

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5924 of 2019

Om Prakash Kumar S/o Sri Surendra Singh R/o Village- Pipra, P.O.-
Manoharpur Kachhuara, P.S.- Ram Krishna Nagar, District- Patna- 800016
... .. Petitioner

Versus

1. The State of Bihar through its Chief Secretary, Govt. of Bihar, Patna
2. The Chief Secretary, Govt. of Bihar, Patna
3. The Principal Secretary (Home Department), Govt. of Bihar, Patna.
4. The Director General of Police, Govt. of Bihar, Patna.
5. The Inspector General (Prison), Govt. of Bihar, Patna.
6. The Addl. Director General (Special Branch), Govt. of Bihar, Patna.
7. The Inspector General (Railway), Govt. of Bihar, Patna.
8. The Senior Superintendent of Police, Patna.
9. The Superintendent of Police, Araria.
10. The Superintendent of Police, Arwal.
11. The Superintendent of Police, Aurangabad.
12. The Superintendent of Police, Banka.
13. The Superintendent of Police, Begusarai.
14. The Superintendent of Police, Kaimur at Bhabhua.
15. The Superintendent of Police, Bhagalpur.
16. The Superintendent of Police, Bhojpur.
17. The Superintendent of Police, Buxar.
18. The Superintendent of Police, Darbhanga.
19. The Superintendent of Police, East Champaran.
20. The Superintendent of Police, Gaya.
21. The Superintendent of Police, Gopalganj.
22. The Superintendent of Police, Jamui.
23. The Superintendent of Police, Jehanabad.
24. The Superintendent of Police, Katihar.
25. The Superintendent of Police, Khagaria.
26. The Superintendent of Police, Kishanganj.
27. The Superintendent of Police, Lakhisarai.
28. The Superintendent of Police, Madhepura.
29. The Superintendent of Police, Madhubani.
30. The Superintendent of Police, Muzaffarpur.
31. The Superintendent of Police, Nalanda.
32. The Superintendent of Police, Nawada.



33. The Superintendent of Police, Purnea.
34. The Superintendent of Police, Rohtas.
35. The Superintendent of Police, Saharsa.
36. The Superintendent of Police, Samastipur.
37. The Superintendent of Police, Saran.
38. The Superintendent of Police, Sheikhpura.
39. The Superintendent of Police, Sheohar.
40. The Superintendent of Police, Sitamarhi.
41. The Superintendent of Police, Siwan.
42. The Superintendent of Police, Supaul.
43. The Superintendent of Police, Vaishali.
44. The Superintendent of Police, West Champaran.
45. The Patna High Court through the Registrar General, Patna (Bihar).
46. The Additional Director General of Police, SCRB, Bihar, Patna.
47. The Director Prosecution, State of Bihar, Patna

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Om Prakash Kumar (In Person) Mr. P.K. Shahi, <i>Amicus Cujriae</i> Ms. Surya Nilambari, A.C. to <i>Amicus Curiae</i> .
For the State	:	Mr.Lalit Kishore, Advocate General Mr. Suraj Deo Yadav, AAG.
For the Patna High Court	:	Mr. Satyabir Bharti, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 29-10-2022

The present writ petition in the nature of Public Interest Litigation (for short 'PIL') has been filed by the petitioner for commanding the respondents to ensure that day-to-day investigation of any criminal case carried out by the officers of Bihar Police and the entries thereof transcribed in the police case diary should be maintained in a digital form so as to provide better aid in



dispensation as well as in the administration of justice.

2. The petitioner, a practicing advocate of this Court, has appeared in person. He submitted that in the present contemporary era of digitization/computerization, the Bihar Police is using the outdated system of maintaining the records in manual form which adversely affects the administration of criminal justice. He contended that the case diary is an important piece of document wherein day to day proceedings of investigation is maintained by the Investigating Officer investigating a criminal case. Since it is maintained by the officers of Bihar Police in a handwritten form, it has been noticed many a times that case diary maintained by the Investigating Officer is not legible and thereby it causes difficulty in the administration of justice. Since the police officer who investigates a criminal case either fully or partly is entitled to look into the case diary containing the details of the investigation and refresh his memory while deposing as a witness before the trial court, in case it is not legible, he will not be able to understand the case and depose before court especially given the fact that trial in a criminal case takes years to complete. He further contended that the police case diary should be prepared in a digital form instead of hand written so as to facilitate the dispensation of justice. He contended that States like Punjab and Haryana keeping in view the relevancy of such method adopted the



system which requires the maintenance of case diary in a digital form and to the best of the knowledge of the petitioner the same is maintained by the National Informatics Centre. He further contended that he had represented through email on 18.12.2018 before all respondents with a request that every SHO of Police Station be directed to prepare the case diary in a digital form, but, none paid any heed to on his representation except Superintendent of Police, Katihar. He further contended that though digitization appears to be a difficult job, once the same is done, it would be beneficial in the administration of justice.

3. In the counter affidavit, respondent nos. 3, 4 and 6 admitted that many a times, the case diary maintained by the Investigating Officer is not legible. They admitted that the reliefs sought by the petitioner is acceptable in principle. However, their contention is that there are many problems and challenges in digitization of the case diary. In Writ Petition (Crl) No. 68 of 2016, the Supreme Court by its order dated 07.09.2016, directed that the copies of the FIRs, unless the offence is sensitive in nature, like sexual offences, offences pertaining to insurgency, terrorism and of that category offences under POCSO Act and such other offences should be uploaded on the police website and if there is no such website on the official website of the State Government within 24



hours of the registration of the FIR so that the accused or any person connected with the same can download the FIR and file appropriate application before the Court as per law for redressal of his grievances. The Court clarified that in case there is a connectivity problem due to geographical location or there is some other unavoidable difficulty, the time can be extended up to 48 hours. It is further stated in the counter affidavit that in the State of Bihar after registration of the FIR it is being uploaded on the website within 24 hours in view of the direction given by the Supreme Court in the aforesaid Writ Petition (Crl) No. 68 of 2016.

4. In the counter affidavit it is further stated that in view of the statutory provisions of Section 172(3) of the Code of Criminal Procedure, 1973 unlike FIR, case diary cannot be accessed freely by public at large. Its secrecy is to be maintained so that investigation/inquiry and trial is not hampered. It is also stated that at present the Investigating Officers are not computer literate and cannot type the case diary on computer and prepare case diary in digital form. This problem may be solved by training of the Investigating Officers particularly Assistant Sub Inspector, Sub-Inspector, Inspector of Police, Dy. Superintendent of Police and other Senior Police Officers acting as Investigating Officers and making them computer literate in typing, scanning and uploading on



computer. Further option is to appoint large number of operators who will assist the Investigating Officers in typing/scanning on computer and preparing case diaries in digital form. Both the options involve high cost and will require much time. It is also highlighted that there are other legal challenges in digitization of the case diary. If computer operators are hired from other agencies, the secrecy of the case diary may be compromised and consequently investigation will be hampered. Thus, the integrity of computer operators making entries in case diary on computer is to be ensured. Due to the constraints of manpower and physical resources and the legal limitation of case diary not being a public document and its secrecy to be maintained for investigation, the digitization of case diary will take time and at present no timeline be fixed for this.

5. While hearing the present public interest litigation, various issues of defective investigation arose. In recent past, while having been assigned with criminal appeal (DB) roster this Court had the occasion to deal with several cases of faulty and suspicious investigation. Though defect in investigation by itself cannot be a ground for doubting the prosecution case, in such cases, the Court has to be circumspect in evaluating the evidence. The standard of investigation is a state of concern in many cases. The faulty investigation leads to acquittal and justice becoming a casualty.



6. Considering the issues of wider ramification in the administration of criminal justice system prevailing in the State of Bihar which transpired during the course of hearing, vide order dated 02.08.2022, this Court had requested Mr. P.K. Shahi, learned Senior Counsel to assist us as *amicus curiae*. He readily agreed to our request. Ms. Surya Nilambari, learned counsel agreed to assist the learned *amicus curiae* in the present case.

7. On 11.08.2022, when the matter was taken up, learned *amicus curiae* made his submissions. He stated that the learned assisting counsel has prepared a report highlighting the most common deficiencies into the investigation being conducted by the police in the State while investigating cognizable offences and has also made several suggestions for improving the administration of criminal justice system in the State of Bihar. The said report was taken on record and the learned Advocate General was requested to look into the matter and file a comprehensive reply regarding the stand of the State and the steps which the State is proposing to take on the issues highlighted by the learned *amicus curiae*. Mr. Satyabir Bharti, learned counsel appearing for the Patna High Court also made his submissions.

8. On 19.09.2022, after going through the reports submitted by the learned *amicus curiae*, the State filed its comprehensive counter affidavit.



