

KERALA POLICE
STANDARD OPERATING PROCEDURE



**SOP
SERIES
04**

**INVESTIGATION &
PROSECUTION IN GENERAL**



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FOREWORD

Years back, the Police Standing Order (PSO) in respect of the Kerala Police was published in 4 volumes. Over the period of time, these Police Standing Orders have undergone changes by issuance of Executive Directives, Circulars etc. from the Govt. as well as from the Police Headquarters. Needless to say, the present Police Standing Orders are slowly becoming legacy documents.

02. Police Standing Orders in a State spell the procedures and practices to be adopted by the Police while doing “Policing”. Today various State Governments, Govt. Agencies etc. are making efforts to standardize the policing procedures; as part of that, we also made efforts to prepare the Standard Operating Procedure (SOP) relating to various police functions, viz. registration of FIRs, scene of crimes investigation, preparation of CDs, investigation of offences against children, traffic management and enforcement etc.

03. In the matters of investigation and prosecution, over the period of time, new legislations have been enacted; both by the Government of India as well as by the State Government. New offences have been added to the list of ever expanding offences; similarly new procedures have been prescribed both in the Statutes and through constitutional Court rulings. Investigations have become more technology oriented.

04. Similarly a lot of changes have taken place in prosecution methodology also. In these circumstances many of the directions contained in the Police Standing Orders of Kerala have become redundant. Some circulars were issued by the Government as well as by the Police Department to overcome these difficulties.

05. However on examination, we found that SoP should be prescribed in relation to investigation and prosecution in general. There will be two volumes relating to the subject. The first Volume will contain SoP relating to investigation and prosecution in general. The Second Volume will contain the investigation, prosecution and related issues pertaining to some specific types of cases. Some other volumes will have to be brought out relating to POCSO and some other offences.

06. It is clarified that these SoPs have to be followed by one and all and if there is any contradiction/difference/inconsistency with the PSO, or the Circulars already issued, the directions in SoP will prevail.



07. The new SOP series of Kerala Police will spell out operational/ functional aspects of the police subjects, as per the latest law and latest decisions of various courts including the Apex Court. Some parts of the SOP will require amendments over the period of time due to changes in law, due to rulings of constitutional courts like Hon. High Court of Kerala and the Hon. Supreme Court of India. Such changes are inevitable.

08. This SOP needs to be followed in letter and spirit by all the Police Officials and other stakeholders.

09. I hope the series of SOP will be very useful.

01.11.2020
Thiruvananthapuram

Loknath Behera IPS
State Police Chief

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**REGISTRATION OF
FIRST INFORMATION REPORT
PART I**

FIRST INFORMATION TO THE POLICE

CHAPTER 1

LAW

1.1 THE FIRST INFORMATION REPORT (FIR)

The phrase “First Information” has not been used in the Criminal Procedure Code 1973; but by practice, it has come to mean the information given by any person to the police under Section 154 Cr.PC. FIR is the report prepared by the officer in charge of the police station, on the basis of such information.

1.2 Legal Provision:

First Information in cognizable cases

SECTION 154 CrPC

1.2.1 *Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.*

***Provided** that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 509 of the Indian Penal Code is alleged to have been committed or*

attempted, then such information shall be recorded, by a woman police officer¹ or any woman officer²;

Provided further that—

- a. in the event that the person against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 509 of the Indian Penal Code is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be;*
 - b. the recording of such information shall be video graphed;*
 - c. the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5A) of section 164 as soon as possible.*
- 2. A copy of the information as recorded under Sub-Section (1) shall be given forthwith, free of cost, to the informant.*

Any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in Sub-Section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

¹ Test qualified of and above the rank of WCPO.

² Any Women Officer working as Govt. Servant.

1.3 Object of an FIR.

The principal object of FIR is only to make “information” to the police officer to set the criminal law in motion, obtain early information of an alleged criminal activity and to record the circumstances before there is time for such circumstances to be forgotten or embellished.

1.4 Evidentiary Value of the FIR.

1.4.1 It is valuable because it gives the earliest version of the occurrence. It is not a substantive piece of evidence. It may be used for contradiction³/corroboration⁴ against the author thereof.

1.4.2 It is relevant as a subsequent conduct,⁵ if lodged by the accused.

1.4.3 It may be used as a dying declaration,⁶ if lodged by the deceased whose death is in issue.

1.4.4 It may be used as an entry by a public servant in the discharge of his/her official duties.⁷

1.5 Refusal by Police to Record FIR.

1.5.1 The Police Officer has no power to refuse to enter the received information in FIR for adequate action about the commission of cognizable offence given to him.

1.5.2 But he can refuse to record the FIR if the information is given as vague and not adequate enough to enable him to commence an investigation.

1.5.3 Refusal to record the FIR by the police officer is a punishable in respect of offenses 326-A, 326-B, 354, 354-B, 370, 370-A, 376, 376-A, 376-AB, 376-B, 376-C, 376-D, 376-DA, 376-DB, 376-E, and 509 IPC.⁸

1.5.4 The person aggrieved can send to the District Police Chief the substance of

³ Section 145 Indian Evidence Act, 1872 (hereinafter referred as Evidence Act).

⁴ Section 157 Evidence Act

⁵ Section 8 Evidence Act.

⁶ Section 32(1) Evidence Act.

⁷ Section 35 Evidence Act.

⁸ Section 166A Indian Penal Code, 1860 (hereinafter referred as I.P.C).

the information by post. The District Police Chief of the district may investigate the case himself or direct any officer subordinate to him for investigation.⁹

- 1.5.5 Further the informant can file petition before the Magistrate who will forward the same to the Officer in Charge of the Police Station concerned with direction to register a case and investigate.¹⁰

⁹Section 154 (3) Cr.P.C.

¹⁰Section 156(3)Cr.P.C.

CHAPTER 2

HOW TO RECORD AN FIR

2.1 Duty of the Officer-in-Charge of Police Station on receipt of such information.

2.1.1 Read 1.2.1. Format of FIR - See Annexure I

2.1.2 A copy of information or FIR or both should be delivered to the informant free of cost.¹¹ Accused/ his/her Representative are also eligible for the copy of the FIR within two days of his application.

2.1.3 The copies of FIRs, unless the offence is sensitive in nature, like sexual offences, offences pertaining to insurgency, terrorism and that category, offences under POCSO Act and such other offences, should be uploaded on the Police website, within twenty – four hours of the registration of the First Information Report, so that the accused or any person connected with the same can download the FIR and file appropriate application before the Court concerned as per law for redressal of his/her grievances. In case there are connectivity problems due to geographical location or there is some other unavoidable difficulty, the time can be extended up to forty-eight hours. The said 48 hours can be extended maximum up to a further 72 hours and it is only related to connectivity problems due to geographical location¹².

2.1.4 After registering FIR in CCTNS platform, Officer in Charge of Police Station should select Publish or Un Publish option. On clicking “Yes” in Publish option, that FIR will get published and it will be available in the Kerala Police Website for viewing and downloading by the public.

2.1.5 The decision not to upload the copy of the FIR on the website as directed by the Hon’ble Supreme Court of India, shall be taken by Sub Divisional Police Officer (SDPO) concerned. Such decision shall, in no case be taken by an officer below the rank of Deputy Superintendent of Police/Assistant

¹¹ PHQ Circular No 35/98 dated 02/06/1998.

¹² Judgment of Hon’ble Supreme Court in Writ Petition(Crl) No. 68/2016 filed by Youth Bar Association of India & PHQ Circular No. 26/2016.

Superintendent of Police. The decision taken by the SDPO will be duly communicated to the concerned Jurisdictional Magistrate.

2.1.6 The original FIR is required to be sent forthwith to the Magistrate/Judge concerned who is empowered to take cognizance of the offence. But in UAPA cases the original FIR should be sent to District Sessions Court. In POCSO Act cases original FIR should be forwarded to specially designated Sessions Court. In some districts there are Special Courts for NDPS Act and SC/ST (PoA) Act cases. In such districts the original FIRs of those cases may be sent to Special Courts as per the decision of the Special Courts. So also the cases registered under Prevention of Corruption cases which have to be sent to the concerned Vigilance Special Court.

2.2 The duty of the Officer-in-Charge of the police station after recording the FIR.

2.2.1 After recording the FIR, if the offence is of serious nature, the Officer-in-Charge of the police station is to proceed in person or depute one of his/her subordinate officers not below such rank (test qualified CPOs¹³), as the State Government may, by general or special order, prescribe in that behalf, to proceed to the spot to investigate the facts and circumstances of the case and if necessary, to take measures for the discovery and arrest of the offenders. The practice of insisting written information, as to the commission of a cognizable offence, to register a case is not correct therefore should be dispensed with.

2.2.2 It is well settled that a First Information Report is not an encyclopedia, which must disclose all facts and details relating to the offence reported. It is enough, if the Police Officer, on the basis of the information given suspects the commission of a cognizable offence and not that he/she must be convinced or satisfied that a cognizable offence has been committed.

¹³Govt. Order NO.196/2013/Home.Dated : 03.08.2013, PHQ Circular No. 29/2013.

2.3 Delay in lodging FIR

Following factors to be kept in mind while dealing with delay in lodging FIR:

- 2.3.1** Delay, if any, in making the FIR should be explained in the FIR itself. In the First Information itself reason for delay has to be explained. It should be recorded in the 8th column of FIR. It should be believable and well explained.
- 2.3.2** Delay, in lodging the FIR, if not sufficiently explained; it will create suspicion in the mind of court that there was no eyewitness to the incident and lodging the FIR was the result of an afterthought.
- 2.3.3** Delay in filing FIR in the case of rape cannot be used as a ground against prosecution case and reason for acquittal.

2.4 Recording of FIR¹⁴.

- 2.4.1** The FIR should be recorded in plain and simple words. It should be in the language of victim, as far as possible.
- 2.4.2** Time of occurrence should be noted. Occurrence time and Reporting time have to be logical.
- 2.4.3** If the informant is aware about motive, preparation, previous and subsequent conduct of accused, these facts should be recorded. Modus operandi should be elicited and mentioned in the FIR wherever it is applicable.
- 2.4.4** The FIR should be a truthful account-neither minimized nor exaggerated.
- 2.4.5** Do not interpolate anything after the FIR has been written.
- 2.4.6** Don't avoid the crucial facts in the FIS(First Information Statement) while filling 12th column of FIR. Don't include information in column 12, which was not stated in the First Information.
- 2.4.7** Avoid scoring out what has been written. In unavoidable circumstances, a line should be drawn across the word/s to be scored out still keeping it legible and the officer recording the FIR should initial it.

¹⁴ PHQ Circular No. 133/68 dated 14/08/1968.

- 2.4.8** Note the injuries found on the person (of the informant) or the witness and mention the same in the FIR.
- 2.4.9** Value of property stolen or damaged or lost should be mentioned correctly. Do not lessen the value to improve your statistics.
- 2.4.10** The special identifying marks, if any, on the items involved, together with their detailed description should be clearly noted.
- 2.4.11** When the information relates to theft, the informant should be asked to give detailed list of articles stolen, their value, weight, design, engravings and other distinguishing marks, which may assist identification.
- 2.4.12** While recording the FIS, the identity of the accused, physical features, the type or weapon used, if any, the language spoken, etc. should be elicited and mentioned in the FIR. The circumstances of identification must be clearly brought out, e.g. the condition of light, the line of visibility, the distance from which the identification was made etc.
- 2.4.13** The names of the suspects, if any or any accused recognized during the occurrence, should be specified. If a particular person is suspected, the facts on which the suspicion is based should be clearly specified. The informant should be able to distinguish between what he/she saw, knew and heard.
- 2.4.14** The names of known/suspected/unknown accused persons with full particulars should be entered serially in the FIR.¹⁵ The names of the eye witnesses and those to whom the complainant or informant reported the names of the accused immediately after the occurrence should be obtained and recorded for the purpose of corroboration. If such information, though available first hand is not noted, the defense may term it as fabrication and afterthought.
- 2.4.15** Read 2.1.5
- 2.4.16** In the case of written information related to the commission of cognizable offence, an exact copy of the written complaint shall be attached along with the original sent to Court with the FIR.

¹⁵KP Form No.25.

- 2.4.17** A police officer should not defer in registering the FIR on the plea of verifying the truth of the information. If a person gives deliberate false information in regard to a cognizable offence, the informant is liable for prosecution.¹⁶
- 2.4.18** After registration of FIR, if there is no sufficient ground to enter into investigation the officer-in-charge of police station shall not investigate the case { 157 (1) (b) CrPC }.
- 2.4.19** Refusal to record FIR on the ground that the place of crime does not fall within the territorial jurisdiction of the police station amounts to dereliction of duty. It is the duty of the officer-in-charge of the police station to record a case and forward the same.¹⁷
- 2.4.20** Care should be taken to ensure that the informant is not trying to exaggerate the actual occurrence or to give the colour of a cognizable offence to an incident of a non-cognizable character. Informants tend to give coloured statements out of excitement or prejudice.
- 2.4.21** The recording of First Information Report shall not be for the collection of any of the details mentioned above.
- 2.4.22** If the report is made at a Police Out-Post, a First Information Report should not be prepared by the Head Constable or Constable in charge, as he is not a Station House Officer¹⁸. He will enter the facts of the report in the Out-Post general diary and send the report or the informant as expeditiously as possible to the Police Station.
- 2.4.23** In case of emergency, he will then proceed to the scene of occurrence and will take steps to arrest the accused and recover stolen property, if any, pending the arrival of the Station House Officer to conduct the investigation. He will also see to the proper guarding of the scene.
- 2.4.24** SHO should ensure that all FIRs (IIF-I) are registered through CCTNS application and the printout generated for FIR through CCTNS is only

¹⁶Section 182 or 211 I.P.C, 117(d) KP Act.

¹⁷AIR1993 SC 2644; 1993 Cr.L.J 3684; 1994 SCC (Cri) 734.

¹⁸ Section 2 (o) Cr.P.C defines Station House Officer (SHO).

submitted to the concerned Court. GD entry is must for registering FIR in CCTNS platform. The copies should be sent to Sub Divisional Police Office and DCRB. One hard copy should be attached to CD file. The supervisory Officers viz., DySP/DPCs shall ensure that the SHOs under their jurisdiction are complying with the same.¹⁹

2.5 First information by the accused

2.5.1 FIR may be lodged by an accused person himself/herself.

2.5.2 FIR may be lodged by the accused mainly for two reasons: 1) Accused after committing gruesome murder would himself/herself come to the police station and confess the offence; or 2) Accused may lodge false information about the offence with a view to escape from punishment.

2.5.3 Whenever police officer receives information of the commission of cognizable offence, he/she is bound to issue FIR on the information received by him/her, from any person including the accused.

2.5.4 Facts which do not amount to a confession and merely shows the motive, preparation or opportunity for the crime or give information leading to the discovery of a fact, can certainly be proved on behalf of the prosecution.²⁰

2.5.5 FIR made by the accused will be a confession. Confession made by accused to a Police Officer is inadmissible in court.²¹ Any confession which may form part of such a FIR will be inadmissible under Section 25 of Evidence Act.

2.6 Information received through Telegram/telephone message/Whatsapp/digital mode

2.6.1 Telegrams/telephonic messages/Whatsapp/digital mode cannot be taken for registering FIR, for want of signature of the informant. Otherwise the Officer in Charge of Police Station should contact the sender of the message, collect

¹⁹ Circular No. 25/2016 dated 08/11/2016.

²⁰ Sections 7, 8, 27 Indian Evidence Act.

²¹ Section 25 Indian Evidence Act.

information and then register FIR.

2.6.2 In the above circumstances the officer-in-charge of Police Station may register the case as Suo- Motu (157 CrPC)

2.7 Suo-motu registration of FIR u/s 157 Cr.PC:

2.7.1 In some instances, police officers may have to prepare FIRs on their own initiative and have to play the part of the informant. An illustrative list of instances are as below:

- i. When they receive secret, anonymous, telegraphic and telephonic information about the commission of a cognizable offence.
- ii. When they get some direct knowledge about the commission of a cognizable offence.
- iii. When an occurrence of cognizable offence is exclusively detected by them.
- iv. When a cognizable offence is committed in their very presence.

2.8 First information: Referred by the Magistrate

2.8.1 Criminal Miscellaneous Petition, filed by any person, which reveals the commission of a cognizable offence, may be forwarded to SHO by the jurisdictional Magistrate U/Sec 156(3) Cr.P.C. The officer-in-charge of police station shall register FIR upon the CMP as per the order of Magistrate.

2.8.2 If a complaint filed before the Magistrate reveals the commission of a non-cognizable offence, it may be forwarded to the officer-in-charge of a police Station by Magistrate to register an FIR and investigate. In such cases the officer-in-charge of police station shall register the case and investigate the case like that of a cognizable offence, except the fact that no arrest shall be made without a warrant from the endorsing Magistrate.

2.8.3 Magistrate may forward a complaint filed by any person U/sec 202 Cr.P.C to the officer-in-charge of police station for report. In such cases the police shall not register the case. A report regarding the facts of the case may be

forwarded in such cases. It is pertinent to note that the investigation mentioned in section 202 CrPC is distinct from that mentioned in Chapter XII of CrPC. While of conducting 202 CrP C enquiry, Police have no power to summon the accused or record the Statement. [Ramesh Sobti @ Ramesh Sobyi Vs State of WB & Anr (2017)].

CHAPTER 3

VARIOUS ASPECTS RELATED WITH FIR

3.1 Disposal of FIR

3.1.1 An FIR once started, shall on no account be cancelled by the officer in charge, nor is it permissible for a Magistrate/Judge or any other Police officer to do so. Recording of FIR means starting of an investigation of a criminal case which can only be concluded in any of the following ways:

- (i) By refusing investigation under Section 157 (1) (b) Cr.P.C. It can be closed as Further Action Dropped (FAD).
- (ii) By transferring it to a different police station on question of jurisdiction.
- (iii) By transferring the case to other specialized investigating agencies like Crime Branch or CBI etc.
- (iv) By submitting a final report which may be a charge sheet or a refer report as (i) False, (ii) Mistake of fact, (iii) Mistake of Law, (iv) Civil Nature, (v) Further Action Dropped (FAD).

3.2 Quashing of FIR

FIR may be quashed by the High Court invoking Section 482 CrPC (inherent powers) or by invoking Writ Jurisdiction under article 226 of Constitution. Supreme Court has also power to quash the FIR under Article 32 of Indian Constitution.

3.3 Transfer of FIR

3.3.1 When an offence is committed in an area close to the boundary of a Police Station and it is doubtful in whose area of jurisdiction the crime occurred, the Police Station to which it is first reported shall register the case and take up investigation at the first instance.

3.3.2 It may be transferred later, if required, when the actual area of jurisdiction is

determined. In CCTNS there is option to transfer FIR.

- 3.3.3** But before transferring a case from one Police Station to another, a definite conclusion regarding jurisdiction must be arrived at first.
- 3.3.4** When an Officer-in-Charge of Police Station who registers a case has concurrent jurisdiction with Officer-in-Charge of another Police Station to investigate a case, the case should not be transferred without orders of the District Police Chief/Superintendent of Police.
- 3.3.5** When an offence committed on the Railway line within Railway Police jurisdiction is reported to a local Police Station, the latter shall forthwith inform the Railway Police Station concerned; this should be followed up by a First Information Report.

3.4 FIR for offence committed beyond local jurisdiction of Police Station.

- 3.4.1** Police Officer cannot refuse to record the FIR on the ground that he/she has no territorial jurisdiction over place of offence.
- 3.4.2** If at the time of registration of FIR, it becomes apparent that the crime was committed outside the jurisdiction of the police station, police should register FIR and must ensure that the FIR is transferred to the Police Station concerned within 24 hours.
- 3.4.3** If the place of occurrence is near and is easily accessible from the Station House, the Station House Officer will at once proceed to the spot, take up investigation and continue it till relieved by the police having jurisdiction. Simultaneously, action will be taken to send immediate intimation to the police having jurisdiction over the place. When the investigation is taken over by the latter, the First Information Report should be transferred.
- 3.4.4** It should be clearly understood that the delay over the determination of the jurisdiction leads to avoidable wastage of time which impacts on the victim and also leads to offenders getting an opportunity to slip from the clutches of the law.

3.5 Criteria for registering First Information Report.

- 3.5.1** The condition, which is essential for recording FIR is that there must be any information related to the commission of a cognizable offence. If the information discloses more offences than one, at least one of the offences must be cognizable for registering a case directly by Officer-in-Charge of Police Station.
- 3.5.2** There is no hard and fast rule that the informant must be the aggrieved person or victim.
- 3.5.3** The informant/victim/aggrieved party has no right to withdraw the case once FIR is registered.

3.6 Second FIR & Investigation.

- 3.6.1** There is no prohibition in law to file a second FIR in relation to the same incident, if it was not filed by the same person, who had filed the first FIR, as a counter-case, based on the allegations different from the allegations made in the first FIR.²²
- 3.6.2** In case the accused in the first FIR comes forward with a different version or counter case in respect of the same incident, investigation on both the FIRs has to be conducted.
- 3.6.3** If there are more incidents than one as a part of same transaction, no need to register more FIR than one.

3.7 Effect of omission of signatures of the first informant.

- 3.7.1** Section 154 Cr.P.C requires FIR to be recorded in the very language of the informant (as far as possible) to be read over and explained to him/her and to be signed by the informant.
- 3.7.2** The idea behind reading over the information reduced to writing and obtaining signature of the informant thereon is to ensure that what has been

²² *P. Sreekumar v. State of Kerala & Ors.* (2018) 4 SCC 579.

reduced to writing is a true and faithful version of the information given to the officer-in-charge of the Police Station.

- 3.7.3** The absence of signatures on the first information report by the informant, however, is not necessary to the extent that it will vitiate and nullify such report. The first information report is still admissible in evidence.
- 3.7.4** When a dying declaration is recorded by a police officer in the nature of a FIR, but it was not attested by the doctor to the effect whether the injured was conscious or not, and the signature or thumb impression of the deceased was also not taken; the dying declaration in the FIR would to be highly doubtful.²³
- 3.7.5** If an information 'relates to the commission of a cognizable offence' it is first information admissible in evidence as such, although the police officer may have neglected to record it in accordance with law.²⁴
- 3.7.6** The information which starts the investigation is the real first information under Section 154 Cr.P.C. and should be treated in evidence as such. It does not depend on the sweet will of the police officer, who may or may not have recorded it.
- 3.7.7** The entry in the General Diary is to be the substance of the information of the cognizable offence which is given in writing or reduced to writing and signed by the person giving it. Where, therefore, the Police Officer has failed to reduce the information to writing and get the signature of the informant, he/she has no business to enter it in the General Diary. If he/she has so entered in the diary, it is not in accordance with the provisions of Section 154 Cr.P.C and such an entry cannot be introduced in evidence against the accused and cannot be relied upon by the court.²⁵

²³*Maniram v. State of M.P.* AIR 1994 SC 840.

²⁴*Mani Mohon Ghose v. Emperor* AIR 1931 Cal 748.

²⁵*Anu Meah v. Tripura Adm.* AIR 1961 Tripura 4.

3.8 Officer-in-charge of a Police Station

- 3.8.1** Officer in charge of a police station includes, when the officer in charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of a Civil Police Officer or, when, the State Government so directs, any other police officer so present²⁶.
- 3.8.2** A Police officer of such rank as may be fixed by the Government and designated as the Station House Officer shall supervise the functions of each police station and that officer shall be the officer in charge of the Police Station.²⁷

3.9 Person Competent to record FIR²⁸

- 3.9.1** The FIR shall be recorded by the Officer-in-charge of police station. Test qualified Civil Police Officers are also eligible²⁹.
- 3.9.2** The Officer in charge of a Police Station even if he/she is outside of Police Station building he/she can record “First Information” and can forward the same for registering an FIR at the Police Station and he/she can commence and continue the investigation.
- 3.9.3** After registering FIR, if the offence is of serious nature and the Police Department/Government/any law has prescribed the “rank” of Investigating Officer to investigate the case, it shall be investigated by the Officer designated.
- 3.9.4** If the offence is not of serious nature and name of accused not mentioned in the FIR, no need to cause immediate action (sec 157 CrPC).

²⁶ Section 2(o) Cr.P.C.

²⁷ Section 5(3) Kerala Police Act.

²⁸ PHQ Circular No. 133/68 dated 14/08/1968.

²⁹ G.O. (Ms) No. 1010/2016/Home, Dated: 19.03.2016

- 3.9.5** If the place of occurrence of the crime is mentioned in another Police Station limit, the case shall be transferred to that Police Station within 24 hours.
- 3.9.6** If there is no sufficient ground to enter into the investigation he/she shall not investigate the case; however he will make note in the GD with detailed reasoning.
- 3.9.7** If the Officer in Charge of Police Station who registered the case is not SHO, he/she shall forthwith inform the matter to the SHO to exercise the discretionary powers.

3.10 Delay in transmission of FIR to the Court

- 3.10.1** Once FIR is registered it shall be forwarded without delay to the Magistrate having jurisdiction.³⁰
- 3.10.2** Delay in transmission of FIR to the court without any explanation for delay will support defence contention that FIR was the result of an afterthought.³¹
- 3.10.3** Mere delay in dispatch of FIR to magistrate is not always fatal to prosecution.

3.11 Cross-complaint & Counter information.

- 3.11.1** There cannot be two FIRs against the same accused in respect of the same case, but when there are rival versions in respect of same episode, it would normally take the shape of two different FIRs and investigation can be carried by same Investigating Officer and it should be tried by same court.
- 3.11.2** When two persons prefer complaint against each other, depending upon the nature of the complaint, the Officer in charge of the Police Station is bound to register both the cases.
- 3.11.3** After due investigation, the Police Officer has to differentiate between the aggrieved and aggressor and charge-sheet against the aggressor.

³⁰Section 157 Cr.P.C.

³¹*Madru Singh v. State of M.P.* AIR 1997 SC 3527.

3.11.4 If the applicant wants to add something by way of giving additional facts of incident and feels that something is lacking in the previous FIR, he/she can always say so in his statement before Police during the course of investigation, but it will not entitle him/her to register a second FIR regarding the same incident implicating the same accused.³²

3.12 Refusal to Sign FIR

3.12.1 The FIR must be signed by the informant.

3.12.2 After recording the information as stated by the informant, if the informant refuses to sign the report of the FIR made by him/her to the Police Officer, he/she may be prosecuted for the offence under Section 180 I.P.C.³³.

3.13 Remedy on refusal to register an FIR.

3.13.1 It is mandatory for an officer-in-charge of the police station to record the FIR if someone approaches him/her for giving information about a cognizable offence.³⁴

3.13.2 If the officer refuses to record the FIR, the informant may send the substance of such information to the District Police Chief who may take necessary actions in this regard and may even ask the officer-in-charge to start the investigation upon such information.³⁵

3.14 Lodging of False Report

3.14.1 The police officer is responsible for inserting anything false in the FIR and is liable to be punished for forgery.

3.14.2 People may lodge false report: (i) for taking vengeance; (ii) for getting insurance money, illegally by cooked-up stories of death or fire; (iii) for

³² *Rajeev Kumar Singh v. State of U.P.* 2005 CriLJ 248.

³³ Section 180 I.P.C.

³⁴ Section 154(1) Cr.P.C.

³⁵ Section 154(3) Cr.P.C.

grabbing other's ornaments by narrating false stories of theft; and (iv) for misleading the police.

- 3.14.3** It is the duty of the police officers in such cases to make an enquiry into the matter after recording details in the GD so that innocent persons are not charged on false information.
- 3.14.4** The story of the informant must be scrutinized carefully and evidence must be collected to establish that the case is false.
- 3.14.5** If a person gives deliberate false information in regard to a cognizable offence, the informant is liable for prosecution.³⁶

3.15 Gist of FIR recorded in General Diary

- 3.15.1** As soon as the report has been entered in the FIR Book, the substance of the report must be briefly recorded³⁷ in the Police Station General Diary³⁸ in prescribed format³⁹.
- 3.15.2** If the Officer in charge of the Police Station receives a telegram or telephone message or rumour while he/she is in the Police Station, he/she shall make an entry in the Station General Diary regarding the gist of the information received which he/she is proceeding to verify.

3.16 Recording of offences against Women

- 3.16.1** If the information relating to an offence is given by the woman against whom an offence under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376AB, section 376B, section 376C, 376D, 376DA, 376DB, section 376E or section 509 of the Indian Penal Code is alleged to have

³⁶ Section 177 or 182 or 211 I.P.C & 117 (d) of KP Act

³⁷ PHQ Circular No. 133/68 dated 14/08/1968.

³⁸ Section 12 Kerala Police Act.

³⁹ KPF No. 57.

been committed or attempted, then such information shall be recorded, by a woman police officer⁴⁰ or any woman officer⁴¹.

3.16.2 In the event that the person against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376AB, section 376C, section 376D, section 376DA, section 376DB, section 376E or section 509 of the Indian Penal Code is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be.

3.16.3 In POCSO Act cases the statement of child should be recorded as far as practicable by a Woman Police Officer not below the rank of Sub Inspector at the residence of the child or at a place he/she usually resides or at the place of his/her choice⁴².

3.16.4 The Police Office while recording the statement of the child shall not be in uniform.

3.16.5 The recording of such information shall be video graphed;

3.16.6 The police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5A) of section 164 as soon as possible.

⁴⁰ Test qualified of and above the rank of WCPO

⁴¹ Any Women Officer working as Govt. Servant

⁴² Chapter VI of POCSO Act.

CHAPTER 4

PRELIMINARY ENQUIRY⁴³

4.1 PEs should be registered in appropriate circumstances in the Crime Branch and also in the Local Police.

4.2 In Police, in view of the directions of the Hon'ble Supreme Court of India, we need to conduct Preliminary Enquiries (PEs) in certain circumstances.

4.3 Conducting of PEs should not be misused. Decision to conduct PEs should be in the interest of the department and in the interest of the complainant also.

4.4 The Hon'ble Supreme Court has laid down clearly, the time limit, for completing the PEs⁴⁴. That has to be adhered to. It should be completed within 15 days, generally, and in exception cases, by giving adequate reasons 6 weeks time can be taken.⁴⁵

4.5 In all the circumstances, the roles of the supervisory officers are very crucial. It is intended that the supervisory officers of the level of DySP, SP, DIG and above must understand clearly various issues and directions contained in this Circular and explain them to the officers in the field, properly.

4.6 A Constitution Bench of the Supreme Court in *Lalita Kumari v. Govt. of U.P.*⁴⁶ held that registration of First Information Report is mandatory under Section 154 of the Cr.P.C, if the information discloses commission of a cognizable offence and no preliminary enquiry is permissible in such a situation.

4.7 If the information received does not disclose a cognizable offence but indicates the necessity for an enquiry, a preliminary enquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

4.8 The Supreme Court issued the following Guidelines regarding the registration of FIR.

- (i) Registration of FIR is mandatory under Section 154 of the Code, if the

⁴³ PHQ Circular No. 29/2017 dated 09/11/2017

⁴⁴ *Lalita Kumari v. Govt. of U.P.* [W.P. (Crl) No. 68/2008] ;(2008) 7 SCC 164.

⁴⁵ PHQ Circular No. 5/2018, Para 06

⁴⁶ (2008) 7 SCC 164.

information discloses commission of a cognizable offence and no preliminary enquiry is permissible in such a situation.

- (ii) If the information received does not disclose a cognizable offence but indicates the necessity for an enquiry, a preliminary enquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.
- (iii) If the enquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary enquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than 15 days and in exceptional cases 42 days. It must disclose reasons in brief for closing the complaint and not proceeding further.
- (iv) The police officer cannot avoid his duty of registering offence, if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.
- (v) The scope of preliminary enquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.
- (vi) As to what type and in which cases preliminary enquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary enquiry may be made are as under:
 - a) Matrimonial disputes/ family disputes
 - b) Commercial offences
 - c) Medical negligence cases
 - d) Corruption cases
 - e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary enquiry.

- (vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary enquiry should be made time-bound and in any case, it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.
- (viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, *“we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an enquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary enquiry must also be reflected, as mentioned above”*.(Supreme Court)

- 4.9** As far as Local police is concerned, a close supervision by supervisory officers is required, otherwise there is every chance of the PEs being misused and conducted without control causing a lot of legal, ethical & practical issues.
- 4.10** Decision to conduct PEs should be in the interest of the Justice.
- 4.11** In all the circumstances, the roles of the supervisory officers are very crucial. It is intended that the supervisory officers of the level of DySP, SP, DIG and above must understand clearly various issues and directions contained herein and explain them to the officers in the field, properly.
- 4.12** When information regarding an incident or a complaint or an allegation is received by the SHO, he should record the brief of that information without changing the material facts in the General Diary'
- 4.13** Therefore, if the information does not reveal a cognizable offence a PE is to be conducted.
- 4.14** Sometimes in the petitions or in the information received, there will be more than one allegation. There is no bar in registering more than one PEs on such petitions, allegations-wise. However, that shall be decided by the DIG Range or above in case of Local Police and ADGP Crime Branch in case of Crime Branch.

- 4.15** Once the SHO feels that a PE is required regarding a particular information / complaint / allegation received at the Station, he shall request for directions in writing from the DPC concerned. The letter to the DPC will be routed through DySP/ASP directly and not through the normal channel to avoid delay. The DPC shall forward the same to Range DIG on the same day itself and Range DIG shall convey his decision at the earliest to the SHO and DPC.
- 4.16** In case where it is decided to conduct a PE, the PE shall be conducted by the SHO concerned or SDPO in Local police and DySP/DI nominated by ADGP in Crime Branch.
- 4.17** PE Registration Report: As soon as it is instructed as above to register a PE, the Unit Head of Crime Branch / SHO will take action to get the PE Registration Report (to be prepared in a format shown as Annexure-I).⁴⁷
- 4.18** Registration Report of PE should be written in the PE Registration Report Form and not on the form prescribed for recording First Information Report under Section 154 Cr.P.C.
- 4.19** Besides the allegations in brief, the complete details of the suspects involved should be recorded in the PE Registration Report.
- 4.20** The copies of the PE Registration Reports should be sent to the DySP/ASP concerned in Local Police and to the SP/IGP concerned in Crime Branch.
- 4.21** After the registration of the PE, a GD entry should be made; a Plan of Action should be drawn up by the Enquiry officer in consultation with his Supervisory Officer. He should insist time limit for each of the action points contained in the Plan of Action.
- 4.22** After the completion of the PE, a Final Report is to be prepared in a format (Annexure-II) ⁴⁸ and submitted to the supervisory officer along with recommendations for further necessary action.
- 4.23** Collection of Documents/Recording of Statements in PE: The Preliminary Enquiries should be limited to the scrutiny of records and examination of bare minimum persons which may be necessary to judge whether there is any

⁴⁷ PHQ Circular No. 05/2018 dated 11/04/2018.

⁴⁸ PHQ Circular No. 05/2018 dated 11/04/2018.

substance in the allegations which are being enquired into and whether the case is worth pursuing further or not.

- 4.24** The required documents/records (copies only) should be collected under proper receipt memos.
- 4.25** The statements of witnesses during the Preliminary Enquiries should be recorded in the same manner as recorded during the investigation of Criminal Cases. However, issuance of notices under Section 91 Cr.P.C⁴⁹ and 160 Cr.P.C⁵⁰ shall not be resorted to during PE.
- 4.26** Register for PEs: A serial number shall be allotted to each PE.
- 4.27** This should be entered in a Register for PE maintained in each P.S and Crime Branch HQs. The same format of FIR Index register can be used for the PEs.
- 4.28** Procedure for Converting a PE into a Crime Case: The Preliminary Enquiries will result either in registration of Crime Cases or in recommending Departmental Action, or being closed for want of proof.
- 4.29** As soon as sufficient material disclosing the commission of a cognizable offence becomes available during the course of Preliminary Enquiry, the Enquiry Officer will draw up the PE Final Report as in Annexure II and a criminal case should be registered within 24 hours of such finalization.
- 4.30** Quick disposal of a PE is very important; converting a PE, to a Crime Case is crucial.
- 4.31** Procedure regarding PEs received from Other Police Stations for Part Enquiries: Whenever requests are received from another Police station to make part-enquiries in their PEs within the local limits of the PS concerned, these should be entered by the receiving PS in a separate Register for PE and given serial numbers for reference. The SHO receiving such request should get the part-enquiry done at the earliest and forward the report to the SHO/DPC concerned as early as possible.
- 4.32** In nutshell –
- (i) PEs shall be conducted by the Crime Branch forthwith. The

⁴⁹ Section 91 Cr.P.C: Summons to produce document or other thing.

