

Section 154 And 156(3) of Code of Criminal Procedure-What, When And How?
written by Avani Sinha | April 6, 2020



Section 154 And 156 of CrPC

Hon'ble Apex Court, in the matter of "M. Subramaniam & Anr. Vs. S. Janaki & Anr[1], has recently set aside a High Court order which directed the police to register an FIR and file the final report on the basis of the complaint. Hon'ble Supreme Court placed reliance on its previous decision in the matter of Sakiri Vasu v. State Of Uttar Pradesh And Others[2] ("Case 1") in which it has dealt with due process in connection with the non-registration of FIR. Beginning with the essential differences between the sections 154 and 156(3) of Code of Criminal Procedure, 1973, this article culminates with the chronology of remedies to be exhausted for registration of FIR through Court.

Section 154: Information in cognizable cases[3]

Section 154 (1) Cr.P.C elucidates that any 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 himself or under his direction, and all such information, whether in writing or reduced to writing as aforesaid, shall be signed by the person who furnishes it.

Section 154 (3) Cr.P.C explicates that a complaint shall be given in writing or by post to the Superintendent of Police if any person is aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in subsection.

The Superintendent of Police, upon receipt of such complaint 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.

Section 156 (3). Judicial magistrate's power to investigate cognizable case[4]

Section 156(3) entails that any Magistrate empowered under Section 190 may order an investigation by a police officer performing its duties under Chapter XII of Cr.P.C

The above-mentioned sections highlight the chronology/series of remedies available to a person. Firstly, filing a complaint before the police official and secondly, in the event of failure of the registration of the complaint by the official, one shall approach the SSP/SP for the said purpose. However, if the complaint is not registered even after that, then the next remedy is to seek help from the Judicial Magistrate.

Hon'ble Apex Court citing various judgments has clarified the right approach for registration of FIR.

Court's Observation

Hon'ble Apex court has observed that if any application under Section 156(3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and an appropriate investigation to be taken place, in the event where, according to the aggrieved person, no proper investigation was done. Under the same provision, the Magistrate may monitor the investigation to

ensure a proper investigation.

Supporting Case Laws

1. In *Mohd. Yousuf v. Afaq Jahan Hon'ble*, Apex Court observed: (SCC p. 631, para 11)[5] that a *Judicial Magistrate, before taking cognizance of the offence, may order investigation under Section 156(3) of the Code. If he does so, he should not consider the complainant's oath because he was not taking cognizance of any offence therein.*

- This Court had taken the same view in *Dilawar Singh v. State of Delhi* (JT vide para 17).[6]

The honb'le Court clarified that even if an FIR has been registered and the police have made the investigation, or is making the investigation, which the aggrieved person feels is not satisfactory, such a person can approach the Magistrate under Section 156(3) Cr.P.C, and if the Magistrate is satisfied he can order a proper investigation and may take other appropriate actions. Thus, in cases where the Magistrate finds that the police has not done its job or is not satisfied with the investigation of the case, he can direct the police to supervise the investigation and monitor it.

- In *State of Bihar v. J.A.C. Saldanha* (SCC : AIR para 19)[7], Hon'ble Court held that a Magistrate can order an investigation to resume even after the police have submitted the final report.

Thus, Section 156(3) Cr.P.C although briefly worded, is very extensive and includes all such incidental powers as are necessary to ensure a proper investigation.

- In *Sudhir Bhaskarrao Tambe v. Hemant Yashwant Dhage and Others*,[8] it was observed that *if a person has a grievance that his FIR has not been registered by the police, proper investigation is not being done, then the remedy available to the aggrieved person is not to go to the High Court under Article 226 of the Constitution of India, but to approach the Magistrate concerned under Section 156(3) Cr.P.C.*

High Court's Power - (Why not move the High Court by filing a writ petition or Under Section 482 Cr.P.C)

Hon'ble Apex Court relying on its judgment passed in Case 1 observed that- *we have found in this country that the High Courts are flooded with writ petitions praying for registration of the first information report or praying for a proper investigation.*

The High Court should not encourage this practice and should generally refuse to intervene in such matters and relegate the petitioner to his alternating remedy under Section 154(3) and Section 36 Cr.P.C. If despite approaching the Superintendent of Police or the officer referred to in Section 36, his grievance still persists, then he can approach a Magistrate under Section 156(3) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C.

The High Court should discourage the practice of filing a writ petition or petition under Section 482 Cr.P.C. simply because a person's FIR has not been registered by the police, or after being registered, a proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the concerned police officers, and if that is of no avail, under Section 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C.

It is true that alternative remedies are not the absolute bar to a writ petition, but it is equally settled that the High Court should not intervene

if there is an alternative remedy.

Conclusion

Thus, it can be safely concluded that in order to keep the wheels of our criminal justice system moving, filing of "FIR" is most essential. The same should be done chronologically. Firstly, the complainant must try to get the FIR filed under Section 154 C.r.P.C. If the police refuse to register FIR U/S 154 then the complainant must move under Section 154(3) by filing a written complaint. In case of non-registration of FIR, as per previous provisions then the complainant can move under Sec 156(3) and can approach Magistrate. It is well-settled law that 156(3) is a resort for registration of FIR in the event the police do not entertain one's complaint. Directly approaching High Court for registration of the FIR either by filing a writ petition/application under Article 226 of Constitution Of India or section 482 of CrPC would cause dismissal of the petition out rightly. Therefore, the crux of the matter is to exhaust the remedies chronologically, categorically and cautiously in light of the aforementioned legal scheme of provisions.

- [1] Judgment of Supreme Court Of India M. Subramaniam and Ors. vs. S. Janaki and Ors. (20.03.2020 - SC): MANU/SC/0348/2020
- [2] Sakiri Vasu vs. State of U.P. and Ors. (07.12.2007 - SC) : MANU/SC/8179/2007
- [3] Section 154;The Code Of Criminal Procedure, 1973
- [4] Section 154;The Code Of Criminal Procedure, 1973
- [5] Mohd. Yousuf vs. Afaq Jahan and Ors. (02.01.2006 - SC) : MANU/SC/8888/2006
- [6] Dilawar Singh vs. State of Delhi (05.09.2007 - SC) : MANU/SC/3678/2007
- [7] State of Bihar and Ors. vs. J.A.C. Saldanha and Ors. (13.11.1979 - SC) : MANU/SC/0253/1979
- [8] Sudhir Bhaskarrao Tambe vs. Hemant Yashwant Dhage and Ors. (12.04.2010 - SC) : MANU/SC/1328/2010

Contributed By - Avani Sinha

Designation - Senior Associate

King Stubb & Kasiva,

Advocates & Attorneys

Click Here to Get in Touch

New Delhi | Mumbai | Bangalore | Chennai | Hyderabad | Kochi

Tel: +91 11 41032969 | Email: info@ksandk.com