9. On 20.09.2022, when the matter was taken up, Mr. K.K. Singh, Additional Director General of Police Modernization, Patna, Bihar, Mr. Brighu Srinivasan, Director, Bihar Police Academy, Rajgir, Bihar and Mr. Prabhunath Singh, Director, Prosecution, State of Bihar appeared personally before the Court. In the absence of the learned *amicus curiae*, we heard Ms. Surya Nilambari, the learned assisting counsel and Mr. Om Prakash Kumar, the petitioner in-person. We had also heard Mr. Lalit Kishore, learned Advocate General and the Officers of the State who were present in-person and reserved the judgment.

10. There is consensus amongst the parties that there are shortcomings in investigation of the cases, which require immediate attention and remedial measures.

11. A counter affidavit has also been filed on behalf of Respondent No.2 wherein it has been stated that pursuant to the order passed by this Court in the present case, the Director General of Police, Bihar constituted a committee under the chairmanship of the Additional Director General of Police, C.I.D., Bihar. Other members of the Committee are DIG of Police (Economic Offence Unit), Bihar, the Superintendent of Police (Excise and Prohibition), Bihar and the Superintendent of Police (Weaker Section), Bihar. The Committee in its meeting dated 12.09.2022 examined every aspect of



the report submitted by the learned *amicus curiae* and submitted status and suggestions in respect of issues raised in the report. The report of the Committee was sent to the Home Department, Bihar on 16.09.2022, which requested the DGP, Bihar, Patna to issue circulars with respect to certain suggestions.

12. Mr. Lalit Kishore, learned Advocate General, Bihar submitted that though the State is taking steps to improve quality of investigation in criminal cases, it would welcome any order which the Court may pass for bringing improvement in the investigation process. He contended that the State is committed to establish the Rule of law and plucking the loopholes, if any, into the criminal investigation.

13. Having exhaustively heard the parties and perused the suggestions made by the learned *amicus curiae*, this Court would firstly like to discuss certain provisions relating to investigation of criminal cases as mentioned in the Cr.P.C, The Bihar Police Manual, The Protection of Children from Sexual Offences Act and The Bihar Prohibition and Excise Act.

14. Chapter XII of the Code of Criminal Procedure (for short "Cr.P.C") titled "Information to The Police and Their Powers to Investigate" provides the procedure that the police have to follow to conduct investigation of an offence. This is further supplemented by



the provisions of The Bihar Police Manual.

15. According to Section 2(h) of the Cr.P.C “*investigation includes all the proceedings under the Cr.P.C for collection of evidence conducted by a police officer or by any person (other than a Magistrate), who is authorized by a Magistrate in this behalf*”. It includes proceeding to the spot of crime, ascertaining the facts and circumstances of the case, discovery and arrest of the suspected offenders, collection of evidence, examination of various persons including the accused and recording their statements in writing and search of places or seizure of things which are considered necessary. It is the constitutional obligation of the State to provide impartial and efficient, effective and responsive investigating agency.

Recording of Information

16. The Investigation commences with the receipt of information of an offence. Section 154 of the Cr.P.C provides that 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 has to be entered in a book to be kept by such officer in such form as the State Government



may prescribe in this behalf.

17. Herein, the proviso to Section 154(1) of the Cr.P.C provides that if the information is given by the woman against whom an offence under Section 326-A, Section 326-B, Section 354, Section 354-A, Section 354-B, Section 354-C, Section 354-D, Section 376, [Section 376-A, Section 376-AB, Section 376-B, Section 376-C, Section 376-D, Section 376-DA, Section 376-DB], Section 376-E or Section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer.

18. The second proviso to Section 154(1) of the Cr.P.C provides that in the event that the person against whom an offence under Section 354, Section 354-A, Section 354-B, Section 354-C, Section 354-D, Section 376, [Section 376-A, Section 376-AB, Section 376-B, Section 376-C, Section 376-D, Section 376-DA, Section 376-DB], Section 376-E or Section 509 of the Indian Penal Code (45 of 1860) 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; the recording of



such information shall be videographed and the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5-A) of Section 164 as soon as possible.

19. In addition to the procedure laid down in Cr.P.C, Rule 143 (a) of Bihar Police Manual also contains instructions regarding the recording of information by the police which requires that the FIR of cognizable crimes mentioned in section 154 (1) Of Cr.P.C shall be drawn up in Form no. 26, in accordance with the instructions printed with it. In the counter affidavit filed on behalf of the State it has been stated that vide Home Department notification no. 8383 dated 16.08.1995 Form No. 26 of the Bihar Police Manual has been amended to Integrated Investigation Form-1(IIF-1) to bring uniformity throughout the courts.

20. Rule 145 (a) and (b) in Chapter 8 of Bihar Police Manual provide that the complainant must necessarily put in a list of property stolen, signed by himself, which shall be sent to court with the first information. A copy of the list must be retained by the Investigating Officer. If the complainant is unable to furnish such a list with the first information, the Investigating Officer shall obtain such a list, as soon after his arrival at the spot, as possible, and forward the list, duly signed by the complainant to the court. Police



officers are strictly prohibited from preparing these lists themselves. The list should contain a full description of each article alleged to have been stolen. As per Rule 143 (a) of Bihar Police Manual, a copy of this information as recorded has to be given to the informant free of cost.

Report to a Magistrate

21. Under Sec. 157 (1), if the information received is of a cognizable offence then, the Officer in-charge of the Police station, after recording the information is required to forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report.

Proceeding to the Place of Occurrence

22. The Officer in-charge or any subordinate officer deputed by him (not being below such rank as the State Government may, by general or special order, prescribe in this behalf) shall proceed to the place of occurrence, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender. In this regard, Rule 176 (a) of Bihar Police Manual Volume - I Chapter 9 provides that, "*In each appropriate case, the Investigating Officer shall, as soon as possible, after arriving at the scene of occurrence, prepare a plan of it and shall attach it to the case diaries for the information of his*



superior officers. He may at his discretion prepare and send up a map or plan in any other case also. Detailed instructions in connection with preparing maps are given in Appendix 77. If the Investigating officer cannot prepare a map of the PO any Amin or other competent plan drawer may draw the map or plan." Appendix 77 contains detailed instructions as to how a crime scene is to be recorded through sketch and photograph. It minutely describes the procedure to be followed for blocking and isolating the crime scene and for the method of inspection to be undertaken. It also specifies the special characteristics required to be observed in cases of suspicious death and the manner of conducting investigation in cases of hanging and strangulation.

Examination of Witnesses

23. Under the statutory prescriptions in Section 161(1) of the Cr.P.C, the Investigating Officer is required to examine orally any person supposed to be acquainted with the facts and circumstances of the case. Section 161(3) requires the Investigating Officer to make a separate and true record of the statement of each such person whose statement he records. In view of the first proviso to Section 161(3) of the Cr.P.C, which was introduced with effect from 31-12-2009, recording by audio-video electronic means has also been permitted. The second proviso inserted with effect from



31.12.2009 provides further that the statement of a woman against whom an offence under Section 354, Section 354-A, Section 354-B, Section 354-C, Section 354-D, Section 376, [Section 376-A, Section 376-AB, Section 376-B, Section 376-C, Section 376-D, Section 376-DA, Section 376-DB], Section 376-E 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.

24. Under sub-section (2) of section 170, when the officer in charge of a police station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he is required to send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the facts and circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate as thereby directed and prosecute or give evidence as the case may be in the matter of the charge against the accused.

Medico-Legal Evidence

25. Section 53-A of Cr.P.C requires the examination of the person arrested on a charge of committing an offence of rape or an



attempt to commit rape by a registered medical practitioner, acting at the request of a police officer not below the rank of a sub-inspector and, Sec. 164-A of Cr.P.C, requires that in rape cases, the victim has to be examined by a registered medical practitioner with the consent of the victim within twenty-four hours from the time of receiving the information relating to the commission of such offence.

26. Rules 205 and 217 to 220 of Bihar Police Manual read with Chapter 42 (Forensic Science Laboratory) and Appendix 78 of the Manual provides the procedure for the collection of evidence for being sent to experts for analysis. Rule 205 contains directions for recording of information to be included in the Forwarding Report specifically in cases of suspected poisoning, hanging/strangulation, body found in well, body found murdered in open field, presumed murder; Rule 217 provides the rules for packing and dispatch of articles to be sent for chemical analysis; Rule 219 outlines the special precautions that have to be taken with regard to articles that are suspected of containing blood stains; Appendix 78 lays down a detailed procedure for packing and dispatch of articles. Chapter 42 (FSL) deals with methods of sending the exhibits, rules regarding receipt and disposal of exhibits/articles sent for the examination, results, points of guidance for medical officers/autopsy surgeons.



Rule 1254 (c) provides that the exhibits are to be preferably sent by the Investigating Officer through the Judicial Magistrate concerned. Though there is no bar in sending them through SP and SDPO also, in cases where samples are collected by a medical officer, it can be directly sent by them. Rule 1258 contains rules regarding receipt and disposal of the exhibits/articles sent for examination to the laboratory. It requires for the exhibits to be sent expeditiously through special messenger and after completion of examination, the exhibit along with a report in Form no. 216 has to be sent through a special messenger if the same cannot be sent through post or railway. As per Rule 216(b) the report of the analysis has to be sent to the Station in-charge and the original copy of the report has to be filed with the Magistrate's record.