⁵⁰ Section 160 Cr.P.C: Police Officer's power to require attendance of witnesses.

decision to conduct a PE shall rest on the ADGP Crime Branch. In the event, any Crime Branch Office receives a petition and the Unit Head feels that a PE has to be conducted the Unit Head (DySP/SP) shall transmit that quickly to the ADGP Crime Branch with the recommendation to conduct a PE and it is for the ADGP Crime Branch to decide whether a PE has to be conducted or not. Once he decides, he will issue the orders and the Unit Head will conduct the PE as per the directions contained in Circular 05/2018; PE in Crime Branch should be done by an Officer of and above the rank of Inspector of Police.

- (ii) Supervision of the PE shall be done in a hierarchical manner in the Crime Branch.
- (iii) After the PE is completed, a case can be registered only on the directions of the ADGP Crime Branch. Therefore, Unit Head has to send the result of the PE to the ADGP Crime Branch through the concerned SP and IGP.
- (iv) As far as Local Police is concerned, conducting of PE should be done prudently. There should not be a tendency not to register cases and go for PEs.
- (v) A PE should not be considered as a shortcut and substitute to a criminal case.
- (vi) The decision to conduct PE in Local police will rest on the DPC concerned who will order the registration of a PE after getting recommendation from the Police Station through the DPC (SHO to DPC straight) concerned. The DPC concerned may also recommend to IGP directly.
- (vii) The disposal of the PE will also be ordered by the DPC/Range DIG/Zonal IGP/ADGP(L&O)/SPC.

CHAPTER 5

POINTS TO BE REMEMBERED

- 5.1** The FIR Under Section 154 CrPC is not a substantive piece of Evidence. The absence of FIR, therefore by itself cannot destroy the prosecution case. [(J) Jagadish R Rao VS Government of Union Territory of Goa, Daman and Diu].
- 5.2** It was not necessary that First Information be given only by a person who has entire knowledge of the facts and it may be merely hearsay. [Shew Pru v King, A.I.R 1941 Rang, 209 at p. 211 : 1941 Rang, L. R. 34 : 43 Cr. L.J. 157].
- 5.3** **First Information Report on statement Under Section 162 Cr.PC** : It is well settled law that if the statement has been recorded by the police as contemplated by Sec.154 CrPC that statement cannot be said to be recorded in the course of the investigation of the case and therefore, would not be hit by the provisions of Sec. 162 CrPC as such a statement is not a statement recorded in the course of investigation. Such statements recorded in accordance with the provisions of Sec. 154 are popularly referred to as FIRs. MehrVajsi Deva VS State of Gujarat, A.I.R 1965.
- 5.4** If the first information lodged by the accused is an information of the sort that leads the police to enter into investigation and there is nothing in the statement itself which is hit by the provisions of Sec. 25, Evidence Act, as a confession made before a Police Officer.
- 5.5** A ‘Confession’ is nowhere defined in the Evidence Act; but it is a settled principle that confession must be of the crime in terms with which an accused has been charged. It would be noticed that it is only a confession made to a Police Officer which is not admissible in view of the provisions of Sec. 25; but there is no bar to the admissibility of an admission of any relevant fact made by an accused to a Police Officer prior to the commencement of any investigation.

- 5.6 FIR by accused**- Inculpatory statement to be excluded.- The First Information statement given by an accused at the Police Station, so long as it contains inculpatory statements, would stand excluded from evidence. [STATE OF KARNATAKA v YARAPPA REDDY, 2000 S.C.C (CR) 61 AT P.66: 2000 (1) EAST CR. C. 4 AT P.8 (S.C)].
- 5.7** A dying declaration made by a person since deceased even during the investigation is admissible in evidence under Sec. 162 (2) of the Code of Criminal Procedure. If the informant dies before the matter comes before the court, the FIR is admissible as dying declaration under Sec. 32 (i) of Evidence Act or as evidence of conduct under Sec. 8 of Evidence Act.
- 5.8** Where the name of some of the accused was omitted in the FIR but the omission in the FIR was a matter of little consequence since it was made good by the fact that the name of all the accused persons was mentioned in the dying declaration it was held that there was no rule of law which stipulates that an accused whose name is not mentioned in an FIR is entitled to an acquittal. [Dharshan Singh alias Bhasuri VS State of Punjab 1983 SCC 523].
- 5.9 Informant not produced**- If the prosecution wishes to rely on the statement in the report it must produce the informant unless the case comes within Sec. 32(1) of the Evidence Act. This FIR, unless the man who made it dies, is not admissible evidence of any fact which is contained in it: it merely proves that this was the original story which set the police on motion.
- 5.10** As the FIR can be used by the prosecution only for the purpose of corroborating the statement in Court of the person making the report it follows that if the informant himself/herself is speaking from hearsay, his report cannot be used to corroborate such admissible evidence.
- 5.11 Does Companies Act, 1956, bar a recourse to the laying of information before police with reference to cognizable offences committed in relation to**

affairs of the company?- No obligation is cast on the Central Government to follow the procedure starting with an investigation under Sec. 237 of the Companies Act and culminating in a prosecution under the provisions of Sec. 242 and there is no provision which would prevent the Central Government from laying the information before the police if a cognizable offence under the Indian Penal Code is disclosed on an inspection made under Sec. 209(4) or otherwise. One can see nothing in the provisions of the Companies Act which would, even by implication, bar a recourse to the laying of the information before the police for, the purpose of investigation and action under the Cr.P.C. when there are reasonable grounds for believing that cognizable offences under the Indian Penal Code has been committed in relation to the affairs of the company. It cannot be said that the Companies Act is exhaustive even in the matter of investigation into cognizable offences under the Indian Penal Code, committed in relation to the affairs of a company. In Fact, the Act does not touch the aspect at all. There is nothing in the Companies Act which limits the power of the police to investigate under the Criminal Procedure Code.

5.12 Initiation of proceedings under the National Security Act, 1980,- Proceedings under this Act are initiated by an order of detention made by the Central or State Government under Sec.3 of the said Act.(Power to make orders detaining certain persons)

5.13 Initiation of proceedings under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974,- Section 3 of the Act authorizes the Central Government or the State Government or any officer of the Central or the State Government, not below the prescribed rank, to make an order for detention of a person with a view to prevent him from indulging in activities relating to smuggling of goods or from acting in a manner prejudicial to conservation or augmentation of foreign exchange.

5.14 FIR against Judicial Officer- Before lodging an FIR against any judicial Officer, the permission of the Chief Justice of the High Court should be

obtained irrespective of the nature of the offence and irrespective of the fact that the alleged offence is in discharge of his official duty or purported discharge of his official duty. [U. P. Judicial Officers' Association VS Union of India 2003].

CHAPTER 6

FREQUENTLY ASKED QUESTIONS:

6.1 What is the difference between an FIR and a COMPLAINT?

The criminal law can be set into motion by two ways:

1. By filing a complaint before the Magistrate (under Section 190 Cr.PC), and
2. By giving information to the police (under Section 154 Cr.PC).

Thus Complaint and FIR sets the Criminal Law in motion. However, there are some differences between the two:

Complaint is before the Magistrate; FIR is before the Police. Information can be given to the police by any person, but in the case of certain offences, a complaint can be made only by certain persons (see Sec.195 to 199 Cr.PC).

FIR empowers the police to start investigation in case of any cognizable offence, but a Magistrate can take cognizance only on the complaint and not on FIR (Sec.190 Cr.PC).

Sec 2(d) CrPC defines “complaint”. In the definition it says that in the process of taking action on a complaint by Magistrate does not include “Police report” which is defined in Sec 2 (r)CrPC.

6.2 Where should an FIR be dispatched sent to?

- i. The original FIR is required to be sent forthwith to the Magistrate empowered to take cognizance of the offence. But in UAPA cases the original FIR should be sent to District Sessions Court. In POCSO Act cases original FIR should be forwarded to specially designated Sessions Court. In some districts there are Special Courts for NDPS Act and SC/ST (PoA) Act cases. In such districts the original FIRs of those cases may be sent to Special Courts as per the decision of the Special Courts.

- ii. A copy of the information or FIR or both should be delivered to the informant free of cost. Accused/ his/her Representative are also eligible for the copy of the FIR within two days of his/ her application.
- iii. After registering FIR in CCTNS platform, Officer in Charge of Police Station should select Publish or Un Publish option. On clicking “Yes” in Publish option, that FIR will get published and it will be available in the Kerala Police Website for viewing and downloading by the public. It should be carried out within 24 hrs of the registration of FIR. But the offence is sensitive in nature, like sexual offences, offences pertaining to insurgency, terrorism and that category; offences under POCSO Act etc. choose “Un Publish” option.
- iv. The copies of FIR should be sent to Sub Divisional Police Office and DCRB. One hard copy should be attached to CD file.
- v. In Grave Crimes, copies of the FIR are sent to the District Police Chief and DIG Range.
- vi. In motor accidents cases, copy of FIR should be sent to the Accident Claim Tribunal and Insurance Company. (PHQ Circular No: 4/99)

6.3 How can an FIR be made comprehensive?

The following eleven “W”s may be kept in mind while recording the FIR.

They are:-

- 1 What information a person want to give?
2. What is his capacity – eye witness/ victim/ hear say?
- 3 Who possibly committed the crime?
- 4 Who is the victim of crime?
5. When did it occur?
6. Where did it occur? (The spot)
7. Why? (Motive of crime)

8. Which way? How the incident happened? (Describe the incident. The role played by each accused– weapon used, etc.)
9. Who else was present then?
10. What was taken away by accused? (any articles/property)
11. What traces were left by accused? (Physical clues).

CHAPTER 7

DOs & DON'Ts WHILE TAKING FIR

7.1 DOs

1. Record the statement in the language of the victim, as far as possible.
2. The Police Officer who records the statement should be humble, polite and simple.
3. Use very polite language to senior citizens.
4. When somebody files a written complaint, if it has some omissions clarify the relevant details and then record information.
5. The informant may be in stress when he/she comes to Police Station. Change him to a relax mood.
6. Record the contact number of the informant, e-mail ID etc..
7. If the victim doesn't come to give FI Statement, explain the reason for his absence in the Statement of informant.
8. The Physical Features of the accused should be described, if his/her identity is not known.
9. The reason for delay in filing FIS should be well explained in the statement itself. It should be believable. It should be recorded in 8th column of FIR.
10. If the incident has happened after sunset, the source of light has to be explained.
11. If the informant is unable to sign on the FIS, take the impression of his right / left hand thumb.
12. The informant is unable to speak regional language, then seek the service of interpreter.
13. The officer in charge of Police Station should read over the statement given to the informant. If he/she is illiterate, read over 2 or 3 times.
14. The direction and distance of the place of occurrence from Police Station should be recorded in the last part of statement.

15. While taking the statement of the injured person, the position of injury has to be noted.
16. If the names of occurrence/ocular witnesses are known by the informant, it should be recorded in the FIS.
17. In the case of women victims, the statement has to be recorded preferably by Woman Police Officer.

7.1. 1174 CrPC CASES

1. Record the relation between the deceased and the informant.
2. How he learned the information.
3. The personal details of the deceased.
4. The details regarding the manner of death.
5. The location of the dead body.
6. The time of death or time gap between last seen alive and first found dead.
7. Whose company the deceased was prior to his death and whether he carried any valuables?
8. Whether the informant has any suspicion in the cause of death.
9. The opinion of the informant about the cause of death.
10. In the case of married woman, record the date/year of marriage.

7.1.2 THEFT CASES

1. Offences committed inside or outside of house.
2. Whether it happened day or night.
3. Point of entry and point of exit.
4. Modus operandi should be recorded.
5. Nature, value and identity of articles stolen.
6. Whether the articles stolen were kept in locked drawer or almirah.
7. Where was the key of the door or table or almirah kept?
8. Any sound was heard by the inmates?

9. Any foreign articles or implements of house breaking are present in the scene?
10. In the case of vehicles, the registration number, model, colour, availability of GPS in the vehicle, engine number, chassis number, hypothecation details and value of vehicles should be noted.

7.1.3 SEXUAL OFFENCES

1. The statement of a victim in sexual offences should be recorded by a Woman Police Officer.
2. Record the statement in the language of victim as far as possible.
3. In the case of children, the statement should be in question answer model.
4. Use simple and humble language towards rape victims.
5. Don't embarrass the victim.
6. If any NGO person comes along with victim, don't insult him/her.
7. Woman Police Officers should be designated as Victim Liaison Officers to assist, counsel and to give necessary mental and physical support to the victim.
8. The presence of parents may be assured on the occasion of recording the statement of children.
9. Record the period of sexual abuse- date and time, location of assault etc. have to be elicited from victim.
10. Describe the identification of accused, if he is unknown.
11. Try to elicit the nature and colour of the dress worn by the victim and the accused.
12. Describe injuries, physical and mental status and hygiene.
13. Record the date of birth of the victim, last menstrual period and also elicit the chance of pregnancy.
14. The offence is committed at various places, the identification of location, hotels, rooms and persons contacted should be recorded.

15. Describe the details of any property like gold ornaments, mobile phone, cash etc. delivered to accused by victim.
16. Record the details of the offer/ promise given by the accused to commit sex with her.
17. Record the details of drug or liquor abuse, if any.

7.2 DON'Ts

1. Nobody should be allowed to prompt statements to the informant, while he/she is giving FIS.
2. Don't distort or exaggerate the information rendered by the victim/ complainant.
3. Don't deny to record FIR with the excuse of Territorial Jurisdiction.
4. The officer who records information should never jump into conclusion.
5. If the injured came to Police station with injuries, don't try to record the statement at police station. Direct him to hospital immediately and record the statement of him at hospital.
6. Don't make the informant wait at police station for a long time to record FIR.
7. Don't insult or abuse or ridicule the informant.
8. Brief the informant about his rights and services rendered by police to him at police station.
9. Don't deprive the informant to use the public utilities in police station to meet his/ her primary needs.
10. Do not interpolate or input, overwrite anything after FIS has been written.
11. Do not interpolate anything after the FIR has been written.
12. Don't avoid the crucial facts in the FIS while filling 12th column of FIR. Don't include information in column 12, which was not stated in the First Information.

**REGISTRATION OF
FIRST INFORMATION REPORT
PART II**

CIRCULARS

SL No.	Circular No.	Date	Brief of the Circular
1.	05/2018	11/04/2018	Preliminary Enquiry (PE) - Registration report – conducting of reg:-
2.	29/2017	09/11/2017	Preliminary Enquiry – Registration report reg:-
3.	26/2016	10/11/2016	Uploading of First Information Report through CCTNS – directions of the Hon’ble Supreme Court in its judgement in Writ Petition (Crl) No. 68/2016 – complied with – instructions issued - reg:-
4.	25/2016	08/11/2016	Regarding registering of GD, FIR, Crime details, Arrest, Property Seizure, Final Form, Court Disposal, Result of Appeal and use of all modules through CCTNS platform.
5.	10/2013	23/04/2013	Criminal Law (Amendment) Act 2013 – Instruction issued.
6.	32/2010	05/07/2010	Cases registered under Cr.PC S.156(3) – Investigation – Instructions - reg:-
7.	35/1998	02/06/1998	Furnishing copy of FIR to the informants U/s 154(2) Cr.PC – further instructions issued - reg:-
8.	133/1968	14/08/1968	First Information to the police – Registration of – Instructions issued.

* If anything is contradictory between and inconsistent with the contents of the above Circulars, the PSO and the Part I, the directions in Part I shall prevail.

- Circulars are available in Kerala Police Website.

SCENE OF CRIME INVESTIGATION

PART I

SCENE OF CRIME INVESTIGATION

CHAPTER - 1

PRESERVATION, INSPECTION, EXAMINATION OF SCENE OF CRIME.

1.1 Preservation, Inspection, Examination of Scene of Crime.

- 1.1.1** Dissemination of information. Eg: If any vehicle is involved in a Crime case, messages should be given to Toll gates, Check posts, Control Room Vehicles etc.
- 1.1.2** Send a team well in advance to guard the Scene of Crime (SOC).
- 1.1.3** Cordon off by barricading the SOC, guard the SOC and preserve the SOC from tampering and contamination. If the SOC is in open place, protect it from rain and also from severe sunny condition.
- 1.1.4** Circulate the information to Superior Officers, dog squad, Scientific Officer of FSL, Finger Print Expert, Police Photographer, Cyber Expert, bomb detection and defuse expert, all the neighboring police stations, District Control Room, Crime Records Bureau etc., considering the nature of the case.
- 1.1.5** Peruse station crime records to identify the Modus Operandi and criminals in the list. If there is any suspicion on any of the listed persons, then check MOIS (Modus Operandi Information System) in Police website and his social media accounts.
- 1.1.6** The investigation team should proceed to the SOC with Investigation Kit and safety measures as the case may be.
- 1.1.7** After reaching the SOC, provide First Aid /medical attention to the injured.

1.1.8 Fix the correct place of occurrence.

1.1.9 As far as possible service of Department Photographer/Videographer should be used. If it is not available, use the service of private photographers (Rs.2000 DGP, DIG & IGP Rs.1000/- vide G.O (M.S) No 140/85 Home dated. 27-06-85). In police encounter death cases, Photography/Videography by private as well as Department photographer/videographer is mandatory.

1.2 Documentation of Scene of Crime:

Scene of Crime should be documented. There are three ways by which a Scene of Crime can be documented; by Photography/Videography of the Scene of Crime, or drawing the sketch map of the Scene of Crime or preparing descriptive Mahazar.

1.3 Points to be kept in mind while taking the photographs:

1.3.1 Photographs should be pointed to the evidences in the Scene of Crime.
Eg: Tyre marks, foot prints, perishable evidences etc.

1.3.2 Colour photographs should be taken. In UAPA cases, it is mandatory.

1.3.3 Long distance photographs should be taken to show the location. The service of drone can be utilized in certain cases.

1.3.4 Took intermediate distance shots to show relative positions of physical evidence.

1.3.5 Physical evidence should not be moved or touched unless it is properly recorded, sketched and photographed/video graphed from relevant angles by placing indicators/scale.

1.3.6 Close- up shots to show injuries, footprints, dagger, firearms etc.

- 1.3.7** Scales/measuring tapes may be used while taking photographs from short distances.
- 1.3.8** If the photograph/videograph is submitting as evidence, then certificate under section 65B of Evidence Act is mandatory.
- 1.3.9** The Statement of the Photographer should be recorded u/s 161Cr.P.C in grave crimes/important cases.

1.4 Drawing Sketch of SOC:

Drawing of sketch map of the SOC is an important part of investigation. The sketch map prepared by the IO is relevant under Section 7 & 9 of Evidence Act and as it is based on the actual observation of the IO at the spot. Scale should be recorded in the sketch. The direction also has to be indicated. The person/ Investigating Officer who prepares the sketch should sign on the sketch and two independent witnesses may be cited. As far as possible, service of revenue officials can be sought for the preparation of sketch.

1.5 Necessary steps while drawing a sketch of SOC:

- 1.5.1** Identify the SOC preferably in the presence of the complainant/occurrence witness.
- 1.5.2** Establish SOC boundary mentioning distances from the identifying fixed points/pillars/marks etc.
- 1.5.3** Draw sketch map on a good quality A3/A4 size paper.
- 1.5.4** If photography is done by digital camera, then the memory chip containing the clips should be collected by the IO along with the developed prints to prove its genuineness in the Court.

- 1.5.5** The priority of utilizing the service of experts is to be determined by the IO by considering the facts and circumstances of each case. There is no hard and fast rule to fix the priority of service of experts.
- 1.6** SOC should be Videographed by covering all the persons assembled in and around the SOC before, during and after using the service of the tracking dog. If a person is present before the arrival of tracking dog to the Scene of Crime, and if he is absent in the video during the service of the dog, he could be a suspect.
- 1.7** Statement of the Dog Handler should be recorded u/s 161 Cr.P.C. Report of handlers should be collected and submitted before the Court based on the evidence.
- 1.8** The tracking path should be recorded by preparing a mahazar.
- 1.9** Lifting of flat objects is only by holding at the edges.
- 1.10** Lifting of bottles, glass tumbler etc., by holding only at the rim of top and bottom. It has to be kept in mind that the rim may have salivary stains which can be used for DNA profiling.
- 1.11** The fingerprint evidence should be properly preserved and lifted. Those prints should be sent to Finger print Bureau via Court immediately after the scene examination.
- 1.12** Lifting of dagger, knife etc., by holding at its' tips.
- 1.13** Cutting edges of a weapon should be secured with jute or cotton.

CHAPTER - 2

TRACING OF EVIDENCE, METHODS OF COLLECTING VARIOUS EVIDENCES, SEIZURE, PACKING AND LABELLING OF MATERIAL OBJECTS IN VARIOUS CRIME SCENES

2.1 Firing Cases

2.1.1 Firearms and Ammunitions: Due Precaution have to be taken in handling a weapon found or suspected to be loaded:

- I.** The first and foremost duty of the officer who arrives at the scene is to ascertain the condition of the victim. If the death could not be ascertained, immediate medical aid is to be provided to the victim.
- II.** Before anything is touched or moved, scaled photographs of the scene from different angles should be taken. It is advisable to photograph the position of the firearm, cartridge cases, bullets etc. in relation to the dead body if the case is homicide/suicide/accidental discharge.
- III.** A firearm may or may not be recovered at the scene of crime. If it is present, its position with respect to the body should be noted. It should also be noted to ascertain whether the weapon was tightly held by the victim.
- IV.** There may be fibers from cloths, soil particles, hairs, fragments of glass, metal etc. on the body of the firearm. These materials can often have great evidentiary value.
- V.** An intense search for the empty fired cartridge cases should be made at the scene of crime. The examination will throw light on the type and make of the firearm used. The firearm, if recovered, can be submitted with the fired cartridge cases to the Ballistic Division of Forensic Science Laboratory for linkage.

- VI.** In case of muzzle loading firearms, a thorough search of percussion caps is necessary. The percussion caps are more important, as no cartridge case is used in such guns. Therefore, it can be established with the help of these caps.
- VII.** The position of the empty cartridge cases can also be of importance in some cases in determining the position of the shooter. Therefore, the location of empty cartridge cases should be recorded.
- VIII.** The crime scene should be thoroughly searched for bullet holes and ricochet marks. A bullet may be found lodged either in the body of the victim or in the surrounding obstacles, doors, walls, tree trunks etc. Ricochet marks, if any, should be noted and their position should be carefully recorded.
- IX.** The firearm discharge residues would escape through the space between the breech and stock and deposited on the hands of the shooter. These discharge residues can be completely washed out if the hands are washed out thoroughly. A proper hand wash should be collected from the suspected persons as well as the victim.
- X.** The scene of crime should be thoroughly searched for wads and propellant/powder residues.
- XI.** In a case involving shooting through glass, both sides of the glass pane should be photographed. The side of the window where the small pieces of glass have fallen should be recorded.
- XII.** Firearms: The muzzle and breech ends of the barrel of the firearm should be properly sealed. It is preferable that the muzzle end is capped instead of being plugged.
- XIII.** The barrel of the firearm should never be cleaned.
- XIV.** Firearms in loaded condition should not be sent to Forensic Science Laboratory. If loaded, it should first be unloaded and no effort should be

made to cock and fire it. In extreme cases where the firearm has to be sent in loaded condition, the safety catch of firearm should be kept in safe mode and the Police Personnel who carries the firearm should be informed about the loaded condition of the firearm and the parcel should be marked with red letters **“Handle with Extreme Caution- Firearm is in Loaded Condition”**.

- XV.** The firearm may be wrapped in waste or clean rags and finally sent in a wooden box or hardboard box.
- XVI.** Fired bullets: The bullet may be rolled in clean absorbent cotton and then packed in card-board box or some other rigid container. In case more than one bullet is involved in the case, each bullet should be rolled separately in clean absorbent cotton and then packed.
- XVII.** While recovering bullets lodged in furniture, walls etc care should be taken so that the rifling marks on the bullets are not disturbed.
- XVIII.** Pellets, slugs, wads etc.: They may be packed with cotton in clean card – board boxes which may then labelled. No writing should be done on the wads.
- XIX.** Live cartridges: The cartridges should be packed with cotton in wooden, card-board or any other rigid containers. The possibility of cartridges colliding with each other during transit should be avoided by packing them separately.
- XX.** Empty cartridge cases: The cartridge cases should be packed with cotton in any rigid containers. The possibility of cartridge cases colliding with each other during transit should be avoided by packing them separately.
- XXI.** Shot or powder pattern on clothing and skin clippings containing holes: The clothing should be packed so as to protect it against scratching, creasing, bending or cracking. If the garment is wet, it should be dried out in shade. Separate packing should be used for different garments.

XXII. The skin clipping containing the holes should be dried thoroughly and clipped tightly on a card- board sheet.

XXIII. Glass pieces, etc: Small fragments of glass should be embedded in plasticine. Larger pieces of glass may be protected by simple packing between layers of absorbent cotton.

2.1.2 Evidences from human body/body of animals in firing cases.

- I.** Whole body X-ray examination is mandatory. X-ray film should be produced before Court. Track of the bullet and position/fragment of bullets or bones ruptured can be determined by taking X-ray.
- II.** Service of ballistic expert should be used to collect the gunshot residues at the entry point and wearing apparel. Dress should be removed after the examination of ballistic expert. It should be sent to FSL.
- III.** Instruct Forensic Surgeon to use vernier calipers to determine the measurement of the bullet.
- IV.** If the bullet is recovered from the body, DNA examination should be done on the biological materials stick on the body.
- V.** In Police encounter cases the dress worn by the victim should be removed by the doctor who conducted Postmortem examination.
- VI.** Hand wash of the victim by using 5% solution of HNO₃ to collect Gun Shot Residues.
- VII.** Multiple exit wounds may occur with a single bullet. IO should clarify the reason for multiple exit wounds in such cases with Forensic Surgeon.
- VIII.** If the bullet injury is happened in a suicide case, there is possibility of GSR on the hand. It should also be explored.
- IX.** A joint scene examination of IO, Forensic Surgeon, Ballistic Expert,

Explosive Expert and Biological Experts should be arranged to evaluate the position of deceased as well as firearm.

X. Biological materials: Should be collected carefully to avoid cross contamination.

- i. Avoid packing biological materials in bottles or plastic containers as it may lead to fungal growth due to retention of moisture.
- ii. Always dry the biological material collected from the SOC in room temperature in order to avoid fungal growth
- iii. Never dry it in the sunlight or by any other means as this destroys the blood cells sooner.
- iv. Use sterile paper as the sample may be requiring DNA typing in the course of examination.
- v. Never preserve the sample in formalin.
- vi. No preservation is required when the sample is collected in cotton gauze and air dried.
- vii. Each article should be packed separately and sample to sample contact should be avoided.
- viii. Whenever there is the possibility of stains to be a mixed one due to injuries sustained for more than one person, the fact should be clearly stated in the forwarding note.
- ix. Control sample should be provided along with material collection.

XI. Liquid Blood: Soak a sterile/autoclaved cotton gauze with the liquid blood, dry well in room temperature, pack in a clean sterile paper/envelope.

XII. Blood Stain:

- i.** When fresh wet stains are detected on cloth items, dry the item very well at room temperature before packing. Pack the item in clean sterile paper.
- ii.** When wet stain of blood is present in large quantities, soak a piece of cotton gauze with blood, dry well in room temperature and pack in clean sterile paper.
- iii.** The small and blood stained articles can be collected as such after drying up the stains in room temperature and packed in sterile paper.
- iv.** When dried blood stains are found on a cloth item, collect the item as such and pack in paper and send the entire fabric for examination. Cover the stained portions with clean paper and stitch/clamp/clip it on both sides of the stain. Do not fold the cloth across the stain. If there are several stains, each stain should be serially numbered.
- v.** Bloodstained blade of a dagger should be dried and should be wrapped with clean piece of paper or cloth and then finally packed in a suitable paper envelope or cardboard box.
- vi.** When dried bloodstains are seen on large articles like table, cot etc. those are not portable, transfer the stains on to sterile cotton gauze, air dry and pack in clean sterile paper.
- vii.** Blood stains found on articles like blade of a dagger can also be collected by carefully scraping out the stain by a clean sterile razor blade or scalpel and pack in clean sterile paper. Separate scalpel/razor blade should be used for each sample to prevent sample to sample contamination.
- viii.** If blood stains are noticed on the nails of the victim or assailant, the nails should be cut without losing the stains and other attached tissues and without causing injury to the person whom the nail clippings are collected. Nail clippings should be collected by Medical practitioner only.

ix. Blood stained soil should be sent after dry on shade.

x. Clean cotton gauze soaked in distilled water should be used to collect dried smear of blood present on the floor or wall or any such object.

XIII. Seminal Stains: Seminal stains on the garments should be dried at room temperature and packed in clean sterile paper.

i. If stain suspected to be that of semen is detected on a hard object like floor, cot etc, it should be transferred on to a piece of clean cotton gauze and dried at room temperature and packed in paper.

ii. Vaginal smear and swab collected from the victim during the course of examination of victim should be brought to the laboratory without delay. So the chance of fungal growth can be avoided. This should be collected by Medical Officer and use sterile bottle.

iii. Avoid folding or crushing of the stained area in the process of packing.

iv. In sexual offence like oral sex, the presence of spermatozoa in oral cavity has to be determined. Insert sterile gauze inside the mouth and then collect the swab. Before this process, don't wash the mouth.

XIV. Saliva: Any item like garments that is suspected to contain saliva should be dried at room temperature and packed in paper.

i. Control sample of saliva for determining the status of secretion may be collected by soaking sterile cotton gauze. The cotton gauze has to be dried at room temperature and packed in paper.

ii. Control sample of saliva should be collected in a clean sterile phial and forwarded to the laboratory preserved in ice.

iii. The victim/accused should be asked to wash their mouth at least half an hour before collection of saliva .They should be given sterile gauze cloth

to put them in mouth and then the saliva stained gauze clothes are to be dried at room temperature and packed.

- iv.** When collecting salivary stains from crime scene using cotton gauze, put a circle with a ball pen in the gauze and soak the inner side of the circle in the stain. This will help to identify the sample area during the time of examination.

XV. Hair: The crime scene, as well as the body of the victim and assailant must be thoroughly searched for detecting hairs. Paper, hair, fiber, or any small solid object should be lifted with forceps. Vacuum cleaner can be used to collect hairs from the Scene of Crime.

- i.** The hairs can be packed in paper or polythene covers.
- ii.** Sample of hairs from the suspect as well as the victim has to be forwarded along with the hairs collected from the scene of crime. A minimum number of twenty-five hairs each must be collected (preferably by plucking) from the scalp, chest and pubic regions and packed separately in paper or polythene cover. Hairs from axils, legs and hands can also be collected as and when situation needs.
- iii.** No kind of preservation is required for hairs.
- iv.** The hair samples should be collected only by a Medical Practitioner.

XVI. Tissue: Fragments of tissue obtained from scene of crime or other source should be dried at room temperature without using any preservative and packed in paper. The tissue need not be preserved but should be dried well.

XVII. Fibers: The fibers obtained from the scene of crime or other sources can be packed in paper and forwarded along with the control cloth with which it has to be compared. Vacuum cleaner can be used to collect hairs or fibers.

- i. In cases of death due to hanging, the fibers on the palms of the deceased can be collected by using cellophane tapes as below.
 - a) Press the cellophane tapes against the interior portion of the palms for lifting of fibers.
 - b) Fold the cellophane tapes with its adhesive portion faced to the interior so that the fibers and particles trapped in the adhesive side of the cellophane tapes can be preserved indefinitely.
 - c) Sufficient number of cellophane pressings should be collected to transfer all the fibers from the whole area of the palms.
 - d) Cellophane tape pressings should be collected from both the palms, both soles, the suspension point where the body was said to be hanged, from the stepping device and from the body on which the ligature was made.
- ii. The original ligature material has also to be forwarded to the Forensic Science Laboratory as such for comparison with the fibers lifted from the palms of the deceased.
- iii. In rape-cum-murder, smothering, strangulation, gagging etc, cellophane prints of front of neck, back of neck, cheek, lips, front of nose, jaw, palms, foot etc. should be taken.

XVIII. Bite marks: Bite mark is important evidence in sexual offenses. It is usually not recorded due to the delay in reporting of the case or due to the delicacies of the victim to show the areas of the body with bite marks. In sexual assault cases the chance of having bite marks cannot be ruled out. The bite marks should be photographed by Govt. Dental Odontologist with scale to make it life size enlargement for comparison. Photographing at periods of regular intervals preferably at two hours intervals will help in getting the most clear

bite marks. These photographs along with a positive dental cast of the offender are to be forwarded to the laboratory for comparison. Positive dental cast should be made by an Odontologist.

2.2 Crime scenes of various types of cases

2.2.1 Hit and run cases: Possible evidences are:

- i.** Finger prints / palm prints of the victim on the vehicle.
- ii.** Hairs / fibers - torn cloth pieces of the victim on the vehicle.
- iii.** Blood stains / skin pieces of the victim on the vehicle.
- iv.** Any other stain / mark picked up from the accident scene on the vehicle.
- v.** Paint chips/ flakes of the vehicle at the accident site.
- vi.** Wind screen , head light, rear light broken glass pieces of the vehicle at the accident site
- vii.** The mud guard soil/ vehicle underneath soil / mud of the vehicle at the accident site.
- viii.** The lubricating oil/ grease marks of the vehicle at the accident spot.
- ix.** Tyre tread marks/skid marks of the vehicle at the accident site-Length and other measurements.
- x.** Cigarette butts/ beedi ends/ empty plastic water bottles / any other belongings of the vehicle inmates that accidentally fell at the accident site.
- xi.** Broken parts of the vehicle.
- xii.** Drag marks of the loaded material like the iron rods, logs of wood etc at the accident site.
- xiii.** The vehicle may leave characteristic smell of the loaded material at the accident spot.
- xiv.** The vehicle could leave its tyre tread marks on the run over victims clothing found at the accident site.

- xv. The run over victim's blood could be spilled on the tyre/wheel/mud guard of the vehicle.
- xvi. Tyre impressions- Condition, Size of the movement.
- xvii. In Hit and Run cases the SOC is unique in each case. Separate SOP is prepared for the investigation of Hit and Run cases.

2.2.2 Sexual Offences:

- i. The wearing apparels of the victim may carry seminal stains, fibers /foreign material of the dress of the assailant and hairs of the assailant.
- ii. The wearing apparels of the assailant may contain the blood, hairs/fibers/foreign material and the vaginal secretory material of the victim.
- iii. The genital tract of the victim may contain seminal discharge of the assailant.
- iv. The scene of occurrence of sexual offences may contain blood stain, seminal stain, hairs etc. which may help in identifying the assailant as well as proving of the crime.
- v. The presence of loose pubic hairs at the private parts of the victim and accused is also important in cases of rape. Comb the private parts, head etc. and collect loose hairs.
- vi. Bite marks on the body of the victim as well as of the assailant.
- vii. The scene of crime of sexual offences should be examined for the presence of marks of struggle, portions of torn articles of cloth of victim or assailant, fragments of textile fibers, torn off buttons, hairpins, blood, semen, saliva etc.
- viii. In cases of Sodomy, in addition to the samples obtained in cases involving rape, fecal matter on the cloth and on the penis of the assailant may also be available.

- ix. The wearing apparels of the victim and of assailant should be collected without any delay as washing may lead to the loss of the stains.
- x. The spermatozoa may be present in the female tract only for a few days and hence the vaginal smear and vaginal swab should be collected within a period of 72 hours preferably from the time of incident. Beyond 72 hours, the rate of success of detecting spermatozoa decreases to a great extent.
- xi. The examination for loose pubic hairs is also to be conducted immediately after the crime. In cases reported after delay, examination for pubic hairs is of no value.
- xii. In Rape -Cum- Murder cases cellophane prints of cheek, lips, nose, front of neck, back of neck, palms and bottom of feet should be taken.

