

Procedure to Proceed Under the Provision of Section 161 CrPC

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Abstract

Police Investigating Officer plays a vital role in a crime investigation. They are the first contact persons for a legal inquiry. Sec. 161, Cr.P.C describes the laws about how a police can examine a person, though there are many other related legal acts. A statement of a witness recorded by Investigating Police Officer during the process of investigation is neither administered under oath/affirmation nor tested by cross-examination. So, as per Indian law, it can't be considered a piece of substantive evidence. However, it may be used by the defense for contradicting the prosecution witness. The statements made to the Police Investigating Officer by witnesses are required to initiate a trial in a court of law.

Key Words: Police investigation, Criminal Procedure Code, Evidence, Summon, Penalty.

Introduction

The Code of Criminal Procedure which is popularly known as Criminal Procedure Code, Cr.P.C deals with police duties in arresting offenders, absconders and in the production of documents, etc. during their investigation of offences. Sec.161, Cr.P.C deals with the rules of examination of witnesses by the police. It may be stated as bellow:-

1. Sub-sec. (1)161, Cr.P.C - A police officer may examine orally any person supposed to be acquainted with the facts and circumstances of the case.
2. Sub-sec. (2) 161, Cr.P.C - Those examined persons need to answer all questions truthfully, except those questions which can make him liable for a criminal charge or to

pay a penalty.

3. Sub-sec. (3), Cr.P.C - The Investigating Police Officer make a written note of the statement thus obtained from the person.

The criminal justice system administers the standard of conduct needed to protect people in the community. Here, police plays a vital role in all types of crime investigation. For a systematic and lawful investigation police are the first person who arrive at the crime scene. The police mainly concern themselves with maintaining discipline and crime prevention, prevention of arrests, investigations and detection, control of crowds, public control at festive events, preventing riots, car traffic and more. Under the guidelines of Indian Penal Code 1860, Criminal Procedural Code 1973, Indian Evidence Act

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1872, the Police Act 1861, police conducts criminal investigations. Sec. 157 to 173 of Cr.P.C. provide the guidelines regarding the duties and powers of the police investigating officer of the crime. In this study we attempt to study the elementary values and recordings of their statements under Sec. 161, Cr.P.C. 1973.

Police Investigation of Crime:

There are many legal stages before the start of a court procedure and one such step is investigation by police. The Honorable Supreme Court of India, in *H.N. Rishbud & Inder Singh Vs State of Delhi*,¹ held that criminal police investigation consists of the following steps:-

1. Visiting the crime spot
2. Ascertainment of facts of the case
3. Discover & arrest of the suspected offender
4. Collection of evidence
5. Formation of opinion if whether it is necessary to place the accused before a Magistrate for trial and if so taking all necessary actions by preparing a charge sheet under Sec.173, Cr.P.C. 1973.

Examination of Witnesses by Police:

Sec.161, Cr.P.C, 1973 defines the Examination of witnesses by police. Under this section, any police officer, not below such a rank as prescribed by the state government, may examine orally any person supposed to be acquainted with the facts and circumstances of the case. The term "any person" includes accused also. In simple words it is also known as "Police interrogation". The persons, thus examined by Investigating Police Officer, require to answer all questions except "questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture." Such persons are legally bound to state the truth. If such person gives false statement then he may be prosecuted under Sec.202 & 203, I.P.C.² For giving false statement he also may be punished under the sec. 193, I.P.C. However, the accused may enjoy the privilege to remain silent during police interrogation as he got "right against self-incrimination" as per Sec.161 (2) Cr.P.C and Art. 20(3) of Indian Constitution³. But, if a witness, during police interrogation, does not give answer to the questions then he may be punished

under the Sec. 179, I.P.C.⁴.