Investigation into the age of the Victim

27. Age determination of the victim becomes essential in certain offences under the Indian Penal Code and in offences under the Protection of Children from Sexual Offences Act (for short 'POCSO Act'), to establish the necessary ingredients of the offence. Appendix 79 of Part V of the Bihar Police Manual in furtherance of Rule 205 requires for collection of evidence to establish the age of the victim.

28. Section 53 A of Cr.P.C provides for the procedure of



examining the accused of rape cases and the report to be prepared by registered medical practitioner in this regard is required to mention the age of the accused. Similarly, the report of medical examination of the rape victim that is submitted by registered medical practitioner under sec. 164 A of Cr.P.C is also required to mention the age of the victim. The age determination of the victim can be undertaken in the same manner as provided in the Juvenile Justice Act, 2015 for the determination of age of child in conflict with law.

Search

29. A search may be conducted by the Officer in charge of a Police Station or an Investigating Officer, having reasonable grounds for believing that anything necessary for the purpose of investigation of any offence which he is authorized to investigate may be found in any place within the limits of the Police Station of which he is incharge or to which he is attached and that such thing cannot in his opinion be otherwise obtained without undue delay under Sec 165 Cr.P.C and in keeping with the procedure as laid down in Sec 100 of Cr.P.C.

Arrest of Accused

30. Chapter V of the Cr.P.C deals with the arrest of persons under Sections 41 to Section 60. The basic procedure to make an arrest has been mentioned under section 46 of the Cr.P.C. Sub-



section (1) of this Section provides that the police officer or other person making the arrest shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

31. The proviso to Section 46(1) of the Cr.P.C mandates that 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.

32. Sub-section (4) of Section 46 of the Cr.P.C further mandates that, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, 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.

33. The police officers have been authorized to arrest any person without the warrant ordered by the court under Sections 41, 42, 151 of Cr.P.C. Section 151 of the Cr.P.C empowers a police officer to arrest any person, without orders from a Magistrate and



without warrant, "if it appears to such officer" that such person is designing to commit a cognizable offence and that the commission of offence cannot be prevented otherwise.

34. As per Section 50 of the Cr.P.C and Article 22 of the Constitution of India which provides certain rights to detained persons, the right to be informed about the grounds for arrest is a basic right. It is the police officer's responsibility to notify and tell the arrested person whether the offence is bailable or not.

35. In non-cognizable offences, an arrest is made with a warrant, and the arrested person has the right to read the warrant under Section 75 of the Cr.P.C. A warrant of arrest must satisfy specific conditions, including being in writing, signed by the presiding officer, and bearing the seal of the court, as well as the accused's name and address and the offence for which the arrest is made. If any of these are absent, the warrant is invalid and illegal. The police officer must wear a distinct and legible identification allowing for simple recognition. At the moment of arrest, a memo of arrest must be written, which must be certified by at least one witness, who might be a family member or a member of the local area where the arrest is made and countersigned by the detained individual.

36. Under section 41-D of the Cr.P.C the arrested person



has been given a right to meet an advocate of his choice during the course of interrogation. Under section 50 of Cr.P.C, an arrested person has a right to inform a family member, relative, or friend about his/her arrest. To avoid illegal arrests, arrested persons have the right not to be kept for more than 24 hours without being produced before a magistrate. It is a basic right conferred by Article 22 of the Indian Constitution and backed by Sections 57 and 76 of the Cr.P.C. Under Sections 54 and 55-A of the Cr.P.C, an arrested person has been given the right to be medically examined by a medical officer when he is produced before a magistrate or at any time while in custody, with a view to establishing that the offense with which he is charged was not committed by him or that he was subjected to physical torture. Under Section 303 of the Cr.P.C. an accused person before a Criminal Court has been conferred a right to be defended by an advocate of his choice.

37. As per Section 41-A of the Cr.P.C, if any police officer requires the participation of any individual, who is not required to be arrested under Section 41(1) of Cr.P.C. and 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, he can give him a notice to appear before him or at any such other place as may be specified in the



notice. The individual to whom the notice is served is obliged to show up at the specified place and time. The individual complying to the notice is not required to be arrested unless the police officer is of the opinion that he ought to be arrested for which he would be duty-bound to record reasons in writing. Inability to comply with the notice is a ground for arrest. The police officer is required to forward a duly filled checklist that contains specified sub-clauses under Section 41(1)(b)(ii) of the Cr.P.C and produce the reasons and materials which necessitated the arrest while taking the accused before the Magistrate for his further detention.

Test Identification Parade

38. Identity of the accused is important in a criminal trial. To establish the identity of the accused the Investigating Officer can take recourse to the test identification parade. The test identification parade is an integral part of investigation and is relevant by virtue of Section 9 of Indian Evidence Act. Section 54-A of the Cr.P.C allows the person suspected to be sent for a Test Identification Parade when the appropriate court has the right to send the person to be a subject of the Test Identification Parade by directing the person itself or the police officer to take the procedure required.

39. Rule 236 of The Bihar Police Manual, 1978 lays down the guidelines for holding a Test Identification Parade of suspected



persons. Rule 236 is in two parts. Part (a) relates to "Identification of suspected persons"; whereas Part (b) relates to "Identification of suspected articles". The Rule specifies that the following instructions have to be strictly complied in this regard:

1. The suspect shall be kept at a place where the identifying witness cannot have access to him.
2. At the time of taking the suspects to Court or Jail, precaution shall be taken that none is able to see them and hence they shall be taken in closed vehicles or if such vehicles are not available, their faces shall be covered in such a manner that they cannot be recognized.
3. As far as possible, the photographs of suspected persons shall not be published before identification.
4. The investigator shall not keep suspected persons in Police custody before holding Test identification.
5. The prosecutor shall request the Magistrate that these persons should not be released on bail before identification.
6. If the physical characteristics of any suspected person are such that on account of these, he can be searched in a group, then as far as possible such persons shall be assembled for mixing up who have similar characteristics or the characteristics shall be covered. The investigator shall see before the identification parade begins that the suspected person is available in it.
7. For identification, one suspected person is to be mixed with 8-10 other persons and not that ten suspected



persons shall be mixed in a small group.

8. Identification should be done without delay because identification done with delay is not fully acceptable to Courts.
9. Where the description of suspected persons in the first information report or in the statements of witnesses are so explicit that there is no suspicion left of any kind, it is not essential to hold an identification parade.
10. The Investigating Officer, though his presence may be essential outside, shall not be present while the identification is in progress.
11. If a witness is unable to attend an identification parade and identification is considered necessary, this may be arranged with reference to photograph, details of which are incorporated in Appendix 22.
12. When suspected persons are brought for identification its chart shall be prepared in P.M. Form no. 42. An indication of the above facts should be given in the case diary and identification chart.

Provisions for Diary of proceedings in investigation

40. As per Sec 172(1) of Cr.P.C, every police officer making an investigation is required to enter his daily 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. Every police officer needs to maintain a case diary while carrying out an



investigation. As per Section 171(1-A), the statements of witnesses recorded during the course of investigation under section 161 are required to be inserted in the case diary.

41. Rule 164(a) in Chapter 9 of the Bihar Police Manual provides that the Investigating Officer shall keep a record of the proceedings of his investigation in a diary in PM form no. 30 or 30A. It also mandates that separate books shall be made available at each PS for recording statements under Section 161 CrPC. As many copies of such statements shall be prepared as there are of the case diary, so that one copy of the statement can be attached with each copy.

42. Rule 62 of the Bihar Police Manual provides for custody of the case diaries. This rule makes it essential for the copy of the case diary written on a certain day to be sent to the Inspector at the end of the day together with a copy of the statement recorded under Section 161 Cr.P.C while the investigation is in progress. The Inspector is required to read it and forward it to the SDPO and make an entry in the Crime Index regarding the action taken. In certain cases, (Category B Appendix 3, Bihar Police Manual) the diary is required to be forwarded to the SP directly. Directions may also be given to the Investigating Officer, 3 copies of which may be prepared in Form no. 30A.



43. Rule 164(c) of the Bihar Police Manual states that a note shall be made at the end of each day's diary of the place from, the hour at and the means by which it is dispatched. The points on which the investigation is pending is to be written.

44. Rule 164 (f) provides that a carbon copy of the diary shall be despatched to the inspector at the close of each day and the latter, on getting it, shall read it and forward it to the SDPO. In some cases, a copy of the case diary shall be sent directly to the S.P.

45. Rule 164 (i) lays down the procedure that must compulsorily be followed in the preparation and dispatch of the case diary:

- The dispatch must be entered in the dispatch register and station diary. It must be sent in sealed covers and on the envelope the case number and diary number shall be noted. Every Investigating Officer must have a personal seal with his initials.
- If the Investigating Officer is in the Mofussil the diary must be routed through the police station.
- All such sealed envelopes must be opened personally by the Inspector, SDPO and the SP and not by any subordinate.
- If due to some reason the diary cannot be written on any particular day on which it should be written, the day on which it is written should be given. Also, the reason why the diary could not be given must be noted.
- When the diary is completed, the Investigating Officer



must narrate certain facts after writing the accounts of investigation and before closing the diary such as:

1. Which witnesses were questioned?
2. Whether any exhibit was dispatched to the chemical examiner and whether the opinion of any doctor received regarding injury or weapon used?
3. Which houses were searched?
4. Consultation of the Crime Directory and other police records.