2.2.3 Murder:

- I. Collect blood stains on the scene of occurrence, Body of the victim, weapon, other articles etc
- II. Seminal discharge may be present on the body of victim or scene of crime in rape-cum-murder cases. There may be presence of hairs in the fist, various body parts and wearing apparels of the victim.
- III. Fibers, torn fragments of cloth from the scene of crime.
- IV. Dead body has to be thoroughly examined by using magnifying glass and torch to trace any foreign material on the body.
- V. Putrefied remnants like Skull, Mandible, teeth, skeletal remains etc. may be examined and preserved for examination considering the nature of the case.

In Murder cases the SOC is unique in each case. Separate SOP is prepared for the investigation of Murder cases.

2.2.4 Death due to hanging:

The following evidences should be traced and collected.

- i. Saliva stains may be present on the garments of the deceased due to salivary dribbling.
- ii. Fibers can be transferred on to the palms of the deceased due to the handling of ligature for making the knot.
- iii. Fibers may be present on the ligature mark on the neck.
- iv. Plant tissues and other particles may be attached on the soles of the deceased while climbing for making knots on suspension point.
- v. Fibers of the ligature may be present on the suspension point.
- vi. Injuries occurred on the body of the deceased.
- vii. Blood stains, stool, urine, vomit etc. if any available in the vicinity of the place of hanging.
- viii. In hanging cases, the ligature should be photographed “in situ”, unless already disturbed.
- ix. Measurements of the height of the point of suspension and foot-rest if any, length of the ligature and circumference of the noose should be taken along with the description of the knot.
- x. The noose should be cut without disturbing the knot, so the possibility or otherwise of self application can be assessed.
- xi. The strength of the ligature, whether adequate to hold the weight of the body should also be considered.
- xii. It is preferable to send the ligature along with the body to the medico-legal expert to compare it with the ligature mark at the time of autopsy.

2.2.5 Death due to drowning:

- i. Presence of diatoms in the body of the deceased especially in the bone marrow.

- ii. Collect water sample (two liters of water should be collected) from the water source where the body of the deceased is seen.
- iii. In suspicious death cases, if the dead body is found in a pond / well, depth of the water should be noted in the mahazar.
- iv. Presence of fibers or hairs found on the fist or body parts of the deceased.

2.2.6 Death due to Burning

I. Chemical burns.

Chemical burns are burns caused by the application of corrosive i.e. substances like concentrated acids like sulphuric acid, hydrochloric acid, nitric acid, or corrosive alkalise like caustic soda, phenol, phosphorous, bromine, potassium permanganate and hydrogen peroxide.. They produce burns of the tissues exposed to them.

The nature of corrosive may be identified from the colour marks on the skin. It is yellow in nitric acid, white in hydrochloric acid and phenol, black in sulphuric acid. The offending material can be identified through chemical examination not the affected tissue.

II. Burns by explosives.

Burns caused by explosions in coal mines or by gun powder in quarries are usually extensive and cause blackening and tattooing of the part Kerosene and petroleum burns. Kerosene burns are commonest variety amidst the burns responsible for death. Burns can be easily recognized from its characteristic smell and sooty blackening of the parts.

III. Burns caused by highly heated solid or molten metal.

When momentarily applied it will produce blisters and reddening corresponding to the size and shape of the material used. In prolonged application, there are roasting and charring.

IV. Scald

The wounds caused by steam, hot or boiling liquid are called scalds. It will never cause singeing of hair or burning marks on the garments. In this case place of occurrence may remain without any dependable mark.

V. Points for determination of burns.

- i.** Extensive redness and vesication of skin
- ii.** Charring of tissues
- iii.** Singeing of hair
- iv.** Burning of the clothing
- v.** Discolouration of metallic belongings ornaments of the body.
- vi.** Cracking of tissues.
- vii.** Pugilistic attitude of the dead body.
- viii.** Smell of burn tissues. Presence of ashes, kerosene, spirit, match sticks and box, burnt sticks etc .

VI. Post mortem burns.

The assailants sometime burn the dead body of the victim to prevent the identification of the victim, to prevent detection of the crime, to misguide the investigation, to destroy evidence etc. under the presence of suicidal or accidental burns. Such burns are called post mortem burns.

(I). In post mortem burn case generally-

- i.** Blisters will not be surrounded with red lines
- ii.** Bed of the blisters will not be red and congested.
- iii.** Vesicles contain air, not albuminous fluid and chlorides.
- iv.** There will be no sign of inflammation, repair or healing.

(II). Points for investigation of a case of suspected post mortem burning.

- i. To determine the identity of the victim.
- ii. To note the exact position of the victim, condition of the body with marks of wounds.
- iii. Note the exact colour and condition of the wound.
- iv. Note position and condition of garments, metallic substance, ornaments.
- v. Find out exact cause of death.
- vi. Note the exact location and condition of the place of occurrence, ashes, and other exhibits.

VII. Theft:

- i. Hair, Fiber, Blood, Tool marks, Cigarette buds, beedi stubs etc. may be present in the SOC.
- ii. Implements used for house breaking have to be examined by Fingerprint expert and collected for examining tool mark.

CHAPTER – 3

SAMPLE COLLECTION FOR DNA PROFILING

3.1 Procedure for Sample Collection for DNA Profiling

- 3.1.1** Never pack the blood stained gauze in bottles or similar containers because packing in bottles may cause fungal growth due to persistent moisture.
- 3.1.2** Never preserve the sample in formalin.
- 3.1.3** Use only EDTA for preserving blood
- 3.1.4** Wear gloves and masks when samples are collected
- 3.1.5** Do not touch sample with bare hands
- 3.1.6** Avoid contamination between samples
- 3.1.7** Collect each sample by separate instrument to avoid inter sample contamination
- 3.1.8** Never pack wet samples
- 3.1.9** Avoid bottles and containers as far as possible when packing stains. Always prefer clean paper.
- 3.1.10** Never pack more than one item in one packet
- 3.1.11** Forward samples to the Forensic laboratory at the earliest.
- 3.1.12** Contact Laboratory for any advise/information at right time
- 3.1.13** Immediate drying is the best preservation for swab, smears and stains.

3.2 Samples for Paternity/Maternity cases

- 3.2.1** Blood: Blood samples can be collected from the concerned by a licensed medical practitioner. Volume of 2 ml blood each from the child, biological mother and the alleged father, should be collected in sterile / autoclaved bottle and preserved in EDTA or Blood soaked in sterile/autoclaved cotton gauze and dried well in room temperature. Pack in clean sterile paper/envelope.
- 3.2.2** Avoid packing of unpreserved blood, since the sample blood in unpreserved condition should be kept frozen until it reaches to the laboratory.
- 3.2.3** Buccal Swab: Buccal Swab samples can also be collected from the concerned by a licensed medical practitioner.
- 3.2.4** A sterile and autoclaved cotton swab can be used for this purpose. Sterile cotton swabs should be wiped on the interior of the cheek of the child, biological mother and alleged father without contamination between samples.
- 3.2.5** The buccal swab should be dried well in room temperature and packed in sterile paper.
- 3.2.6** A portion of each buccal swab can be transferred as a smear by gently wiping on to a sterile micro slide and dried well in room temperature. It should be packed in a sterile paper.
- 3.2.7** Avoid packing in bottles or plastic containers as it may lead to fungal contamination

3.3 Samples for crime cases

- 3.3.1 Blood:** Whenever blood is available in a dead body either fresh or in slightly disintegrated condition, it should be collected in a piece of sterile/autoclaved cotton gauze, dried in room temperature and pack in clean sterile paper or envelope.
- 3.3.2 Blood sample for comparison:** Blood samples for comparison can be collected from the concerned by a licensed medical practitioner. 2 ml of blood collected in sterile autoclaved bottle and preserved in EDTA OR Blood soaked in sterile/autoclaved cotton gauze and dried in room temperature. Pack in clean/sterile paper packet/envelope
- 3.3.3 Buccal Swab for comparison (Either blood sample or buccal swab is enough):** Buccal Swab samples can also be collected from the concerned by a licensed medical practitioner. A sterile and autoclaved cotton swab can be used for this purpose. Sterile cotton swabs should be wiped on the interior of the cheek of the child, biological mother and alleged father without contamination between samples. The buccal swab should be dried well in room temperature and packed in sterile paper and a portion of each buccal swab can be transferred as a smear by gently wiping on to a sterile micro slide and dried well in room temperature. It should be packed in a sterile paper.
- 3.3.4 Wet stains:** Transfer the wet stain of blood, semen etc. to a sterile cotton gauze, dry in room temperature and pack in sterile paper.
- 3.3.5 Dried Stains:** When dried stains of blood, semen etc are to be collected from a surface like floor, furniture, utensils etc., it can be scraped out from the surface using a sterile razor blade or scalpel and pack in clean sterile paper. OR A piece of sterile cotton gauze wetted with pure distilled water can be used for transferring the stain. Dry the gauze in room temperature and pack in clean sterile paper or paper envelope.

Always use small piece of cotton gauze to transfer the stains to prevent the stain getting diluted so much, so that required quantity of DNA cannot be extracted from the stain.

- 3.3.6 Tissue:** Collect about 100gms of un-putrefied skeletal muscle tissue and preserve in a clean container with ethyl alcohol. OR If un-putrefied tissues are available, collect about 100 gms of skeletal muscle tissue in a clean polythene cover and keep frozen in ice. It should be forwarded to the laboratory within 24 hours to prevent decay.

When the tissue is packed without preservation, care must be taken to keep the packet containing ice without melting with periodical change of ice until the sample is brought to the laboratory

- 3.3.7 Fresh Bones with attached tissues:** Preserve the femur bone (if femur is not available, other long bones are preferred) in a clean sterile bottle with crystal salt. Never preserve the tissue in formalin.

- 3.3.8 Bones after the full loss of tissues:** Pack the dry femur bone (if femur is not available, other long bones are preferred) in clean paper and forward to the laboratory. No preservative is needed.

Completely burnt bones are not suitable for DNA typing.

- 3.3.9 Teeth:** Pack 2 to 3 the molar teeth (if molar teeth are not available, premolar, canine or incisors can be used) in paper. Preserve teeth for DNA test as far as possible. It is not necessary to preserve the teeth for DNA analysis. If it preserves, use alcohol. Never preserve the teeth in formalin.

- 3.3.10 Hair with root and root sheath:** Collect twenty-five hairs with root and pack in paper/sterile bottle /envelope. No preservative is necessary.

- 3.3.11 Hair from scene of crime/ hairs of unknown source:** Collect the hairs and pack in paper/sterile bottle /envelope without preservative.

3.3.12 Vaginal swabs, smears: Vaginal swabs should be dried well at room temperature before packing. Well dried swabs and smears can be packed in clean paper. Bottles should be dried well

3.3.13 Penile swabs and penile smears: Penile swabs and smears can be collected with cotton wool/cotton gauze wetted with pure distilled water, air dry well and pack in paper packet/envelope.

3.3.14 Unidentified body, abandoned fetuses etc.: If not putrefied, preserve the femur and muscle tissue in alcohol/crystal salt or keep frozen till it reaches the lab. Blood can also be collected as described above.

If putrefied, preserve the femur in alcohol/ crystal salt or keep frozen till it reaches the lab.

3.3.15 Uterine tissue with foetus/embryo: Keep the tissue samples/ foetus frozen till it reaches lab or Preserve the tissue samples/foetus in alcohol or Preserve tissue in chilled saline kept in ice till it reaches laboratory

Immediate drying is the best preservation for swabs, smears and stains.

CHAPTER - 4
COLLECTION AND FORWARDING OF NON BIOLOGICAL
SAMPLES FOR CHEMICAL EXAMINATION

4.1 Toddy and other Liquors:

- 4.1.1** Collect toddy directly from the large containers
- 4.1.2** IMFL sample should be collected from the case/batch, 750 ml of the Sample from each batch after homogenization, if large quantity is available. If it is less than 750 ml, send the entire sample for analysis.
- 4.1.3** Suitable Glass/Plastic Bottles with screw cap. Prevent loss of sample by evaporation.

4.2 Drugs and psychotropic substances:

- 4.2.1** Handle the materials after wearing gloves. Some drugs are very dangerous and hence the use of a face mask is also advised.
- 4.2.2** Collect representative sample from all the packets/containers, empty capsules, tablet making machine, other containers suspected having been used to manufacture drugs or consumed.
- 4.2.3** For drugs are in pure form (powders etc) homogenize and send 5g of representative sample from each packet. If it is less than 5g, send the entire material.
- 4.2.4** If it is an ampule, send the ampule as such. If it is tablet, send one strip.
- 4.2.5** In stupefying cases, food materials, empty glasses etc should be send.
- 4.2.6** Each sample should be packed separately in suitable containers such as polythene bags. Samples should not be contaminated or mixed. Individual bag should be sealed and all relevant details should be written on each along with item number.

4.3 Plant Materials (Ganja, Charas, Hashish, and Hashish oil, Opium)

- 4.3.1** Handle the materials after wearing gloves to avoid contamination. Ganja should be dried otherwise there is chance of fungal infection and thereby destruction of Cannabinoids. If the contraband is the plants of Ganja, take one plant as a sample.
- 4.3.2** From bulk quantity of Ganja, 24 gm of representative sample may be sent after homogenization from each pack. If it is less than 24 gm, send the entire sample
- 4.3.3** For other categories, 5 g of sample. If it is less than 5 g, send the entire material.
- 4.3.4** Pack the sample in a polythene cover and wrap using a brown paper.
- 4.3.5** Samples should not be contaminated or mixed. Individual bag should be sealed and all relevant details should be written on each along with item number.

4.4 Petroleum Products:

- 4.4.1** Sample should be taken directly from the tank. Avoid contamination and evaporation. Take representative samples. Send the control sample, if available.
- 4.4.2** In the case of Petrol, diesel or Kerosene 1 litre should be taken as sample. Send the sample in a glass bottle with tight screw cap or bottle with self sealing cap. Avoid evaporation loss

4.5 PDS-Kerosene:

- 4.5.1** Sample should be taken directly from the tank/container. Avoid contamination and evaporation. Take representative samples. 1 litre Kerosene should be taken as sample from each container.

4.5.2 If it is a suspected case of removal of blue dye, 1 litre debris from the bottom of the tank should also be send. Send the sample in a glass bottle with tight screw cap or bottle with self sealing cap. Avoid evaporation loss.

4.6 Fats/Vegetable Oils:

4.6.1 No special requirement. Avoid contamination. 250 g/ 250 ml should be as sample.

4.6.2 Use dry glass bottle with air tight screw cap.

4.7 Fire/Arson Residues:

4.7.1 The sample should be collected from the origin of fire and sent for examination at the earliest. Delay causes loss of evidence.

4.7.2 In cases of Arson, the un-burnt portion, partially burned portion of the material stored in godowns/warehouses etc., should be sent as control.

4.7.3 In homicidal/ suicidal cases, the dress worn by the victim, container used to carry inflammable material, any foreign materials etc. should be collected.

4.7.4 Approximately 500 g of materials from each spot of fire. Pack the material in glass jars/bottles. If not available, use thick polythene bags, and ensure that it is air tight.

4.7.5 Never pack in paper.

4.8 Poisons:

4.8.1 Poisons and other toxic substances should be collected and handled carefully. Always wear gloves. Content of any bottle suspected to be a drug/poison, should be sent as such.

4.8.2 In case of spurious drugs, control samples may be seized from the shop or the manufacturing unit and forwarded along with sample. Each sample may be collected in separate and clean containers, sealed, labelled and sent for analysis.

4.9 Metals, alloys and Metalloids (Gold, Silver, Platinum, other heavy metals and their alloys)

4.9.1 Always wear gloves in case of liquid samples and radioactive metals. Gold may be dissolved in cyanide or aqua-regia solutions which are corrosive and toxic.

4.9.2 Solid materials have special requirement.

4.9.3 Collect 250 ml of solution.

4.9.4 Metallic objects like idol/medal, etc., may be sent as such.

4.9.5 The entire ornament/ biscuit/bar/coin as such may be sent.

4.9.6 Use Glass bottle with air tight glass lid. Never use metal/plastic caps.

4.9.7 Metallic objects may be sent as such without exposure to air.

4.10 Polymers: No special requirement. 100 g of material should be taken as sample. Use polythene bag to pack the material.

4.11 Miscellaneous Articles

4.11.1 Analysis of acids and alkalis (acid throwing cases), Handle with care. Always wear gloves. 100 ml should be taken as sample liquid.

4.11.2 In case of acid throwing, affected clothing material, containers found at the scene, pieces of skin, soil and other affected objects have to be seized.

4.11.3 For liquid samples, use narrow mouth glass containers with plastic cap.

4.11.4 Always use wide mouth glass containers for packing dress, soil etc.

4.12 Explosives and Scene of Explosion

i. Guarding the scene: Scene of Crime should not be disturbed before completion of examination .The area should be cordoned with tape.

ii. Crater: If an explosion took place close to a surface, a depression is formed on the surface. This is called crater. Usually crater found on the seat of explosion. Maximum evidences can be found at the seat of explosion.

4.12.1 Precautions which must be followed in all explosion cases

- i.** Explosives and bombs should not be touched or handled unless it is sure that there will be no explosion and the experts should be called.
- ii.** Be careful about entering in to a room in which near which an explosion has occurred.
- iii.** Don't open or close the door/window/almirah in the normal way.
- iv.** Don't switch on any electric light if the room is dark. Use hand torch for illumination.
- v.** Don't touch, lift, tilt, drag or move the suspected object.
- vi.** Examine carefully without moving or tilting the suspected object.

4.12.2 Investigating Officer should look for the following items in an Explosion scene.

- i.**Parts of Detonator (Electrical or Non electrical)
- ii.**Mechanism- switches, timer, remote etc
- iii.**Power source –parts of battery

- iv. Parts of container- plastic parts, paper pieces, metal pieces, waxy paper, pieces of pipe in case of pipe bomb, jute thread etc.
- v. Missiles like nails, metal pieces, nuts & bolts, stones, glass pieces, steel balls etc
- vi. Partially burnt safety fuses.
- vii. Orange red, yellow and grey coloured deposits, small particles of chemicals like Potassium chlorate, Potassium nitrate, sulphur, Arsenic sulphide, Charcoal etc.
- viii. These items will be found in and around the seat of explosion and should be collected for examination.

4.12.3 Guidelines for Investigating Officers for forwarding explosive sample to FSL:

The MOs may be forwarded to FSL strictly in accordance with the guide lines in PHQ circular No. 24/01 and official memorandum no. D1. (B) –58737/01 dtd 14/2/2003 issued by the Hon. High court of Kerala.

I. Following are the guide lines for sending Explosives /Explosive Devices to FSL

- i. Live Explosives should never be sent to FSL for examination.
- ii. Explosive devices should be defused and contents such as stones, metallic bodies, explosive charges, fuses, detonator etc packed separately.
- iii. For different explosive devices defused items should be packed separately in containers.
- iv. Never pack more than one item together.
- v. Collection of unnecessary items should be avoided as far as possible from the explosion site. Collect only relevant items.

- vi.** To avoid confusion never label the explosive materials like “Potassium nitrate”, “Potassium Chlorate” etc.
- vii.** Only very small quantity (Maximum 10gm) of explosive material needs to be sent for examination after defusing.
- viii.** Detonator should invariably be defused before forwarding to FSL.
- ix.** In the case of crackers, avoid sending bulk quantities of crackers for examination. Only one or two may be forwarded for examination.
- x.** Defused explosives should be packed in plastic containers or polythene covers, wrapped with bright red coloured paper and sealed. The seal should be clear and legible.
- xi.** The packet should be labelled: “Explosive Materials – Handle with care.”
- xii.** Label should be pasted on wrappers and should not be pasted on MOs or kept loosely inside the packet along with remnants.
- xiii.** Forwarding note should necessarily be accompanied with a certificate “Certified that the explosive materials enclosed within the sealed packet forwarded along with the forwarding note in Cr.No. ----- of -----Police station----- district are not live and that they have been effectively defused before packing. This certificate should be signed by the Investigating Officer and countersigned by the forwarding authority.
- xiv. Soil**
 - i.** Control soil samples should be collected from the upper layer randomly as close to the scene (1 or 2 Meter away from the stained soil) as possible without contamination.
 - ii.** If the stained soil and control soil are wet, it should be dried in room temperature.

- iii. Care should be taken so as not to destroy other trace materials that may be present.
- iv. If the soil is found adhering to an object, as in the case of soil on a shoe, the I.O need not remove it. Instead the object should be wrapped in a paper with the soil intact and transmitted to the laboratory.
- v. When a lump of soil is found, it should be collected and preserved intact.
- vi. If a foot print or tyre track indentations in question, penetrates into subsoil that is different from the top soil, then it is necessary to obtain samples of both the top soil and sub soil separately.
- vii. Dirt in the fingernails has to be scrapped and collected in a clean paper. Scrapings from other fingernails should be packed and sent as control samples.

xv. Glass

- i. It must be photographed and the location should be noted on the sketch before they are touched or moved.
- ii. The fragments of glass, which may lodge in or adhere to the clothing of perpetrator or fall in his pockets or trouser folds, shoes etc should be searched/collected.
- iii. While collecting glass or glass fragments, fingerprints, dust or dirt, blood stains, other foreign matter etc should be well protected.
- iv. All available pieces or fragments should be collected to examine the commonness of source or origin.
- v. Control glass should always be taken from any remaining glass in the window or door frames, as close as possible to the point of breakage.

- vi. In vehicle involved cases, the fragments of glass, which may be adhering to or embedded on the tyres of the suspected vehicle, should be collected.

xvi. Paint

- i. When a transfer of paint occurs in hit and run accident, uncontaminated control sample must always be collected from the surface of the vehicle as it is suspected to be in contact with the victim's vehicle. The collection should be by using a clean scalpel or a knife blade.
- ii. Control sample should also be collected by including all the paint layers down to the base metal.
- iii. Loose paint chips from a garment or from the road must be collected carefully and should be packed in small plastic containers.
- iv. Each paint sample should be separately packed and the exact location of its recovery should be marked.

- xvii. Dust:** Dust, soil, ash and similar debris can be collected by using a spoon or vacuum cleaner and kept in a test tube or cellophane paper. If the mud is attached to a small article, the whole article should be packed in a cellophane paper and send to the lab.

xviii. Tool Marks

- i. The tool marks should be protected with cotton.
- ii. In case of theft of electric wires etc., the cut end to be examined. It should be marked properly and the other cut end should be bent so as to distinguish the cutting by the offender.
- iii. The crime tools recovered should not be put to use before forwarding to FSL.

xix. Spurious Articles

- i.** Control sample of same size, batch, manufacturing date has to be procured from authorized dealer or manufacturer.
- ii.** The control sample should be certified by the authorized dealer or manufacturer.

xx. Documents:

- i.** Do not handle the document unnecessarily.
- ii.** Do not expose it to heat or contact with water or moisture.
- iii.** Don't fold the document unnecessarily. If necessary, they may be rolled.
- iv.** Nothing should be marked or written over the document.
- v.** The document should be dispatched flat by placing it between two pieces of cardboard.
- vi.** Identifying marks on the document should be made with coloured pencil at blank spaces on the documents.
- vii.** Dispatch the document in double sealed cover.

CHAPTER - 5

EXAMINATION OF SCENE OF MASS DISASTERS

5.1 In railway accidents, air crashes, earthquakes etc in which a large number of persons are killed and dead bodies may be mutilated or fragmented and sometimes scattered over a wide area. This creates great difficulties in identification of the victims. The investigation in such cases is conducted generally with the participation of forensic science experts, medico-legal experts, odontologists and explosive experts under the coordinated directions of a leader. A brief outline of the scene of crime examination is as follows;

- i.** Cordon the area to prevent unauthorized entry.
- ii.** Provision of immediate medical attention to the surviving victims and transferring them to the hospital by ambulances for better and systematic care.
- iii.** Division of whole area into a number of manageable sectors, each of which is examined in detail by the investigating team by the standard method for searching the clues.
- iv.** Recording of the scene by photography/videography, sketches and observation notes.
- v.** Labelling of each body by a toe-tag with a number. The isolated limbs and body fragments are rearranged by the Forensic pathologist so as to establish the identity.
- vi.** Identification of disfigured, fragmented or charred bodies is done from personal belongings such as clothing, jewellery, articles and pocket contents.
- vii.** The odontologist identifies the charred and mutilated remains by examining the teeth.
- viii.** The human remains are examined by the medico-legal expert for establishing the identity and cause of death.
- ix.** The wreckage is examined by the concerned experts to ascertain the causes of the accident.

CHAPTER – 6

INVESTIGATION OF POLICE ENCOUNTERS. **GUIDELINES OF SUPREME COURT OF INDIA. (2014 PUCL VS STATE OF MAHARASHTRA)**

6.1 Guidelines of Supreme Court of India. (2014 PUCL Vs State of Maharashtra)

- 6.1.1** Whenever the police is in receipt of any intelligence or tip-off regarding criminal movements or activities pertaining to the commission of grave criminal offence, it shall be reduced in to writing in some form (preferably in to case dairy) or in some electronic form. Such recording need not reveal details of the suspect or the location to which the party is headed .If such intelligence or tip-off is received by a higher authority, the same may be noted in some form without revealing details of the suspect or the location.
- 6.1.2** If pursuant to the tip-off or receipt of any intelligence, as above, encounter takes place and firearm is used by the police party and as a result of that, death occurs, an FIR to that effect shall be registered and the same shall be forwarded to the Court under section 157 of the Code without any delay. While forwarding report under section 157 of the Code, the procedure prescribed under section 158 of the Code shall be followed.
- 6.1.3** An independent investigation in to the incident/encounter shall be conducted by the CID or police team of another police station under supervision of a senior officer (at least a level above the head of the police party engaged the encounter). The team conducting the inquiry/investigation shall, at a minimum, seek:
- i.** To identify the victim; colour photograph of the victim should be taken;

- ii. To recover and preserve evidentiary material, including bloodstained earth, hair, fibers and threads, etc, related to the death;
- iii. To identify scene witnesses with complete names, addresses and telephone numbers and obtain their statements (including the statements of police personnel involved) concerning the death;
- iv. To determine the cause, manner, location (including preparation of rough sketch of topography of the scene and if, possible, photo/video of the scene and any physical evidence) and time of death as well as any pattern or practice that may have brought about the death;
- v. It must be ensured that intact fingerprints of deceased are sent for chemical analysis. Any other fingerprints should be located, developed, lifted and sent for chemical analysis;
- vi. Post- mortem must be conducted by two doctors in the District Hospital, one of them, as far as possible, should be In-charge/Head of the District Hospital. Post-mortem shall be video – graphed and preserved.
- vii. Any evidence of weapons, such as guns, projectiles, bullets and cartridge cases, should be taken and preserved. Wherever applicable, tests for gunshot residue and trace metal detection should be performed.
- viii. The cause of the death should be found out, whether it was natural death, accidental death, suicide or homicide.

6.1.4 A Magisterial inquiry under Section 176 of the Code must invariably be held in all cases of death which occur in the course of Police firing and a

report thereof must be sent to Judicial Magistrate having jurisdiction under Section 190 of the Code.

- 6.1.5** The involvement of NHRC is not necessary unless there is serious doubt about independent and impartial investigation. However, the information of the incident without any delay must be sent to NHRC or the State Human Rights Commission, as the case may be.
- 6.1.6** The injured criminal/victim should be provided medical aid and his/her statement recorded by the Magistrate or Medical Officer with certificate of fitness.
- 6.1.7** It should be ensured that there is no delay in sending FIR, diary entries, panchnamas, sketch, etc, to the concerned Court.
- 6.1.8** After full investigation into the incident, the report should be sent to the competent court under Section 173 of the Code. The trial, pursuant to be charge sheet submitted by the Investigating Officer, must be concluded expeditiously.
- 6.1.9** In the event of death, the next of kin of the alleged criminal/victim must be informed at the earliest.
- 6.1.10** Sixmonthly statements of all cases where deaths have occurred in police firing must be sent to NHRC by DGPs. It must be ensured that the sixmonthly statements reach to NHRC by 15th day of January and July, respectively. The statement may be sent in the following format along with post-mortem, inquest and, where ever available, the inquiry reports.
 - i.** Date and place of occurrence.
 - ii.** Police station.
 - iii.** Circumstances leading to deaths:
 - a) Self defence in encounter.

- b) In the course of dispersal of unlawful assembly.
 - c) In the course of affecting arrest.
 - iv. Brief facts of the incidents.
 - v. Criminal Case No.
 - vi. Investigating Agency.
 - vii. Findings of Magisterial Inquiry/Inquiry by Senior Officers:
 - a) disclosing, in particular, names and designation of police officials, if found responsible for the death; and
 - b) Whether use of force was justified and action taken was lawful.
- 6.1.11** If on the conclusion of investigation the materials/evidence having come on record show that death had occurred by use of firearm amounting to offence under the IPC, disciplinary action against such officer must be promptly initiated and he be placed under suspension.
- 6.1.12** As regards compensation to be granted to the dependents of the victim who suffered death in a police encounter, the scheme provided Under Section 357-A of the Code must be applied.
- 6.1.13** The police officer(s) concerned must surrender his/her weapons for forensic and ballistic analysis, including any other material, as required by the investigating team, subject to the rights under Article 20 of the Constitution.
- 6.1.14** An intimation about the incident must also be sent to the police officers family and should the family need services of a lawyer/counselling, same must be offered.

- 6.1.15** No out of turn promotion or instant gallantry rewards shall be bestowed on the concerned officers soon after the occurrence. It must be ensured at all costs that such rewards are given/ recommended only when the gallantry of the concerned officers is established beyond doubt.
- 6.1.16** If the family of the victim finds that the above procedure has not been followed or there exists a pattern of abuse or lacks of independent investigation or impartiality by any of the functionaries as above mentioned, it may make a complaint to the Session Judge having territorial jurisdiction over the place of incident. Upon such complaint being made, the concerned Sessions Judge shall look into the merits of the complaint and address the grievances raised therein.

SCENE OF CRIME INVESTIGATION

PART II

CIRCULARS

SL .NO.	CIRCUL AR NO.	CONTENT OF THE CIRCULAR
1	32/2018	NDPS Cases - Investigation – Informant/complainant and the Investigating officer cannot be the same person - directions for the conduct of a fair investigation - Instructions issued
2	08/2018	Forensic Science Laboratory – Collection of hair sample for detection of drugs and poison in crime cases – Instruction issued
3	02/2011	Forensic Science Laboratory - Guidelines for Investigating Officers - Standing Instructions
4	44/2010	Visit to the Scenes of Crimes of Major Motor Accidents
5	40/2010	Guidelines/Procedures to be followed in the cases of deaths caused in Police action-reg
6	17/2010	Vehicle Accidents - Hit and Run Cases - Investigation
7	01/2009	Sexual Assaults on Children - Proper investigation and speedy disposal - Guidelines –reg
8	28/2009	DNA Profiling– Reg
9	25/2007	Investigation of Abkari and other Cases - Instructions issued- reg
10	08/2005	Visit to Scene of Crime instructions issued – reg.
11	06/2000	Duties and Responsibilities of Scientific Assts posted in various districts in Kerala – orders issued – reg.
12	34/1998	Murder cases - Visit to the scene of crimes by the SP/CP of District in the quickest time possible - instructions - reg
13	15/1995	Road accidents- treatment of victims in private hospital – regarding
14	10/1989	Grave Crimes - Responsibilities of Sub Divisional Officers and inspectors - reg.
15	21/1988	Scene of crime – taking of photographs – instructions – issued.
16	15/1988	Utilisation of Finger Print Experts – Scans of Crimes – functioning of Single Digit Finger print Bureau
17	33/1987	Investigation in Road accidents cases – Instructions – regarding
18	18/1987	Criminal cases – skeletanised bodies – Establishing identity – Photographic superimposition of skulls
19	02/1985	Unnatural death cases in Railway premises – instructions issued

20	24/1984	Investigation of cases of dead bodies found on Railway track – instruction – reg
21	04/1972	Investigation – investigation of accidents due to explosion or fire – investigation by the Officers of the Department of Explosives – time limit prescribed
22	187/1971	Exhibits to the Forensic Science Laboratory – Forwarding of -Mode of forwarding – instructions issued
23	142/1971	Arms Act and Rules – check on sale of Sulphur
24	28/1971	Accidents on Railways – Investigation by the Police and rescue, relief and restrictions of traffic operations – instructions.
25	99/1970	Motor Accidents – testing of vehicles involved instructions – issued
26	53/1970	Investigation of cases involving fire – arms-
27	154/1969	Investigation scene of occurrence – Photographing of – some general instructions.
28	62/1969	Scene mahazar – preparation of – motor accident cases – instructions issued.
29	165/1968	Emergency landing of Helicopters, Air crafts accidents, etc.- Assistance by Police- Instructions issued.

* If anything is contradictory between and inconsistent with the contents of the above Circulars, the PSO and the Part I, the directions in Part I shall prevail.

- Circulars are available in Kerala Police Website.

EXAMINATION OF WITNESS

PART I

EXAMINATION OF WITNESSES

CHAPTER 1

LAW

PROCEDURE FOR RECORDING OF THE STATEMENT OF THE WITNESS

I. Relevant Legal Provisions:

1. 160. Police officer's power to require attendance of witnesses.—(1) Any police officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required:

Provided that no male person under the age of fifteen years or above the age of sixty-five years or a woman or a mentally or physically disabled person shall be required to attend at any place other than the place in which such male person or woman resides.

(2) The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under sub-section (1) at any place other than his residence.

2. 161. Examination of witnesses by police.—(1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.

Provided that statement made under this sub-section may also be recorded by audio-video electronic means:

Provided further that the statement of a woman against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB section 376E or section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted shall be recorded, by a woman police officer or any woman officer.

3. 162. Statements to police not to be signed: Use of statements in evidence.—(1)

No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872); or to affect the provisions of section 27 of that Act.

Explanation.—An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.

4. **163. No inducement to be offered.**—(1) *No police officer or other person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in section 24 of the Indian Evidence Act, 1872 (1 of 1872).*

(2) But no police officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this Chapter any statement which he may be disposed to make of his own free will:

Provided that nothing in this sub-section shall affect the provisions of sub-section (4) of section 164.

5. **164. Recording of confessions and statements.**—(1) *Any Metropolitan Magistrate or Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial:*

Provided that any confession or statement made under this sub-section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of an offence:

Provided further that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force.

(2) The Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily.

(3) If at any time before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate shall not authorise the detention of such person in police custody.

(4) Any such confession shall be recorded in the manner provided in section 281 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect:—

“I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed) A. B. Magistrate.”

(5) Any statement (other than a confession) made under sub-section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case; and the Magistrate shall have power to administer oath to the person whose statement is so recorded.

(5A) (a) In cases punishable under section 354, section 354A, section 354B, section 354C, section 354D, sub- section (1) or sub-section (2) of section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB section 376E or section 509 of the Indian Penal Code (45 of 1860), the Judicial Magistrate shall record the statement of the person against whom such offence has been committed in the manner prescribed in sub-section (5), as soon as the commission of the offence is brought to the notice of the police:

Provided that if the person making the statement is temporarily or permanently mentally or physically disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement:

Provided further that if the person making the statement is temporarily or permanently mentally or physically disabled, the statement made by the person, with the assistance of an interpreter or a special educator, shall be videographed.

(b) A statement recorded under clause (a) of a person, who is temporarily or permanently mentally or physically disabled, shall be considered a statement in lieu of examination-in-chief, as specified in section 137 of the Indian Evidence Act, 1872 (1 of 1872) such that the maker of the statement can be cross-examined on such statement, without the need for recording the same at the time of trial.

(6) The Magistrate recording a confession or statement under this section shall forward it to the Magistrate by whom the case is to be inquired into or tried.

164A. Medical examination of the victim of rape.—*(1) Where, during the stage when an offence of committing rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged or attempted to have been committed or attempted, examined by a*

medical expert, such examination shall be conducted by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner, by any other registered medical practitioner, with the consent of such woman or of a person competent to give such consent on her behalf and such woman shall be sent to such registered medical practitioner within twenty-four hours from the time of receiving the information relating to the commission of such offence.

