heinous crimes such as sexual assault, rape, and homicide, it plays an important role in collecting evidence and deciding upon the culpability of the accused because in such types of offences, there are hardly any eyewitnesses, and the victim remains the only witness to this crime. In *Upendra v. State of U.P.*¹³, the High Court of Allahabad denied to confirm the death penalty of the accused based on a lack of proper forensic investigation, the accused in the present case was accused of raping and murdering a 75-year-old lady, the court stated that there is no compliance with the section 53-A i.e., no biological material is collected from the accused. The court observed that the case lacked investigation up to the mark and the appeal was allowed.

The case of *Dr. (Smt.) Nupur Talwar v State of U.P. And Anr.*¹⁴ brought to light the unprofessional conduct of the local police in handling such a sensitive matter. The crime scene was tampered with, and crucial evidence was destroyed, leading to a compromised investigation. The case was later transferred to the CBI, but even its flip-flop closure report compelled the court to take Suo-moto cognizance, where they expressed serious concern about the manner the police carried out its investigation. The case also raised serious questions on the skills of the forensic labs in the country, which are primitive and require serious upgradation.

The National Crime Record Bureau (NCRB), which operates under the Ministry of Home Affairs (MHA), is entrusted with the task of gathering and examining crime data. Since, 2016, the NCRB has been releasing data that raises concerns, particularly regarding a steady rise in the number of cases closed by the police due to insufficient evidence. Based on the

¹² <https://www.livelaw.in/top-stories/tarun-tejpal-go-a-police-sessions-court-prosecutrix-material-contradictions-go-a-police-174700> accessed 17 July 2023

¹³(Cc)4/2020

¹⁴(CrI) 293/2014

crime data report by the NCRB, it is estimated that around 750,000 cases registered under the Indian Penal Code (IPC) are closed annually by the police owing to a lack of evidence. In 2016¹⁵, where disposal occurred due to lack of evidence accounted for approximately 14% of all the cases. This figure slightly increased to around 15% in 2017¹⁶ and further rose to 17% in 2018¹⁷. It stabilized at about 16% in 2019¹⁸. However, there was a slight decline, with such cases comprising 12% of all disposals in 2020¹⁹. Over the five-year period, nearly one in six cases were closed due to insufficient evidence. Urgent attention is required to tackle this issue and facilitate the implementation of improved policies and reforms aimed at enhancing evidence-collection procedures. Addressing the matter promptly will pave the way for a more effective and efficient system, ensuring the proper handling and utilization of evidence in various cases.

CONCLUSION

The absence of a specialized investigating agency dedicated to handling offences in the Indian Penal Code has resulted in a miscarriage of justice in India. The investigating officer often fails to responsibly exercise their power, leading to the loss of crucial evidence and eventually resulting in the closure of numerous cases due to insufficient evidence. Additionally, some officers may misuse their authority or be negligent in their duties, leading to false prosecutions in other cases.

Moreover, the lack of infrastructure for scientific investigation poses challenges in collecting evidence, particularly in complex offences where physical evidence is unavailable. Recognizing the flaws in the functioning of the police agency, the Supreme Court has repeatedly emphasized the need for training Investigating Officers. Enhancing police investigation can be achieved through the implementation of a collaborative team approach. The primary object of officers during investigation should be the pursuit of truth free from shortcomings, while also supporting the country's justice system. This training aims to improve the efficiency of investigation while ensuring that no miscarriage of justice occurs. The police department must engage in an ongoing evaluation of its policies and practice,

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https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%2017A.1.pdf accessed 19 July 2023

¹⁶ *Ibid*

¹⁷ *Ibid*

¹⁸ *Ibid*

¹⁹ *Ibid*

ensuring they remain effective and in alignment with the needs of a democratic society. To better serve the pursuit of justice and truth for the community, cooperation between law enforcement and the judiciary is needed.