The object is to ensure that the work done in the course of investigation has been entered point by point.

46. Section 172(3) of the Cr.P.C disentitles the accused and his agent from receiving the case diary or even from seeing the case diary, except as provided therein. This is reiterated in Rule 164(h) of Bihar Police Manual which 'warns' all officers of their responsibility to ensure that copies of the case diaries do not find their way into the hands of unauthorized persons. What is to be supplied to the accused are copies of the statements recorded under section 161 Cr.P.C and other relevant documents and extracts on which the prosecution proposes to rely only before the commencement of inquiry or trial, under Sec 207 Cr.P.C (Rule 279(d) Chapter 12, Bihar Police Manual).

Completion of Investigation and Final Report

47. Section 173 of the Cr.P.C requires the Investigating



Officer to file a report before the magistrate after the collection of evidence and examination of witnesses are done with. This section requires that each and every investigation shall be completed without any unnecessary delay.

48. Section 173(2) of the Cr.P.C requires that the report shall clearly mention, names of the parties; the nature of the information; the names of the persons who appear to be acquainted with the circumstances of the case; whether any offence appears to have been committed and, if so, by whom; whether the accused has been arrested; whether he has been released on his bond, and if so, whether with or without sureties; whether he has been forwarded in custody under section 170 to be submitted in the closure report before the Magistrate.

49. The report under section 173 of the Cr.P.C is also known as the charge sheet or final form. Under Section 173(2)(i) of the Cr.P.C, the Officer-in-Charge of the police station who conducts the investigation is required to file the charge-sheet before the magistrate who has jurisdiction to take cognizance of the matter.

50. The time limit to file a charge sheet is related to arrest of the accused in the case. A joint reading of Sec 57 and Sec 167 of CrPC indicates that in cases where accused is arrested, investigation must be concluded within 24 hours but in cases where it cannot be



concluded within 24 hours, 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.

51. Thereafter, in cases where the investigation relates to any offence punishable with imprisonment of less than 10 years, the final report under section 173 is required to be filed by the investigation agency within 60 days of the arrest of the accused and in cases where the investigation relates to an offence punishable with imprisonment for more than 10 years, life imprisonment or death penalty, the investigation agency is required to file their final report within 90 days from the date of arrest of the accused failing which the accused becomes entitled to compulsive bail.

Further Investigation

52. Section 173(8) of the Cr.P.C empowers the police to further investigate into the matter in respect of any offence, even after filing a report under Section 173(2) of Code of Criminal Procedure and to file a further report or reports regarding such evidence; and in which event the procedure provided under Section



173(2) to (6) shall apply again.

Provisions for Supply of Police Paper and Other Documents to the Accused

53. As per Rule 279 (d) of Bihar Police Manual, 1978, the accused shall be furnished with copies of statements recorded under section 161 Cr.P.C and other relevant documents or extracts thereof, on which the prosecution proposes to rely. Rule 279 (e) of the Manual further provides for appointment of sufficient number of typists for furnishing copies of documents to accused persons. This is referred to as 'Police Paper' that is to be supplied to the accused u/s 207 Cr.P.C.

54. Thus, the police shall supply to the court the 'police paper' in as many copies as the number of accused. This shall include - report prepared in terms of section 173(2) of Cr.P.C; first information 'report (FIR) recorded under Section 154; the statements recorded under sub-section (3) of Section 161 of all persons whom the prosecution proposes to examine as its witnesses; the confessions and statements, if any, recorded under section 164 and any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of section 173 Cr.P.C.

55. If the police officer is of opinion that any part of any statement recorded under sec. 161 (3) of Cr.P.C 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. However, the final discretion shall be with the Magistrate.

Provisions for use of Electronic Records as evidence

56. Under Section 65-B (1) of the Evidence Act, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record, which is printed on paper, stored, recorded or copied in optical or magnetic media produced by a computer is deemed to be a document (under the Evidence Act), if the conditions mentioned in Section 65-B (2) are satisfied. Where a statement in evidence is sought to be given by virtue of Section 65-B, Section 65-B (4) requires a certificate to be produced that inter alia identifies the electronic record containing the statement and describes the manner in which it is produced, and gives particulars of the device involved in the production of the electronic record to show that the electronic record was produced by a computer, either by a person occupying a responsible official position in relation to the operation of the relevant device, or the management of the relevant activities, whichever is appropriate.



57. The three Judge Bench of the Supreme Court opined in *Arjun Panditrao Khotkar* (Supra) that Section 65-B (1) Section 65-B (1) differentiates between the original electronic record, which is contained in the computer in which the information is first stored and the secondary copies that are made from the primary electronic record. It was held that a certificate under Section 65-B (4) shall have to be obtained only when the secondary copy of the electronic record is produced before the Court. It was further held that production of the certificate shall not be necessary when the original electronic record is produced as the same can be adduced directly as evidence.

**ADDITIONAL PROCEDURE FOR INVESTIGATION
UNDER SPECIAL ACTS**

**THE NARCOTIC DRUGS AND PSYCHOTROPIC
SUBSTANCES ACT, 1985**

58. The Narcotic Drugs and Psychotropic Substances Act, 1985, or in short, the NDPS Act, being a Special Act, gives special powers to the law enforcement agencies. However, sufficient safeguards have also been provided in the Act to protect a citizen's rights and stop unnecessary harassment.

59. As per Section 41 of the NDPS Act, Gazetted Officers of the empowered Departments can authorize searches. Such authorization has to be based on information taken down in writing. As per Section 42, searches can be made under certain circumstances



without a warrant (from a magistrate) or an authorization (from a Gazetted Officer). In case of such searches, the officer has to send a copy of the information taken in writing or the grounds of his belief to his immediate official superior within 72 hours.

60. Any person being searched has a right to be searched before a Gazetted Officer or a Magistrate (Section 50). The officer searching the person has to explain to the person that he has a right to be searched before a Gazetted Officer or a Magistrate and if the person wishes to be searched before a Gazetted Officer or a Magistrate he should be taken to the Gazetted Officer or the Magistrate and searched. However, if the officer has reason to believe that it is not possible to take him to a Gazetted officer or a magistrate without giving him a chance to part with the drug, controlled substance, etc., he can search him under Section 100 of the Cr. P. C. [Section 50(5) and 50 (6)].

61. The person who is arrested should be informed, as soon as may be, the grounds of his arrest [Section 52 (1)]. If the arrest or seizure is based on a warrant issued by a magistrate, the person or the seized article should be forwarded to that magistrate [Section 52(2)].

62. The officer who arrests a person has to make a full report to his official superior within 48 hours [section 57].



63. Every person arrested and article seized under warrant issued under sub-section (1) of section 41 are required to be forwarded without unnecessary delay to the Magistrate by whom the warrant was issued. [section 52(2)].

64. Every person arrested and article seized under sub-section (2) of section 41, section 42, section 43 or section 44 are required to be forwarded without unnecessary delay to— (a) the officer-in-charge of the nearest police station, or (b) the officer empowered under section 53. [section 52(2)].

65. The narcotic drugs, psychotropic substances, controlled substances or conveyances thus seized is required to be forwarded to the officer-in-charge of the nearest police station or to the officer empowered under section 53 and, the officer is required to prepare the inventory of same, specifying the details relating to their description, quality, quantity, mode of packing, marks, numbers or such other identifying particulars or the packing in which they are packed, country of origin and other particulars which are relevant to the identity of seized material in any proceedings under this Act.

66. An officer-in-charge of a police station is required to take charge of and keep in safe custody, pending the orders of the Magistrate, all articles seized under this Act within the local area of that police station and which may be delivered to him, and shall



allow any officer who may accompany such articles to the police station or who may be deputed for the purpose, to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the officer-in-charge of the police station. [Section 55]

67. The Officer is required to make an application, to any Magistrate for the purpose of—

- (a) certifying the correctness of the inventory so prepared;
or
- (b) taking, in the presence of such magistrate, photographs of the seized material and certifying such photographs as true; or
- (c) allowing to draw representative samples of such drugs or substances, in the presence of such magistrate and certifying the correctness of any list of samples so drawn.

68. On perusal of the 'Field Officers' Handbook, issued by Narcotics Control Bureau, Ministry of Home Affairs, Government of India, some more guidelines with regard to seizure and sampling have been specified which may be summarized as follows:

- All recovered suspect substances must be field tested with Drug Detection Kits/Precursor Testing Kits and the matching color results to show presence of ND PS or CS and all must be documented.
- All the recovered documents, articles or things must be scrutinized /examined to determine their relevance to the



commission of offence and importance to the inquiries under the Act.