(2) The registered medical practitioner, to whom such woman is sent, shall, without delay, examine her person and prepare a report of his examination giving the following particulars, namely:—

(i) the name and address of the woman and of the person by whom she was brought;

(ii) the age of the woman;

(iii) the description of material taken from the person of the woman for DNA profiling;

(iv) marks of injury, if any, on the person of the woman;

(v) general mental condition of the woman; and (vi) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The report shall specifically record that the consent of the woman or of the person competent to give such consent on her behalf to such examination had been obtained.

(5) The exact time of commencement and completion of the examination shall also be noted in the report.

(6) The registered medical practitioner shall, without delay forward the report to the investigating officer who shall forward it to the Magistrate referred to in

section 173 as part of the documents referred to in clause (a) of sub- section (5) of that section.

(7) Nothing in this section shall be construed as rendering lawful any examination without the consent of the woman or of any person competent to give such consent on her behalf.

Explanation.—For the purposes of this section, "examination" and "registered medical practitioner" shall have the same meanings as in section 53.

Section 41- A. Notice of appearance before police officer. – (1) 24a [The police officer shall], in all cases where the arrest of a person is not required under the provisions of sub-section (1) of section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officers is of the opinion that he ought to be arrested.

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent Court in this behalf, arrest him for the offence mentioned in the notice.]

CHAPTER 2

VARIOUS ASPECTS IN RECORDING WITNESS STATEMENTS

2.1 Statement of the witness under Section 161 Cr.P.C

- 2.1.1** It is desirable to reduce to writing, the statements of all important witnesses who are acquainted with the facts and circumstances of the case and who may have to be cited in the court as witnesses.
- 2.1.2** The statement of each witness should be recorded separately. Statements recorded by Police Officer under Section 161(3) of the Cr.P.C should be in the first person and should, as far as possible, be in the language in which it was made in his own words.
- 2.1.3** Such statements will be certified as truly recorded by the Police officer recording the same and will be attached to the case diary at the relevant dates. As of Section 207 of the Criminal Procedure Code indicates that copies of statements of all persons whom the prosecution proposes to examine as its witnesses should be given to the accused before the commencement of trial.
- 2.1.4** The statement of accused shall be recorded according to the provisions of 161 (3) CrPC⁵¹.

2.2 Power of the police to summon witnesses

- 2.2.1** When it is necessary to summon any person to attend an investigation, the Investigating Officer may issue an order in writing to such person to attend investigation. However, no male person under the age of fifteen years or above 65 years or mentally, physically disabled person or woman shall be asked to attend at any place other than the place in which such male person or woman resides.

⁵¹NandiniSatpathi V. P. L. Dani 1978 CrL J 968 SC

2.2.2 The abovementioned legal process of summoning witnesses by issuing notice under Section 160 Cr.P.C. shall not be used in Preliminary Enquiries.

2.2.3 Non- obedience of such order in writing will attract 174 IPC.

2.3 Section 161: Examination of witnesses by police

2.3.1 Examination of accused under Section 161 Cr.P.C is popularly known as interrogation. The object of examination of witness under Section 161 Cr.P.C is to produce the evidence before the court at the time of trial. Before trial commences, copies of these statements recorded by the police should be furnished to the accused free of cost.

2.3.2 The Police Officer making an investigation may examine any person and record his statement during an investigation.

2.3.3 The accused has the right to remain silent as has the ‘right against self incrimination’ as per Section 161 (2) Cr.P.C and Art. 20(3) of Indian Constitution. But if a witness examined by the police does not give answers to the questions, he may be prosecuted under Section 179 I.P.C or if he gives false information in any judicial proceedings, he can be prosecuted under Section 193 I.P.C.

2.3.4 It shall also be remembered that Police reports and other documents are supplied to the accused, as per Section 207 Cr.P.C. These provisions should be sternly complied with.

2.3.5 In case of mentally retarded, insane, dumb & deaf service of interpreter or special educator can be used. It is better to seek service of Psychiatry Department to record the statement of mentally retarded and insane person.

2.3.6 In rape victims the statement should be recorded invariably by a Woman Officer. In POCSO cases the statement should be recorded as far as preferably by a Woman Sub Inspector.

2.4 Examination of suspect /accused persons

- 2.4.1** A suspect when appearing before IO can be thoroughly examined with a view to ascertain his defence as also to prove charges against him as investigation focuses.
- 2.4.2** The details of the charge against the accused may be informed and his explanation may be sought.
- 2.4.3** If any material objects used information relevant in the commission of an offence is disclosed then the statement of accused may be recorded in the presence of the witnesses mentioning the recovery of the articles weapons etc. disclosed by him. All the points should be thoroughly verified by the IO so that the prosecution is fully prepared to counter the defence of the accused/suspect.
- 2.4.4** Questionnaire for examining the accused should be prepared in important cases and statements recorded in narrative form. Guidance of senior officers for preparation of questionnaire etc. may be obtained from time to time.
- 2.4.5** The answers recorded by the accused should be read over to him.

2.5 Right Against Self Incrimination

- 2.5.1** An accused person cannot be coerced or influenced into giving a statement pointing to her/his guilt.
- 2.5.2** The accused person must be informed of her/his right to remain silent and also of the right against self-incrimination.
- 2.5.3** The person being interrogated has the right to have a lawyer by her/his side if she/he so wishes.
- 2.5.4** An accused person must be informed of the right to consult a lawyer at the time of questioning, irrespective of the fact whether she/he is under arrest or in detention.

CHAPTER 3

DIFFERENT TYPES OF WITNESSES AND ITS EVIDENTIARY VALUE

3.1. Independent and disinterested witness

- 3.1.1.** Independent and disinterested witness means a witness who is a natural one. A witness may be called “interested” only when he or she derives some benefit from litigation, in the decree in a civil case, or in seeing an accused person punished. Related witness is not equivalent to interested witness. Credibility of a witness is not affected by relationship.
- 3.1.2.** Every witness, who is related to the deceased cannot be said to be an interested witness, who will depose falsely to implicate the accused. Statement of every related witness cannot as a matter of rule be rejected by the courts. Evidence of close relatives cannot be excluded, solely on the ground, that they are interested witnesses.
- 3.1.3.** It is only in cases where there is some doubt that court will insist on testimony of independent witness. If evidence led by the prosecution inspires confidence, non-examination of independent witness would not be a serious lacuna. Supreme Court has held that evidence of police officials can't be disregarded merely because it was not supported by independent witnesses.⁵²
- 3.1.4.** Independent witnesses stay far away and are not willing to come forth as they often face harassment and suffer grave consequences. The prosecution has therefore, no choice but to fall back on the testimonies of witnesses who are friends or the family members of the victim.

3.2 Reliability and credibility of the eye witness-

- 3.2.1** A witness who has seen the offence or is present at the time of commission of crime is known as eye-witness. An eye-witness, who has

⁵²*Kripal Singh v. The State of Rajasthan* 2019 All SCR (Online) 145.

no motive to lie, is a powerful form of evidence. Eye-witness must be capable of adequate vision and there must be light adequate enough to see and identify the person involved in the event.

- 3.2.2** The appreciation of the evidence of eye witness depends upon the accuracy of the witness's original observation of the events which he described and the correctness and extent of that he remembers and his veracity.

3.3 Injured witness

- 3.3.1** A witness who himself becomes a victim to the crime is better positioned to narrate the sequence of the crime and details thereof. The injury to the witness is an in-built guarantee of his presence at the scene of the crime. What was he doing at that place, at the hour? Was he related to them or accidentally fell in the domain of victimization or he was participant in crime and got injured while in an attempt to escape?

3.4 Police witness

- 3.4.1** Police officials are responsible persons and their evidence cannot be discarded merely on ground that the same is not corroborated by independent witness. The evidence of the police officer cannot be discarded merely on the ground that they belonged to the police force and are either interested in investigating or are in the prosecuting agency.
- 3.4.2** There can be no prohibition to the effect that a policeman cannot be a witness or that his deposition cannot be relied upon. The rule of prudence, however, only requires a greater degree of scrutiny of their evidence, as they may be said to be interested in the result of the case. As a precaution it must be corroborated by some independent witness.

3.5 Evidence of *panch*witness

- 3.5.1** The *panch*witnesses are to be two or more independent and respectable persons. In the case where there is no eye witness to the offence and the case is totally based on circumstantial evidence, then such *panchnama* carries immense value.
- 3.5.2** It is also important that after preparation of *panchnama* the panchas should read its contents. If the *panch* is illiterate, then such *panchnama* should be read over to him and there should be endorsement that the contents of *panchnama* were read over to them.
- 3.5.3** In case where at time of making *panchnama*, there was no source of light, then it should be mentioned as to how the source of light was managed to prepare *panchnama*. Guidelines can be taken from Section 100(4) & (5) of the Cr.P.C.

3.6 Eye witness account inconsistent with medical report

- 3.6.1** The medical evidence does not itself establish the guilt or innocence of the accused. It provides expert opinions based upon objective, indisputable facts, which help to evaluate the reliability and credibility of other witnesses.
- 3.6.2** If there is conflict of opinion between experts, further opinion may be obtained from senior experts. Where the eyewitness account is found credible and trustworthy, medical evidence pointing out to alternative possibilities is not accepted as conclusive.
- 3.6.3** Sometimes, the eyewitness and the medical evidence may not be exactly of similar opinion, but ultimately both the evidence may lead to the same story. In such a case, both the evidences will not lead to any contradiction.⁵³
- 3.6.4** Sometimes, a great confusion may arise because of difference between

⁵³*Jheenav. State of M.P.* 1986 Cri LJ 1375 (MP).

different eyewitnesses and medical witnesses. At first the Court carefully examines the discrepancies and makes every effort to harmoniously construe the medical evidence and eyewitness evidence.

3.6.5 The rule of evidence is clear on the issue that conviction cannot be based solely on the medical evidence. Medical evidence must be corroborated with other evidence.

3.6.6 Whenever there is a contradiction between the testimony of eyewitness and medical evidence, it's not the case that ocular testimony is accepted or rejected at the instance of medical evidence, but the accused would get benefit of doubt.⁵⁴

3.7 Evidentiary value of the statement given to police

3.7.1 The statements recorded by the police under Section 161 Cr.P.C is not evidence for prosecution. They can be used by the defense for contradicting the prosecution witnesses. But when the prosecution witness turns hostile, with the permission of court, the Public Prosecutor can cross examine that witness by using his statements under Section 161 to establish contradiction.

3.7.2 When Section 161 Cr.P.C statements fall under Section 27 or under Section 32 (1) of Evidence Act, then those statements can be used by prosecution as evidence. Section 161 Cr.P.C statements are not substantive evidence.

3.7.3 If, statement of injured witness was recorded as dying declaration but he survived, then such statement has to be considered as Section 161 Cr.P.C statements.

3.7.4 Section 161 Cr.P.C statements cannot be used against the accused in criminal cases. They shall not be used for any purpose except to contradict a witness in the manner prescribed in the proviso to Section 162 (1) Cr.P.C.

⁵⁴*Mahar Singh v. State of Punjab* AIR 1981 SC 1578.

3.8 Evidentiary value of statement of various categories of witnesses

- 3.8.1** Eye-witness is a direct witness who observed the event. He must not be a stock witness. In the absence of definite proof to the contrary, the eyewitness account is generally accepted by police, prosecutor and judge.
- 3.8.2** The relevant portions of the evidence of a hostile witness can still be made use of in appropriate situations, at least to corroborate the evidence of other independent witnesses in material particulars.
- 3.8.3** Evidence of interested witness cannot be discarded, but it has to be scrutinized with utmost care and caution.
- 3.8.4** Evidence of a trap witness must be tested in the same way as that of any other interested witness.
- 3.8.5** The witness who speaks about the crucial facts or any of the issue in the suit or prosecution is called material witnesses. Failure to examine the material witness by the prosecution in criminal cases may result in clean acquittal of the accused.
- 3.8.6** Testimony of an injured witness can be acted upon even without any corroboration as he is having a special status in law. Such a witness comes with a built-in guarantee of his presence at the scene of the crime. The evidence of the injured witness should be relied upon, unless there are grounds for rejection of his evidence on the basis of major contradiction and discrepancies therein.
- 3.8.7** Chance witness evidence may be reliable or not reliable depending on the circumstances.
- 3.8.8** Independent witnesses stay far away and are not willing to come forth as they often face harassment and suffer grave consequences. The prosecution has therefore no choice but to fall back on the testimonies of witnesses who are friends or the family members of the victim.

3.9 Early interrogation is desirable :

- 3.9.1** The interrogation of witnesses should be conducted early because human memory becomes fainter with the lapse of time and ultimately a time comes, when the witness forgets almost everything about the occurrence.
- 3.9.2** A belated examination of witness may produce another undesirable result; often witnesses discuss things observed not only amongst themselves but also with others and as a result enrich their story with what they hear from others. Moreover, as memory fades with the lapse of time, there grows a certain tendency to fill up the gaps from one's own imagination.
- 3.9.3** Interrogation of witnesses should not be undertaken before the place of occurrence has been carefully inspected, map of the scene of crime prepared, searches made and exhibits preserved.

3.10 Reviving lost Memory:

- 3.10.1** In some cases, it is found that due to genuine pre-occupation the investigator fails to contact the witnesses within a reasonable time and by the time a contact is established, the witnesses have either forgotten all about the occurrence or forgotten a substantial portion of it. There are two different ways of dealing with this, namely,
- (i) by adopting the association method of investigation and
 - (ii) by placing the witness amidst the surroundings in which, he first made his observations.

3.11 The association method:

- 3.11.1** The association method is of great help in reviving lost memory. Generally, a man associates different facts with each other and one fact remembered may stir up his memory with regard to another

fact. Thus, an educated man's memory regarding date of occurrence may be revived by making a reference to an interesting or sensational political event and that of a rustic villager by reaching a village festival of about the same date.

3.12 Place the witness amidst the same surroundings:

3.12.1 Another method of reviving lost memory is to place the forgetful witness in the surrounding and situation in which he first made his observation. Environment helps a great deal in stirring up the memory of the witness. Even if his memory be not revised instantaneously, it is likely to be rekindled after a certain lapse of time. For this reason, it is rather advantageous to examine all important witnesses on the spot because memory reacts better, if it has the actual place of occurrence before it.

3.12.2 It must, however, be remembered that nothing should be suggested to the witness so as to make him testify on matters about which he has no personal knowledge. To be trustworthy, the testimony must come spontaneously from the witness and not as a result of suggestions and feelers thrown at him with a view to getting particular statement.

3.13 Witnesses to be examined separately, trustworthy witnesses to be examined first:

3.13.1 Each witness should be examined separately and none of the suspects or witnesses should be allowed to hear the examination of others.

3.13.2 As far as possible, the important, favourable and trustworthy witness should be heard first so that the investigator may be sufficiently conversant with the facts of the case before he takes up

the interrogation of the suspect or of the unfavourable witnesses.

- 3.13.3** The questions should be clear and unambiguous; they should be neither suggestive nor leading. As a rule, the witness should be allowed first to give an account of his experience in his own way and only thereafter should the real interrogation begin.
- 3.13.4** The investigating officer must see that the witness does not omit any important details but he should at the same time guard against being misled by any false or inaccurate statement.
- 3.13.5** The method of interrogation should vary according to the psychology of the person interrogated, his age, sex, education and social status. A good investigator must, therefore, have a practical knowledge of human psychology and a good deal of fact and experience in the art of handling different classes of witnesses.
- 3.13.6** Some witnesses may require a little bit of stern handling, but as a rule, best results are obtained through patient and sympathetic treatment. The complainant and the inmates of the house, for example, must be made to feel that they are narrating their own tale of woes to their own kith and kin and not to a band of callous and indifferent persons. People who were wronged deserve kindness and sympathy. A word of sympathy brings witnesses much nearer to the investigator than a thousand harsh words.

3.14 Classification of witnesses

i) Interested witnesses:

- 3.14.1** An interested witness is a person who stands to gain by the successful investigation of the case. The investigator should tap these sources to the best of his ability, but he should not repose implicit faith in their statements without some sort of preliminary verification.

3.14.2 These witnesses are prone to exaggerate things and an intelligent investigator must be on his guard against being taken in by half-truths and falsehood by such witnesses.

3.14.3 Interested persons might set up a story before the investigator in accordance with a pre-conceived plan and if he readily believes that story without any verification or without going to the root of the case, he will in some cases at least simply play into their hands unwillingly and become a party to the bringing of a false charge before a court of law.

ii) Hostile witnesses:

3.14.4 They are a class of witnesses who stand to lose something from the result of the investigation and generally come from amongst the friends, relatives, associates, receivers or other well-wishers of the suspect or his family. The investigator must be on his guard against this class of witnesses.

3.14.5 They often lead the investigator to wrong path. Their constant endeavour would be to lead the investigator to a wrong path and thus thwart the purpose of investigation.

3.14.6 So, to deal with them, the investigator must at once be tactful, courteous and firm in his stand. It is almost wrenching something from unwilling hands, not by sheer use of superior force but by the utilization of greater intelligence, wit and resourcefulness over the forces of the hostile camp.

3.14.7 The investigator should not give any chance to the hostile witness to know that he proposes to examine him. It is always profitable to take him by surprise. If he gets an earlier intimation, he either absents himself or gets enough time to cook up a story to mislead the investigator.

3.14.8 He should be examined at a place away from his friends, associates, lawyers and relations.

iii) Disinterested witnesses:

- 3.14.9** This class consists of persons who have neither to gain nor to lose anything from the result of the investigation. Devoid as they are of any personal motive or consideration for manipulating things, their evidence deserves the highest credence. Such a witness, however, unless he is an extremely duty-conscious citizen, does not usually come out of his own accord to help the Police.
- 3.14.10** Naturally, such a witness does not like to stay away from his place of business incurring an amount of personal loss simply to oblige the investigator. The convenience of such witnesses must, therefore, be taken into consideration in deciding the date and time of interrogation.
- 3.14.11** While interviewing a disinterested witness, the investigator would do well to develop a common ground of mutual interest for the conversation.
- 3.14.12** An investigator should be extremely cautious in dealing with a witness of this type and approach him only with utmost civility, politeness and a due sense of dignity in his undertaking. On no account should he provoke the apathy of the witness.

iv) Lying witnesses:

- 3.14.13** Lying witnesses are not necessarily hostile witnesses. Witnesses may at times, give false information from lack of observation, incorrect observations, as also due to self interest and interest in the suspect.
- 3.14.14** Motive should be discovered and questions shaped accordingly: a good investigator must be able to find out the motive of the witness in giving false information in each case and shape his questions accordingly.

3.14.15 As regards the person who gives false information intentionally, it is always better to allow him talk as much as he likes, as it is not possible to lie logically and consecutively for any length of time. When the witness exhausts himself, an intelligent interrogator may not take much time to discover the issues of falsehood in his statement. In most cases, it would be found that the witness has contradicted himself on a number of material points.

(v) Unwilling witnesses:

3.14.16 Unwilling witnesses may come from a variety of reasons. Interestedness in the accused is often a reason but it is not the only cause to engender such a feeling. A witness may be unwilling to depose because of many reasons including his reluctance to be drawn before a court of law.

3.14.17 The remedy lies in discovering the cause of aversion in each case and in taking steps to remove it.

vi) Nervous witnesses:

3.14.18 From the nervous witnesses, the interrogator will have to pick up information slowly and gradually. The witness should be allowed to collect his thoughts and then made to deal with the points one after another in a systematic fashion.

3.14.19 Witness should not be confronted with a volley of interrogatories, as that invariably increases his nervousness and he may mix up things. He should therefore be approached in a spirit of sympathy and examined in his own surroundings. The interrogation should be in the nature of a conversation.

vii) Child witnesses:

3.14.20 Children are often good witnesses, when handled with care. They are easily influenced and terrorized. A friendly, almost, a fatherly, tone should be used to give them self-confidence. They should be asked to reveal their experiences and not what they heard. The interrogation should be in the form of a simple conversation and must be as brief as possible.

3.14.21 The questions should not be leading or suggestive as on account of their tender age, it sometimes becomes difficult for them to give a precise narration of what they actually witnessed and when leading questions are put to them, they are likely to give affirmative answers without understanding the full implications of the questions⁵⁵.

viii) Female witnesses

3.14.22 The examination ought to be conducted, as far as possible, at the residence of the witness and in the presence of a relation or a guardian.

3.14.23 A high standard of decorum and courtesy should be maintained throughout the interrogation and on no account should the interrogator lose patience or behave in a way that may look rude or uncivil on his part.

3.14.24 The services of women police should be requisitioned to undertake the examination.

3.15 Recording of statements of witnesses before a Magistrate

3.15.1. In important cases, witnesses may be produced before a Magistrate and their statements got recorded by the Magistrate on oath under Section 164 of the Cr.P.C before the commencement of the inquiry or trial.

⁵⁵ Corrigendum to Executive Directive No. 30/2018

3.15.2. Such statements cannot be used as evidence by themselves, but if the witnesses deviate subsequently in court during the inquiry or trial from their earlier statements made on oath, they can be charged under Section 193 of I.P.C.

CHAPTER 4

RECORDING OF CONFESSIONS AND ITS RELEVANCY

4.1 Confession by the accused before the magistrate

- 4.1.1** Confessions are received in evidence with great caution. Severe tests are laid down to prove that the confession is voluntary, true and free without any inducement, threat or promise. The legal provisions relating to confession are to be found in Sections 24 to 30 and Section 80 of the Indian Evidence Act, and Section 164 and 281 of the Cr.P.C.
- 4.1.2** If an accused person on being arrested, expresses his desire to make a confession before a Magistrate, the Police Officer concerned will send him immediately to a competent Magistrate under proper escort with a memorandum containing the request.
- 4.1.3** The Police Officers escorting the accused will ensure that while the actual recording of the confession is done, they are not in the view of the accused. The escort will abide by all lawful directions of the Magistrate concerned, commensurate with the safe custody of the prisoner.

4.2 Judicial Confession under Section 164 Cr.P.C

- 4.2.1** Judicial confession is of great value. The failure to tell the accused that he was not bound to confess is certainly an omission of one of the cautions mentioned in Section 164 Cr.P.C and calls for the rejection of the confession. Cautions prescribed by Section 164 Cr.P.C are mandatory and are intended to ensure that the confession is made freely, voluntarily and with a full sense of responsibility.
- 4.2.2** There is a general misconception that in order to prove a judicial confession, the magistrate recording the confession has to come in every case and prove the confession by his oral evidence. If the provisions of

Section 164 Cr.P.C appear to have been complied with, the recording magistrate need not come to the court. Thus, where the magistrate recording the judicial confession is not readily available on account of transfer, leave, retirement etc., the prosecution need not feel helpless, as recorded confession will automatically prove itself.

4.3 Confession by the Co-accused⁵⁶

- 4.3.1** Confession of a co-accused affecting himself and other accused person in a joint trial may be taken into consideration against such other person and the maker himself within the meaning of Section 30 Indian Evidence Act.
- 4.3.2** Confession of a co-accused is very weak evidence and requires corroboration.
- 4.3.3** Investigating officer must be able to show that the maker of the confession has implicated himself in all the offences in which he implicates the other co-accused. Section 30, Evidence Act requires that the person must be tried jointly for the same offence, which expression, means, an offence coming under the same legal definition, that is, under the same section of law.
- 4.3.4** A prudent Investigating officer should make all efforts to collect other pieces of collateral and corroborative evidence to support his case. He cannot expect to secure a conviction on the basis of uncorroborated confession of a co-accused.
- 4.3.5** Under Section 30 of the Evidence Act, a confession made by a co-accused may be taken into consideration by a court against the other accused under the following conditions.
 - i. The statement must be confession of the person who makes it.
 - ii. It must affect the confessing prisoner and his fellow prisoner.

⁵⁶Sec 30 Evidence Act.

- iii. The confession should be of a person who is being tried jointly with others,
- iv. The trial should be for the same offence.
- v. The joint trial of the prisoners must be a legal one.
- vi. The confession must be proved.

4.3.6 The confession of a co-accused is not substantive evidence against the other accused and no conviction of the other accused can be based on such a confession even though it may have led to discovery of any material fact as envisaged in Section 27 of the Evidence Act.

4.3.7 Action under Section 30 of the Evidence Act rests solely with the court trying the case.

4.4 Extra judicial confession by the accused

i) Extra-judicial confession before the members of public:

4.4.1 These confessions are not given much weight in court and the investigating officer should not remain satisfied with this sort of evidence alone. In conjunction with other pieces of evidence, an extra-judicial confession will have great value in fixing the guilt of the accused.

4.4.2 In extra judicial confessions, the courts require the witnesses to provide the exact words used by the accused as nearly as possible. Their confessions being mostly unrecorded, the witnesses very often forget the actual words used by the accused and make discrepant statements. Naturally, the court requires some other supporting evidence.

ii) Confession to a police officer:

4.4.3 Confessions are recorded by judicial officers under Section 164 of the Cr. P. C. However, when an accused on being arrested is willing to confess to a Police Officer about the crime committed by him, the

officer should record the same in the case diary, as far as practicable in the same words of the accused and in first person and himself certify at the end, that it was correctly recorded by him.

4.4.4 This record of the version of the accused will be made by the Police officer even if the statement does not amount to a confession, since the same may help further investigation and collection of evidence.

4.4.5 If any material fact is to be discovered in pursuance of such a statement, so much only of such statement as will lead to the discovery will be reproduced in the recovery mahazar, which will be attested by witnesses. Confession before a police officer is not admissible except under Section 27 of the Evidence Act.

4.5 Method of Recording a Confession:

4.5.1 IO may record just the relevant information in the confession. This may give further clues to the crime. It is likely that this whole exercise may become infructuous because, once the accused is produced in the court; he may decide not to confess. However, details obtained from him earlier may be useful in further unfolding the truth.

4.5.2 The recording of confession can be done in three ways:

- (i) Record it, sentence by sentence.
- (ii) Record it, stage by stage.
- (iii) To hear it completely and then draw up a comprehensive statement.

4.5.3 The following points may be kept in mind while recording a confession:

- (i) Name, parentage, residence etc. of suspect and associates.
- (ii) Acts showing motive and preparation for the crime.
- (iii) Actual commission of the crime with details of time and manner of commission.
- (iv) Subsequent conduct-details of retreat, division and disposal of property.

- (v) Information on the same lines regarding previous offence.
- (vi) Names and activities of receivers, accomplices, harbourers etc.

4.6 Information by the accused leading to discovery- Relevance of the Section 27 of the Evidence Act

4.6.1 Procedure for recording confession leading to discovery

(Sec. 27 Indian Evidence Act) :

- i. Name and other particulars for proper identification of the accused to be obtained.
- ii. Date, time and venue of recording to be indicated.
- iii. Statement may be recorded in presence of two witnesses.
- iv. These witnesses will accompany the IO and the accused to the place of discovery.
- v. Relevant portion of statement leading to the discovery of the articles or physical evidence should be recorded by the IO and signed by the accused. Accused cannot be compelled to give his signature.
- vi. Recovered articles will be packed and sealed in presence of those witnesses.
- vii. Seizure memo prepared by the Investigating officer will be signed by the Investigating officer and the witnesses as well as the accused. Accused cannot be compelled to give his signature.
- viii. Photograph of the witnesses along with the IO, the accused and the seized articles may be taken.

4.7 Relevance of the Section 27 of the Evidence Act

4.7.1 Under the Evidence Act, there are two situations in which confessions to police are admitted in evidence. One is, when the statement is made in the immediate presence of a Magistrate, and the second, when the statement leads to the discovery of a fact connected with the crime. The discovery assures the truth of the statement and makes it reliable, even if it was recorded.

4.7.2 When a discovery is made in pursuance of statements made by several accused persons, such discovery will not bind anyone of them individually. It is only the information that was given by the first person and which led to the actual discovery which may be proved under the terms of Section 27 Evidence Act.

4.8 Effect of non-recovery of the weapon

4.8.1 The discovery and recovery at the instance of the accused are governed by Section 27 and Section 8 of Evidence Act. Non-recovery of weapon of offence does not cast any dent on the prosecution version. Non-recovery of the “weapons of offence” is not fatal to the case of the prosecution, when there is direct, cogent and reliable evidence and trustworthiness of the prosecution witnesses and further more chain of each event connecting to the witness’s evidence is proved.⁵⁷ If recovery could not be effected, even then it is admissible as a subsequent conduct under section 8 of Evidence Act.

⁵⁷ *ChintakayalaKurmaiaha v. State of A.P* 2016(2) ALD(Crl) 777.

CHAPTER 5

PROCEDURE OF TEST-IDENTIFICATION PARADE

5.1 Law and the procedure of Test-Identification

- 5.1.1** The Test Identification (TI) is a process by which the identity of persons, things or animals concerned in the offence under investigation is established as a matter of prudence.
- 5.1.2** When a witness says that he can identify a property or accused persons or others connected with the case under investigation, the investigating officer shall record their description in detail and request the Magistrate to conduct identification parade.
- 5.1.3** When a witness says that he can identify a property or accused persons or others connected with the case under investigation, the investigating officer shall record their description in detail and request the Magistrate to conduct identification parade.
- 5.1.4** It is relevant under Section 9 Evidence Act which says facts which establish the identity of any person or thing whose identity is relevant are also relevant.
- 5.1.5** With regard to criminal offence, the identification has two-fold objectives:
- (i) To satisfy the IO that the person arrested, but not previously known to the witness, is concerned in the crime or that a particular item of property is connected with the case.
 - (ii) To enable the witnesses to satisfy themselves that the accused whom they suspect is really the one who was seen by them in connection with the commission of the crime.
- 5.1.6** Value of such evidence is indeed very high when it can be established that the witness while being examined in the trial corroborates such evidence. Statements made by the witnesses in course of TI proceedings

are admissible for the purpose of corroboration under Section 157 of Evidence Act.

5.1.7 A memorandum prepared by the Magistrate is admissible in evidence under Section 80 Evidence Act without any proof. It means that the magistrate need not come to the Court to prove the memo unless the accused points out ambiguity, defects or lacunae in the TI proceedings.

5.1.8 The TI parade, if conducted by a police officer attracts the provisions of Section 162 Cr.P.C that makes the evidence inadmissible.

5.1.9 Since human memory is often short-lived, it is desirable to hold TI parade without unnecessary delay. The delay, if any must be explained to the magistrate with a request to record the same in his TI parade report and the delay must be explained in the Case Diary.

5.2 Cases in which Test-Identification parade is to be held:

5.2.1 There is no necessity to hold a TI parade where an accused is well known to the witness. It is only to be done when the identity of the accused is to be established by the witnesses. Therefore, in TI parade, the most important criteria are-

- (i) That the accused is not known to the witnesses before the occurrence.
- (ii) That the witness should have the opportunity to observe the accused during the commission of the crime.
- (iii) There should have been sufficient surrounding circumstances which facilitated the identification of the accused at the time of occurrence.

5.2.2 Magistrates should preferably hold TI Parade. Test identification is held in a separate place within the jail premises. A TI Parade held in the police station is admissible, if there is separate space to conduct the same.

- 5.2.3** TI parade has to be conducted as early as possible.
- 5.2.4** Before sending the witness for TI Parade, the IO should examine the witness properly and his statement should be recorded accordingly.
- 5.2.5** Police is not barred from conducting TI Parade. If statements to police as the identification of accused by the identifier and the witnesses in the TI Parade are signed, it will hit by section 162 Cr.P.C. Hence it would be better for police to abstain from conducting TI Parade.
- 5.2.6** The Magistrate will conduct identification proceedings and the record he makes can be used as a statement under Section 164 Cr.P.C.
- 5.2.7** Government has issued the instructions for the guidance of Magistrates and Jail Authorities regarding the conduct of identification proceedings.⁵⁸
- 5.2.8** If the witness identifies the accused during the Test Identification Parade and subsequently fails to identify the accused in the court during trial, then the Magistrate who conducted Test Identification Parade can save the situation by adducing his evidence of Test Identification Parade.
- 5.2.9** If the witness didn't identify the accused at Test Identification Parade and subsequently identify in court during trial, the evidence of identification is of no use.

5.3 Identification through Photographs

- 5.3.1** Photographs of certain classes of criminals are maintained in the District Crime Record Bureau. Photographs exist also for dossier-criminals. Witnesses may be shown the photographs and asked to identify them.

⁵⁸G.O.MS. 791 Home (A) dated 25/06/1958.

- 5.3.2** In cases where criminals are identified through photographs, a regular identification parade should also be held after the apprehension of the accused.
- 5.3.3** When identification is sought to be made through photographs, single and individual photographs should not be shown to witnesses. Photographs of as many persons as possible, among which should be the suspect's photograph should be shown to the witness, who should be asked to pick out from among them the suspect's photograph, if it is there.

CHAPTER - 6

RECORDING DYING DECLARATION

6.1. Dying declaration

- 6.1.1.** The statement made by a person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question, is admissible in evidence under clause (1) of Section 32 of the Evidence Act. Such statement is relevant, whether the person who made it was or was not, at the time when it was made, under expectation of death and whatever may be the nature of the proceeding in which the cause of his death comes into question.
- 6.1.2.** The dying declaration may be recorded by any person. But the dying declaration should preferably be recorded by a Magistrate, if readily available.
- 6.1.3.** Where this is not practicable, the investigating officer may record it, preferably in the presence of witnesses. Even if the declaration is made to a Police officer, it is admissible in evidence and its use is not barred by Section 162 of the Cr.P.C. Even if it has been made orally in the presence of any person, it may be proved in court by the oral evidence of that person.
- 6.1.4.** If he survives, it will be useful, if made before a Magistrate, or anyone other than a Police officer, to corroborate his oral evidence as a witness in court.
- 6.1.5.** The dying declaration must, as far as possible, be complete by itself. The person making the declaration must be speaking from personal knowledge of the facts. If reduced to writing by the police, the declaration should, as far as possible, be in the form of questions and answers and in the very words of the declarant.

- 6.1.6.** The signature of the declarant should invariably be taken on the dying declaration. But, if the declarant is an illiterate or is incapacitated from signing for any reason, such as his hand being maimed, his thumb impression should be taken. A note should be made in the dying declaration giving reasons why the signature of the declarant was not taken.
- 6.1.7.** When the declarant, being in a serious condition and unable to speak, makes signs by hand or head, the person recording the dying declaration must record the precise nature of the signs which the declarant made. In such situation it may be videographed, if possible.
- 6.1.8.** Incomplete dying declarations are not by themselves inadmissible in law. Though a dying declaration is incomplete by reason of the deceased not being able to answer further questions in his then condition, yet the statement, so far as it goes to implicate the accused, could be relied upon by the prosecution, provided it is quite categorical in character and complete by itself so far as the implication of the accused is concerned. If there is corroboration for the dying declaration, it is so much the better, as the incomplete dying declaration would then gain more veracity.
- 6.1.9.** If the person making dying declaration survives, his statement is inadmissible as dying declaration but can be relied on under Section 157 of Evidence Act to corroborate his testimony, when examined, it can also be used to contradict him under Section 145 of Evidence Act.

6.2. Recording of Dying Declaration:

- 6.2.1.** As far as possible, a dying declaration should always be recorded by a magistrate and signed by him. Thumb impression or signature is taken of the person making the statement.
- 6.2.2.** If a magistrate is not available, the police officers should himself record the statement, preferably in presence of witness and obtain the signatures

of the declarant. He should clearly state the reasons in his Case Diary and the statement itself for not summoning the magistrate to record the dying declaration.

6.2.3. If the doctor is not available on the spot, a few questions must be asked to ascertain mental alertness of the victim and the response of the victim along with the questions must be recorded before recording the statement. For instance, question may be asked about the colour of the dress the victim is wearing, the day of recording his statement, and who are the relatives or friends standing beside the victim etc. to ascertain the mental alertness of the victim.

6.3. Procedure for recording dying declaration by police:

- (i) Date, venue and time of recording the statement.
- (ii) Name, age, father's name etc. of the victim for proper identification.
- (iii) A few preliminary questions to ascertain the mental alertness of the victim and the questions and answers must be recorded.
- (iv) Statement in the form of questions and answers in the language of the victim.
- (v) Certificate stating the reasons for non-availability of the doctor and magistrate and the steps taken to secure their attendance.
- (vi) The name, designation and other particulars of the police officer recording the statement.
- (vii) The statement of the deceased should be recorded in his own words.

6.3.1 When the IO or the magistrate recording the statement does not know the script of the language spoken by the deceased, he may record the statement in English.