All the statements of all witnesses must be documented in writing form. Now this statement may be recorded by using suitable audio-video electronic means. Signature of witnesses not necessary rather it is prohibited under the sec. 162, Cr.P.C. Violation of this may diminish the value of the testimony of the witness. Statements of every witness must be recorded separately as clearly described under Sec.161 (3) Cr.P.C read together with S.173 (3) Cr.P.C. As per Sec.161 (3), all police statements of witnesses should be only in direct form of speech. So, the writing should be describable as a statement of the witness himself and as far as possible it should be as nearly as possible, a complete record of what he has told. One copy of such prepared statement must be provided to each accused separately free of cost before the commencement of the trial. If the statement was recorded first in a vernacular language and then translated into English then a copy of the original statement must be furnished to the accused⁵. In addition to this other necessary documents must also be furnished to the accused as he has the right to get them.⁶

The main object of this section is to place the truth in the form of evidence before the court at the time of trial. Such collected information is also useful for the court in framing charges against the culprit.

Evidentiary Value of Statements Made to The Police:

A statement of a witness recorded by Investigating Police Officer during the process of investigation is neither administered under oath/affirmation nor tested by cross-examination. So, as per Indian law, it can't be considered as substantive evidence.^{7,8} However, it may be used by the defence for contradicting the prosecution witness.⁹ Under sections 194 and 195, I.P.C no criminal cases may be initiated by considering such a statement framed by police [C]. It is also opined that statements taken down by police are often taken down in a haphazard manner so sometimes they may not be useful as corroborative evidence and by the same logic not useful for contradiction. However, there may not be any bar in the use of civil cases.¹⁰ Further, it is pointed out that, if signature or thumb prints are obtained

during the statement recording by the police, such statements are unreliable.

Any delay in recording statement by police under sec.161, Cr.P.C not necessarily discredit their testimony if the reason is satisfied by the court. It was well observed by the Honourable Court in case of Ganesh Bhagvan Vs State of Maharashtra, 2005 DMC 445.

Amendments of Sec.161, Cr.P.C:

The two important amendments are:-

1. The Criminal Procedure (Amendment) Act, 2008 a proviso was inserted to S.161 (3) which states that the "statement may be recorded by audio-video electronic means". It was enacted with effect from 31st Dec'2009.
2. According to the Criminal Law (Amendment) Act, 2013 No, 13 of 2013 which was enacted with effect from 3rd Feb'2013, in certain cases of crime against woman or children, under certain Indian Penal Codes such as Sec.354, Sec. 376. etc., statement must be recorded by a lady police officer or lady officer. It is inserted in sub-section (3) of Sec.161, Cr.P.C.

Discussion

As soon as possible statement must be obtained from witnesses however mere delay of few hour in recording the statement does not mount to serious infirmity. There must not be any room for suspicion that delay was deliberate on the part of police giving a chance to set up a case of his own choice. In State of NCT of Delhi Vs. Ravikant Sharma case, honourable court observed that statement recorded under sec 161, Cr.P.C held that any direction to supply "gist" of such statements was unsustainable because such statement of witnesses recorded during investigation does not include interpretation of Investigation Officer.¹¹ Investigating Police Officer can't force the accused to answer all questions if the answers thus sought has a reasonable prospect of exposing him to guilt in some other accusation, actual or imminent, even though the investigation underway is not with reference to that.

In cases of contradictions i.e. conflict between a statement given to police and testimony before the court, the former statement may be used to contradict

the later (P. Ailamma Vs. T. Zedson, 1989). In an omission case, i.e. skip or slip which means exclusion or leaving out, the matter is to be tested by the court if it is a material omission or not and if so it will be termed as a material contradiction.

Conclusion

Though there are certain loopholes in recording the statements by the Police Investigating Officer, it plays a vital role in the preparation of the initiation of a court procedure in a trial. In case of Asan Tharayil Baby vs. State of Kerala, 1981, the Honourable Court observed that the main object of this section 161 of Criminal Procedure Code is to protect the accused both against over-zealous police officers and untruthful witnesses. But when the prosecution witness turns hostile, with the permission of court the public prosecutor can cross examine that witness by using his 161 statements to establish contradiction. Timely and unbiased duty of the police is of paramount importance here.

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