- All recovered and relevant items liable to seizure and confiscation must be entered carefully in an inventory and documented in the Panchanama. All the goods, documents, articles, things and assets found relevant to the commission of offence and subsequent investigations, recovered during search, seized and the fact of seizure must be documented in the Panchanama
- A set of two representative samples must be drawn from each package or lot (if bunching was made into lots of 40 in case of Ganja & Hashish and 10, in case of other drugs) of the suspect seized substances on the spot.
- It must be ensured that the representative samples are of specified weights. (24 gms each in case of opium, Ganja and Charas and 5 gms each in case of all others)
- All the packages including the representative samples must be properly packed, marked and sealed. (For easy reference, the parent package or lot can be marked as P1 or L1 and the two sets of samples as SO1 and SD1 and so on. Samples should be kept in heat sealed plastic pouches which may be kept in paper envelopes before marking and sealing)
- Test memo must be prepared in triplicate on the spot and the facsimile imprint of the seal, used in sealing the sample envelope, affixed on the Test Memo.
- The Panchanama/seizure memo/mahazar must be drawn carefully on the spot and correctly indicating the sequence of events including start and end time of the search proceedings.



- It must be ensured that the Panchnama and all the recovered/seized documents/articles/things bear signatures of the person whose premises was searched or from whom the recovery was made, two independent witnesses, the DLEO and the lady officer if during the proceedings a lady was searched.
- A notice to examine the owner/occupant and recovery witnesses under Section 67 of the NDPS Act must be issued and their statements must be recorded.
- The seized goods and samples must be deposited in the Malkhana at the earliest opportunity after seizure, and acknowledgement receipt obtained from the Malkhana-in-Charge.
- The samples must be sent to the designated laboratory for analysis and report within 72 hours of seizure. (Samples to be sent to CRCL in case of Customs and other agencies under Ministry of Finance; CFSL for police and other agencies under MI-IA and State FSLs for police and other state agencies)

**The PROTECTION OF CHILDREN FROM SEXUAL
OFFENCES ACT
(POCSO ACT)**

69. The POCSO Act provides for:
- (a) Recording the statement of the child at the residence of the child or at the place of his choice, preferably by a woman police officer not below the rank of sub-inspector. (Section 24(1))
 - (b) Police officers should not be in uniform while recording



the statement of the child. (Section 24(2))

- (c) The Police Officer making the investigation shall ensure that at no point of time the child come in contact in any way with the accused. (Section 24(3))
- (d) No child shall be detained in the police station in the night for any reason. (Section 24(4))
- (e) The police officer shall ensure that the identity of the child is protected from the public media unless otherwise directed by the Special Court in the interest of child. (Section 24(5))
- (f) Medical examination of the child has to be conducted in the presence of the parent of the child or any other person in whom the child has trust or confidence. In case the victim is a girl child, the medical examination shall be conducted by a female doctor. (Section 27(1) and (2))

70. This Court has noticed several lapses in investigation related to POCSO Act cases, which lead to acquittals. Prosecution case fails due to failure of investigating agency to file proof of age. Section 34(2) of the POCSO Act provides, *“If any question arises in any proceeding before the Special Court whether a person is a child or not, such question shall be determined by the Special Court after*



satisfying itself about the age of such person and it shall record in writing its reasons for such determination". The investigating agency and the prosecution, both play a crucial role in ensuring that victim's age is established and age determination procedure is followed. We have noticed that the Investigating Officers routinely ask the doctors to determine the age of a child even when birth certificates are available. In the ossification test age of the child is estimated, which has always a margin of error. Forensic age estimation would be required only in those cases where real age is unknown. Invariably, in almost all cases under the POCSO Act, the Investigating Officers fail to collect documents relating to the age of the victim child and they obtain the age determined by the forensic/medical expert, which should be done only if documents relating to age are unavailable. The age in case of a child plays a vital role for the special court under the POCSO Act. If an offence under the POCSO Act is committed upon a child under the age of 12 years, the punishment is much severe in comparison to the same offence committed upon a child above the age of 12 years. It is extremely important for the special court to check the proof of age before the framing of charges because it would be difficult for it at the time of final adjudication of the case, in case of conviction, as there are varying minimum and maximum punishment prescribed for serious offences in case of the



victim belonging to different age group. Unfortunately the police dealing with the POCSO Act cases fail to understand the significance of age and it has been found in many cases that report under Section 173(2) of the Cr.P.C is filed indicating tentative age of the victim. Such practice need to be stopped forthwith.

**THE BIHAR PROHIBITION AND EXCISE ACT, 2016 (the Act
of 2016)**

71. Section 91 of the Act of 2016, which lays down the procedure for launching prosecution under the Act, reads as under:

“91. Procedure for launching Prosecution. (1) As soon as a violation of any of the provisions of the Act is detected, the excise officer or the police officer, of the rank of assistant sub inspector and above, shall register a case under the Act.

(2) The excise officer or police officer concerned shall then proceed for investigation of the case.

(3) After investigation of the case, he shall file a Report within Sixty Days from the date of registration of the case.

(4) The Report so filed shall be deemed to be a Police Report for the purposes of Section-173(2) and Section-190 of the Code of Criminal Procedure, 1973 (Act 2 of 1974).

(5) The Collector shall ensure that the aforementioned Report is filed in time and shall also monitor effective prosecution of the cases before the Courts.



(6) The Superintendent of Police shall closely monitor the status of cases filed by the police officers under this Act and shall submit period reports to the Excise Commissioner and the Collector.”

72. The mandate as laid down under Section 91(1) of the Act of 2016 is akin to one as laid down under Section 154 of the Cr.P.C.

73. In ***Lalita Kumari vs State of U.P.***, reported in **(2014) 2 SCC 1**, it has been held by the Supreme Court that registration of FIR is mandatory under Section 154 of Cr.P.C on receipt of information about commission of a Cognizable Offence. The language under section 91(1) of the Act is wider to the extent that it requires registration of case as soon as violation of any of the provisions of the Act is detected. Section 90(1) of Bihar Act 20 of 2016 further enables application of Cr.P.C in the matters relating to arrests, detention, searches, summons, warrants of arrest, search warrants and the production of persons arrested or articles seized under the Act.

74. The Excise officer authorized under Section 73 of the Act is further empowered under Section 79 of the Act to exercise powers of the officer-in-charge of a police station in his area of jurisdiction for the purposes of the Act. Sub-section(2) of Section 79 further lays down that excise officer so empowered under Section 73



shall be deemed to be a police station. As per Section 78 of the Act, any excise officer is authorized to investigate any offence punishable under this Act.

75. A conjoint reading of provisions of Sections 73,78,79,90 & 91 of the Act would make it manifest that it is mandatory for the Excise Officer authorized under the Act to register a case, the moment violation of any provision of the Act is detected. Only after the registration of the case, the officer concerned can invoke power to investigate as laid down under Chapter XII of Cr.P.C. At initial stage, when by chance, a person is found violating provisions of the Act within the view or knowledge of an authorized excise officer, it would be lawful for such excise officer to arrest such violator. But every such arrest should be followed by registration of case. It may be termed as FIR or Excise Case Number or by any other nomenclature, but registration of case is mandatory. Non-compliance of section 91(1) of the Act being violation of right enshrined under Article 21 of the Constitution of India will render such arrest and seizure illegal.

76. In a prosecution launched by Prohibition Cell of the Bihar Excise Department, accused is arrested after seizure of liquor/intoxicant found in his possession and is produced before the Special Judge, having jurisdiction under section 84 of the Act. The



Excise Officer, thereafter, seeks remand of the accused. His request in practice, is accompanied with preliminary report in Form 138 being used to be filed under Bihar Excise Act 1915. The accused so produced is thereafter remanded invariably under Section 167 Cr.P.C., till filing of final report by concerned Excise Officer which is in Form 122. Such report is deemed to be a complaint by public officer within the meaning of section 87 of Bihar Excise Act 1915. It would be relevant to refer Section 87 of Bihar Excise Act 1915, which reads as under:

“87: No Magistrate shall take cognizance of an offence referred to-

- a. In section 47, section 49, section 55 or section 56, except on his own knowledge or suspicion or on the complaint or report of an Excise Officer or an officer empowered in this behalf by the State Government, or*
- b. In section 57, section 61, clause (d) or clause (e) or section 62 except on the complaint or report of the Collector or and Excise Officer authorized by the Collector in this behalf.”*

77. After the passing of the Act of 2016, the old practice is being continued by Excise Department regarding initiating prosecution by submission of complaint before Special Judge Excise. Such practice is not consistent with the statutory provisions as



prescribed under Section 91 of the Act.

78. Under the Act of 2016, it is mandatory both fore the Excise Officer and the Police Officer to register a case under the Act as soon as the violation of any provision of the Act is detected. After registration of the case, the Excise Officer or the Police Officer concerned, as the case may be, is required to proceed for investigation of the case and after investigation of the case, he is required to file a report within 60 days from the date of registration of the case which shall be deemed to be a police report for the purpose of Sections 173(2) and 190 of the Cr.P.C.