6.3.2 If it is recorded as a result of the questions put to the deceased and the answers given by him, these questions and answers must always be recorded to enable

the Court to understand the full significance of the statement. It is, therefore, essential to record the questions in exact words they have been put and take down the actual words in which the answers are given.

6.3.3 Dying declaration can also be made by signs in answer to question put as to cause of death, especially when the declarant is not in a position to speak or write which will be admitted as verbal statements. There can be a nod of assent.

6.3.4 FIR is admissible as dying declaration if in a murder case the information report lodged by the deceased relates to the cause of his death, by virtue of Section 32(1) of Evidence Act.

6.3.5 The grounds on which a dying declaration is admitted are:

- (i) Death of declarant
- (ii) Necessity: The victim being often the only eyewitness to the crime, the exclusion of his statement would tend to defeat the ends of justice.
- (iii) Sense of impending death, which creates a sanction equal to the obligation on oath.
- (iv) Statements, written or oral must be proved. If the statement is oral, the persons who heard it must depose. If recorded, it must be proved by the evidence of the person who recorded it. If the statement made by the deceased does not relate to his death but to the death of another, it is not relevant. It may be noted that the dying declaration cannot be proved, unless the death of the person who made the declaration is also proved.

EXAMINATION OF WITNESS

PART II

CIRCULARS /EXECUTIVE DIRECTIVES

Sl No.	Circular No.	Content of the Circular
1.	01/1959	Attendance of investigating officer and witnesses in Courts
2.	129/1969	Interrogation of witnesses/accused-general principles
3.	54/1970	Importance of witnesses meeting the Public Prosecutors to refresh their memories
4.	11/1975	Disciplinary proceedings-irregularities-avoidance of
5.	14/1986	Investigation of criminal cases-Haphazard manner of prosecution-avoidance of-
6.	16/1986	Greater attention in the prosecution of criminal cases
7.	65/1994	Witnesses-treatment in Police Stations- implementation of recommendations-7th report of the estimate committee
8.	06/2009	Witnesses in road accident cases
9.	22/2009	Prosecution- copies of case records to APP-
10.	09/2010	Code of Criminal Procedure(Amendment) Act, 2008 – Changes in Police procedure
11.	20/2011	Missing persons-Registration and Investigation KP Act 2011- New procedure
12.	30/2012	Guidelines to be followed by investigating officer while taking victims of sexual assault to various places for investigation
13.	10/2013	The Criminal Law(Amendment) Act 2013-Instructions
14.	Executive Directive No. 25/2017	Statement under 164(5A) CrPC mandatory in sexual offences under the IPC

*If anything is contradictory between and inconsistent with the contents of the above Circulars/Executive Directives, the PSO and the Part I, the directions in Part I shall prevail.

- Circulars and Executive Directives are available in Kerala Police Website.

SEARCH AND SEIZURE

PART I

SEARCH AND SEIZURE

1. Search for Person & Property

- 1.1** Search is an effective tool for investigation. At the same time, it constitutes a serious invasion on the liberty of a person.
- 1.2** Any police officer, when he seizes the property of any person or detains a person in custody or conducts search or arrests any person illegally for causing annoyance and without reasonable cause commits a punishable offence. (Section 116, Kerala Police Act.)
- 1.3** The seizure of article can be from informant, accused or any third person depending upon the facts and circumstances of the case.
- 1.4** Searches are conducted under a warrant issued by a competent court or without warrant by a Police Officer as authorized by the Criminal Procedure Code or other special Acts as the case may be.
- 1.5** Searches under a warrant can be undertaken under any of the provisions of Sections 93, 94, 95 and 97, Cr.P.C.
- 1.6** Searches without a warrant are undertaken under any of the provisions of Sections 103, 165 and 166, Cr.P.C.
- 1.7** Searches are conducted before or after registration of First Information Report; after the arrest of the accused; after confession; to collect evidence during investigation; on the orders of the Court; or for the maintenance of public peace and order.
- 1.8** General provisions as to search and seizure are set out in Section 100 of Cr.P.C. The procedure laid down in the Sections is generally followed in offences committed under the Indian Penal Code as well as in special and local laws with a little variance. Thus, in all circumstances of search and seizure, the investigating officer should follow the procedures and directions laid down under Sections 100 and 165 Cr.P.C.

1.9 There are certain special and local Acts such as the Narcotic Drugs and Psychotropic Substances Act, 1985 which provide for separate search and seizure procedures to be followed by the investigating officer.

2. Object of search:

2.1 The object of a search may be any of the following:

- a. For the arrest of a person if he is concealing his presence;
- b. To recover property from arrested offenders to connect him with the offence or for a weapon;
- c. For obtaining an article or any other thing wanted in a case;
- d. For a person wrongfully confined/missing;
- e. For discovery of firearms or explosives or any other material for prevention and detection of crimes;
- f. For clues/evidence needed for investigation.

3. Production without search:

3.2 If an Investigating Officer considers the production of any particular document or thing, necessary or desirable for the purpose of investigation, he may issue a written order to the person in whose possession or power such document or thing is believed to be, for its production under Section 91 Cr.P.C.

3.3 A Court can also issue summons for production of such document or thing under Section 91 Cr.P.C.

4. Requirements of a lawful search:

4.1 The officer conducting the search should be the Officer-in charge of a Police Station or an Investigating Officer or any subordinate officer who is authorized by the I.O. or officer in charge of the Police Station.

4.2 He should have reasonable grounds for believing that a particular thing is

necessary for the investigation of the case.

- 4.3** The place to be searched should be in the limits of the Police Station of which he is in-charge or the case should relate to the Police Station limits.
- 4.4** Such things cannot, in his opinion, be obtained without undue delay.
- 4.5** Such officer may, after recording in writing the grounds of his belief, shall, if practicable, conduct the search in person.
- 4.6** If he is unable to conduct the search in person, he may after recording in writing, his reasons for not so doing, require any officer subordinate to him to make a search. While deputing a subordinate, the officer shall deliver to such subordinate officer, an order in writing specifying the place to be searched and as far as possible, the thing for which the search is to be made.
- 4.7** Copies such record (advance intimation) made above shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence, and shall be available in the case diary.
- 4.8** Provisions of Section 100 Cr.P.C. shall apply to search made under Section 165 Cr.P.C.

5. House Searches:

- 5.1** The procedure to conduct house searches is prescribed under Section 100 Cr.P.C.

6. Witnesses for searches:

- 6.1** It is mandatory, as per provision of Section 100 (4) Cr.P.C., for an officer making search, to get two or more independent and respectable inhabitants of the locality in which the place to be searched is situated or of any other locality, if such inhabitant of the said locality is available or is willing to be a witness to the search, to attend and witness the search and may issue an

order in writing to them or any of them to do so.

- 6.2** Non-compliance of this order amounts to an offence under Section 187 I.P.C as provided under Section 100(8) Cr.P.C.
- 6.3** In case independent witnesses are not available it is necessary to place on record the fact of having made attempts to have witnesses of the locality in which the search is to be made but no witness was available.
- 6.4** The Officer conducting the search must insist on the witnesses being present with him throughout the search and when an article or document is discovered, attention of the witness should be drawn to all the circumstances relating to it.
- 6.5** While conducting searches in a computerized environment, it would be better to have computer literate witnesses.
- 6.6** A witness should not be selected repeatedly to witness the searches.

7. Procedure for Searches:

- 7.1** Before entering the house, the Investigating Officer and the witnesses should submit their person for being searched by the occupant of the house or some persons on his behalf, who should be permitted to be present during the search.
- 7.2** No other person should be permitted to enter or approach the house except a member of the household.
- 7.3** If necessary, woman officers should accompany the search party. The services of woman Police Officers could be taken from local Police. Immediately on reaching the house, all telephones should be taken charge of by the Search Party.
- 7.4** Members of the search party should behave politely with the inmates of the house/place particularly with the women and aged persons.

- 7.5** Due respect should be shown to the place of worship but the search should cover the entire premises.
- 7.6** The search must be thorough and meticulous. All the incriminating documents/articles must be seized in the presence of witnesses.
- 7.7** A search list (**Form 151 B**) must be prepared on the spot, indicating the proceedings of the search and the list of documents and articles seized during the search. The same must be signed by the witnesses.
- 7.8** A copy of the said search list must be given to the occupant of the house under acknowledgement and the documents/articles so seized from the premises may be recorded in his presence and that of the witnesses.
- 7.9** In case, it is not possible to complete the search on the same day, the portion of the premises which remained to be searched must be sealed and secured under a proper guard before leaving the premises for the night.
- 7.10** All important exhibits should be got video-graphed/ photographed and transferred to one-time write only CD/DVD. The original, along with a copy, should be sealed and deposited in the Court having jurisdiction. With the permission of the Court, a copy may be made and retained for the purpose of investigation.

8. Guidelines to be observed during Searches:

- 8.1** Searches must always be carried out in strict conformity with law. Provisions of Sections 94, 165, 166, 100, 101, 102, and 103 Cr.P.C must be fully complied with.
- 8.2** In the inventory that is prepared, the incriminating documents should be listed with relevant details.
- 8.3** The remaining documents could be inventoried in bulk. However, page numbering and identity should be given and the witnesses etc. should individually initial the contents.

8.4 No unauthorized Press publicity should be given about the searches. Strict instructions should be given to members of the raiding party not to divulge any information about searches to unauthorized persons.

8.5 In the course of a search, it should be ensured that the legal rights of the person searched are respected because any violation thereof may affect the search adversely. The occupant of the premises reserves the following rights:

- a) to see the warrant of authorization duly signed and sealed by the issuing authority;
- b) to verify the identity of each member of the search party;
- c) to have at least two respectable and independent residents of the locality as witnesses;
- d) to have personal search of all members of the search party before commencement and conclusion of the search;
- e) to ensure that a personal search of females is carried out by another female only, with strict regard to decency;
- f) to have a copy of the search list together with all annexures, for which acknowledgment should be given;
- g) to call a medical practitioner, if required; and
- h) to have the facility of having meals etc. at the normal time.

9. Statements under Section 161 Cr.P.C. of the Search Witnesses:

9.1 The I.O. shall record the statements of the search witnesses under Section 161 Cr.P.C., immediately after completion of the search.

10. Search and Seizure of Digital Evidence:

10.1 The principles and procedures to be followed while seizing digital evidence has to be complied with.

11. Unnecessary inconvenience to Parties to be avoided:

11.1 While exercising the powers under Section 91 Cr.P.C. or while taking into possession documents, records etc., required for the investigation, the Investigating Officer must be careful not to act in a manner, which may cause unnecessary hardship or dislocation of work to the persons or offices concerned.

12. Unnecessary Searches to be avoided:

12.1 House searches may be conducted only when essential in the interest of the investigation of the case.

12.2 In every case, wherein the Investigating Officer desires to search a house or dwelling Unit, he will record in his Case Diary the reasons for doing so.

12.3 A house or dwelling Unit must not be searched unless there are definite reasons to believe that certain specific things or documents required for the investigation of the case will be found there. The number of places to be searched should be kept at the bare minimum.

13. Searches after dark to be avoided

13.1 Although the law does not require that searches should be made by daylight only, searches after dark should, as far as possible, be avoided. However, it may be necessary sometimes to take precautions to ensure that the articles of evidentiary value for which the search is to be made are not discharged or tampered with.

14. Procedures in Respect of Letters etc. in Postal Department

- 14.1** A Police Officer has no powers to direct the postal or telegraph authorities to produce a letter or telegram or parcel. (Section 91 (3)(b), CrPC).
- 14.2** The District Magistrate, Chief Judicial Magistrate, Court of Session or High Court for the purpose of any investigation, enquiry, trial or other proceeding under the Cr.P.C may require the postal or telegraph authorities to deliver such document or parcel to such person, as directed by such court. Any executive/judicial magistrate, Commissioner of Police/ District Superintendent of Police may cause search, or detain such document, parcel or thing pending the orders as aforesaid.

15. Search outside jurisdiction

- 15.1** When a search has to be conducted in the jurisdiction of another station, whether in the same or a different district, an officer- in- charge of a police station making an investigation may require under sub-Section (1) of Section 166 Cr.P.C, the officer- in- charge of the former station to make a search or cause search to be made.
- 15.2** But, where there is reason to believe that the delay occasioned by such a procedure might result in evidence being concealed or destroyed, the investigating police officer may, under sub-Section (3) of the Section 166 of Cr.P.C, make the search himself or cause the search to be made, in which case, he shall forthwith send a notice of the search together with a copy of the list prepared under Section 100 Cr.P.C to the officer in charge of the police station, within the limits of which the place searched is situated and to the nearest Magistrate empowered to take cognizance of the offence.

16. Significant Points to be kept in mind while preparing the search list/ memo:

16.1 While making the search/seizure list, the following details should be indicated:

- a. Name, occupation, age and address of witnesses
- b. Time, date and place of start of proceedings
- c. Reason for search
- d. Authority for search

16.2 The offer of personal search of each member of the search party must be recorded.

16.3 Before conducting personal search ask the person whether he would like to be taken before a gazetted officer and record the factual position in the memo.

16.4 The presence of the occupants of the premises/person to be searched, and if necessary identification evidence is to be incorporated in the memo.

16.5 Mention description of place to be searched e.g. area of flat, number of rooms, telephone number etc.

16.6 Ask the person to be searched to give declaration of his baggage wherever necessary e.g. whether he is having, any contraband,

16.7 Give graphic description of the search operation e.g. who opened the suitcase, who had the key, from where the incriminating documents or contraband was recovered, how it was concealed etc. in a simple plain language.

16.8 Mention where and how the weight of contraband goods was done. Give gross weight, net weight etc.

16.9 Mention value of contraband to be seized.

16.10 Mention number of samples drawn and their weight and identification marks.

16.11 Indicate the location from where the given contraband exhibits, samples and documents proposed to be seized/taken over.

- 16.12** Indicate that “nothing was taken over other than what has been recorded in memo”; “no damage to property or person was done”, and that the entire search proceeding was carried in a very peaceful manner (unless the facts are otherwise).
- 16.13** Mention date and time of conclusion of search before leaving the place of search.
- 16.14** Seal the exhibits and contraband mentioning seal number and take an impression on the memo.
- 16.15** Take signatures of witnesses, officer writing the memo and the person being searched, on labels pasted on contraband, exhibits and documents.
- 16.16** Give a copy of memo/ search list to the person whose premises was searched and obtain his receipt with date and time.
- 16.17** In order to ensure proper identification of the seized items, the following important points may be noted.
- a)** Complete description of the property seized is to be mentioned in the memo.
 - b)** In case of recovery from a vehicle, its registration number, colour, engine number, chassis number, model etc. should be mentioned.
 - c)** As regards the seizure of the vehicles, complete mention about engine, chassis number should be mentioned as also the registered number/make and colour. In case any part like wheels, battery, lights etc. are missing, the same should find place in the memo.
 - d)** In case of fire arms, the make (country made or foreign make), number, etc or any specific writings inscribed on it may be mentioned.
 - e)** A sketch of the recovered arms be prepared and that the sketch has been prepared be first mentioned in the memo. This should be done at the spot. The arms etc shall be sealed. The mark of the seal shall be mentioned in the seizure memo itself.

- f) Complete details regarding arms like knife etc, i.e. the length and breadth of the blade and that of handle will be mentioned in the memo.
- g) Details of stolen property like ornaments, watches etc. if recovered shall be mentioned.
- h) Special Marks of identification, its weight etc. will be mentioned.
- i) Special identification marks on the articles including cloth etc. may be mentioned while preparing recovery memo. In case, the article(s) is used one or torn or worn out, a mention should be made in the memo.
- j) In recoveries made from a field (a pit) etc. the depth dug up should be mentioned. Spot may be got photographed and mention made about it in the recovery/seizure memo. Complete description including deformity, if any, in respect of animals recovered may be mentioned.
- k) In case of the recovery of currency notes in trap cases registered under Section 5(ii) of Prevention of Corruption Act, the number, denomination, serial number etc. shall be mentioned.
- l) Property shall be sealed for purposes of identification, if any. A mention about the handing over of seal to one of the witnesses of the recovery/seizure will be mentioned in the memo. Reference to this shall also be made in the statement of the witness recorded under Section 161 Cr.P.C.

17. Submission of Property to Court, and disposal thereof:

- 17.1** If the search has taken place on a warrant, the property is forwarded to the Court with the execution report and the in the form prescribed in **KPF 151**
- A.** Documents are forwarded in **KPF Form 15**.

- 17.2** If the search has taken place without a warrant, the property is forwarded to the Court with a report and the in the form prescribed in KPF 151 A. Documents are forwarded in KPF Form 15.
- 17.3** In case of perishable objects, livestock, cash, explosives etc, appropriate action is to be taken as prescribed under the Cr.P.C, Criminal Rules of Practice, or as prescribed by orders of the Court.
- 17.4** Guidelines regarding disposal of property seized is laid down in Section 451- 459 of the Code of Criminal Procedure, as also Rule 181 to 189 of the Criminal Rules of Practice, Kerala, 1982.

18. Other Salient Aspects to remember include:

- (i) The original seizure list is to be sent to the Court as soon as possible.
- (ii) Seized articles should be properly labeled.
- (iii) Copy of the label should be kept in the Case Diary.
- (iv) Proper entries to be made in the General Diary.
- (v) Entries in the Property register to be ensured.
- (vi) Chain of custody is to be maintained.
- (vii) For obtaining expert opinion against seized article, the same should be forwarded through the Court.

SEARCH AND SEIZURE

PART II

CIRCULARS

SL.NO.	CIRCULAR NO.	CONTENT OF THE CIRCULAR
1	34/86	Search- Important Instructions
2	23/87	Search- Important Instructions
3	16/99	NDPS Act- Investigation of cases- Guidelines issued by the Hon'ble Supreme Court
4	4/2000	Narcotic Drugs and Psychotropic Substances Act. 1985- S.50
5	10/2001	Investigation of cases pertaining to smuggling of Spirit
6	17/2001	Criminal Appeal No. 22 of 1994- Judgement of Hon'ble High Court of Kerala
7	14/2003	Search and arrest
8	8/2005	Visit to Scene of Crime - instructions issued
9	10/2011	Forwarding of Material Objects(MOs) - Proper accounting at Police Stations
10	17/2016	Taking of CCTV footage and call records as evidence in prosecution cases

* If anything is contradictory between and inconsistent with the contents of the above Circulars, the PSO and the Part I, the directions in Part I shall prevail.

- Circulars are available in Kerala Police Website.

ARREST, CUSTODY AND ABSCONDER MANAGEMENT

PART I

ARREST, CUSTODY AND ABSCONDER MANAGEMENT

1. Introduction:

- 1.1 An arrest by police could be an arrest without warrant, arrest with warrant issued by Magistrate and arrest to prevent any person from committing any cognizable offence.
- 1.2 The relevant provisions under which this power is derived are Sections 41, 42, 48, 60 and 151 of CrPC.
- 1.3 Section 60 A of the CrPC mandates that no arrest can be made except in accordance with the provisions of the Code, or any other law in force providing for arrest. Section 125 of the Kerala Police Act, 2011, indicates the conditions under which arrest for offences under the Kerala Police Act is to be made.
- 1.4 Ancillary provisions regarding arrest in specified situations are provided under Sections 55, 129(2), 123(6), 432(3) of the Cr.P.C and the provisions in various other Central and State enactments.
- 1.5 It should be remembered that arrests under Section 41(1), 48, 60, 122 and 151 of the Cr.P.C can be effected by any police officer while arrest under Sections 129 and 171 of the Cr.P.C can be made or directed by the officer in charge of a PS. Police officers do not have the powers to make arrest in non-cognizable cases except under the circumstances mentioned in Section 42 of the Cr.P.C etc.
- 1.6 Provisions regarding removal of persons are laid out in various statutes including Section 40 of the Kerala Police Act, 2011 and Sections 145, 147, 155, 156 of Railways Act.

2. Power of Arrest:

- 2.1 Police Officers can arrest an individual against whom a warrant of arrest has been issued by a Court, if it is endorsed to the officer for execution. There is no discretion to the Police Officer in executing the warrant. In case arrest

could not be made within the specified time in the warrant, a fresh warrant may be obtained after returning the unexecuted warrant.

- 2.2** The power to arrest without warrant is to be exercised with utmost care as it takes away the liberty of an individual and thus it may be ensured that the human rights of any individual are not violated.
- 2.3** Before arresting the individual, the evidence available against him and the necessity to effect the arrest may be evaluated. The arrest may be effected only if it is reasonably considered that the arrested person is involved in the commission of a heinous crime and will be put under trial in a court of law and if it is considered that he is likely to tamper with or destroy evidence or likely to escape from process of law. Unnecessary publicity of the arrest should be avoided.
- 2.4** No hard and fast rule can, however, be laid down as to the exact stage at which an arrest should be affected in the course of an investigation.
- 2.5** No arrest can be made just because it is lawful for the police officer to do so. The police officer must be able to justify the arrest apart from his power to do so. Section 41 of Cr.P.C specifically outlines the justifications.

3. Essentials of Arrest under Section 41 of Cr.P.C:

- 3.1** According to the Section 41 of the Cr.P.C, an individual who has committed/ is suspected to have committed/ against whom information is received of having committed a cognizable offence can be arrested without an arrest warrant by a Court.
- 3.2** In case of offences with punishment of imprisonment for a term less than 7 years or up to seven years, a police officer must record the reason for arrest in writing, if such arrest is effected. If the officer decides not to arrest, then the reason for not arresting also is to be recorded in writing in the CD. This is not required in cases which are punishable with more than seven years of imprisonment.

3.3 Arrest without warrant can also be undertaken in cases of:

- a. Proclaimed offenders;
- b. Persons in possession of suspected stolen property, and who is suspected to committed such theft;
- c. Persons who obstruct a police officer, or escapes/ attempts to escape from lawful custody
- d. Deserter from the armed forces
- e. Persons liable to be apprehended in an extradition proceedings
- f. Released Convict who breaches rules applicable to him
- g. Persons for whose arrest a lawful requisition has been made

3.4 In cases where arrest is not required as above, a notice under Section 41-A may be issued, to appear before the police officer or at such places as notified in the notice. When such person complies or continues to comply with the notice, he shall not be arrested for the offences except after recording specific reasons in this regard.

4. Arrest- How made:

4.1 As provided in Section 46 Cr.P.C, in making an arrest, the Police Officer shall actually touch or confine the body of the person to be arrested, unless there is submission to the custody by word or action.

4.2 If any person forcibly resists the endeavor to arrest him or attempts to evade the arrest, all means necessary, including reasonable force may be used. It must be remembered while using reasonable force, that the law does not give a right to the Police Officer to cause death of a person who is not accused of an offence punishable with death or with imprisonment for life.

4.3 In the absence of the arrest warrant, the concerned Police officer should inform the individual of the reason for his arrest. The person should also be

informed about his offence, whether it is bailable or non-bailable so that he could arrange sureties on his behalf under Section 50 Cr.P.C.

4.4 Every police officer while making an arrest shall:

- a.** bear an accurate, visible and clear identification of his name which will facilitate easy identification;
- b.** prepare a memorandum of arrest which shall be—
 - i.** attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made;
 - ii.** countersigned by the person arrested; and
- c.** inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend named by him to be informed of his arrest.

4.5 An arrest memo (KPF No.14) showing the time, date and place of arrest as well as the FIR number with sections of law shall be prepared at the time of arrest by the Investigating Officer and sent to the Magistrate. At least one witness who may either be a member of the family of the arrestee or a respectable resident of the locality may countersign the arrest report. The arrestee shall also countersign it.

4.6 Provisions contained in some special Acts like Narcotic Drugs and Psychotropic Substances Act (NDPS Act), etc. should be strictly followed.

5. Search of arrested person:

5.1 Police officers shall at the time of arrest search the body of all persons arrested and shall invariably prepare an inspection memo (KPF No.14A) containing details not only of the property seized from the accused but also details of injuries, if any, found on the accused at the time of his arrest.

- 5.2** A list of the property, omitting the wearing apparel retained by the prisoner shall be entered in the Search Register (**KPF No. 151**) which shall be signed by the Investigating Officer and the prisoner.
- 5.3** An inventory of the articles found on his person should be prepared and a copy given to him. All property found on his person, except necessary wearing apparel shall be sent to the Magistrate with **KPF No. 151-A**.
- 5.4** Once the arrestee is brought to the police station, entries are to be made in the register for arrestees (**KPF No. 14 A**), general diary etc.
- 5.5** A thorough search of his clothes and belongings should be made before putting him in lockup. The search is done for anything that may facilitate attack, escape or suicide.
- 5.6** Articles found upon him other than necessary wearing apparel should be placed in safe custody and if any articles are seized from his person, a receipt showing the articles taken possession by the Police Officer shall be given to such person and entries made in concerned registers.
- 5.7** The directives of the Supreme Court in D.K. Basuv. State of West Bengal (1997) 1 SCC 416 should be strictly followed in arrest procedures.

(Annexure-A)

6. Medical Examination of the arrested person

- 6.1** When any person is arrested, he shall be examined by a medical officer in the service of Central or State Government, and in case the medical officer is not available, by a registered medical practitioner soon after the arrest is made.
- 6.2** In case the arrested person is a female, the examination of the body shall be made only by or under the supervision of a female medical officer, and in case the female medical officer is not available, by a female registered medical practitioner.
- 6.3** The medical officer or a registered medical practitioner so examining the arrested person shall prepare the record of such examination, mentioning

therein any injuries or marks of violence upon the person arrested, and the approximate time when such injuries or marks may have been inflicted.

6.4 Copy of the report of such examination is to be furnished by the medical officer or registered medical practitioner, to the arrested person or the person nominated by such arrested person.

6.5 When there are reasonable grounds to believe that medical examination of a person arrested on charge of committing an offence of such a nature will afford evidence of the commission of an offence, he can be subjected to medical examination to ascertain such evidence. Some force as is reasonably necessary for that purpose, can also be used for the purpose as per Section 53 CrPC.

6.6 “Examination” can include the examination of blood, blood stains, semen, swabs in case of sexual offences, sputum and sweat, hair samples and finger nail clippings by the use of modern and scientific techniques including DNA profiling and such other tests which the registered medical practitioner thinks necessary in a particular case.

6.7 In case of persons accused of rape, the registered medical practitioner is to submit a report in the manner prescribed in Section 53-A CrPC, and forwards it to the investigating officer without delay.

7. Intimation of / Publication of information regarding Arrest

7.1 Every police officer or other person making any arrest under this Code shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his friends, relatives or such other persons as may be disclosed or nominated by the arrested person for the purpose of giving such information. (Section 50 A, CrPC)

7.2 The police officer shall inform the arrested person of his rights regarding such intimation and should seek details of the person he would like to

nominate to receive such intimation as soon as he is brought to the police station.

7.3 An entry of the fact as to who has been informed of the arrest of such person shall be made in the Arrest Intimation Register.

7.4 The Magistrate before whom the arrestee is produced has to satisfy himself that these requirements have been complied with.

7.5 The names and addresses of the persons arrested and the names and designations of the police officers who made the arrests have to be displayed on the notice board kept outside the district control room.

8. Procedure When Police Officer Deputes Subordinate to Arrest without Warrant (Section 55 Cr.P.C)

8.1 During the course of investigation, if the IO requests any of his subordinate officers to arrest any person in the absence of a warrant, he shall give such order in writing in the form prescribed (**KPF 118**) specifically mentioning the person to be arrested and the offence and the cause for the arrest. The IO can also notify to the person to be arrested, the contents of such order and can also show him the order. This will not affect the power of the Police Officer under Section 41 Cr.P.C.

9. Arrest of Women Accused- Special Provisions

9.1 Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise.

9.2 The arrest of a woman accused should as far as practicable only take place in the presence of a Woman Police Officer.

9.3 In case of non-availability of a woman Police Officer, a woman relative/acquaintance could be allowed to remain present until she is released on bail or produced before the competent Court.

- 9.4** Where such exceptional circumstances exist, warranting arrest after sunset and before sunrise, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made. (S.46A, CrPC)
- 9.5** Where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest.
- 9.6** A woman accused is searched only by another female with strict regard to privacy and decency. (Section 51(2)).
- 9.7** A woman suspect is to kept in a separate lock-up in the police station. (*SheelaBarse v. State of Maharashtra* AIR 1983 SC 378).

10. Arrest of Members of Parliament/ Legislature/ Public Servants/ Armed Forces

- 10.1** If a member of Parliament/Legislature is to be arrested in a criminal offence, the fact of the arrest having occurred is to be intimated to the Speaker of the Lok Sabha/Legislature or the Chairman of Rajya Sabha mentioning the reasons for the arrest including the place of detention/custody in the prescribed form as contained in “Rules of Procedure and Conduct of business for Lok Sabha”. Such intimation should also be given to the Speaker of State Legislature in respect of arrest of members of State Legislature. Information about the arrest should be correct and clear and will also include whether the arrested member is released on bail pending investigation or trial should also be given. Proforma for the same is laid down in Appendix III to Police Standing Orders (Vol-II).

- 10.2** The communication should be sent by the concerned District Police Chief to whom an express report should be made by the Officer making the arrest.
- 10.3** Factual Report regarding the same is to be sent to the State Police Chief (Circular 23/05).
- 10.4** The intimation should not be delayed on the grounds of holidays.
- 10.5** Arrest cannot be effected within the premises of Parliament or State Legislature without obtaining permission from the Competent Authority (Speaker/ Chairman of Rajya Sabha). The definition of premises includes residential premises under the control of the Speaker.
- 10.6** The arrest of a judicial officer can be made only after intimation to the District Judge or the High Court as the case may be. The law laid down by the Supreme Court is that the judicial officers cannot be arrested for committing any offence without the permission of the District and Sessions Judge or the Chief justice of the High Court, as the case may be. (Delhi Judicial Services Association v. State of Gujarat AIR 1991 SC 2176.)
- 10.7** Members of the Armed Forces cannot be arrested without sanction of the Central Government for anything done by them in discharge of their official duty. Otherwise, for the arrest of any members of the Armed Forces, intimation should be sent to the Officer commanding the unit to which the member belongs. It should be done immediately after the arrest is effected. (I.G's Memo No. D4/40827/65 dated 01/09/1965).
- 10.8** Whenever a public servant is arrested, the matter should be intimated to the superior officers, if possible before the arrest and in any case, immediately after the arrest.

11. Juvenile Offenders

- 11.1** The Hon'ble Kerala State Commission for Protection of Child Rights has issued certain instructions to be followed while handling investigation of crimes related to Juveniles. The instructions shall be strictly adhered to by all Officers in this regard. (Circular 37/2015).

- 11.2** As soon as a juvenile in conflict with law is apprehended by police, he is to be placed under the charge of the special juvenile police unit or the designated police officer. (Section 10 Juvenile Justice (Care and Protection) Act, 2015.)
- 11.3** In case of apprehension, the age of the child must be verified before deciding upon further course of action.
- 11.4** In case of arrest, the child is to be produced before a juvenile court without delay. The time taken, in any case should not exceed 24 hours.
- 11.5** No juvenile must be kept in police lockup.

12. Use of handcuffs:

- 12.1** The person arrested shall not be subjected to more restraint than is necessary to prevent his escape (S.49, CrPC).
- 12.2** The use of handcuffs should be avoided as far as possible. In case, it is felt otherwise due to any reason, the handcuffs may be used only in accordance with law mandated by the Hon'ble Supreme Court (*PremShankerShukla v. Delhi Administration* 1980 3 SCC 526; *Citizen for Democracy v. State of Assam* 1995 3 SCC 743.)
- 12.3** Handcuffs are to be used only if a person is:
- a.** involved in serious non-bailable offences,
 - b.** has been previously convicted of a crime; and/or is of desperate character- violent, disorderly or obstructive; and/or
 - c.** is likely to commit suicide; and/or
 - d.** is likely to attempt escape.
- 12.4** The reasons why handcuffs have been used must be clearly mentioned in the Case Diary. They must also be shown to the court, if so required.

- 12.5** Once an arrested person is produced before the court, the escorting officer must take the court's permission before handcuffing her/him to and from the court to the place of custody.
- 12.6** A person arrested in the execution of an arrest warrant [issued by a magistrate] must not be handcuffed unless prior permission has been taken from the magistrate.
- 12.7** In an arrest without warrant, the police is only allowed to handcuff on the basis of concrete proof that the person is prone to violence; has a tendency to escape; or is so dangerous and desperate that there is no other practical way to restrain her/his movement. Even then the officer may use handcuffs only till the time the person is taken to the police station and thereafter to the magistrate's court.
- 12.8** Handcuffs should ideally not be used on women; on those who suffer from infirmity; in case of bailable offences; juvenile offenders, and witnesses when arrested.

13. Illness of Person under Arrest

- 13.1** It shall be the duty of the person having the custody of an accused to take reasonable care of the health and safety of the accused. (S.55A, CrPC)
- 13.2** When a person in Police custody is suffering from illness or injury at the time of arrest, or becomes ill or sustains injury while in such custody, such a person shall be subjected to medical examination at the earliest opportunity and proper treatment be given to him/her. A record of such treatment should be made in the General Diary of the place where the accused is so confined.

14. Production before the Magistrate

- 14.1** If an arrested accused is not released on bail, he should be produced before the Magistrate having jurisdiction over the case in accordance with the provisions of law, at the earliest and in any case within 24 hours (excluding the journey time) as per Section 57 Cr.P.C. and get remanded to Police/judicial custody.
- 14.2** In cases, where it is not possible to produce the accused before the Magistrate before the fall of night and it becomes necessary for the Police Officers to retain the accused in Police custody, he may be lodged in the lock-up. This is of course subject to the limitation of twenty four hours from the time of arrest.
- 14.3** In the case of women accused, a woman constable should be detailed to guard her in the woman lock-up.
- 14.4** Whenever a person is arrested and it appears that the investigation as regards his involvement cannot be completed within the period of twenty-four hours provided in Section 57 of Cr.P.C, the Investigating Officer should produce him before the Magistrate with an application to remand to judicial custody. The initial remand shall be for judicial custody. The application for judicial custody can be followed by an application for police custody. The Magistrate may authorize detention of the accused in such custody for a term not exceeding 15 days and thereafter send the accused to judicial custody as per Section 167 Cr.P.C.
- 14.5** When the accused is arrested on execution of a warrant of arrest in the jurisdiction of the Court issuing the warrant, he should be produced in the said Court at the earliest and in any case, within twenty-four (24) hours.
- 14.6** When a warrant directed to a Police Officer is to be executed beyond the local jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to an Executive Magistrate or to a Police Officer not below the rank of an Officer-in-charge of a Police Station, within the local limits of whose jurisdiction the warrant is to be executed. The local Police

shall, if so required, assist him in executing the said warrant. (Section 79, CrPC)

- 14.7** When the warrant is executed outside the district in which it was issued and if the Court issuing the warrant is beyond 30 Km from the place of execution of the warrant of arrest, the arrested accused should be produced before the Executive Magistrate or District Superintendent of Police or Commissioner of Police in whose jurisdiction the warrant was executed, as per the procedure laid down under Section 80 Cr.P.C. Order should be obtained from the said Executive Magistrate or District Superintendent of Police or Commissioner of Police for production of the arrested accused before the Court, which had issued the Warrant of Arrest.

15. Remand of arrested accused-Judicial Custody (Section 167 Cr.P.C)

- 15.1** Remand is the process by which continued detention of a person is authorized by a judicial order. When a person is arrested and not released on bail, he is remanded to custody by a judicial officer. It is usually done on the basis of a request from the officer in charge of the police station in order to complete the investigation procedure.
- 15.2** The officer is to forward the accused to the nearest judicial magistrate along with a remand report enclosed by the case diary written till that date and the investigation should disclose some offence against him so far and further investigation is pending in the case. A remand at a time will be for a maximum period of 15 days. It can be for 60 days in ordinary cases where offences are punishable with imprisonment for less than 10 years and 90 days in cases punishable with death or life imprisonment or with imprisonment for not less than 10 years.
- 15.3** In computing the period of 15 days, both the day on which the remand order is made and the day on which the accused is ordered to be produced before the Court shall be included. (Rule 22, Criminal Rules of Practice)

15.4 If the charge sheet is not filed within that period, the accused shall be entitled for bail even in a serious case like murder. An accused can be remanded separately for each and every case committed under different transactions.

