

**LEGAL PERSPECTIVE OF BRINGING INTERROGATION UNDER JUDICIARY AND REASONABLE FORCE ON
ACCUSED**

Dr.K.GANESAN*

Dr. D. USHA**

ABSTRACT

To protect the innocents from false criminal charges and bring the culprits in the clutches of law it is inevitable making the police true agents of the law and not servants of the party in power¹. To achieve this goal it is necessary, the separation of the 'Law Police' (Investigating police) from the 'order police' (police maintaining discipline) in our country there is no direct association of Judicial wing with the investigation of cases. Eventhough the scheme of chapter XII of Cr.P.C especially Sections 156,157,158,159,164,165,169,170,173 and 174 all go to show that while investigating a case the investigating officer, as a matter of fact, acts, under the control and supervision of the Magistrate. But the undue interference with the statutory duties of police when investigating a case, affects adversely the preliminary step to help the ultimate judicial process before a court of law. The law commission of India (1958) in its 14th report had observed, "The investigation staff should be separated from the law and order staff to enable the investigating officer to devote undivided attention to investigating work". To expedite the investigation a reasonable force on accused person for scientific interrogation and examination is much essential. For this section 53 of Cr.P.C. 1973 stands as follows. "Examination of accused by medical practitioner at the request of police officer-when a person is arrested on a charge of committing an offence of such a nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting at the request of a police officer not below the rank of sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such aexamination of the person arrested as is reasonably necessary in order to ascertain the facts which may afford such evidence, and use such force as is reasonably necessary for that purpose.

* Assistant Professor (SR), VIT School of Law, VIT University- Chennai Campus (Corresponding Author).

** Associate Professor, School of Computing Science, Chennai.

¹Working paper for seminar on Desirability of Separation of "Law" Police and "Order" Police, S.V.P.National Police Academy, Hyderabad (1983) Para 6 of the report.

SEPARATION OF INVESTIGATING POLICE FROM THE LAW AND ORDER POLICE

The separation of 'Investigating Police' from 'Law and Order Police' is highly desirable and the need of the hour. The benefits of such separation are indeed manifold. The Punjab police commission (1961-62), the Delhi Police Commission (1968), the Gorey Commission on Police Training (1972), the National Police Commission (1977-80), the M.P.Public-Police Relations Committee (1983) all headed by our eminent Judges and educationalists have in one voice condemned political interference with the working of police.

POLICE JUDICATURE IN FRANCE

The investigating police discharge certain functions in the matter of collection and collation of evidence over which the court adjudicates the cases. The 1962 Royal Commission on Police therefore opined that the investigation of cases is a part of the Judicial Process and that the police must be entirely independent in the discharge of functions which are judicial or quasi-judicial². But the position in our country is not the same, it cannot be denied that by collecting evidence for the ultimate decision of court, the police helps the judicial process and, therefore, till the contempt of courts Act was recast in 1971, it was held by catena of decisions that when the accused was arrested or his arrest was eminent, it was contempt to prejudge the case or express opinion on the quality of evidence and thereby prejudice mankind for or against a party notwithstanding the fact that the case had not yet been cognizance of by the court³. Political or other types of interference at the stage of police investigation by interested persons may be the reason for this. Hence the police were unequivocally brought under court's protection so that no pressure could be put on them either to completely abandon a case or to let off certain persons of influential group or political party. In France, where the police judicature '(the investigating police) is under the control and protection of the 'Judge d' instructions' or examining Magistrates who record the statements of the witnesses produced before them by the police in course of their investigation for building up the case dossier for the 'cour' arrises' (the trial court) to which the accused is committed to stand his trial after a further scrutiny by a bench of three senior judges of 'cour

²Report of the Royal Commission on Police in U.K., 1962, para 230 of the Report.

³A.K.Gopalan v Noordeen, AIR 1970 SC 1694.

d' appeal' in the 'chambre d' accusation'. All this is to ensure that none is exposed to the indignity of a court trial without substantial reasons⁴.

ADVANTAGES OF SEPARATION OF INVESTIGATING POLICE FROM LAW AND ORDER POLICE

The separation will bring the investigating police under the protection of judiciary and widely reduce the possibility of political or other types of interference with the police investigation by invoking the law of contempt, if necessary, by effecting suitable amendments. With the possibility of greater scrutiny and supervision by the examining magistracy and the public prosecutors, as in France, the investigation of police cases, especially the serious cases are likely to be more in conformity with the law than at present, which often is a cause of failure of even detected cases in court.

As in France and continental system, it will reduce the possibility of unjustified prosecution and consequently of a large number of acquittals in state prosecution. Further it will result in speedier investigation and as such as speedier overall disposal of cases as the investigating police would be completely relieved from performing law and order duties. Hence it will increase the expertise of the investigating police, as in the case of the C.I.D by relieving them from other duties and would result in more of successful detections and state prosecutions. Above all, not having been used in any law and order duties involving use of force like tear-gassing, lathi-charging and firing, they would not provoke public ire and hatred which stand in the way of police public co-operation in tracking down crimes and criminals and in getting information, assistance and intelligence in this regard which the Indian police like their counterpart in U.K the common law have a right to get under the provisions of sections 37-44 of Cr.P.C.⁵

INTERROGATION WITH REASONABLE FORCE

The use of reasonable force is a vague and indefinite concept, there being no yardstick to measure the intensity thereof user of force against mental reluctance can hardly be said to be reasonable, particularly when the judge to decide the reasonableness of the force is a police officer. But in view of

⁴ English Law and French Law, by Rene David;chapter V, page 64-71, Stevens (1980).

⁵ Union of India v MadanDey, 1991 Cri L J,347 (cal at para 22 of the Report).

Kathikalu's case compelling the delinquent to submit a part of his body for inspection does not offend the bar to testimonial compulsion under Art, 20(3), of Constitution. For to be a witness is not equivalent to furnishing evidence in its widest significance to include also production of documents or giving materials which may be relevant at a trial to determine the guilt or innocence of the accused. Giving thumb impression or impressions of foot or a palm or fingers or specimen writings or showing body parts of the body by way of identification are not included in the expression "to be a witness"⁶. In the light of the above discussion section 53 of Cr.P.C. may be probed into. The following are essential to attract section 53, Cr.P.C.

1. There must be a delinquent arrested by police.
2. The accusation against him leading to his arrest is such that one may have reasonable ground for believing that medical examination of his person would afford evidence as to commission of an offence.

Then, at the best of a police officer who must be not below the rank of Sub Inspector of Police, a registered medical practitioner can examine or cause his person to be medically examined, in doing so, if needed; such force as is reasonably necessary may be used.

CONCLUSION

When the interrogation is placed under the judiciary by separating the Law police, (investigating police) from Law and Order police, as the investigating police will be plain clothes men even when attached to police station and they being similarly dressed as the members of the public except for a small armband to show their identity, will be able to establish better rapport with the people and thus win their co-operation and support without which no force anywhere in the world can be success. The Goreycommittee on police training also recommends effective separation of the investigation from the Law and Order staff at least in urban police station. The separated investigating police being squarely placed under judiciary and the public prosecutor through whom they will have to put up their cases before trial court. The adoption of such a separation will ensure undivided attention to the detection of crimes. It will also provide additional strength to the police establishment which needs an increase in most of the states.

⁶ State of Bombay vKathiKalu, AIR 1961 SC 1808.