79. It would be pertinent to note here that only after the police report is filed before the court, which shall be deemed to be a police report under Section 173(2) of the Cr.P.C after investigation, the Special Judge would be authorized to frame charge against the accused in case of warrant trial or explain substance of accusation to the accused in case of summary trial.

80. It is seen that the Prosecution being launched by the Excise Department/ Prohibition Cell, almost across the State begins in all cases from detection of violation of the provisions of the Act, but no case is being registered within the meaning of sub-section (1) of Section 91 of the Act. The practice so adopted is against the mandate of statutory provisions.



81. Under Section 37 of the Act of 2016, consumption of liquor or intoxicant is a penal offence. Innumerable cases are being registered for contravention of Section 37 of the aforesaid Act throughout the State of Bihar. In almost all the cases, the only material which is being produced by the law enforcing agency against the accused is that he was put to Breath Analyzer Test, which corroborated the content of alcohol in blood. Indisputably, the device through which Breath Analyzer Test is conducted is an electronic device. The primary evidence, i.e., the device used in the Test is not produced before the court by the investigating agency. Under such circumstance, in order to prove that the accused had consumed liquor or intoxicant or was found drunk or in a state of drunkenness at any stage, it is necessary for the investigating agency to exhibit the alcometer slip along with the certificate issued under Section 65-B (4) of the Evidence Act at the stage of trial after submission of police report as provided under Section 91(4) of the Act, failing which the alcometer slip will be an inadmissible document. This aspect must be kept in mind by the investigating agencies.

The Fallacies in Investigation by Police

82. I. Fallacies in Investigation of Offences Affecting the Human Body

(a) **Delayed Institution of FIR:** We have noticed in many



cases that having reason to suspect the commission of a cognizable offence or having information about a cognizable offence, the police officer incharge of a police station proceeds to the spot without making any entry in the station diary and after reaching the spot prepares the inquest report, makes inquiry about the occurrence from the local persons, sends the body of the deceased for autopsy and thereafter returns the police station and waits for some one from the victim's family to come and institute the FIR. In such cases, steps taken by the police officer after reaching the spot of crime would be part of investigation and the formal registration of FIR subsequently may lead to doubt regarding the veracity of the prosecution case. Hence, all efforts should be made by the police to timely lodge an FIR in order to improve the credibility of the prosecution case.

- (b) In cases of assault and hurt, medical examination of the victim is an essential part of investigation. However, in cases of simple hurt, there is usually no mention of any such examination and neither does the Investigating Officer bother to mention in his case diary as to why such examination was not required. The cases of grievous hurt,



which can be covered u/s 325 or 326 of IPC are most callously and routinely brought under the ambit of sec. 307 of IPC for attempt to murder.

- (c) The accused cannot be a witness against himself as per Article 20(3) of the Constitution and must be presumed to be innocent until proven guilty. The accused is not required to give answers to those questions which would tend to prove a criminal charge against him [Section 161(2) of CrPC]. However, in cases of homicide, in absence of any eye-witnesses, the police base their investigation only on the confessional statements of accused and co-accused. These confessions are custodial confessions and are barred to be used in criminal proceeding during trial in view of Section 25 of the Evidence Act. Such confessions are conveniently retracted during trial, leading to acquittal on the basis of no evidence.
- (d) This practice of basing the entire investigation on the confessional statement of the accused without taking any effort to gather any other corroborative evidence has become a commonly followed procedure by the police in the State and has made a mockery of the entire criminal justice system.



II. Faulty Crime Scene Investigation by the Investigating Officer is an issue that destroys the case at the very inception of investigation.

- (a) The crime scene is often disturbed by the general public by the time police officers reach the crime scene which leads to loss of evidence like hair strands, fingerprints, footprints, and other evidence. In fact, even in cases where such evidence is available, there is hardly any scientific investigation which leads to the loss of much crucial evidence. One reason for this is clearly that the police officers are not aware of the intricacies of scientific investigation and another is the shortage of scientific experts.
- (b) As per **Rule 176 (a) of Bihar Police Manual Volume -I Chapter 9**, *"In each appropriate case, the Investigating Officer shall, as soon as possible, after arriving at the scene of occurrence, prepare a plan of it and shall attach it to the case diaries for the information of his superior officers. He may at his discretion prepare and send up a map or plan in any other case also. Detailed instructions in connection with preparing maps are given in Appendix 77. If the Investigating Officer cannot prepare a map of the PO any Amin or other competent plan drawer may draw the map or plan."* It is clear that the Investigating Officer is



required to make a map of the place of occurrence. However, this is rarely done by the police in Bihar while investigating a case.

III. Cases of Circumstantial Evidence

(a) We have seen that in a case of circumstantial evidence services of a sniffer dog was taken for investigation. The whole investigation in the case was based on the extra judicial confession of the son of the accused as well as the evidence that the dog entered the house of the accused in her absence after smelling the place where the body of the deceased was found.

(b) In ***Gade Lakshmi Mangaraju v. State of A.P.***, reported in ***(2001) 6 SCC 205***, the Supreme Court observed:

“17. We are of the view that criminal courts need not bother much about the evidence based on sniffer dogs due to the inherent frailties adumbrated above, although we cannot disapprove the investigating agency employing such sniffer dogs for helping the investigation to track down criminals.

18. Investigating exercises can afford to make attempts or forays with the help of canine faculties but judicial exercise can ill afford them.”

(c) Similarly, in ***Dinesh Borthakur v. State of Assam***, reported in ***(2008) 5 SCC 697***, the Supreme Court held:

“The law in this behalf, therefore, is settled that while the services of a sniffer dog may be taken for the purpose of investigation, its faculties cannot be



taken as evidence for the purpose of establishing the guilt of an accused.”

- (d) In cases of circumstantial evidence, we have seen that in most of the cases the Investigating Officers make no effort to complete the chain of circumstance. It is most common to find several missing links, which ultimately result in failure of prosecution case.

IV. Fallacies in Investigation of Offences Against Property

- (a) Offences against property (including theft, burglary, theft of vehicle, etc.) forms a majority of the cases disposed by police for lack of evidence (case true but no clue).
- (b) Offences under this head like theft, robbery, extortion, dacoity are the most common crimes that are investigated by the police. The investigation into such offences requires a detailed and scientific analysis of the crime scene. The investigating office must collect the evidence left by the burglar such as fingerprints, shoe prints, tool marks of the tool or implement used by the burglar. Modus Operandi adopted by the criminal may provide a significant clue to his identity if previous records (or knowledge) are available. Through the use of state DNA databases and agencies it is possible to identify suspects involved in associated crimes; the CCTV footage wherever available,



is also a reliable piece of evidence including a proper description of the stolen property and its reference, wherever possible, must be included in the diary.

- (c) However, in actual practice there is absolutely no crime scene investigation and the case diary carries a routine description of the boundary of the place of occurrence; the CCTV footage is rarely procured and whenever it is, the basic rules of electronic evidence are not followed, making the evidence useless during trial. At times, the entire investigation is based solely on the confessional statement of the accused given to the police, which being inadmissible in Court results in acquittal.

V. Fallacies in Investigation of Offences Relating to Documents

- (a) In cases of **falsification of documents, forgery, and fraud**, in order to establish a case, the intention and conduct of the accused person and the presumption of requisite intention has to be proven. The documentary evidence as to the forged document is essential for any criminal prosecution. The investigation is required to concentrate largely on the documentary evidence along with the evidence of hand-writing and document experts, evidence regarding possession of the document and



circumstantial evidence to support the presumption of intention to use the document for fraudulent purposes.

- (b) But, in reality, the investigation only comprises interviews of the witnesses named by the informant and most of the time, even the document alleged to have been forged just gets a passing reference in the diary.
- (c) In the case of ***Sheila Sebastian vs R. Jawaharajand Anr, (2018) 7 SSC 581***, while deciding the criminal appeal filed against an order passed by the High Court of Judicature at Madras, wherein the High Court had held that the conviction of accused respondents was not sustainable under Section 465 of the Indian Penal Code, 1860 the Apex Court observed that,

"28. This case on hand is a classic example of poor prosecution and shabby investigation which resulted in the acquittal of the accused. The Investigating Officer is expected to be diligent while discharging his duties. He has to be fair, transparent and his only endeavor should be to find out the truth. The Investigating Officer has not even taken bare minimum care to find out the whereabouts of the imposter who executed the PoA. The evidence on record clearly reveals that PoA was not executed by the complainant and the beneficiary is the accused, still the accused could



not be convicted. The latches in the lopsided investigation goes to the root of the matter and fatal to the case of prosecution. If this is the coordination between the prosecution and the investigating agency, every criminal case tend to end up in acquittal. In the process, the common man will lose confidence in the criminal justice delivery system, which is not a good symptom. It is the duty of the investigation, prosecution as well as the Courts to ensure that full and material facts and evidence are brought on record, so that there is no scope for miscarriage of justice."