15.5 Remands are always given by the Judicial Magistrate, but in the absence, an executive magistrate, on whom the powers of Judicial Magistrate are conferred, can give remand, if the arrested person is produced before him. In such cases, the remand can be only for a maximum period of 7 days by executive magistrate. Beyond this, remand can be given only by the competent Judicial Magistrate.

15.6 In case the accused is detained in hospital and is not in a position to be moved and produced before a Magistrate, the Magistrate shall proceed to the hospital, see the accused person to order remand or extension of remand. (Rule 21, Criminal Rules of Practice.

16. Remand to Police custody (Section 167 Cr.P.C, Rule 20, Criminal Rules of Practice, Kerala)

16.1 The request for remand to police custody to interrogate an accused, who is remanded to judicial custody, is allowed for further interrogation. However, in such instances, the police officer should ensure that his requisition has satisfactory reasons.

16.2 A request for remand to police custody shall be accompanied by an affidavit setting out briefly the prior history of investigation and the likelihood of further clues which the Police expect to derive by having the accused in custody, sworn to by the investigating or other police officer, not below the rank of a Sub Inspector of Police.(Rule 20, Criminal Rules of Practice)

16.3 Police custody can be given only within the first fifteen days of remand and that too to a maximum period of 15 days. Police custody can be taken for different remands made in different cases. After the period of custody is

over, the accused person shall duly be produced before the magistrate within time.

16.4 In computing the period of 15 days, both the day on which the remand order is made and the day on which the accused is ordered to be produced before the Court shall be included. (Rule 22, Criminal Rules of Practice)

16.5 When the accused is given to police custody, he must be medically examined at the start and end of the remand period. In addition, he shall be medically examined every forty-eight hours. It is advisable to medically examine the accused while in police custody every day, if the situation permits.

16.6 The following are the various reasons for granting police custody:

- (i) For identifying the accused by persons residing at a distance place;
- (ii) During interrogation, accused offered to show stolen property or weapons or other articles connected with the crime;
- (iii) Accused will be able to show places where he has brought any weapons used in the offence and where he has disposed of the proceeds of the offence.

17. Remand Extension

17.1 Generally, no Magistrate shall extend the remand under Section 167, Cr.P.C, without the accused being produced before him. The extension of remand in the absence of production of the accused under Section 167, Cr.P.C, shall be for special and extra-ordinary reasons specifically recorded while making the order of extension and in case where the police or prosecution is not able to furnish proper reasons for non-production of the accused while seeking extension of remand under Section 167, Cr.P.C, the competent Court may order release of the accused on bail.

17.2 Absence of his physical production of accused may be condoned, if it is physically impossible to produce him in person. For instance, if the

accused person is mortally injured or grievously ill and in the hospital, he may not be in a position to be produced before the Magistrate. Where an accused person charged with many offences may have to be produced on a particular date at two different places, it is obvious that by no magic can he be produced at both the places at the same time.

17.3 Where curfew is imposed and an accused person cannot possibly be carried to the relevant Magistrate without infracting the law. Instances listed are only illustrative but not exhaustive, as there may be many other factors which may hinder or bar the actual physical production of an accused. The law does not therefore compel or insist upon impossibility of performance of the requirement enacted under S. 167(2) (b) of the Cr.P.C.

17.4 In UA(P)A Cases, however, these provisions are at substantial variance as laid down in Sec 43 D of UA(P)A, 1967. (PHQ ED 21/2017)

18. Right of the police to question the accused after remand to Judicial Custody

18.1 During Judicial Custody, the police officer in charge of the case is not allowed to interrogate the suspect. However, the court may allow the interrogation to be conducted if it feels that the interrogation is necessary under the facts produced before the court.

19. Interrogation

19.1 When any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation, though not throughout interrogation.(Section 41D, CrPC)

19.2 The details of such interrogation must be recorded in the Interrogation Register.

20. Absconding accused (Rule15-18 A, Criminal Rules of Practice, 1982)

20.1 Absconding accused can be categorized into three types. They are as follows:

- (i) Wanted person during the stage of investigation;
- (ii) Accused person against whom non-bailable warrant is issued either during investigation or after the charge-sheet is filed; and
- (iii) Accused person against whom proceeding under Section 82 & 83 of Cr.P.C. has been initiated.

20.2 If during the course of investigation of a case, sufficient evidence justifying the arrest of an accused is collected but the accused is found evading arrest, the investigating officer will issue notices / summons against all absconding accused in their cases and try to secure the presence of the accused to join investigation. All of efforts taken in this regard must be documented.

20.3 Enquiries should be made from his relatives, friends and other persons who are likely to be aware of his movements and they should all be warned against harbouring him.

20.4 Despite doing so, if the presence of the accused is not secured, the investigating officer must report these facts and apply to the Court for issue of bailable and non bailable warrants and should take all efforts to trace out and arrest the accused.

20.5 Despite such efforts, if the presence of the absconding accused is not secured, the Court must be approached for issue of proclamation under Section 82, CrPC and further to proceed under Section 83, CrPC.

20.6 The investigating officer must endeavor to arrest and secure the presence of the accused, publish the proclamation under Section 82 CrPC and complete the procedure to attach the property of the accused under Section 83 of CrPC.

20.7 If it is found that the accused is suspected to have, or is likely to travel abroad, then a "Red Notice" & "Look Out Circular (LOC)" must be issued. The MHA instructions regarding LOCs, format of the LOC, red

notice, and a sample red notice is attached here with as **Annexures-B, C, D&E.**

20.8 Services of a blue notice may also be utilised to collect additional information about a person's identity, location or activities in relation to a crime.

20.9 The details of all wanted persons may be uploaded in the Kerala Police Website (through SCRB) and circulated amongst other law enforcement agencies to compel the person to join investigation.

**ARREST, CUSTODY AND ABSCONDER
MANAGEMENT
PART II**

ANNEXURE A

Directives of the Supreme Court regarding arrest laid down in *D.K. Basuv. State of West Bengal*

The following Supreme Court directives in *D.K. Basuv. State of West Bengal* (1997)

1 SCC 416 should be strictly followed in arrest procedures:

- (i) The Police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle the interrogation of the arrestee must be recorded in a register.
- (ii) The police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and of arrest.
- (iii) A person who has been arrested or detained and being held in custody in a police station or interrogation centre or other lockup shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at a particular place, unless the attesting witness of the memo of arrest is himself such a friend or relative of the arrestee.
- (iv) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through Legal Aid Organization in the district and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
- (v) The person arrested must be aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
- (vi) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars

of the police officials in whose custody the arrestee is.

- (vii) The arrestee, where he so requests, be also examined at the time of his arrest and minor injuries, if any, present on his/her body must be recorded at that time. The Inspection Memo must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.
- (viii) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody, by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory; Director, Health Services should prepare such a panel for all Tehsils and districts as well.
- (ix) Copies of all the documents, including the memo of arrest referred above should be sent to the ilaka Magistrate for his record.
- (x) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout interrogation.
- (xi) A police control room should be provided at all district and state headquarters where information regarding the arrest and place of custody of the arrestee shall be communicated by the officer causing the arrest and at the police control room it should be displayed on a conspicuous notice board.

ANNEXURE B : Lookout Circular

ANNEXURE C : LOC Draft Form

ANNEXURE D : RCN Application Draft

ANNEXURE E : RCN Application form Sample

ANNEXURE B : LOOK OUT CIRCULAR

MUST IN ALL DIA-10

No. 25016/31/2010-Imm.
Government of India
Ministry of Home Affairs
(Foreigners Division)

Jaisalmer House, 26 Mansingh Road
New Delhi, the 27 October, 2010

OFFICE MEMORANDUM

Subject: Issuance of Look Out Circulars (LOC) in respect of Indian citizens and foreigners -

Under the existing practice, the issuance of LOCs is governed by this Ministry's letter number 25022/13/78-F.I dated 5.9.1979 and OM number 25022/20/98-F.IV dated 27.12.2000.

2. It has, *inter-alia*, been stated in the letter dated 5.9.1979 of MHA that 'apart from the Govern India in the Ministry of Home Affairs, circulars are issued by various authorities for keeping a watch on arrival/departure of Indians and foreigners. These authorities include the Ministry of External Affairs, the Customs and Income Tax Departments, Directorate of Revenue Intelligence, Central Bureau of Investigation, Interpol, Regional Passport Officers, Police authorities in various States, etc.' It has further been stated that 'unless otherwise specified in the warning circular itself, the circulars issued by any of the various authorities specified above will be regarded as invalid if it is more than one year old and the card will be weeded out. For the future, it is considered that whenever any authority issues a warning circular to the immigration authorities, the period of validity should be clearly specified in the circular. If this is not done, the circular will be considered to be valid only for a period of one year from the date of issue and a watch will be maintained by the person concerned at the immigration check posts only for that period.'

3. The OM dated 27.12.2000 of MHA specifies the steps required to be taken for opening an LOC in respect of an Indian citizen. It has been mentioned in the said OM that the request for opening an LOC in respect of an Indian citizen is required to be made to all the Immigration Check Posts (ICP) in the country in a prescribed proforma. It has further been stated that 'the request for opening of LOC must invariably be issued with the approval of an Officer not below the rank of Deputy Secretary to the Government of

India / Joint Secretary in the State Government / concerned Superintendent of Police at district level.' Further, 'Care must be taken by the originating agency to ensure that complete identifying particulars of the person, in respect of whom the LOC is to be opened, are indicated in the Proforma...'. It is further provided that 'an LOC is valid for a period of one year. It can, however, be extended further before the expiry of the one year period. In case no request for extension of LOC is received before expiry of one year period, an LOC will automatically be closed by the Immigration Officer concerned after expiry of one year period.'

4. The Hon'ble High Court of Delhi, in Writ Petition (Civil) No. 10180 of 2009 [Shri Vikram Sharma vs. Union of India and Ors.], considered the question whether a request for the issuance of an LOC could be made by the National Commission for Women (NCW). While disposing of the said Writ Petition, the High Court, in its order dated 26.7.2010, observed that 'a request for the issuance of an LOC could not have emanated from the NCW. It had to come from either the Central or the State Government and that too only in the prescribed form and then again only by the officers of a certain rank. In this context, while criminal courts dealing with cases of criminal law enforcement can issue directions, which may result in the issuance of an LOC, there is no such power vested either under the Cr.P.C. or the Passports Act or under the MHA's circular, in statutory bodies like NCW. Being granted the powers of a civil court for a limited purpose does not vest the NCW with the powers of a criminal court and it has no authority as of today to make a request for the issuance of an LOC....'

5. The Court further observed, "there are a large number of statutory commissions at the level of the Centre and the States which perform judicial functions and are vested with, for the purpose of conducting inquiries upon receiving complaints, the powers of a civil court. These include the National Human Rights Commission (NHRC), the NCW, the National Commission for Protection of Children's Rights. These statutory bodies, however, have not been vested with the powers of a criminal court and do not have powers to enforce criminal law. It is for the Government of India to take a policy decision on whether it wants to vest such statutory tribunals/commissions with criminal law enforcement powers. Since as of today, they have no such power, it is imperative that the MHA should issue further clarificatory circulars or office memoranda clearly stating that the request for issuance of LOCs cannot 'emanate' from statutory bodies like the NCW. If at all, such bodies should bring the necessary facts to the notice of law enforcement agencies like the police, which will then make the request for issuance of an LOC upon an assessment of the situation, and strictly in terms of the

procedure outlined for the purpose. This clarification will be issued by the MHA, in consultation with other concerned agencies, including representatives of the statutory bodies referred to, within a period of 12 weeks from today...”

6. In a related judgement delivered on 11.8.2010 by the Hon'ble High Court of Delhi in W.P. (Crl.) No. 1315/2008–Sumer Singh Salkan Vs. Asstt. Director & Ors and Crl. Ref.1/2006–Court on its Own Motion Re: State Vs. Gurnek Singh etc., the Court has answered four questions raised by a lower court on the LOC. These questions are as below:

- a) What are the categories of cases in which the investigating agency can seek recourse of Look-out-Circular and under what circumstances?
- b) What procedure is required to be followed by the investigating agency before opening a Look-out-Circular?
- c) What is the remedy available to the person against whom such Look-out-Circular has been opened?
- d) What is the role of the concerned Court when such a case is brought before it and under what circumstances the subordinate courts can intervene?

7. The High Court has answered these questions in its judgement dated 11.8.2010 which are reproduced below for guidance of all concerned agencies:

- a) Recourse to LOC can be taken by investigating agency in cognizable offences under IPC or other penal laws, where the accused was deliberately evading arrest or not appearing in the trial court despite NBWs and other coercive measures and there was likelihood of the accused leaving the country to evade trial/arrest.
- b) The Investigating Officer shall make a written request for LOC to the officer as notified by the circular of Ministry of Home Affairs, giving details & reasons for seeking LOC. The competent officer alone shall give directions for opening LOC by passing an order in this respect.
- c) The person against whom LOC is issued must join investigation by appearing before I.O. or should surrender before the court concerned or should satisfy the court that LOC was wrongly issued against him. He may also approach the officer who ordered issuance of LOC & explain that LOC was wrongly issued against him. LOC can be withdrawn by the authority that issued and can also be rescinded by the trial court where case is pending or having jurisdiction over concerned police station on an application by the person concerned.

- d) LOC is a coercive measure to make a person surrender to the investigating agency or Court of law. The subordinate courts' jurisdiction in affirming or cancelling LOC is commensurate with the jurisdiction of cancellation of NBWs or affirming NBWs.

8. In accordance with the order dated 26.7.2010 of the High Court of Delhi, the matter has been discussed with the concerned agencies and the following guidelines are hereby laid down regarding issuance of LOCs in respect of Indian citizens and foreigners:

- a) The request for opening an LOC would be made by the originating agency to Deputy Director, Bureau of Immigration (BoI), East Block-VIII, R.K. Puram, New Delhi - 66 (Telefax: 011-2619244) in the Proforma enclosed.
- b) The request for opening of LOC must invariably be issued with the approval of an officer not below the rank of
- i. Deputy Secretary to the Government of India; or
 - ii. Joint Secretary in the State Government; or
 - iii. District Magistrate of the District concerned; or
 - iv. Superintendent of Police (SP) of the District concerned; or
 - v. SP in CBI or an officer of equivalent level working in CBI; or
 - vi. Zonal Director in Narcotics Control Bureau (NCB) or an officer of equivalent level (including Assistant Director (Ops.) in Headquarters of NCB); or
 - vii. Deputy Commissioner or an officer of equivalent level in the Directorate of Revenue Intelligence or Central Board of Direct Taxes or Central Board of Excise and Customs; or
 - viii. Assistant Director of IB/BoI; or
 - ix. Deputy Secretary of R&AW; or
 - x. An officer not below the level of Superintendent of Police in National Investigation Agency; or
 - xi. Assistant Director of Enforcement Directorate; or
 - xii. Protector of Emigrants in the office of the Protectorate of Emigrants or an officer not below the rank of Deputy Secretary of the Government of India; or
 - xiii. Designated officer of Interpol

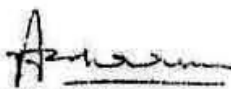
Further, LOCs can also be issued as per directions of any Criminal Court in India.

- c) The name and designation of the officer signing the Proforma for requesting issuance of an LOC must invariably be mentioned without which the request for issuance of LOC would not be entertained.

- d) The contact details of the originator must be provided in column VI of the enclosed Proforma. The contact telephone/mobile number of the respective control room should also be mentioned to ensure proper communication for effective follow up action.
- e) Care must be taken by the originating agency to ensure that complete identifying particulars of the person, in respect of whom the LOC is to be opened, are indicated in the Proforma mentioned above. It should be noted that an LOC cannot be opened unless a minimum of three identifying parameters, as given in the enclosed Proforma, apart from sex and nationality, are available. However, LOC can also be issued if name and passport particulars of the person concerned are available. It is the responsibility of the originator to constantly review the LOC requests and proactively provide additional parameters to minimise harassment to genuine passengers.
- f) The legal liability of the action taken by the immigration authorities in pursuance of the LOC rests with the originating agency.
- g) Recourse to LOC is to be taken in cognizable offences under IPC or other penal laws. The details in column IV in the enclosed Proforma regarding 'reason for opening LOC' must invariably be provided without which the subject of an LOC will not be arrested/detained.
- h) In cases where there is no cognizable offence under IPC or other penal laws, the LOC subject cannot be detained/arrested or prevented from leaving the country. The originating agency can only request that they be informed about the arrival / departure of the subject in such cases.
- i) The LOC will be valid for a period of one year from the date of issue and name of the subject shall be automatically removed from the LOC thereafter unless the concerned agency requests for its renewal within a period of one year. With effect from 1.1.2011, all LOCs with more than one year validity shall be deemed to have lapsed unless the agencies concerned specifically request BoI for continuation of the names in the LOC. However, this provision for automatic deletion after one year shall not be applicable in following cases:
 - a. Ban-entry LOCs issued for watching arrival of wanted persons; which have a specific duration);
 - b. loss of passport LOCs (which ordinarily continue till the validity of the document) ;
 - c. LOCs regarding impounding of passports;
 - d. LOCs issued at behest of Courts and Interpol

- j) In exceptional cases, LOCs can be issued without complete parameters and /or case details against CI suspects, terrorists, anti-national elements, etc in larger national interest.
- k) The following procedure will be adopted in case statutory bodies like the NCW, the NHRC and the National Commission for Protection of Children's Rights request for preventing any Indian/ foreigner from leaving India. Such requests along with full necessary facts are first to be brought to the notice of law enforcement agencies like the police. The S.P. concerned will then make the request for issuance of an LOC upon an assessment of the situation, and strictly in terms of the procedure outlined for the purpose. The immigration/emigration authorities will strictly go by the communication received from the officers authorized to open LOCs as detailed in the para 8 (b) above.
9. It is requested that the contents of this OM may be brought to the notice of all concerned for strict compliance.

Encl: As above

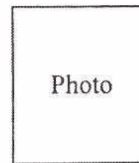

(Anuj Sharma)
Director (I&C)
Tel: 25389280

To:

1. Chief Secretaries of all State Governments / UT Administrations
2. All Secretaries to the Government of India
3. Director, IB, North Block
4. Secretary (R), Cabinet Secretariat, Bikaner House Annexe
5. Director, CBI, North Block
6. Director General, Narcotics Control Bureau, R.K. Puram
7. Chairman, CBEC, Department of Revenue, M/o Finance, North Block
8. Chairman, CBET, Department of Revenue, M/o Finance, North Block
9. DG, Directorate of Revenue Intelligence, CBEC, 'D' Block, IP Estate
10. Director of Enforcement, Enforcement Directorate, Lok Nayak Bhawan
11. Additional Secretary, D/o Legal Affairs, M/o Law & Justice, Shastri Bhawan
12. Additional Director, Bureau of Immigration, R.K. Puram
13. Shri J.P. Meena, Joint Secretary, NHRC, New Delhi
14. Ms. Sundari Subramaniam Pujari, JS, NCW, 4-Deen Dayal Upadhyaya Marg, New Delhi
15. Shri B.K. Sahu, Registrar, National Commission for Protection of Children's Rights, New Delhi

- 16. Shri B. K. Gupta, Additional Secretary (CPV), MEA, Patiala House
- 17. Shri Narinder Singh, JS (L&T), MEA, ISIL Building, Bhagwan Das Road
- 18. JS (IS-I), MHA, North Block
- 19. JS (IS-II), MHA, North Block
- 20. JS (J-II), Department of Justice, Jaisalmer House
- 21. JS (Kashmir), MHA, North Block

ANNEXURE C: LOC DRAFT FORM
PROFORMA FOR ISSUE OF LOOK OUT CIRCULAR (LOC)



I. PERSONAL PARTICULARS

a. FIRST NAME																					
b. MIDDLE NAME																					
c. SURNAME																					
d. ALIAS (IF ANY)																					
2. SEX	MALE	<input type="checkbox"/>	FEMALE	<input type="checkbox"/>																	
3. FATHER'S NAME																					
4. PRESENT NATIONALITY																					
5. PLACE OF BIRTH																					
6. DATE OF BIRTH											7. AGE AS ON 31.12.2012 (YRS)										
8. OCCUPATION																					

II. PHYSICAL DISCRPTION:

a. COLOUR OF EYES	BROWN	<input type="checkbox"/>	BLACK	<input type="checkbox"/>	GREEN	<input type="checkbox"/>	BLUE	<input type="checkbox"/>												
b. COLOUR OF HAIR																				
c. HEIGHT						CMS						FEET			INCHES					
c. ANY OTHER DISTINGUISHING MARK OR PHYSICAL ATTRIBUTE																				

III. PASSPORT DETAILS:

a. PASSPORT NO.																					
b. PLACE OF ISSUE																					
c. COUNTRY OF ISSUE																					
d. ISSUED ON											VALID TILL										

IV. REASON FOR OPENING LOC:

a. CRIMINAL CASE (SPECIFY FULL DETAILS)

i) FIR NO											ii) Date										
iii) SECTION OF LAW (WHERE APPLICABLE)																					
iv) POLICE STATION																					
v) DISTRICT											vi) COUNTRY										

b. WANTED BY LAW COURT / JUDICIAL AUTHORITY:

i) NAME OF THE COURT																				
ii) ORDER BY WHICH SUBJECT IS WANTED																				

c. NAME OF ANY OTHER AGENCY

Scanned with CamScanner

d. SPECIFY PERIOD OF RETENTION OF LOC (MONTHS)

V. ACTION EXPECTED FROM IMMIGRATION CHECK POINT

- VI. PARTICULARS OF THE ORIGINATOR:

- SIGNATURE OF THE ORIGINATOR

DATE:

Investigation and Prosecution in General - SOP

ANNEXURE D: RCN APPLICATION DRAFT

Red Notice Form Draft

This document is for internal use only by National Central Bureaus and judicial authorities. It should on no account be submitted to the General Secretariat to request the publication of a notice.

IDENTITY PARTICULARS

Family name:

Family name in the original script or Chinese Telegraphic Code:

Family name at birth:

Forename:

Forename in the original script or Chinese Telegraphic Code:

Sex:

***Date and place of birth**

Date:

Town/Region:

Country:

Nationality

Confirmed

- 1.
- 2.
- 3.

Caution

<input type="checkbox"/>	Amnesic
<input type="checkbox"/>	Armed
<input type="checkbox"/>	Dangerous
<input type="checkbox"/>	Depressive
<input type="checkbox"/>	Addicted to drugs
<input type="checkbox"/>	Escape Risk
<input type="checkbox"/>	Mentally Ill
<input type="checkbox"/>	Infectious
<input type="checkbox"/>	This person is liable to commit sexual offences involving minors
<input type="checkbox"/>	This person is liable to use pictures of minors for pornographic purposes for his own gain
<input type="checkbox"/>	Suicidal
<input type="checkbox"/>	Under medical treatment
<input type="checkbox"/>	Violent
<input type="checkbox"/>	Other

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Page 1 of 6

ALIAS

Also known as

Family name	Forename	Date of Birth	Town/Region	Country
1.				
2.				
3.				

Nicknames

1.	
2.	

DETAILS

Marital status:

Father's family name and forenames

Family name:

Forename:

Mother's maiden name and forenames

Family name:

Forename:

Occupation:

Languages spoken:

1.	
2.	

Regions/Countries likely to be visited

Country	Region
1.	
2.	
3.	

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Page 2 of 6

Additional information:

Identity documents

	1	2	3
Nationality			
Type			
Number			
Date of issue			
Expiry date			
Country of issue			
Town of issue			

IDENTIFICATION MATERIAL

Photographs

Fingerprints

DNA

Dental information

Blood group:

Clothing:

Jewellery:

Other personal effects:

PHYSICAL DESCRIPTION

Height (cm):

Weight (kg):

Hair:

Eyes:

Build:

Distinguishing marks and characteristics:

CASE

Facts of the case

Date:

Town:

Country:

Offence code(s):

Summary: { maximum 1000 characters (200 words)}

Additional facts of the case:

FUGITIVE WANTED TO SERVE A SENTENCE

CONVICTION/SENTENCE	
Charge(s) on which convicted	
Law covering the offence(s)	
Sentence imposed	
Remainder of sentence to be served	
Time limit for enforcement	
Number	
Date issuance	
Issuing or competent judicial authorities	
In (Place+ Country)	
Was the subject present in court when the judgment was rendered?	
The subject has or will have the opportunity to have the case retried in his/her presence.	
The subject had sufficient notice of the trial or the opportunity to arrange for his/her defence.	
Name of signatory	
Arrest warrant or judicial decision ordering execution of the sentence/ European arrest warrant	
Number	
Date issuance	
Issuing or competent judicial authorities	
In (Place+ Country)	
Name of signatory	

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Page 5 of 6

FUGITIVE WANTED FOR PROSECUTION

ARREST WARRANT OR JUDICIAL DECISION HAVING THE SAME EFFECT / EUROPEAN ARREST WARRANT	
Charge(s):	
Law covering the offence(s)	
Maximum penalty	
Time limit for prosecution or expiry date of arrest warrant or judicial information having the same effect	
Number	
Date issuance	
Issuing or competent judicial authorities and place of issuance:	
In (Place + Country)	
Name of signatory	

ANNEXURE E: RCN Application form Sample

(Sample Filled)

Draft Red Notice

This document is for internal use only by National Central Bureaus and judicial authorities. It should on no account be submitted to the General Secretariat to request the publication of a notice.

IDENTITY PARTICULARS

Family name:	<i>Family name/Surname of the subject.</i>
Family name at birth:	<i>May include previous family name(s) held by the person ex. family name(s) prior to a legal name change or the former family name(s) of a woman who has assumed her husband's family name(s).</i>
Forename:	<i>Forename /First name of the subject</i>
Sex:	<i>() Male / () Female</i>
*Date and place of birth	<i>Only the year is mandatory. Date/Year of Birth</i>
Date of birth:	<i>dd/mm/yyyy</i>
Town/Region:	<i>Place of birth</i>
Country:	<i>Country of birth</i>

Nationality

Confirmed

1. *Citizenship of the subject.*

Yes or No.

2.

3.

Caution

Yes/No	Amnesic
Yes/No	Armed
Yes/No	Dangerous
Yes/No	Depressive
Yes/No	Addicted to drugs
Yes/No	Escape Risk
Yes/No	Mentally Ill

Page 1 of 6

Yes/No	Infectious
Yes/No	This person is liable to commit sexual offences involving minors
Yes/No	This person is liable to use pictures of minors for pornographic purposes for his own gain
Yes/No	Suicidal
Yes/No	Under medical treatment
Yes/No	Violent
	Other

ALIAS

Also known as :- If the subject is known by any other name, date of birth, nationality etc.

Family name	Forename	Date of Birth	Town/Region	Country
Family name/Surname of the subject.	Forename /First name of the subject	Date/Year of Birth	Place of birth	Country of birth

Nicknames: Nickname of the subject if any

1.

DETAILS

Marital status:	(Married/Unmarried/divorcee) of the subject
<u>Father's family name and forenames</u>	
Family name:	Family name/Surname the father of the subject.
Forename:	Forename /First name the father of the subject.
<u>Mother's maiden name and forenames</u>	
Family name:	Family name/Surname the mother of the subject.
Forename:	Forename /First name the mother of the subject.

Page 2 of 6

Languages spoken: *language(s) spoken by the subject.*

Identity documents: Identity documents like Passport, National I-Card(Aadhar Card), PAN card etc.

Nationality	Type (i.e Passport, National I-Card etc.)	Number	Date of issue	Expiry date	Country of issue	Town of issue
Mandatory	Mandatory.	Mandatory				

Photographs : A good quality of Photograph of the subject, date and place of taken photograph

Fingerprints: *Good quality of fingerprints with full description of fingers.*

DNA: *of the subject*

Dental information: *of the subject*

Blood group: *of the subject*

Clothing: *Type of clothes, pattern and colour of materials, condition of clothes, manufacturers' labels, dry cleaning or laundry marks.*

Jewellery: *Full description of jewellery worn by the person (including dates and/or other inscriptions).*

Other personal effects: *Describe in as much detail as possible other personal effects their possession (e.g. luggage, watch, wallet, keys, photographs, mobile phone (incl. number), medication, cigarettes, etc.).*

PHYSICAL DESCRIPTION: *of the subject*

Height (cm):

Weight (kg):

Hair:

Eyes:

Build:

Distinguishing marks and characteristics: *Scars, tattoos, deformities, amputations, etc, of the subject.*

CASE

Facts of the case

Date: *(Date on which the offence occurred){Mandatory}*

Town: *(Place where the offence occurred)*

Country: *(Name of the Country where the offence occurred){Mandatory}*

Offence code(s):

Summary: {maximum 1000 characters (200 words)}

{Date, place, circumstances, modus operandi, etc.. Summary should bring clear and succinct description of the case. Summary should be limited to 1000 characters (200 words)}.

Additional facts of the case:

{It may be used to provide more details regarding the facts of the case, if needed}..

FUGITIVE WANTED TO SERVE A SENTENCE: (If the subject has been convicted)

CONVICTION/SENTENCE	<i>All the fields have to be compulsorily filled.</i>
Charge(s) on which convicted	<i>Brief of sections under which the subject has been charged</i>
Law covering the offence(s)	<i>Sections of law under which the subject has been charged</i>
Sentence imposed	<i>The punishment/penalty awarded to the subject. Red Notice would be published only if the subject is sentenced to at least six months of imprisonment and/or there is atleast six months of the sentence remaining to be served.</i>
Remainder of sentence to be served	<i>If subject has served part of sentence</i>
Time limit for enforcement	
Number	<i>No. of the Order convicting the subject</i>
Date issuance	<i>Date of the Order convicting the subject</i>
Issuing or competent judicial authorities	<i>Judicial authority pronouncing the sentence.</i>
In (Place+ Country)	
Was the subject present in court when the judgment was rendered?	<i>To be filled as per the case.</i>
The subject has or will have the opportunity to have the case retried in his/her presence.	<i>To be filled as per the case.</i>
The subject had sufficient notice of the trial or the opportunity to arrange for his/her defence.	<i>To be filled as per the case.</i>
Name of signatory	<i>Name of the Judge pronouncing the judgment.</i>
Arrest warrant or judicial decision ordering execution of the sentence/European arrest warrant	<i>Warrant of arrest should be open dated.</i>
Number	<i>Warrant number</i>

Date issuance	<i>Date on which the warrant has been issued</i>
Issuing or competent judicial authorities	<i>Designation of Judicial authority by which the warrant has been issued.</i>
In (Place+ Country)	<i>Place/Country from where the warrant has been issued.</i>
Name of signatory	<i>Name of the issuing authority of warrant</i>

FUGITIVE WANTED FOR PROSECUTION (If the subject is wanted for trial)

{All fields are Mandatory}

ARREST WARRANT OR JUDICIAL DECISION HAVING THE SAME EFFECT / EUROPEAN ARREST WARRANT	<i>Warrant should be open dated.</i>
Charge(s):	<i>Brief of sections under which the subject has been charged</i>
Law covering the offence(s)	<i>Sections of law under which the subject has been charged</i>
Maximum penalty	<i>Maximum penalty which can be awarded to the subject. (For issue of a Red Notice, the conduct constituting an offence is punishable by a maximum deprivation of liberty of at least two years or a more serious penalty)</i>
Time limit for prosecution or expiry date of arrest warrant or judicial information having the same effect	<i>Warrant should be open dated.</i>
Number	<i>Warrant number</i>
Date issuance	<i>Date on which the warrant has been issued</i>
Issuing or competent judicial authorities and place of issuance:	<i>Designation of Judicial authority by which the warrant has been issued.</i>
In(Place + Country)	<i>Place/Country from where the warrant has been issued.</i>
Name of signatory	<i>Name of the issuing authority of warrant</i>

CIRCULARS

SL.NO.	CIRCULAR NO.	CONTENT OF THE CIRCULAR
1	23/1994	Human Right- Rights of Accused person – Supreme Court of India's guidelines
2	4/2000	Narcotic Drugs and Psychotropic Substances Act, 1985- S.50
3	14/2003	Search and Arrest
4	20/2004	Persons wanted during the investigation of the cases Publishing of Look Out Notice.
5	25/2004	Arrest, Interrogation and Detention of Persons
6	23/2005	Law and Order – Incidents involving MPs/MLAs- Procedure to be followed
7	24/2005	Arrest/Detention by Police – Allegation of Custodial Torture
8	3/2006	Arrest/Detention by Police – Allegation of Custodial Torture – Prevention of Trafficking in Women and Children
9	10/2006	Code Of Criminal Procedure 1973 as Amended by Criminal Amendment Act, Act no 25 of d 2005 and 2 of 2006
10	9/2010	Code Of Criminal Procedure (Amendment) Act, 2008 Charges in Police Procedure
11	45/2010	Central Custodial Facility
12	20/2014	Direction on Arrest of persons under section 498A of IPC or Section 4 of Dowry Prohibition Act and for offence punishable which may less than 7 year imprisonment
13	37/2015	The instructions to be followed by an officer investigating/Arresting etc. Juvenile Convict

* If anything is contradictory between and inconsistent with the contents of the above Circulars, the PSO and the Part I, the directions in Part I shall prevail.

- Circulars are available in Kerala Police Website.

CASE DIARY

PART I

CASE DIARIES OF A CRIME CASE AND THEIR IMPORTANCE

What is 'Case Diary'?

A Case Diary is a systematic record of the investigation conducted on a day to day basis, compiled chronologically and prepared by the investigating officer, as envisaged under Section 172(1) of the Code of Criminal Procedure.

CHAPTER 1

LAW

1.1 Relevant Legal Provisions:

1.1.1 Sec.172(1) Cr.P.C. : *Diary of proceeding in investigation: Every police officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.*

(1A) The statements of witnesses recorded during the course of investigation under section 161 shall be inserted in the case diary.

(1B) The diary referred to in sub-section (1) shall be a volume and duly paginated.

1.1.2 Sec.172 (2) Cr.P.C. : *Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.*

1.1.3 Sec.172 (3) Cr.P.C. : *Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but, if they are used by the police officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police officer, the provisions of section*

161 or section 145, as the case may be, of the Indian Evidence Act, 1872 (1 of 1872), shall apply.

- 1.1.4 Sec.167(1) Cr.P.C. :** *Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well- founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.*

CHAPTER 2

RELEVANT POINTS IN MAINTAINING CASE DIARY

2.1. When should a Case Diary be written?

2.1.1 Case Diaries should be submitted in the following cases:

- (i) In all cognizable cases investigated by the police under Chapter IV of Cr.P.C.
- (ii) In all non-cognizable cases investigated by police under the orders of the competent Magistrate/Court.
- (iii) In all investigations under Section 174 Cr.P.C into the apparent cause of death.
- (iv) In the case of 'Man/Woman missing'.

2.2 What are the entries in a Case Diary?

2.2.1 The different columns in a case diary are as follows:

- i. F.I.R. Number
- ii. Section(s) of Law
- iii. Serial Number of Case Diary
- iv. Date of Case Diary
- v. Time of commencement of investigation and time of conclusion
- vi. Date of FIR
- vii. Name of the complainant/informant
- viii. Names of the accused
- ix. Value and nature of property lost
- x. Value and nature of property recovered
- xi. Name of the deceased (victim)
- xii. Places visited
- xiii. Names of persons examined during the day
- xiv. Total number of persons examined
- xv. Details of investigation conducted during the day.

2.3 The First Case Diary

2.3.1 The first Case Diary should commence with a brief summary of the FIR, the time of receipt of the complaint, delay if any, in starting for the scene, the time of departure for and arrival at the scene, and description and plan of the scene. In cases where there is no scene as such like in financial crimes, the records and places where such records or data recording, storage or retrieval systems are located, the method of crime as reflected at such places, objects, computers, documents etc. and the plan or sketch or diagram representing the crime scene may be described or drawn up as is possible.

2.4 Ingredients of a Case Diary:

2.4.1 The following are the **proceedings to be noted in Case Diary**⁵⁹:

- (i) The time at which the information reached him shall be noted.
- (ii) Gist of such information.
- (iii) Visit of Scene of crime and its description with sketch map and index, photographs etc.
- (iv) A true record of the observation at the scene of crime together with a statement and reason for such statement of circumstances ascertained.
- (v) The place or places visited by the Investigating officer shall be chronologically noted in the case diary with date and time of visit.
- (vi) The time at which the investigating officer began and closed his investigation shall be mentioned in the case diary.
- (vii) The entry of the proceedings of investigation in case diary should be made every day.

