

# INVESTIGATION IS MORE THAN “COLLECTION OF EVIDENCE “

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## 1. ABSTRACT

The purpose and need for this article is to clear the ambiguities which have made the process of “investigation”, a symbol of embarrassment for investigating agencies and judicial system. Criminal justice system has always remained under discussion before the superior courts. As his lordship Hon’ble Chief Justice Athar Minallah held, “State has neglected the most crucial part of the governance system for the past seven decades because it is obvious that Criminal Justice System was never our priority”<sup>1</sup>. Similarly, the August Supreme court held, “Supreme Court observed that existence of a high degree of political and administrative apathy had translated into failing criminal justice system”<sup>2</sup>. We will discuss the strongest pillar of criminal justice system which is in fact in its weakest form i.e. investigation. Investigation is treated as a secondary subject with merely procedural importance. Mostly investigation is discussed as a procedure without contributing to the meaning to the term “Investigation”. In routine we have only treated it as a process but it is more than that. Unless we are able to assimilate this, we cannot improve it. Investigation is the strongest and most important pillar of Criminal Justice System. It is the reason for the low conviction rate. As a result, trust of people from the system is evaporating with time. The biggest dilemma with our criminal justice system is that there are multiple forums for challenging the trial court verdict but there is no forum for correcting the blunders made during investigation which means once it is done, it is in its final form forever. There is no room for making corrections at any subsequent stage.

## 2. INVESTIGATION AS DEFINED

*“Investigation” includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf”.*<sup>3</sup>

## 3. INGREDIENTS OF INVESTIGATION

The definition is complete but understanding of the term “Investigation” needs explanation. From the definition we have the following breakup which “includes”:

- All the proceedings under this code
- Collection of evidence

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<sup>1</sup> “Aftab Vs State” Crl Appeal # 55/2016 of Islamabad High Court, Islamabad.

<sup>2</sup> 2015 SCMR 1724

<sup>3</sup> Section 4 (l) of the Criminal Procedure Code 1898.

- By Police officer or by any person authorized

For better understanding, we will take the breakup one by one.

#### **4. ALL THE PROCEEDINGS UNDER THIS CODE**

- a. Importance of the Code:** Criminal Procedure Code 1898, is the bible for proceedings for administrating any penal substantive law<sup>4</sup>. In practice it is commonly observed that the criminal courts don't follow the procedures in letter and spirit as much as the civil courts. The courts and the parties including learned counsels exploit the spaces for accommodating the accused persons under the garb of "accused is the most favorite child of the law"<sup>5</sup>. Similarly procedural illegalities<sup>6</sup> often result in vitiating the whole trial.
- b. Proceedings:** The term "proceedings" is a comprehensive expression which includes every step taken, towards further progress of a cause in court or tribunal, from its commencement till its disposal.<sup>7</sup> Although we cannot conclude the proceedings of an investigation, but the basic proceedings which involve in investigation are:<sup>8</sup>
- i. Proceedings on the spot (Site inspection)**
  - ii. Ascertaining the facts/ circumstances of the case**
  - iii. Discovery of arrest of suspended offender**
  - iv. Collection of evidence relating to commission of offence**
  - v. formation of opinion as to trial of the case.**

**For summoning and arrest:** It includes the procedure to be adopted for compelling appearance of a person which include procuring arrest of an offender if needed and to suspend the same if the facts of the case permits. Also the procedure to summon any witness or any other person for the purpose of any interrogation. However, the same has to be done in line with the guidelines given in the code<sup>9</sup>.

**For search and seizure:** The investigation progresses with the recovery of case properties. However, the procedures if not adopted make the whole effort a question mark and Vital recoveries become a symbol of disgrace for the whole investigation process.<sup>10</sup>

**For recording information:** The manner for recording information given by the complainant whether cognizable or non-cognizable is explicitly mentioned

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<sup>4</sup> Section 5 of the Criminal Procedure Code 1898.

<sup>5</sup> Case title "Faryad Ali vs The State" of August Supreme Court of Pakistan (2008 SCMR 1086)

<sup>6</sup> PLD 1960 DACCA 551, PLD 1958 SC 437, 1993 SCMR 550

<sup>7</sup> 2001 SCMR 1461, 2017 CLD 1382

<sup>8</sup> 2019 PCRLJ 852 IHC

<sup>9</sup> Chapter 6 of the Criminal Procedure Code 1898

<sup>10</sup> Daniel Pearl Judgment dated 02-04-2020 of Hon' Sindh High Court (Spl. CrI. Anti Terrorism Appeal no. 68 of 2002)

with minute details<sup>11</sup>. Such details if not properly followed amount to vitiate the proceedings.

***For recording Statement and Confessions:*** The manner of recording statements and confessions under section 164 CrPC are to be followed with precise guidelines. Any deviation from guidelines will result in depreciation of evidence.<sup>12</sup>

***For requesting physical custody for the purpose of remand:*** The most crucial stage of any investigation involves the physical custody of the accused. It is of such an imminent importance that the Constitution of Islamic Republic of Pakistan emphasized under article 10 that a person arrested must be produced within 24 hours before a Magistrate. Therefore, remand period if granted by the learned Magistrate must be utilized in the best possible manner and similarly the learned Magistrate is also duty bound to assess and measure the effort of the Investigating Officer while granting subsequent physical remand. The superior courts had laid down guidelines<sup>13</sup> and rules<sup>14</sup> for the learned Magistrates to be followed while exercising their powers under this code.<sup>15</sup>

***For conducting medical examination:*** In hurt and homicide cases, the medical examination report is of star importance and Special provisions regarding medical examination and the procedure for conducting the medical examinations are mentioned under Chapter 14 of the code.