VI. The General Fallacies in Investigation

Copy of Case Diary Being Supplied to Accused

- (a) The right of the accused in relation to the police files and the general diary is a very limited one and under no circumstance are they to be provided a copy of the case diary. Section 172(3) of Cr.P.C clearly stipulates that neither the accused nor his agent is entitled to call for and see the case diaries 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 the diary to cross-question and counter such police officer, the provisions of Section 161 or Section 145 as the case may be, of the Evidence Act shall apply. In such cases, only that



part of the case diary may be used by the accused which has been used by police or Court. Shockingly, it is a common practice in the State of Bihar that for grant of "police papers" to the accused u/s 207 Cr.P.C, the police normally supply a photocopy of the entire case diary.

- (b) Deprecating the practice of making available the entire case diary, the Hon'ble Supreme Court in ***Sidharth & Ors. Vs. State of Bihar*** reported in ***(2005)12 SCC 545***, observed:

“Lastly, we may point out that in the present case, we have noticed that the entire case diary maintained by the police was made available to the accused. Under Section 172 of the Criminal Procedure Code, every police officer making an investigation has to record his proceedings 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. It is specifically provided in sub-clause (3) of Section 172 that 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 CrPC or the provisions of Section 145 of the Evidence Act shall be complied with. The court is empowered to call for such diaries not to use it as evidence but to use it as aid to find out anything that happened during the investigation of the crime. These provisions have been incorporated in the Code of Criminal Procedure to achieve certain specific objectives. The police officer who is conducting the investigation may come across a series of information which cannot be divulged to the accused. He is bound to record such facts in the case diary. But if the entire case diary is made available to the accused, it may cause serious prejudice to others and even affect the safety and security of those who may have given statements to the police. The confidentiality is always kept in the matter of criminal investigation and it is not desirable to make available the entire case diary to the accused. In the instant case, we have noticed that the entire case diary was given to the accused and the investigating officer was extensively cross-examined on many facts which were not very much relevant for the purpose of the case. The learned Sessions Judge should have been careful in seeing that the trial of the case was conducted in accordance with the provisions of CrPC.”

- (c) Subsequently, the Patna High Court ***Sukhdeo Yadav and Ors vs State of Bihar, Criminal Miscellaneous No.18237***



of 2015 issued certain directions as follows:

"21. Considering the totality of the facts and circumstances I am of the view that in the interest of fair investigation and trial and for the ends of justice, certain directions need to be issued, to be followed strictly by all concerned. I accordingly direct as follows:

(i) As required by Section 172 of the Cr.P.C., every Police Officer making an investigation shall mandatorily, day by day enter his proceedings in investigation in the case diary. In the event there is no progress in investigation on a particular day because of any reason, the Investigating Officer will be required to make an entry to this effect in the case diary immediately.

(ii) It will be the responsibility of the investigating Officer and the Supervisory Officers to ensure that no unauthorized person has any access to the case diaries. In case it is found that someone has succeeded in getting a copy of the case diary or had access to the contents of the case diary through illegal means, it will be the responsibility of the Supervisory Officers to fix responsibility and the disciplinary authorities will be required to take disciplinary action against the person responsible for making available the case diaries to persons not authorized to have access to the same.

(iii) There shall be no delay in making available the case diaries to the Courts as and when required and



all Officers and functionaries shall act with utmost promptitude to ensure that the diaries are made available to the Court. It is made clear that failure on the part of any person to make available the case diary to the Courts, including the subordinate courts, amounts to causing obstruction in course of justice and therefore, contempt of Court, within the meaning of Contempt of Courts Act, 1971. 22. It is further directed that there should not be a mechanical approach in complying with the requirements of the provision prescribed under section 207 of the Code by making available the entire case diary to an accused, as a police report. It is made clear that the accused persons are required to furnish the statements recorded under sub-section (3) of Section 161 of only such persons whom the prosecution proposes to examine as its witnesses. 23. It goes without saying that the police officer may make a request for excluding any part from the statement of witness recorded under section 161(3) Cr.P.C. to be furnished to the accused, as provided under section 173(6) of the Code. 24. It is also directed that the senior police officers including the Director General of Police shall take all possible measures to ensure that the provisions contained in Rule 164 of the Police Manual are duly complied with by the Investigating Officers and the Supervisory authorities, in order to maintain secrecy of investigation by ensuring that copies of case diaries are not leaked."



- (d) In light of the directions issued as above, DGP, Bihar issued an order dated 3.06.16 but it does not appear that the directions are being followed.

VII. Confession Made Part of FIR

- (a) The Supreme Court had examined the evidentiary value of a confessional FIR in *Aghnoo Nagesia v. State of Bihar*, *AIR 1966 SC 119*. The brief facts of the case are that the appellant murdered. Somra and later Chamin and then Ratni and Dilu. The FIR of the offences was lodged by the appellant himself at the police station, which was reduced to writing by the officer in charge and the appellant affixed his left thumb impression on it. Thereafter, the Sub-Inspector took cognizance of the offence and arrested the appellant. In that case, the FIR was divided into 18 parts. Parts 1, 15 and 18 show that the appellant went to the police station to make the report. Parts 2 and 16 show his motive for the murders. Parts 3, 5, 8 and 10 disclose the movements and opportunities of the appellant before the murders. Part 8 also discloses his intention. Parts 4, 6, 9 and 11 disclose that the appellant killed the four persons. Part 12 discloses the killing and the motive. Parts 7, 13 and 17 disclose concealment of a dead body and a tangi



(murder weapon) and his ability to point out places where the dead bodies and tangi were lying. Part 14 discloses the previous confession by the appellant. The High Court admitted in evidence Parts 1, 2,3, 5, 7, 8, 10, 13, 15, 16, 17 and 18 and convicted the appellant.

- (b) The Supreme Court held that save and except Parts 1, 15 and 18 identifying the appellant as maker of the FIR and save and except the portions coming within the purview of Section 27, the entire FIR must be excluded from evidence. Further it is pertinent to point out that the Hon'ble Supreme Court acquitted the appellant from all the charges and set his life at liberty.
- (c) It is well settled that an FIR is not a substantive piece of evidence, i.e., it cannot be used as evidence to prove a fact in issue or relevant fact. However, it is a relevant fact u/s 8 Evidence Act, and it can be used to corroborate or contradict the informant u/s 157 and 145 of Evidence Act, respectively, if such informant is called as a witness. In addition to this, since proof of a confession by accused to police officer is excluded by provision of Evidence Act as Sections 24, 25 and 26, Evidence Act, the entire confessional statement in all its parts including the



admissions of minor incriminating fact will be excluded, unless proof of it is permitted by some other section such as Section 27, Evidence Act.

- (d) When the accused himself approaches the police and confesses his guilt, then the right approach perhaps would be that the SHO may record his self-statement regarding the fact and immediately present the accused before the Magistrate and get his confession recorded u/s 164 Cr.P.C.
- (e) In cases where the police receive information of crime and thereafter the accused confesses to police in the same sequence, the confessional statement should not be made part of the FIR. It may be part of investigation. Under such circumstance, steps must be taken to get a judicial confession recorded u/s 164 Cr.P.C.
- (f) In any other scenario, where confessional statement is not part of the same transaction as the FIR, any practice of annexing it with the FIR will clearly be against legal provision.

VIII. Forensic Science Laboratory Report:

- (a) Generally, the opinion of an expert through relevant, requires the expert to be examined as a witness in court otherwise his report cannot be admitted in evidence.



However, Section 293 of the Cr.P.C makes the report of certain Government Scientific Experts mentioned under sub-section (4) of this Section admissible in evidence without calling him as a witness. Although it is not required to examine the expert as witness to prove his report under Section 293 of the Cr.P.C, the report cannot be read in evidence unless it is tendered in evidence.

- (b) We have seen quite often in Bihar that the police report is filed before the court of Magistrate without obtaining the FSL report. In many cases, the FSL report is submitted by the Investigating Officer in sealed cover after the commencement of trial and the trial court marks the same as an exhibit even without being tendered in evidence by any witness. The copy of the same is also not supplied to the accused in compliance with Section 207 of the Cr.P.C. Thus, the accused does not know as to what is the outcome of the forensic test. Such practice needs to be stopped at the earliest so that the prosecution cases may not fail either due to delayed obtainment of FSL report or due to non-supply of a copy of the FSL report to the accused or due to the non-tendering of the same by any witness.