⁵⁹PHQ Circular No. 36/2010 dated 31/12/2010.

- (viii) Consultation of Police Station records especially in case of crime against property and its outcome.
- (ix) Details of inquests/search/seizure/arrest/examination of witnesses with their respective place should be recorded.
- (x) Name, age, address and other particulars of the witnesses examined and complete true statement recorded under Section 161 Cr.P.C should be inserted in case diary.
- (xi) Every step of investigation including forwarding of any accused, reports, documents, seized articles sent to experts, their opinion with date and time of dispatch and receipt should be incorporated.
- (xii) Position relating to the addition or alteration of the section(s) of law and of accused need to be reflected in the Case Diary and this should be brought to the notice of the competent Court by filing petition.

2.4.2 Every step taken by the Investigating officer shall be mentioned as concisely as possible. Every clue obtained, even if at the time it appears likely to be of no value, information obtained which is likely to prove of value, and methods adopted by the suspects/accused are among the things to be mentioned in the case diary.

2.4.3 The gist of the statements of witnesses shall find place in the case diary in third person.

2.4.4 Grounds of searches without warrant and grounds of arrest of persons must be clearly mentioned in the diary.

2.4.5 A true record of the observation at the scene of occurrence must be entered. It is necessary to describe objects seen with reference to some other objects having fixed position at the place. The fact of taking photographs/ videography must be mentioned.

2.4.6 Scene must be described fully; the map or plan of the place of occurrence must be drawn on a separate sheet, and distances shown as accurately as possible.

2.4.7 Correct record of time must be maintained.

2.4.8 It is desirable to mention at the end of the day's diary – a note about further actions yet to be taken in the case.

2.4.9 Dispatch and means of dispatch of copies sent to superior officers should be mentioned at the end of diary.

2.4.10 Changing or delaying diaries by police officers are strictly prohibited.

2.4.11 For the purpose of departmental record and supervision, a Case Diary should also contain a record of:

- (i) The sending of information, express or ordinary, to the departmental superiors under the rules.
- (ii) The requisition of the services of experts.
- (iii) The reference made to crime records.
- (iv) The verification of the complicity of the possible criminals.
- (v) The issue of Hue and Cry notices, inquiry slips and other steps taken to obtain co-operation or help from what ever quarter.
- (vi) The disposal of manpower and equipment in furtherance of the investigation.
- (vii) The clues found at the spot and the action taken to preserve develop and submit them to expert examination.
- (viii) The verification of the statement made or alibi claimed during the investigation.
- (ix) The theories formed after the investigation and the reason for the discard of any.
- (x) The lines of further investigation proposed.
- (xi) The final probabilities or facts of the case as determined on conclusion of investigation.

2.4.12 The following **shall not be incorporated in the Case Diaries**:

- (i) Opinion of the Supervisory Officers and Law Officers, except where they are issued as directions.
- (ii) Any conflict of opinion between the investigating officer and the

supervisory officers.

- (iii) Recommendations made in concluding report of the Investigating Officer, comments of Law Officer(s) and Supervisory Officers, where such practice is in vogue.
- (iv) Any other facts/circumstances not relating to investigation of the case.

2.5 Case Diary and Statements of Witnesses:

2.5.1 The diary under Section 172 need not contain the statements of witnesses recorded under Sec. 161 Cr.P.C. The part containing such statements is called Part-II to distinguish it from the Case Diary which is called Part-I. This classification has come into existence for the sake of administrative convenience as Part-I is a privileged document and copies of Part-II have to be made available to the accused.

2.6 Case Diaries to be numbered and dated.

- 2.6.1** All Case Diaries prepared in a case should bear consecutive numbers and shall be dated.
- 2.6.2** Each paragraph in a case diary shall be numbered.
- 2.6.3** There shall be a separate case diary for each date, prepared in duplicate, one copy of which will be retained by the I.O. in the case file and the other copy will be forwarded to the SDPO, to be scrutinized by him and retained in the office file.
- 2.6.4** Both copies of the case diaries shall include all the relevant enclosures, viz. copies of statements of witnesses, seizure memos, search lists etc., but may not include the day-to-day correspondence taken up by the I.O. with various offices/agencies/ individuals.

2.7 Dispatch of Case Diary

2.7.1 Cases Diaries should be written promptly in the prescribed form and dispatched without delay.

2.8 Bail Application and Case Diary

2.8.1 Whenever information is received about the filing of Bail Application, the Investigating Officer must personally visit the concerned Public Prosecutor and be present in the Court at the time of the bail arguments; if the Investigating Officer is otherwise engaged because of unforeseen circumstances, he must detail a responsible officer under him, with necessary notes, to meet the Public Prosecutor.

2.8.2 The up-to-date CD file should also be forwarded to the Public Prosecutor. In case of the absence of the investigating officer, there must be an entry in the CD file about the reason for his inconvenience. The name of the Officer who is authorised to attend the Court should also be mentioned in the CD.

2.8.3 The Officer who visits the Public Prosecutor / Govt. Pleader and who attends the Court during the bail argument must write a detailed note in the Case Diary about the findings/remarks/orders of the Court.⁶⁰

2.9 Supplementary Case Diaries

2.9.1 Every Investigating Officer, to whom part investigation of a case is entrusted, will also maintain a Case Diary for the investigation made by him. This may be called 'Supplementary Case Diary' (SCD).

2.9.2 SCDs will be taken on record by the Chief Investigating Officer, who may incorporate the gist of important facts disclosed in such investigation in

⁶⁰PHQ Circular No. 11/2006 dated 11/08/2006.

his own CD for the date when the SCD is received by him. It is important that SCD must be submitted without any delay.

2.9.3 A copy of the CD submitted by I.O./Chief I.O. to the supervisory would invariably enclose the SCDs received by him.

2.10 Writing of Last Case Diary

2.10.1 In the concluding diary, the investigating officer shall record a summary of the reasons which have guided his final decision in the case. If he considers that there is no case, his reasons will, of course, be more detailed and fact based than the one sent up for trial.

2.10.2 On receipt of the orders of the Competent Authority (as prescribed) after completion of investigation, the last Case Diary in every case shall be written as mentioned below:

- (i) In cases, in which charge-sheet is to be submitted to the Court, the last CD would be written on the date of filing the charge-sheet. If, however, investigation is continued under Section 173(8) Cr.P.C. on the same allegation or on other allegations, then Case Diaries would continue to be written till such investigation is completed.
- (ii) For cases, in which prosecution is not launched, the last Case Diary would be written on the date when the competent Court passes the closure order on the Final Report under Section 173Cr.P.C.

2.11 Value/ Importance of case diary:

2.11.1 Writing Case diary is statutory and legal obligation.

2.11.2 Under the provision of Section 172 Cr.P.C, every Police Officer conducting investigation shall maintain a record of investigation done on each day in a Case Diary in the prescribed K.P.F. No. 24. Case Diaries are important record of investigation carried out by an Investigating Officer. It helps decide further course of action.

2.11.3 It helps subsequent investigating officers to understand the case.

2.11.4 A case Diary is the record of investigation prescribed by Section 172(1) Cr.P.C. It enables senior officers to guide and supervise the investigation besides providing a record for the IOs own reference.

2.11.5 Any Court may send for the Case Diaries of a case under inquiry or trial in such Court and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial. Judge may take assistance of Police Diaries for appreciating the point or situation better.

2.11.6 It also aids the prosecutor to represent the case before the court.

2.11.7 It assists the investigating officer to refresh his memory during trial.

2.11.8 If written on day-to-day basis without delay, sanctity and credibility is attached to the evidence collected in investigation.

2.12 Delay in Writing Case Diaries/ Failure to write Case Diaries

2.12.1 The case diary should be promptly written i.e. on the very day of investigation. Otherwise there is every possibility for the investigating officer to miss certain points which may be important.

2.12.2 The diary being a record of investigation, failure to write day-by-day of the facts discovered during the investigation gives rise to the suspicion that such circumstances did not exist. Naturally, this will have an adverse effect.

2.12.3 Delay also leads to suspicion by the Court as also adversely affects investigating officer and prosecution.

2.13 Role of Superior Officers:

2.13.1 The CI/SDPO/SP would receive a copy of F.I.R. They should read the contents of the F.I.R. and ensure prompt receipt of the Case Diaries.

2.13.2 As and when the Case Diaries are received, the date should be noted and initialled by the superior. The officer should promptly and thoroughly read the Case Diaries and pass remarks wherever necessary. The remarks should be more in the advisory form than pointing out mistakes unless

there are glaring omissions and commissions.

2.13.3 The Case Diaries and other documents enclosed thereto may be used for preparing periodical Progress Reports, in respect of cases where the same is prescribed/ where such instructions are in vogue. The Case Diary must be written on the day of investigation. The supervisory officer would record a gist of its contents in the running note sheet. These need not be forwarded, unless specially called for.

CHAPTER 3

USE OF CASE DIARY IN COURT

3.1 Use of Case Diary in Court:

3.1.1 Under sub-Section (2) of Section 172 Cr.P.C, the court has the unfettered power to examine the entries in the diaries. The trial Court can, under the provision of Section 172(2) of Cr.P.C call for CD and use it as an aid to inquiry or trial.

3.2 In particular, the diary can be used by the Court for the following purposes:

- 3.2.1** As an aid to the trial
- 3.2.2** To discover relevant evidence
- 3.2.3** To put necessary question to a witness on the basis of information given in the diary
- 3.2.4** To clear up ambiguities in evidence for the sake of justice
- 3.2.5** To see if a witness has turned hostile
- 3.2.6** To decide if a remand in Police custody is really necessary
- 3.2.7** To determine if bail can be granted to the accused
- 3.2.8** To see/decide if there is a case against the accused which justifies framing of a charge
- 3.2.9** For taking cognizance for summoning more persons as accused in addition to those already charge sheeted.
- 3.2.10** During investigation, the Court can call for the Case Diary to form an opinion whether the accused person whose bail application is pending for hearing should be released on bail or deny bail. However, the Court cannot disclose the contents of the Case Diary at the time of passing orders of bail during investigation.

By prosecution:

- 3.2.11** Section 162 Cr.P.C permits the prosecution to use any part of the statement with the permission of the Court to contradict a hostile

witness.⁶¹

3.2.12 Prosecution cannot use case diary as supporting evidence.

3.2.13 The case diary cannot be used to enable any witness other than the police officer, who made it, to refresh his memory nor can it be used to contradict any witness other than such police officer

By defence:

3.2.14 A Case Diary which does not contain any statement of witnesses is a privileged document. The defence has no right to inspect or get a copy of it.

3.2.15 Neither the accused nor his lawyer is entitled to call for it or to see it even if it is referred by the Court.

3.2.16 However, if the Police Officer while giving evidence uses it to refresh his memory or if the court uses to contradict him, the privilege goes. It is only in these two events that the diary becomes valuable to the accused for contradicting the police officer under Section 145 Evidence Act or for inspection under Sec.161 Evidence Act for his cross-examination. But even in such case the accused is entitled to see only the particular entry referred to and so much of the diary as is the opinion of the court is necessary to the full understanding of the particular entry so used as no more.

3.3 Refreshing memory by the police officer:

3.3.1 Section 159 of the Evidence Act allows a witness to refresh his memory by referring to any writing made by him at the time of the transaction concerning which he is questioned in court.

3.3.2 In view of this, the Investigating Officer of a criminal case can refer to his writings made during investigation.

3.3.3 While these rights are given to a witness to refresh his memory as above, Section 161 of the Evidence Act gives a right to the adverse party to see

⁶¹Section 145 Evidence Act.

such writing (which is used for refreshing memory under Sections 159 and 160 Evidence Act) and such adverse party can also cross-examine such witness on the basis of such writing.

- 3.3.4** In case, the police officer uses the entries in the diaries to refresh his memory or if the Court uses them for the purpose of contradicting such police officer, then the provisions of Sections 145 and 161, as the case may be, of the Evidence Act would apply.

CHAPTER 4

CONFIDENTIALITY/ SAFE CUSTODY OF CASE DIARIES

4.1 Confidentiality/ Safe Custody of Case Diaries:

- 4.1.1** Supreme Court in *Balakramv. State of Uttarakhand*⁶² has reiterated that the accused cannot claim unfettered right to inspect the case diary. The confidentiality is always kept in the matter of investigation and it is not desirable to make available the police diary to the accused on his demand.
- 4.1.2** The Investigating Officer and his superiors shall ensure the physical safety of the case diary as well as its contents. Any leakage of the contents to any person other than authorized by law leads to undesirable consequences and will be detrimental to prosecution. They should not permit access to any unauthorized person particularly the accused or their agents or their counsel.
- 4.1.3** Case diary is a confidential document and the access to the case diaries is limited only to the Investigating Officer, the superior officers and the concerned legal officers who are in charge at a given time and not to others. It may be seen only by the Investigating Officer, the Officer in charge of the Police Station, any Police Officer superior to such Officer, the Court Officer (i.e., the senior most prosecuting officer and his junior who may be deputed by him to prosecute the case), staff especially authorised to deal with such diaries and any other officer authorised by the Superintendent of Police.
- 4.1.4** Every case diary should be treated as confidential until the final disposal of the case, including the appeal, if any, or until the expiry of the period of appeal.
- 4.1.5** Case diaries should be kept in the personal custody of the Investigating Officer and he or any Police Officer deputed by him should take it to the

⁶²2017(5) SCALE 220.

court on the dates of hearing. Of course, the Prosecutor would have perused it either at the time of preparing the charge-sheet, or it will be sent to him for perusal before or on the hearing date.

- 4.1.6** An officer, who is transferred, must hand over all Case Diary files to his successor in time if the successor takes over the charge directly or to his immediate superior officer, if the successor is not directly taking over charge from him.⁶³
- 4.1.7** In cases committed to the Court of Sessions, the diary should be sent to the Public Prosecutor under acknowledgement. On the disposal of the case in the Court of Sessions, the diary should be returned to the Station House Officer by the Public Prosecutor through the Court Officer.
- 4.1.8** Investigating Officer may also take the case diary in person to the Public Prosecutor for briefing him with reference to the case either before or on the date of hearing.
- 4.1.9** Cases diaries of cases disposed of in court are usually destroyed after three years. In very important cases, the diaries are retained for longer periods also. If the accused is absconding, it is retained till the case is finally disposed of in any manner.
- 4.1.10** The movement of Case Diary files should be monitored by the Officer entrusted with such responsibility from time to time (generally the Supervisory Officers).
- 4.1.11** If the CD File is transferred, the register, "Movement Registers of CD File", should be maintained on the lines of Local Delivery Book and should clearly give details and dates on which the CD File was transferred from one office to another. The signature of the person receiving the CD File in each office should be taken in the register without fail

⁶³ PHQ Circular No. 21/2009 dated 23/05/2009.

CHAPTER 5

COPIES OF CASE DIARY

5.1 Copies of Case Diary

- 5.1.1** Case diaries and statement of witnesses will be prepared in duplicate. The original is retained in the station and the other sent to the SDPO concerned who shall deal with the case diaries in the manner prescribed. In cases investigated by Sub-Inspector who is also SHO of Police Station, the case diaries will be directly forwarded to SDPO concerned. SDPO shall scrutinise the case diary and necessary instructions should be given to the I.O.
- 5.1.2** When Circle Inspector exists, send a copy to the Circle Inspector who will scrutinise the Case Diary and send to Sub Divisional Officer for disposal. The Sub Divisional Officer after scrutiny will file it in his office. When the case is disposed of by the appropriate Court, the whole case file kept in the Sub Divisional Office will be send to the record room in his office for file. It should be kept in chronological order for each Police Station.
- 5.1.3** The cases investigated by Circle Inspectors themselves, copies of Case Diaries should be forwarded to their immediate Superior on the day of the Case Diary itself.
- 5.1.4** In grave crimes which are investigated by Circle Inspector, one copy of the Case Diary to be sent to DCRB, 2nd copy to Sub Divisional Office and 3rd for retention in the Circle Inspector's Office. After filing Final Report of the case, the case diary should be handed over to concerned Police Station with proper acknowledgement.
- 5.1.5** The cases investigated by SDPO/DySP themselves; copies of Case Diaries should be forwarded to DCRB on the day of the Case Diary itself. DPC/SP/Supervisory Officer should verify the Case Diaries and issue necessary instructions.

CASE DIARY

PART II

CIRCULARS

SL.NO.	CIRCULAR NO.	CONTENT OF THE CIRCULAR
1	46/1965	Disposal of Case Diaries
2	26/1966	Places and duration of visit – information
3	101/1970	Check register of case diaries by the Sub Divisional Officer
4	156/1971	Introduction of continuation sheet to save space
5	08/1988	Writing of CDs – instructions
6	16/1992	Writing the name of investigating officers in CD files
7	07/1999	Investigation of cases by local police ensuring prompt writing of to-date CDs
8	07/2000	Issue of NLC-Instructions
9	11/2006	Filing of bail applications for advance bail –m necessity of maintaining CD files up to date
10	09/2007	Sanction for prosecution – case diaries not to be sent to competent authority – sending of report on investigation
11	21/2009	Investigation – case diaries – handing over on transfer
12	36/2010	Writing of case diaries during investigation
13	43/2010	Missing of CD files – prevention – instructions

* If anything is contradictory between and inconsistent with the contents of the above Circulars, the PSO and the Part I, the directions in Part I shall prevail.

- Circulars are available in Kerala Police Website.

COMPLETION OF INVESTIGATION

PART I

COMPLETION OF INVESTIGATION

CHAPTER 1

LAW

1.1 Relevant Legal Provisions

1.1.1 Section 173- Report of police officer on completion of investigation.

- (1) Every investigation under this Chapter shall be completed without unnecessary delay.*
- (1A) The investigation in relation to an offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E of the Indian Penal Code (45 of 1860) shall be completed within two months from the date on which the information was recorded by the officer in charge of the police station.*
- (2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating —*
- (a) the names of the parties;*
 - (b) the nature of the information;*
 - (c) the names of the persons who appear to be acquainted with the circumstances of the case;*
 - (d) whether any offence appears to have been committed and, if so, by whom;*
 - (e) whether the accused has been arrested;*
 - (f) whether he has been released on his bond and, if so, whether with or without sureties;*
 - (g) whether he has been forwarded in custody under section 170;*

- (h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or section 376E of the Indian Penal Code (45 of 1860).*
- (ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.*
- (3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.*
- (4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.*
- (5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report—*
- (a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;*
- (b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.*
- (6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note*

requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

- (7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).*
- (8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).*

CHAPTER 2

VARIOUS ASPECTS IN PREPERATION OF FINAL REPORT

2.1 Investigation to be completed properly and without delay

2.1.1 Section 173 of the Cr.P.C lays down that every investigation under Chapter XII of the Code shall be completed without unnecessary delay.

2.1.2 Thus, particularly, in cases where the accused are caught red-handed, there should be no delay at all in the submission of charge-sheets, if previous convictions are not valid for enhanced punishments. In simple offences, there should normally be no difficulty in completing the investigation and filing the charge-sheet before the expiry of the remand period of 15 days granted under Section 167 of the Cr.P.C.

2.1.3 There may, however, be some complicated cases, where it may not be possible to complete investigation within a period of 15 days.

2.1.4 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.

2.2 Preparation of Final Report⁶⁴

2.2.1 If, upon the completion of an investigation, it appears to the officer in charge of a Police Station that there is sufficient evidence to warrant the filing of charge-sheet against the accused, he will submit to the Magistrate empowered to take cognizance of the offence a charge-sheet in KPF No. 29.

2.2.2 Care should be taken to see that all the columns in the charge-sheet in KPF No. 29 are filled in properly. No column should be left blank unless it is inapplicable.

⁶⁴PHQ Circular No.20/2018dated 08/08/2018.

- 2.2.3** The officer in charge of the police station shall also communicate in KPF No. 114, the action taken by him to the person who laid the first information.
- 2.2.4** The charge should be brief but couched in clear terms.
- 2.2.5** The date, time and place of offence should invariably be mentioned in charge. .
- 2.2.6** In all important cases of complex nature, points involving question of law and facts, the charge-sheets should be prepared in consultation with the Assistant Public Prosecutor and also the Public Prosecutor, wherever necessary.
- 2.2.7** It is advisable to consult the Assistant Public Prosecutor or Public Prosecutor, if necessary, even at the stage of investigation, in order to enable the investigating officer to conduct the investigation on proper lines and to collect the type of evidence required by law to bring home, the guilt of the accused.

2.3 Charge-Sheet to be accompanied by Memorandum of Evidence giving names and addresses of witnesses.

- 2.3.1** When a charge-sheet in KPF No. 29 is sent to court, a separate memorandum giving the names and addresses of the witnesses cited and specifying clearly, the points each witness is called upon to prove should be sent to the Magistrate. This Memorandum of Evidence is intended only for the use of the court.

2.4 Supplying copies of records to the accused persons

- 2.4.1** Under Section 173 (7) of the Code of Criminal Procedure, 1973, where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5) of Section 173.

2.4.2 Under Section 207, in any case where the proceeding has been instituted on a police report, the magistrate has to furnish to the accused, free of cost, and without delay a copy of each of the following:—

- (i) the police report;
- (ii) the first information report recorded under section 154;
- (iii) the statements recorded under sub-section (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding there-from any part in regard to which a request for such exclusion has been made by the police officer under sub-section (6) of section 173;
- (iv) the confessions and statements, if any, recorded under section 164;
- (v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of section 173:

2.4.3 However, the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) above and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused.

2.4.4 Also, if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.

2.5 Procedure when the accused is absconding

2.5.1 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.

- 2.5.2** If the warrant cannot be executed within a reasonable time, the Investigating Officer shall move the court for instituting proceedings under Sections 82 and 83 of Cr.P.C
- 2.5.3** 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 Cr.P.C, 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 Cr.P.C The case shall then be entered by the Magistrate in a separate register of long pending cases.
- 2.5.4** If, at any future time, the accused person is apprehended or appears before the court, the case against him shall be treated as a new case and dealt with according to law.
- 2.5.5** 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 unreasonable⁶⁵.
- 2.5.6** Proclamation orders under Section 82 of Cr.P.C can be issued against any person for whose arrest the Magistrate has issued a warrant.
- 2.5.7** 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.
- 2.5.8** Once the proclamation orders are issued, they should be immediately promulgated.
- 2.5.9** Orders of attachment under Section 83 of Cr.P.C can also be issued simultaneously along with the proclamation orders. The period of 30 days

⁶⁵ 33 of Evidence Act

mentioned in Section 82 of Cr.P.C is the time allowed to the accused to surrender.

2.5.10 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.

2.5.11 It is necessary that the proclamation order issued under Section 82 of Cr.P.C is widely published in the manner provided for in that Section.

2.5.12 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.

2.5.13 Persons who willfully or knowingly harbour such offenders could be prosecuted under Section 216 I.P.C. It is, therefore, necessary that the widest publicity is given to the proclamation order issued under Section 82 of Cr.P.C so that its knowledge can be conclusively proved against the harbourer for prosecution under Section 216 I.P.C.

2.5.14 In such cases the Officer in Charge may approach the Judicial Officer issued proclamation to invoke section 174-A of IPC.

2.5.15 If the accused is abroad, take steps to extradite the accused.

CHATER 3

PROSECUTION SANCTION

3.1 Category A:

- 1** For offences under sections 172 to 188 of I.P.C 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 sections 193 to 196, 199, 200, 205 to 211, 228, 466, 471, 475 and 476 of I.P.C the complaint should be filed in the court directly in writing by the court, or some officer authorized by the court, or its superior court if the offence is committed in any proceedings in that court.
- 3** Offences under sections 182 and 211 of I.P.C, 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 sections 153A, 295A, 505(1) of I.P.C 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 sections 153B, 505(2) or (3) of I.P.C and also offence under Section 120B of I.P.C of above sections shall be launched only after obtaining the sanction of the Government or District Magistrate.
- 6** Prosecution for offences under sections 493 to 498 of I.P.C, which are offences against marriage shall be launched in courts directly by a complaint made only by the aggrieved persons or their guardians. Offence under Section 498A of I.P.C can be launched in courts only by a police report or by the aggrieved person or their parents or guardians.

- 7 As per Section 197 Cr.P.C 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 from office except by the Government, sanction of the Government, is necessary before filing a charge sheet in a court.
- 8 This condition applies even where the prosecution is launched after retirement, but the offence was committed while the public servant was in service.

3.2 Category B

- 1 There are certain Special and Local Acts like Prevention of Corruption Act, Violation of Arms Act, Explosive Substances Act, UAPA etc., where prosecutions cannot be launched under those Acts without the sanction of certain authorities.

ACT	SANCTIONING AUTHORITY
Contravention of Section 3 of The Arms Act (Section 39)	District Collector
The Explosive Substance Act (Section 7)	District Collector
The Prevention of Corruption Act (Section 19)	Authority competent to remove the offender from service.
The Passport Act (section 15)	The Central Government (Now authorized Home Department, State Government.
The Emigration Act (Section 27)	External Affairs Ministry of Central Government.
UAPA (Section 45)	MHA of Central Government.
THE SUPPRESSION OF UNLAWFUL ACTS AGAINST SAFETY OF MARITIME NAVIGATION AND FIXED PLATFORMS ON CONTINENTAL SHELF ACT, 2002 [SUA Act (Section 12)]	MHA of Central Government.
Offence committed outside India by an Indian Citizen, by any person on any ship or aircraft registered in India. (Section 188 Cr.PC)	MHA of Central Government.

- 2 However, no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, section 376, section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB or section 509 of the Indian Penal Code (45 of 1860).
- 3 While sanction orders are necessary for the courts to take cognizance, but there is no bar to register cases and make investigations.
- 4 Where sanctions are necessary, the Investigating Officer should make out a case and place all the material and documents before the sanctioning authority.⁶⁶ 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.
- 5 If the law requires the sanction of the District Magistrate, the Investigating Officer shall forward his requisition along with relevant material to the District Magistrate through proper channel. If the sanctioning authority is the Government, the same procedure is followed through the State Police Chief.
- 6 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.

⁶⁶Circular No.20/2018 dated 08/08/2018.

CHAPTER 4

DIFFERENT CATEGORIES OF FINAL REPORT

4.1 Final Reports - Referred Reports

4.1.1 Sometimes, the investigation may not end in a charge sheet and is fit to be dropped. In such a case, the case is referred and referred report is made under Section 173 Cr.P.C

4.1.2 Whenever a case is referred, it shall be forwarded to the magistrate via Sub Divisional Police Officer for his acceptance and proceedings. Reports are referred under various categories.

4.2 Non-Cognizable:

4.2.1 If result of investigation of a cognizable offence reveals the commission of a non-cognizable offence, shall be deemed to be a complaint as per definition of 2(d) of Cr.PC.

4.2.2 If the case is found to be of non-cognizable nature after investigation, then the Investigating Officer submits Final Report Non-Cognizable. In this case, the parties are free to contest the case in a court of law, or the magistrate may take cognizance of the offence on the basis of this Final Report itself and summon the accused to stand trial.⁶⁷

4.3 Mistake of Fact:

4.3.1 When the case was started simply because of misrepresentation of facts and in the course of investigation, however, the investigator learns the correct state of facts, then the case is to be disposed of by submitting the Final Report as Mistake of Fact for dismissing the case.

⁶⁷*India Carat Pvt. Ltd. v. State of Karnataka* 1989 Cr.L.J. 963 SC.

4.4 Civil nature:

4.4.1 On investigation if it is revealed that the case relates to a civil dispute, the disposal will be as civil nature.

4.5 False Case:

4.5.1 When on investigation, the Investigating Officer finds the case of the complainant to be false, there is obviously no question of prosecuting anybody on the strength of such a false accusation. In this case, he should submit the Final Report as False and the complainant should be prosecuted under sections 182 or 221 of I.P.C or 117(d) of KP Act.

4.6 Undetectable:

4.6.1 Despite all the efforts by the Investigation Officer, if the case is not detected, a Final Report Undetectable is submitted to the court. However, whenever the accused is traced and arrested, the case is opened again.

4.7 Evidence not sufficient to charge sheet the case:

4.7.1 When a final report is sent to the magistrate under Section 173(2) Cr.P.C, the magistrate may or may not accept it. If he accepts the same, he will issue proceedings.

4.7.2 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.

4.7.3 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-motu* on the report.

4.7.4 When a final report is sent to the magistrate, the SHO shall inform the complainant about the action.

4.7.5 The magistrate also shall send notice to the complainant directing him to show as to why the report should not be accepted. On the orders of magistrate, the aggrieved party can go to the higher courts for revision.

CHAPTER 5

POINTS TO BE NOTED WHILE PREPARING FINAL REPORTS

5.1 The following points should be kept in mind while preparing Final Reports:

- (i) The typing should be in double space. The ink impression should be dark enough for easy reading. Para numbers should be given.
- (ii) Enquiries/investigations should be thorough and complete and the information supplied in the Final Reports should be adequate on all points.
- (iii) The allegations, the facts of the case, the evidence available and the opinions and comments should not be mixed up in the Final Reports. They should be dealt with separately and succinctly.
- (iv) Repetition should be avoided. The allegations should be listed in proper order in a clear and definite form and discussed separately in detail.
- (v) The analysis of the facts of the case should be kept separate from the opinion. When there are a number of allegations and a number of accused persons, care should be exercised so that the conclusion is very clear in respect of each allegation and in respect of each accused. In the final recommendation, the name of each accused person as well as his accused number should be furnished.
- (vi) If any of the necessary witnesses could not be examined or if some of the documents could not be obtained, the same should be mentioned clearly in the Final Report, giving clear reasons.
- (vii) Opinion received from the expert or at least the relevant portion thereof should be incorporated in the Final Reports.

5.2 Split Charge-Sheet/Joiner of charges

5.2.1 Separate charges for distinct offences⁶⁸. An accused person, by an application in writing, so desires and the Magistrate is of opinion that such person is not likely to be prejudiced thereby, the Magistrate may try together all or any number of charges framed against such person. But the same shall be subjected to the operation of the provisions of Sec. 219, 220, 221 & 223 CrPC.

5.2.2 Three offences of the same kind within year may be charged together.

Offences are of the same kind when they are punishable with the same amount of punishment under the same Section of IPC or of any special or local Laws.

Provided that, for the purpose of this section, an offence punishable under Sec. 379 IPC shall be deemed to be an offence of the same kind as an offence punishable under Sec. 380 IPC, and that an offence punishable under any section of IPC, or of any special or local Law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.

Example: Lalu Prasad Yadav case⁶⁹: Large scale defalcation of public funds, fraudulent transactions and fabrication of accounts in Animal Husbandry Department of State of Bihar popularly known as “Fodder Scam”.

There is difference between the same kind and the same offence. In different treasuries, distinct offences have been committed though of same kind by different sets of accused persons. There have to be separate charges for distinct offences and, therefore separate trials are required to be held.

⁶⁸ Sec.218 Cr.P.C

⁶⁹ *LALU Prasad Yadav Case AIR 2017 SC 3389*

Sec. 218 deals with separate charges for distinct offences. Sec.219 quoted above, provides that three offences of the same kind can be clubbed in one trial committed within one year. Sec. 220 speaks of trial for more than one offence if it is the same transaction. In the instant case it cannot be said that defalcation is same transaction as the transactions are in different treasuries for different years, different amounts, different allotment letters, supply orders and suppliers.

5.2.3 There may be a conspiracy in general one and a separate one. There may be larger conspiracy and smaller conspiracy which may develop in successive stages involving different accused persons. Defalcations have been made in various years by combination of different accused persons, there can be separate trials⁷⁰. on the basis of law laid down by this Court

5.2.4 (i) If, in one series of facts so connected together as to form same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

(ii) When a person charged with one or more offence of criminal breach of trust or dishonest misappropriation of property as provided in Sub-Section (2) of Sec. 212 or in Sub-Section (1) of Sec.219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.

(iii) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

⁷⁰Ram LalNarang v. State (Delhi Administration), 1979 KHC546:1979(2) SCC 322 1979 SCC (Cri)479: AIR 1979 SC 1791

(iv) If several Acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, or such acts⁷¹.

(v) Nothing contained in Sec. 220 Cr.P.C shall affect the Sec. 71 of IPC.

5.2.5 The provisions of these sections pertaining to joint trial, are only enabling provisions. An accused cannot insist with ulterior motive or otherwise that he be tried as Co-accused with other accused that too in a different case. It is only a discretionary power and Court may allow it in a particular case if the interest of justice so demands to prevent miscarriage of justice⁷².

5.2.6 Despite taking efforts, if the presence of accused is not secured, all procedures in respect of when an accused is absconding as outlined earlier should be set in motion.

5.2.7 Once the process is undertaken, the court can proceed to record regular evidence against the accused who are present and pass order to record evidence under Section 299 of Cr.P.C. against absconding accused.

5.2.8 If any incriminating evidence comes on record against the absconding accused, judgment can be delivered in respect of the available accused and evidence recorded can be preserved and file kept on dormant list for the court to pass suitable order at an appropriate time⁷³. This would serve two purposes:

- (i) Case against the present accused would not be delayed.
- (ii) Precious evidence can be preserved and can be used at a later stage.

⁷¹Sec. 220 Cr.P.C.

⁷²Essar Tele holdings 2015 KHC 4648

⁷³*CBI v. Dawood Ibrahim Kaskar* AIR 1997 SC 2494

5.3 Scope for Further Investigation

- 5.3.1** The power of the police to conduct further investigation, after laying final report, is given in Section 173(8) Cr.P.C.
- 5.3.2** Section 173(8) of the Code lays down that further investigation can be made after a final report under Section 173(2) has been forwarded to the Magistrate if after such investigation the Officer-in-Charge receives further evidence. In such case, he shall forward to the Magistrate, a report regarding such evidence in the form prescribed.
- 5.3.3** The matter as to whether there exist sufficient and valid grounds for further investigation is entirely for the consideration of the Officer in charge of police station, and the Court cannot give any direction restraining the investigating officer from conducting further investigation.
- 5.3.4** This sub-Section is based on the necessity to confer express power on the police to make further investigation and submit supplemental reports (supplemental charge sheets). Whenever new facts come to light to the police resulting in further investigation, it is the duty of the police to send a supplemental report based on such materials to the Magistrate.
- 5.3.5** This provision permits filing of revised report on getting fresh materials. However, a second charge-sheet cannot be filed without further investigation and without obtaining further evidence.
- 5.3.6** Sub-section (8) of Section 173 of the Code makes it clear that sending of report under sub-section (2) does not preclude further investigation and sending supplementary report. The investigating agency can submit supplementary reports to the Magistrate even where the Magistrate has already taken cognizance of the offence upon police report.
- 5.3.7** Further investigation by the police is also not without jurisdiction or contrary to law when trial in a Court of Session is continuing, especially in view of the wide powers of the Police under Section 173(8) Cr.P.C.

- 5.3.8** In this matter, it was also opined by the Supreme Court in the case of *Rama Chaudhuryv. State of Bihar*⁷⁴ that law does not mandate taking of prior permission from magistrate for carrying out a further investigation but, it can be said to be good to inform the Court about further investigation so that the Court can temporarily stop the proceedings.
- 5.3.9** Further investigation can be conducted by the same agency which initially investigated the case and not by a different agency.
- 5.3.10** The investigating officer is not vested with unbridled power to re-investigate and rope in any person without sufficient evidence to proceed against. More persons can be added as accused when there is adequate material and evidence collected by the investigating agency by passing a speaking order.

5.4 Action in certain compoundable offence⁷⁵

- 5.4.1.** Section 126 of Kerala Police Act deals with compounding of offences in case of certain offenses.
- 5.4.2.** The Station House Officer may, on application of the accused, compound all non-cognizable offences under the Act.
- 5.4.3.** The District Police Chief may, on any application made by the accused, compound offences under sections 117, 118 and 119(2) of KP Act 2011 if he deems that the matter is not serious enough to be prosecuted before a court: Provided that no such compounding shall be made in a matter in which the court has already initiated action, after submission of charge sheet by police, and on such occasions, the offences may be compounded before such court.
- 5.4.4.** The compounding fees to be levied in respect of each category of offence while compounding shall be such as may be prescribed by the Government

⁷⁴ AIR 2009 SC 2308

⁷⁵ Section 126, Kerala Police Act.

and the Station House Officer concerned shall collect such compounding fees in accordance with the manner notified by the State Police Chief.