***For conducting Identification Parades:*** Identification Parade is also a tool for collecting evidence. However, the procedure for using every tool varies and must be catered in the manner prescribed. The principles for appreciating the identification parade proceedings were elaborated by the August Supreme court of Pakistan<sup>16</sup>.

***For examination of witnesses:*** Examining the witnesses and for recording statements of the witnesses, the parameters set by the superior courts are to be kept in mind. This will increase the appreciation of the statement as authored by Honorable Justice Syed Mansoor Ali of August Supreme Court of Pakistan<sup>17</sup>. Recently, Honorable Justice Ejaz Afzal Khan of August Supreme Court of Pakistan held in a case that use of audio and video devices to facilitate the recording of statements could not be said to have been prohibited by any interpretation<sup>18</sup>.

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<sup>11</sup> Section 154 and 155 of the Criminal Procedure Code 1898

<sup>12</sup> 2016 SCMR 274, 2018 PLD 296, PLD 1976 SC 404

<sup>13</sup> 1984 PCRLJ 2588, 2018 PLD SC 595, 2009 PCRLJ 705, 1995 SCMR 429

<sup>14</sup> Chapter 11 of the 3<sup>rd</sup> Volume of the Lahore High Court Rules and Orders

<sup>15</sup> Section 167 of the Criminal Procedure Code 1898

<sup>16</sup> PLD 1995 SC 1

<sup>17</sup> Raza vs The state (Crl petition no. 1124-L of 2015) of August Supreme Court of Pakistan

<sup>18</sup> PLD 2019 SC 196

**Formation of Opinion:** For finally concluding the police investigation, the investigating officer has to form an opinion in light of the evidence collected. This is the final conclusion of the investigation which can result in even cancellation of the case or challaning the accused person under column no. 2 or 3 of the Police report under section 173 CrPC. No one can interfere in the investigation especially the judiciary. It is a pure prerogative of the IO to prepare the police report as per finding of his investigation.<sup>19</sup> Sections 157, 160 and 161 CrPC provides a mechanism for check and balance so that fair and impartial investigation can be conducted.<sup>20</sup>

## **5. COLLECTION OF EVIDENCE**

This part of the definition is mainly based on 2 terms i.e. "Collection" and "Evidence". Collection means the resources and supporting laws which allows the IO to collect any piece of supporting evidence. All those manners which are not supported by any law and are forbidden should never be exercised for the sake of investigation. This is the real gist of this definition which needs to be explained to the IO with clarity. It also defines the borderline for the IO to effort, whereas if he crosses any such borderline, it will amount to colorful exercise of his jurisdiction. Collection of evidence help the IO to form an opinion for submission of final report under section 173 CrPC<sup>21</sup>.

Evidence is well defined under Qanoon e Shahadat Order 1984<sup>22</sup>. Anything which is beyond this definition has to be procured with the help of procedures given in the code. Any deviation from the procedures might result in giving benefit to the accused.

## **6. BY POLICE OFFICER OF BY ANY PERSON AUTHORIZED**

Lastly, the IO i.e. Investigating Officer can be any police officer or any other person authorized by the Magistrate. However, this excludes the Magistrate from interfering the investigation. However it has been commonly observed by the august Supreme Court of Pakistan, "Investigation of a criminal case fell within the exclusive domain of the police"<sup>23</sup>. However, at this point, we should not ignore the fact that the whole criminal procedure code revolves around the Magistrate and he is bound to play his role while supervising the investigation for the purpose of its progress and for scrutinizing any procedural lacunas. Besides this, the Police Rules 1934 also provide special provision for supervision by gazetted officer<sup>24</sup>.

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<sup>19</sup> 2019 SCMR 2029

<sup>20</sup> 2019 PCrLJ 852 Islamabad

<sup>21</sup> 2015 PCrLJ 1551 Islamabad

<sup>22</sup> Under Article 2(1)(c) of QSO 1984

<sup>23</sup> 2019 SCMR 2029

<sup>24</sup> Rule 17, Chapter 25, Volume 3 of Police Rules 1934.

## **7. CONCLUSION**

Our history is evident that high profile cases were mishandled by our investigating agencies and as a result the society trust on the criminal justice system diminishes. We live in a society where pre-trial proceedings such as Remands and Bails are contested more vigorously whereas the trials are left at the mercy of the prosecution and court. Courts are helpless due to weak and incompetent investigations which result in low conviction rates. The law of the land put a heavy responsibility on the investigating officer. It had been held by superior courts that **poor investigation would lead to poor results in an adversarial system and even good laws would become bad laws when badly implemented.** Plethora of judgments are available which states that if criminal trial will fail due to poor and defective investigation, the prosecution will be responsible for the acquittal of the culprits.