- 5.4.5.** As a general principle, Compounding shall be deemed to be conviction but may be used to prove the previous conduct in any proceeding where such previous conduct is relevant.

COMPLETION OF INVESTIGATION

PART II

CIRCULARS

SL.NO.	CIRCULAR NO.	CONTENT OF THE CIRCULAR
1	19/1957	Copies of documents with charge sheet- provision of section 173 CrPC
2	25/1970	Crimes- FIRs- Final reports due to Courts – Watch over pendency in co-ordination with Court records – instructions issued by High Court of Kerala
3	125/1971	CrPC-Chapter XIV- Reinvestigation of a case after filing final report u/s 173 CrPC – Decision of High Courts
4	30/1972	Action under Official Secrets Act- furnishing of copies of statements/documents prepared during investigation to the accused - instructions
5	22/1988	Further investigations u/s 173(8) CrPC – prior sanction from SP/CP to be obtained
6	45/2009	Proper accounting of UI cases and new performa for the list of UI cases to be hung in Police Stations
7	56/2009	CBCID – Investigative supervisory procedures - instructions
8	09/2010	Code of Criminal Procedure (Amendment) Act, 2008- Changes in Police procedure – Instructions
9	43/2010	Missing of CD files – prevention - Instructions issued

* If anything is contradictory between and inconsistent with the contents of the above Circulars, the PSO and the Part I, the directions in Part I shall prevail.

- Circulars are available in Kerala Police Website.

COURT WORK, PROSECUTION, TRIAL

PART I

ROLE AND RESPONSIBILITIES OF A POLICE OFFICER IN THE PROSECUTION OF CASES

CHAPTER – 1

ARREST AND BAIL

From the registration of a crime case till its final disposal in the Court, the Investigating Officer is accountable to the Court having jurisdiction. Generally investigation, as we all know, starts after the registration of FIR. Once the FIR is registered, it shall be forwarded without delay to the Magistrate having jurisdiction. The Station House Officer should realise the fact that delay in transmission of FIR to the Court without proper justification will support the defence contention that FIR was result of an afterthought.

1.1 Production of arrested person before the Magistrate

If a person is arrested and he is not released on bail on bond, he should be produced before the Magistrate in accordance with the provisions of Law, at the earliest and in any case within 24 hours excluding the time of journey.

1.2 Remand of the arrested accused

When an accused involved in a non-bailable offence is arrested, he shall be forwarded to the Judicial Magistrate concerned along with a remand report within 24 hours of his arrest. The remand report should be prepared with due care and the same should disclose adequate reasons justifying his remand in that case. Whenever police custody of the accused is sought by the Investigating Officer not below the rank of Sub Inspector, his requisition for the same should reveal satisfactory reasons. Police custody can be obtained only within the first 15 days of the remand (except UAPA cases). After the period of custody is over, the accused person shall be duly produced before the Magistrate within time.

The following are some of the grounds which can be cited while seeking police custody of the accused.

- (iv) For identifying the accused by persons residing at a distant place;
- (v) During interrogation, accused offered to show stolen property or weapons or other articles connected with the crime;
- (vi) Accused will be able to show places from where he has brought any weapon used in the offence and where he has disposed of the proceeds of the offence.

1.3 Opposing bail application of the accused

An accused arrested in a non-bailable offence would approach the Court seeking bail. In such cases, the Investigating Officer shall furnish necessary details to the prosecutor for opposing the bail application. Some of the grounds for opposing the bail application can be:- the likelihood of absconding by the accused, tampering with evidence, intimidation and threat to witnesses, repeating the offence, nature of the offender and the offence, breach of peace and tranquility in the locality or retaliation by the victim's party.

Similarly the accused apprehending arrest may approach the Court of Session or the High Court by filing application for anticipatory bail. In such cases, the Investigating Officer must furnish sufficient information to the Public Prosecutor so as to enable him to defend the application properly.

CHAPTER - 2

SEARCH AND SEIZURE

2.1 Search and seizure

During the investigation of the case, it may be necessary for the Investigating Officer to conduct search at different places for collecting evidence which may be relevant for the case under investigation. Under normal circumstances, the Investigating Officer will have to approach the Court for getting a search warrant. Various 'Mahazars' prepared by the Investigating Officer like the scene mahazar, seizure mahazar and the material objects seized shall be forwarded to the Court concerned without delay.

After the completion of the investigation, if the Investigating Officer feels that a prima facie case is made out, charge sheet is filed in the Court under section 173(2) CrPC. If the Investigating Officer is of the view that the case is not fit to be charge sheeted, a final report is filed in the Court for dropping further action in the matter.

CHAPTER - 3

PUBLIC PROSECUTOR

3.1 Public Prosecutor

Normally Public Prosecutor appears for the State and conducts prosecution in all Sessions cases, contests bail applications and argues appeals and criminal miscellaneous petitions in Sessions Court and gives advice on legal matters. Besides them, there are Assistant Public Prosecutors to conduct prosecution in Magistrate Courts. However, sometimes, considering the importance of the case, legal complexities involved during the investigation etc., a Special Public Prosecutor may be engaged.⁷⁶ This engagement sometimes is made during the investigation of the case or after a charge sheet is filed.

⁷⁶ Executive Directive No 11/2017 dated 07/07/2017.

CHAPTER - 4

DIFFERENT STAGES OF PROSECUTION RELEVANT FOR A POLICE OFFICER

4.1 Posting of case and process service

When a case is posted for the appearance of the accused, the Magistrate / Judge would issue summons to the accused on the date specified therein. It is the duty of the Police Officer to promptly serve the summons or to inform the Court regarding non service of the summons after specifying the reasons for the same. If a warrant is issued for compelling the attendance of the accused, the Police Officer shall execute the warrant for ensuring the presence of the accused for Trial proceedings.

4.2 Framing of Charge

At this stage, the Court shall consider the materials submitted before it to ascertain whether the offences alleged are prima facie sustainable. The defence is having right to file petitions for discharge of the offences for the reason that from the materials submitted before the Court, offences alleged are not made out or the Prosecution is unsustainable for technical reasons like delay in filing the final report, absence of prosecution sanction, incompetence to conduct investigation etc. It is the duty of the Police Officer to ascertain the contention of the accused in this connection and properly instruct the Prosecutor to meet with the grounds of discharge. If the grounds mentioned are curable and technical, the Investigating Officer should see to it that such defects are properly rectified.

Once the charge is framed, the Investigating Officer should verify the Court Charge to ensure that all the relevant facts and offences have been incorporated in it. If there is any mistake or omission in the charge, the Investigating Officer shall bring it to the notice of the Court through Public Prosecutor.

4.3 Duties Regarding Proper Execution of Summons and Warrants.

Normally Court in consultation with the Prosecution issue process only to such number of witnesses as could be examined on the day. Summonses received from the Court should be served on the witnesses promptly and the served summons should be returned to the Court at least a day before the date of hearing. Postings should be arranged in such a way that the witnesses who are not likely to be examined should not be made to attend the Court on a particular date of hearing.

Action should also be taken under Section 174 IPC, against witnesses, who fail to attend the Court in spite of the service of summons.

On commencement of trial proceedings, SHO will ensure that the summons are procured well in advance and served in time. The Police shall extend all possible assistance to Public Prosecutor for the smooth conduct of trial.

The following procedure should be adopted to monitor effectively, the progress of service of summons:

- 4.3.1** A list of cases under trial should be prepared by the Legal Division and should be put up to the District Police Chief concerned every week showing the cases coming up in the next 7 days in the Courts in a prescribed format.
- 4.3.2** The District Police Chief shall review this statement every day to take care of the cases coming up in the next 7 days. This will enable the District Police Chief to aid the prosecution by taking effective and immediate steps to ensure service of summons and attendance of witnesses, whether by sending wireless messages, through telephonic contacts or by serving through Special messengers.
- 4.3.3** The Public Prosecutor conducting a case should apply to the Court for the summoning of the witnesses for the next hearing, well in advance so that sufficient time is available for effecting the service of summons.
- 4.3.4** When the Public Prosecutor and the Investigating Officer are together on

the date of hearing, they must decide on the next set of witnesses on that date of hearing itself and make an application for the issue of summons. The summons should either be procured the same day or the next day.

- 4.3.5** If summons are obtained well in advance, more than one attempt can be made to effect proper service. Late service of summons and the consequent failure of the witnesses to attend Court shall prevent the Public Prosecutor from praying for the use of coercive powers of the Court to ensure the presence of witnesses on the next date of hearing.
- 4.3.6** In order to facilitate timely service of summons, addresses of witnesses should be checked periodically.
- 4.3.7** A Witness Register should be maintained wherein addresses should be updated periodically. Along with the postal address, the telephone numbers should be collected from the witnesses who have such facilities. This should be done by the Aid Prosecution Police Personnel of the case along with the executive staff of the legal division.
- 4.3.8** Maintenance of this register should also be checked by the District Police Chief periodically.
- 4.3.9** The Aid Prosecution Police Personnel detailed for each case should supply the changed address. Addresses of the witnesses should also invariably be recorded in the Case Diaries.

4.4 Examination of witnesses

The handling of witnesses in Court calls for a technique different from that employed in the interrogation of persons during an investigation. The investigator seeks to discover the author of a crime and the manner of its perpetration, whereas the prosecutor aims at establishing the guilt of the person found to be the culprit as a result of the investigation. The true function of the prosecutor is to assist the Court in administering justice on the basis of legal and admissible evidence.

Examination of witnesses in Court is governed by the provisions of the Indian Evidence Act. Section 137 of the Indian Evidence Act lays down three

stages in the examination of a witness, namely examination in chief, cross-examination and re-examination. Section 138 of the Act lays down the order of such examination. A witness is first examined in chief by the party that calls him and this is called his examination-in-chief. The opposite party is then entitled to cross-examine him. After cross-examination, he may be re-examined by the party calling him for clarification of the facts, if it so desires. The right to cross-examine a witness is a statutory right and its very purpose is to test the veracity of the testimony of the witness and thereby to extract the truth and expose falsehood. An intelligent cross-examination can detect or expose discrepancies in the evidence given by a witness by impeaching its accuracy, credibility and general value, and can also elicit the facts suppressed by him.

The Investigating Officer can provide valid inputs and suggestions to the prosecutor, if any of the prosecution witnesses has been made to give any misleading statement during cross-examination or that any point has been purposefully left obscure, in order to clear it in re-examination.

4.5 Police Officer as Witness

On completion of examination of other witnesses, the evidence of Investigating Officer will be recorded. Before giving evidence in Court, the Investigating Officer Should again study the case diaries, statements recorded u/s: 161 CrPC, confessions, seizure reports, remand diaries/reports, scientific reports and the charge sheet thoroughly.

4.5.1 Before the Investigating Officer is examined as witness, he shall have consultation with the Public Prosecutor/Assistant Public Prosecutor and shall have an understanding regarding the evidence already recorded, exhibits marked and material objects identified in Court. While giving evidence, if the witnesses, exhibits and material objects were mentioned in the chronological order as marked in Court like PW, Exhibit P, MO etc, the same will be highly appreciated by the Court.

- 4.5.2** If the Investigating Officer is thorough about the case, investigation and statements recorded by him, he can depose with all confidence and withstand cross-examination. He will be able to give a satisfactory explanation to the Court, only if he is completely aware of the proceedings and what evidence were given by the witnesses in the Court and what they answered during cross-examination. It is desirable for him to prepare a draft statement to be deposed in complicated cases and show it to the prosecutor and take note of any suggestions made by him.
- 4.5.3** A Police Officer shall always appear in uniform when giving evidence in the Court, even though he is working in Special Unit.
- 4.5.4** The Police Officer shall salute the Court, both when entering and leaving the Court and witness box. He shall remain attentive in the Court room and shall keep the decorum of the Court.
- 4.5.5** He should remain calm while giving evidence and shall not argue with the defence counsel. At the same time, care should be taken to ensure that his points are properly brought to the attention of the Court.
- 4.5.6** While giving evidence, properly understand the question of the defence counsel patiently and start answering only after the question is completed. He can answer the question directly to the Judge by looking at him. If the question is not clear to him, he may bring it to the notice of the Court.
- 4.5.7** When questioned by the adverse party, never turn towards the prosecution counsel as it would give an impression to the Court that the witness is relying on the Prosecutor for replying.
- 4.5.8** The Police Officer shall not get offended by the nature of questions put by the defence counsel during cross-examination. If any question is unnecessarily vexatious, represent the matter to the Court and seek its protection.

- 4.5.9** The Police Officer going to the witness box should be ready with his diaries, statements of witnesses, etc. The Court may require his case diaries for inspection and the Police Officer should be ready to give them to the Court immediately. Any delay in doing so may draw adverse inference from the Court on the conduct of the Investigating Officer.
- 4.5.10** After entering the witness box and taking the oath, the officer should narrate his statement chronologically, starting with the receipt of information, registration of the case, and through whatever steps he has adopted and whatever evidence collected as part of the investigation up to filing of the charge sheet. Officers who have partly investigated a case should give evidence regarding the role played by them alone and the handing over of it to their successor or superior and they should not speak about the investigation done by other Police Officers, unless he verified it.
- 4.5.11** Care should be taken to give short answers in simple language even to complicated questions. Never try to give answers hastily without properly understanding the questions. However, there shall not be undue delay in giving the answers. Lengthy answers may provide room for another round of fresh questions. The Police Officer should be able to give an impression to the Court that he has been efficient and thorough in his investigation.
- 4.5.12** Framing a question depends upon the intelligence and the experience of a lawyer. A clever lawyer put a question in such a manner that the witness has no alternative except to say “Yes” or “No”. By answering “Yes” or “No”, there may be some possible damage to the case. So, it is for the witness to understand the question and give a suitable explanation instead of simply saying “Yes” or “No”. Police Officers, while giving evidence, should be more vigilant against being trapped by such intelligent questions from the defence counsels. Some counsels will insist on answering only “Yes” or “No” to such questions and any explanation will be vehemently

opposed. In such situations, the Police Officer can very well seek the permission of the Court to suffix his explanation.

4.6 Examination of the Accused

On completion of the recording of the prosecution evidence, the accused will be called upon to explain incriminating circumstances brought out from the prosecution case. The judge will ask explanation to incriminating circumstances u/s 313 of CrPC and call upon the accused to tender his version as to the incident if he wishes to explain.

The Investigating Officer should verify the answers given to the questions put to the accused and additional statement given by him. The Investigating Officer shall invite the attention of the Public Prosecutor regarding the falsity or contradictory nature of the explanation offered by the accused. The admissions made during such examinations should also be brought to the notice of the Prosecutor to the advantage of the prosecution. If the Court omits to put any of the incriminating circumstances which the prosecution proposes to rely on, the Investigating Officer shall bring it to the notice of the Court through Public Prosecutor during the argument of the case.

4.7 Examination of Defence Witness

On completion of the examination of accused u/s 313 CrPC, the Court will call upon the accused to enter upon his defence. The defence will be having right to examine defence witnesses in disproof of the charge against him. Though the accused is having such a right, the Court can regulate the number of witnesses sought to be examined after evaluating the point to be proved.

- i. The details and whereabouts of proposed defence witness shall be thoroughly enquired and their association or interest with the accused, if any, shall be unearthed for proper cross-examination by the Public Prosecutor. The Investigating Officer should actively assist the Public Prosecutor for cross-examining defence witnesses.

- ii. As per Section 315 of CrPC, the Accused shall be a competent witness in disproof of the charge against him. In such cases, the Investigating Officer shall furnish all details of investigation regarding the conduct of the accused that are capable of contradicting his evidence and securing admissions from his depositions.
- iii. If examination of any other witnesses or production of fresh documents will render the defence evidence to be false and favourable to the prosecution, all efforts should be taken for production of such documents and examination of such witnesses.

4.8 Arguments of the Case

After the completion of the examination of the witnesses, examination of accused u/s 313 CrPC and defence evidence, if any, the case will be posted for final hearing. The Investigating Officer should actively participate in the preparation for argument and raise his points for the consideration of the Public Prosecutor. He shall attend the final hearing and carefully watch the defence version to understand the shortcomings in the investigation and lacunae in the prosecution case as projected by the defence. The same shall be helpful in aiding the prosecutor in rebutting such contentions advanced by the defendant in a given case or as a corrective measure for investigation of similar cases in future.

CHAPTER – 5
DUTIES OF POLICE OFFICERS IN CONNECTION WITH
PROSECUTION

5.1 Duties of the Investigation Officer

- 5.1.1** The Investigating Officer should send the case diary file in advance to the public prosecutor and give necessary personal instructions.
- 5.1.2** The Investigating Officer should personally attend the Court on all dates of hearing unless he is held up on any other urgent duty. If so, one of the competent Senior Police Officers shall be sent to the Court with the case diary in time to meet the Prosecutor.
- 5.1.3** The Investigating Officer should assist the Public Prosecutor in briefing the witnesses, conducting prosecution, filing documents, marking exhibits and see that the prosecution case is presented in the best possible manner.
- 5.1.4** He shall also make enquiries and furnish material to the Prosecutor for the cross-examination of defence witness.
- 5.1.5** Apart from the Investigating Officer, another Police Officer, fully acquainted with the facts of the case, should be deputed to aid the Public Prosecutor in Sessions and in other important cases, since the Investigating Officer, as a witness to be examined, may not be able to assist the Prosecuting Officer during the entire proceedings in the Court.
- 5.1.6** The Senior Police Officer, who is deputed for aiding prosecution in the Court shall closely observe the proceedings in the Court and prepare the Court CD for every date including the details of witnesses examined so far, witnesses to be examined, attendance of officers,

MOs marked, deposition of witnesses in favor, hostile witnesses, etc; and submit the same to the SHO concerned.

5.1.7 The SHO after examining the Court CD will take remedial measures in consultation with the IO and the Prosecutor of the case before the next date of posting. The Court CD should be attached to the Case Diary file, in order that the official witnesses appearing before the Court for examination will get a clear picture of the trial already completed.

5.2 Duties of Station House Officer

The Station House Officer should coordinate with the Prosecuting Officer in the examination of witnesses attending the Court. He should take suitable action against those who attempt to intimidate or influence Prosecution witnesses.

He should promptly attend to the grievances or complaints, if any from the Prosecution witnesses against the accused or their associates. In appropriate cases, the SHO requests the Prosecuting Officers to move the Court to initiate action against hostile witnesses, if necessary.

5.3 The Attendance at Sessions

The Investigating Officers should attend entire Sessions trial of the cases investigated by him. In important cases, the Inspector of Police concerned should attend Sessions trial regularly and provide necessary assistance and instructions to the prosecuting staff. Probationary Officers who undergo training should attend Sessions Court trials as part of their training.

Deputy Superintendent of Police and District Police Chief/Superintendent of Police should attend at least a few Sessions trials in sensational/important cases. The District Police Chiefs should closely monitor all sensational/important cases.

5.4 Consultation with the Prosecutors

The Investigating Officer must consult the Prosecutors in the following cases:

- 5.4.1** Cases which are exclusively triable by the Court of Sessions;
- 5.4.2** Cases under Section 120B I.P.C;
- 5.4.3** Grave Crimes
- 5.4.4** When a case and counter-case are registered and a decision has to be taken, whether both the cases have to be charge-sheeted or only one of them;
- 5.4.5** Cases involving complicated questions of law / fact;
- 5.4.6** Any other case where the IO/SDPO/DCP/SP desire that the Prosecutor should be consulted;
- 5.4.7** Any case where the Prosecutor/Director/Deputy Director of Prosecution considers that such consultation is necessary.

In respect of the cases referred to above, while sending the charge-sheets to the APPs, the Investigating Officer should give sufficient time to the Prosecutor to scrutinize the charge-sheets. Along with the charge-sheet, the Investigating Officer should send the case diary file to the PP/APP to enable him to study the papers for scrutinizing the charge-sheet.

If there is a difference of opinion between the Investigating Officer and the Prosecutor on any matter pertaining to investigation or prosecution, such matters should be referred to the Superintendent of Police, who shall take it up with the Deputy Director for further advice.

5.5 Appointment of an Officer on Court Duty/Holding IO (HIO) to assist the Prosecution.

The Investigating Officers are required to render all assistance to the Law Officers during the course of trial. The IO should be sensitive to matters relating to the Courts and should be prompt in his attendance in the Court on each and every occasion especially when the evidence of an important witness is recorded.

- 5.5.1** The IO of a case shall engage an officer of his team as the Aid Prosecution Police Personnel from the day of registration of the case. The Aid Prosecution Police Personnel should be associated with the developments of the case from the beginning so as to help the law officer in the Court not only during investigation but also during prosecution.
- 5.5.2** He should be associated in the handling of witnesses so that they do not get influenced by accused.
- 5.5.3** He should ensure proper maintenance of case records and keep track of the proceedings in the Court.

CHAPTER- 6

WRITING OF COURT CASE DIARIES

6.1 Writing of Court Case Diaries

The progress of the cases in Courts, including Appeals and Revisions should be regularly reported by the Prosecuting Officers (the in house law officers/ the special counsels) in charge of such cases through Court Diaries in the prescribed form in duplicate by sending a copy to PP and one copy to the District Police Chief concerned.

- 6.1.1** However, if, in between, there is any important development in a case worthy of being brought to the notice of higher ups, then he shall forward the report to the SP concerned, who in turn will send the report with his own comments to PP/ DIG who will further apprise the DG concerned.
- 6.1.2** The Court Diary should be in detail and if in any extreme exigency, adjournment is sought by the prosecution, which should normally be avoided, it should contain full reasons for the same.
- 6.1.3** The Senior Officers should scrutinize the Court Diaries carefully to decide the corrective action to be taken to improve the prosecution and also to take appropriate action against the defaulting IOs, Aid Prosecution Police Personnel, etc.
- 6.1.4** The course of action to be taken should be reflected by the District Police Chief concerned in the Court Diaries while forwarding these to the Head of Legal Division/DIG.
- 6.1.5** The Court Diaries should invariably contain information on the following points, when they are forwarded by the District Police Chief to the DIG/ Head of Legal Division/ DLA:
 - (i) Names of prosecution or defence witnesses who are summoned or examined.

- (ii) How the witnesses fared and a gist of their evidence. If and when a witness turns hostile, it should be mentioned in the Court Diary and the District Police Chief should comment how the damage caused by the hostile witness will be remedied.
- (iii) How the case proceeded.
- (iv) What proceedings are due on the next date of hearing?
- (v) Reasons for adjournment indicating whether adjournment was granted at the request of prosecution or defence or if the Court otherwise could not take up the case.
- (vi) If adjournment is occasioned by non-production of witnesses, reasons for their non-production.

6.2 Prisoner's Escort

Whenever an order for the production of a prisoner to give evidence or to answer a charge is received from a competent Court by the Officer in charge of a jail, such officer shall send a copy of the Court's order to the head of the local Police, who thereupon shall cause the necessary Police guard to be detailed in accordance with the terms of the order and the prisoner shall be made over to the custody of this guard.

CHAPTER - 7

SCRUTINY OF JUDGMENTS/ORDERS

7.1 Scrutiny of Judgments/Orders

Each judgment of a trial Court in a case should be scrutinized and examined with reference to the following points:

- (i) Whether the sentence is adequate or inadequate;
- (ii) Whether appeal for enhancement of sentence is feasible;
- (iii) Whether acquittal or discharge is justifiable;
- (iv) Whether any material is available for filing an appeal against acquittal or discharge or inadequate punishment;

The judgment in each of the cases have also to be scrutinized to examine any breach of rules and regulations, procedures/ established practices and to suggest necessary steps to prevent lapses, if any in future.

CHAPTER - 8

GENERAL PRINCIPLES REGARDING RECOMMENDING APPEALS AND REVISIONS

8.1 General principles regarding recommending appeals and revisions

While examining a case for filing appeal against the acquittal/discharge, decisions pronounced by various High Courts and the Supreme Court on the scope and power of the Appellate Court to interfere with an acquittal in exercise of their powers under Section 378 Cr.P.C should be kept in mind.

8.1.1 Though the High Court has full powers to review at large the evidence upon which an acquittal order is founded and to reach its own conclusions, the following factors should be taken into consideration before recommending an appeal:

- (i) Views of the Trial Court regarding credibility of the witnesses;
- (ii) Reluctance of the Appellate Court to disturb the findings on facts recorded by the Trial Court which had the advantage of seeing and hearing the witnesses;
- (iii) Right of the accused to the benefit of doubt;
- (iv) Any other factor considered relevant by the Public Prosecutor.
- (v) No appeal/revision is to be recommended in a mechanical manner without analysis of the Judgment.

8.1.2 High Courts generally prefer not to interfere with orders of the lower Courts in exercise of their inherent powers under Section 482 Cr.P.C, except in cases of real and substantial injustice.

8.1.3 Consequently, an appeal for enhancement of the sentence should be made after considering the part played by each accused in commission of the offence.

8.1.4 Similarly, filing of revision applications in interlocutory matters should not be resorted to unless there is some substantial question of law involved or, the impugned order, if allowed to stand, is likely to have far-reaching consequences.

8.2 Appeal⁷⁷ and Interlocutory Orders

The words Appeals and Revisions are very loosely and interchangeably used by the law enforcement officials. Sections 372 to Section 394 of the Cr.P.C deal with appeal whereas Sections 395 to 405 contain various provisions relating to revisions.

8.2.1 An appeal can be defined as a legal right in which the appellant approaches a higher Court for the purpose of obtaining a review or reversal of the verdict of the Court below on legal and (or) factual grounds.

8.2.2 Cr.P.C contemplates appeals both against conviction and acquittal. An appeal against acquittal is contemplated under Section 378(2) of the Cr.P.C.

8.2.3 The State Government may direct the Public Prosecutor to present an appeal against the inadequate sentence on a trial held by any Court other than the High Court.

8.2.4 Appeal should be presented to the Court of Sessions, if the sentence is passed by the Magistrate and it should be to the High Court, if the sentence is passed by any other Court.

8.2.5 When an appeal has been filed against the sentence on the ground of its inadequacy, the Court of Session or the High Court, as the case may be, shall not enhance the sentence except after giving to the accused a reasonable opportunity of showing cause against such enhancement. While showing cause, the accused may plead for his acquittal or for the reduction of the sentence.⁷⁸

⁷⁷Rules 98-124, The Criminal Rules of Practice, Kerala 1962.

⁷⁸Section 377 Cr.P.C.

8.3 Appeal in Case of Acquittal

8.3.1 High Court

The State Government may direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of an acquittal passed by subordinate Court.

It should be made within six months, where the complainant is a public servant and sixty days in every other case, computed from the date of the order of acquittal.⁷⁹

8.3.2 Sessions Courts

In a Sessions Case, the Public Prosecutor in charge of the case will report to the Collector and to the Superintendent of Police soon after the judgment is pronounced with his recommendation for further action, if any, to be taken.

- i. In cases of acquittal, if the Public Prosecutor considers that an appeal or revision should be filed, he shall obtain certified copies of the necessary records and forwards them with his report direct to the Advocate General for filing an appeal.
- ii. He sends a copy of that report simultaneously to the Collector of the District.
- iii. On receipt of the Public Prosecutor's report, the District Collector promptly addresses the Home Department for the issue of necessary instructions to the Advocate General for filing an appeal in the High Court.
- iv. All these processes should be coordinated timely by the SHO/Inspector of Police concerned.

⁷⁹Section 378 Cr.P.C.

- v. In hopelessly weak cases, the Public Prosecutor can exercise his discretion in deciding upon appeals and keep back the records.

8.3.3 Magistrate Courts

In cases of acquittal by Magistrates, the Assistant Public Prosecutors must send proposals to the District Collector through the Superintendent of Police for filing appeal.

- i. The Assistant Public Prosecutors concerned must obtain certified copies of deposition of witnesses and other relevant records from the Court promptly and forward them to the Collector through the Superintendent of Police.
- ii. The District Collector after consultation with the Public Prosecutor, if necessary, will send a report to the Government in Home Department and at the same time sending a copy of his report to the Director General of Prosecutions.
- iii. Report of the District Collector should reach the Government within 45 days of the judgment. In cases where the Collector decides that no appeal or revision need be filed, he will immediately inform the Superintendent of Police.
- iv. If the District Police Chief is of the view that there are grounds to file an appeal or revision, he will send a report to the State Police Chief through proper channel to move the Government in the matter.

8.3 Revision⁸⁰

Revision can be defined as a procedural facility afforded to a party wherein he can invoke the supervisory jurisdiction of a higher Court to examine the correctness, legality or propriety of any finding, sentence or order of an inferior Court.

⁸⁰ Rules 100-124, The Criminal Rules of Practice, Kerala 1962.

- i. Section 397 of the Cr.P.C deals with the revisional powers of superior Courts viz. the High Courts and Sessions Court.
- ii. In revisional jurisdiction, the High Court cannot embark on re-appreciation of evidence. Only in exceptional cases of real and substantial injustice, High Courts interfere under their revisional jurisdiction.
- iii. A revision application for enhancement of the sentence should be made after considering the part played by each of the accused in the commission of crime.
- iv. Similarly, filing of revision applications in interlocutory matters should not be resorted to unless there is some substantial question of law involving right of the party, if allowed to stand, is likely to have far-reaching consequences to the prejudice of the prosecution.

8.5 Limitation

In view of Article 131 of the Limitation Act, 1963, a revision petition has to be filed within ninety days of the date of order.

8.6 Review

There is no power of review with the Criminal Court after judgment has been signed.

- i. This rule contained in Section 362 Cr.P.C is based on an acknowledged principle of law that once a matter is finally disposed of by a Court, the said Court becomes *functus officio*⁸¹, the moment the order for disposing of a case is signed.
- ii. Such an order cannot be altered except to the extent of correcting a clerical or arithmetical error. There is also no provision for modification of the judgment.⁸²

⁸¹*functus officio* means of no further official authority.

⁸²*Hari Singh Mann v. Harbhajan Singh Bajwa & Ors* AIR 2001 SC 43; *Chhanniv. State of U.P.* AIR 2006 SC

- iii. The prohibition contained in Section 362 Cr.P.C is absolute, after the judgment is signed; even the High Court in exercise of its inherent power under Section 482 Cr.P.C has no authority or jurisdiction to alter the same.

8.7 Statement of Facts/Counter Affidavits before High Court

The District Police Chiefs shall personally scrutinize the connected records and prepares statements/reports with the assistance of the officers, who are directly handling the issue and closely acquainted with the facts and circumstances of the case.

- 8.6.1** The Subordinate Officers are not permitted to file Statements of Facts before the Honorable High Court without proper verification by District Police Chief.
- 8.6.2** The statements/counter affidavits prepared should be produced before the Govt. pleader concerned and necessary corrections if any may be made before filing it before the Court.
- 8.6.3** The Statement and counter affidavits shall be filed at least three days in advance of the actual date of hearing /posting.
- 8.6.4** A copy of the statement /counter affidavits should be forwarded to PHQ with the certificate of District Police Chief that he has personally perused and examined the statement of facts /affidavits and found that what is stated in the statement of fact /affidavits are correct and true.
- 8.6.5** Whenever an authorized officer has to represent the State Police Chief in order to file the statement of fact or affidavits, the authorization shall be collected by the District Police Chief.
- 8.6.6** It is the duty of District police Chief to ensure that the affidavits, Statement of Facts, reports etc are filed before the Honorable Court only by an Officer not below the rank of Inspector of Police.

8.6.7 Where State Police Chief is directed to file statement of facts/affidavits etc. by himself, the District Police Chief concerned shall prepare the same in consultation with the Advocate General or Government Pleader or Director General of Prosecution who, is attending the case and same shall be got approved by the IGP of range concerned.

To sum up, the Investigating Officer should realise the fact that his job is not over by the mere filing of charge sheet before the Court. Unless the wrong doer is given adequate punishment, the peaceful existence of mankind would suffer and there will be wide spread unrest. Hence, there should be proper co-operation and co-ordination between the investigating agency and the prosecution wing so as to secure the ends of justice. Police Officers should adopt a proactive approach for maintaining good working relation with the Prosecuting agency.

COURT WORK, PROSECUTION, TRIAL

PART II

CIRCULARS

SL. NO.	CIRCULAR NO.	CONTENT OF THE CIRCULAR
1	Circular No. 24/2019	Copies of FIR, FIS, legible typewritten copy of the FIS and the remand report are to be furnished to the prosecutor concerned in regular bail application- Instructions- reg.
2	Circular No. 30/2018	Trial of criminal cases against MPs/MLAs of Kerala- transfer of cases to the Special Court-directions-reg
3	Circular No. 20/2018	Sanction for Prosecution- Furnishing of information in a newly designed Proforma-Investigation Report- reg
4	Home Dept. Circular No 264/C4/Home/2017	Appointment of Special Public Prosecutors- Guidelines and Procedures-Modified -reg
5	Circular No. 15/2015	Guidelines for Police Officials to present before the Court.
6	Circular No. 23/2015	പോലീസ് ഉദ്യോഗസ്ഥർക്കോടതികളിൽ ഹാജരാകുന്നതിന് സംബന്ധിച്ച്
7	Circular No. 34/2015	സമൻസ്, വാറണ്ട് കൃത്യമായി നടത്തുന്നതിനെ സംബന്ധിച്ചുള്ള നിർദ്ദേശങ്ങൾ
8	Circular No. 38/2012	Preparation of Statement / Counter Affidavit to be filed on behalf of State Police Chief before the Hon'ble Supreme Court and High Court – Instructions issued.
9	Circular No. 22/2009	Prosecution Copies of Case Records to be given to Assistant Public Prosecutors - Instructions issued
10	Circular No. 09/2007	Sanction for Prosecution - Case Diaries not to be sent to competent Authority - Sending of Report on Investigation - Instructions
11	Circular No. 25/2005	Criminal Justice - Serving of Summons and Warrants – Failure noticed on the part of Police Officers -Instructions issued -Reg;
12	Circular No. 60/1998	Discharge of official duties - protection to members of Kerala Police charged with the maintenance of Public Order from false, vexatious or malafide prosecution - Reg.
13	Circular No. 19/1990	Discharge of official duty- protection to members of Kerala Police charged with maintenance of public order from false, malafide prosecution-

14	Circular No 21/1989	Prosecutions, convictions and acquittals under the Narcotic Drugs and Psychotropic Substances Act, 1985 - Review of - instructions for fool- proof investigation and launching of prosecutions - Filing of appeals, etc
15	Circular No 30/1986	Sessions cases – trial and appeal – instructions – regarding.
16	Circular No.16/1986	Monitoring of Prosecution
17	Circular No. 22/1988	Judicial pronouncement of the High Court of Kerala that has formulated certain important guidelines
18	Circular No. 37/1984	Service of summons on witnesses- Non cooperation of Police – Instruction issued – reg –
19	Circular No. 194/1971	Crimes – Where the right of private defence of any other general exception exists infavour of the accused – procedure to be followed by investigating officers – clarified –
20	Circular No. 144/1971	Criminal Justice - Criminal breach of trust or criminal misappropriation - number of instances in which prosecution may be resorted to - observations by Hon. Justice Shri.P.Narayana Pillai of the Kerala High Court - commented –
21	Circular No. 157/1971	Investigation of new cases disclosed during interrogation of professional Criminals concerned in a case – Procedure for dealing with – Instructions issued
22	Circular No. 104/1970	Criminal Justice- withdrawal of prosecutions – regarding-
23	Circular No. 84/1969	Investigation – cases in which a large number of accused, witness etc. are involved -maintenance of analytical records – orders issued
24	Circular No. 89/1969	Prosecution – By Police Officers – Instructions issued.
25	Circular No. 127/1968	Crimes – Prosecution in courts – watch on and recording of case progress- Further instructions – Issued
26	Circular No 01/1959	Attendance of investigating officers and witnesses in courts – Instructions issued

* If anything is contradictory between and inconsistent with the contents of the above Circulars, the PSO and the Part I, the directions in Part I shall prevail.

- Circulars are available in Kerala Police Website.



KERALA POLICE