IX. Non-Compliance of Section 65-B, Evidence Act in Cases of Electronic Evidence



- (a) Nowadays, evidence may be in the form of DVD, CD, Hard-Drive, Chip, Memory Chip, Pen Drive; in the form of Audio and Video Recordings or; Evidence generated through mobile phone in the form of media, calls and email.
- (b) The requirement under Section 65-B (4) is unnecessary if the original document itself is produced i.e., if the owner of a laptop computer, tablet or even a mobile phone is examined to prove that the concerned device, on which the original information is first stored, is owned and/or operated by him. However, where the computer happens to be on a system or network and it is impossible to physically bring such system or network to court, or when CDs, VCD, Chip produced in the court then the only means of providing information contained in such electronic record is in accordance with Section 65-B (1), together with the requisite certificate under Section 65-B (4).
- (c) In a decision delivered on 14th July, 2020, a three Judge Bench of the Supreme Court in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, reported in (2020) 7 SCC 1, has clarified the interpretation of Section 65-B as



inconsistent views had been taken in three earlier decisions of the Supreme Court, i.e. Anwar P.V. Vs. P.K.Basheer, reported in (2014) 10 SCC 473, Shafhi Mohammad Vs. State of H.P., reported in (2018) 2 SCC 801 and Tomaso Bruno Vs. State of U.P., reported in (2015) 7 SCC 178. After divergent views were taken in the three earlier decisions by the Supreme Court, confusion had arisen as to whether the certificate under Section 65-B (4) would be obtained even when an original copy of electronic record is produced as evidence. The next issue that arose was whether it was mandatory to comply with the provisions of Section 65-B (4) or can the requirement to obtain the certificate be dispensed with.

- (d) As per the Evidence Act and in consonance with the three Judge Bench decision of the Supreme Court in ***Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*** (Supra) in the matter, it is settled that where electronic evidence is being produced as secondary evidence, a certificate under 65-B is mandatory. However, even though the CDR and CCTV footage are being increasingly filed in evidence, the Investigating Officer rarely bothers with the legal requirement of annexing certificates under section



65-B with it.

X. Fallacies in Investigation of Offences under Special Acts

- (a) In cases under the **NDPS Act** the provisions under Section 41(2) proviso to Section 42(1) and Section 50 have to be mandatorily complied with. However, they are generally violated and it vitiates the trial. Other than this, it is often seen that the person, who recovers the contraband from the accused, lodges the FIR and investigates the same; separate occurrences/incidents are clubbed in one FIR and investigated; independent witnesses are not associated during the course of investigation despite their availability at the place of occurrence; weighing scale is often taken from the open market either from some fruit vendor or shopkeeper and, weighing of the contraband is not proved at the stage of trial; contraband is often not seized or sealed on the spot, neither the contraband is produced as material exhibit nor any evidence is led regarding its disposal in terms of Section 52-A of the NDPS Act; no evidence is led regarding safe custody of contraband; though the seizure is made from different packs of contraband recovered and seized but samples are taken from only few; no entries are made in the Malkhana register about the seizures and



samples taken for re-sealing etc. in order to prove the safe custody of the seized contraband and no explanation is given for delay in sending the samples for forensic examination. All these defects in investigation vitiate trial and it ends in acquittal.

XI. In cases under Arms Act

The prosecution sanction is mandatory u/s 39 of the **Arms Act, 1959**. However, most of the time, charge-sheets are filed without the same. Other than this, the seized arms and ammunition are not sealed properly. At times, the seizure is also not done in compliance with the legal mandate. The witness of the seizure list puts his signature on the seizure list but rarely do we get to see clearly written by the witness in his own handwriting that the things were recovered and seized in his presence. Due to this, these witnesses very conveniently turn hostile in court. In some cases, the police officer who seizes the object or who is the informant of the case is made the Investigating Officer of the case. Similarly, sometimes, the complainant of the case is a police officer and he himself undertakes its investigation. This also affects the fair trial of the case quite adversely.

The Impact of Faulty Investigation

83. The objective of the Criminal Justice System is



manifold. It has to prevent the occurrence of crime; punish the transgressors and the criminals and rehabilitate them; compensate the victims as far as possible; maintain law and order in society and; deter offenders from committing any criminal act in the future. However, it is clear from the discussion above that presently our criminal justice system is falling short in many respects.

84. The evidence is collected by the investigating agencies and the courts have to decide the cases on the basis of whatever evidence and material is produced before them. The courts are meant for the dispensation of even-handed justice. The law requires proof beyond any reasonable doubt. This probative value of high degree is not possible unless every possible effort to achieve the best available evidence is made by the Investigating Officer. If the investigations are based mostly on oral testimonies and the same witnesses change their version in court, the natural outcome will be that the cases would fall flat. If the investigation is defective and there is scanty evidence the court is left with no other option except to give the accused the benefit of doubt. Thus, despite the fact that crime is taking place, the accused are getting acquitted as there is insufficient evidence and the prosecution fails to prove the guilt of the accused beyond all reasonable doubt. This leads to unmerited acquittals.

85. We must keep in mind that it is not severity but the



certainty of punishment that deters people from committing crimes. Conviction of a criminal is the ultimate test of a justice system. If after years of investigations and trials the guilty are let off, it is not just a waste of time and energy but also corrodes the faith of the common man in the criminal justice system.

86. Lord Alfred Thompson Denning in his book titled “The Due Process of Law” has observed:-

“In safeguarding our freedoms, the police play a vital role. Society for its defence needs a well led, well trained, and well disciplined force of police whom it can trust; and enough of them to be able to prevent crime before it happens, or if it does happen, to detect it and bring the accused to justice.

The police of course, must act properly. They must obey the rules of right conduct. They must not extort confessions by threats or promises. They must not search a man’s house without authority. They must not use more force than the occasion wants. But, so long as they act honourably and properly, all honest citizens should support them to the uttermost. There is nothing more detrimental to the rule of law than the kidnapper to extract his ransom and get clear; for the mugger to smash up old ladies and go free; or for the company director to defraud the shareholders and get away with.”

87. These words ring especially true and clear in the



present-day scenario when the standard of investigation by the police is on a downward spiral and is a major factor in the abysmally low rate of conviction.

88. At this stage, we must record that the convictions recorded by the trial court are rarely being upheld by the appellate court due to lack of clinching evidence. The investigating system has to be improved to avoid wrong acquittal. An urgent and drastic measure is required to restore the faith of the people in the criminal justice system and best way to achieve that faith is to ensure honest, efficient, impartial, speedy and scientific investigation of the reported crimes.

89. The confidence of the people is the greatest asset of the police in investigation of crimes and maintenance of law and order because hard intelligence in investigations comes from public cooperation. Once this confidence is lost and the people develop an attitude of revulsion and cynicism, they are reluctant to come forth. In absence of public cooperation, fair investigations become even more difficult. Unfortunately, we are presently caught in this vicious circle.

Solutions

I. Training

90. This Court is of the opinion that training is an important



aspect for improving efficiency of personnel in all lines of work, especially among policemen who have to make quick decisions in life and death situation. The police personnel of all ranks require training at the appropriate time in their career. They need to be engaged in a continual re-examination of their role. We have been told that in Bihar there is a Police Academy at Rajgir. Apart from this, there is Bihar Police Academy, Bailey Road, Patna, Constable Training School, Nathnagar, Bhagalpur, Constable Training School, Siumultalla, Jamui and Armed Police Constable Training School, Dumraon, Buxar. However, mere existence of infrastructure for training is not sufficient to address the issue. It is imperative that there should be a uniform curriculum of the highest standard across police academies. This curriculum must also be supplemented with sensitization programmes aimed to enable the police officers to display a greater sense of compassion and empathy towards the accused, victims and other civilians. The latest concepts and practices in subjects as varied as criminology, sociology, cybersecurity, terrorism studies, criminal justice jurisprudence and organizational behaviour must be incorporated in the training schedule. The training in the aforesaid subjects will help the police to face new challenges.

**II. Adherence to the order passed by the Supreme Court in
Cr.Appeal No. 400 of 2006**



91. In this context, it is pertinent to mention that the Supreme Court while hearing ***Criminal Appeal No. 400 of 2006*** noticed certain inadequacies in the criminal trial procedure followed throughout the country. Thus, in ***Suo Motu Writ (Cri) 1 of 2017***, Shri R. Basanth, Senior Advocate, Shri Sidharth Luthra, Senior Advocate and Shri K. Parmeshwar, Advocate were appointed as *amicus curiae* and notice was issued to all State Governments and High Courts to submit their responses to the *amicus curiae* regarding need to amend criminal rules of practice in order to bring about uniformity. Based on these, the Draft Criminal Rules on Practice, 2021 was submitted and the Supreme Court, vide order dated 20th April, 2021, was pleased to order all High Courts to take expeditious steps to incorporate the Draft Criminal Rule on Practice, 2021 as part of the rules governing criminal trials, and to ensure that the existing rules, notifications, orders and practice directions are suitably modified, and promulgated (wherever necessary through the Official Gazette) within 6 months from the date of the order. These Draft Rules comprise five Chapters and the first chapter is for investigation. As per the Draft Rules:

- (a) Every Medico Legal Certificate and Post Mortem Report must contain a printed format of the human body (both frontal and rear view) and the sketch must indicate if there



are any injuries.

- (b) In case of custodial deaths, the Investigating Officer must inform the hospital to arrange for a photographer or videographer for conducting the post-mortem examination of the deceased. A police photographer or a State nominated photographer or by an independent private photographer in the absence of the former two has to do this.
- (c) The police must seize such photographs or videos through a panchnama or seizure memo for proof during trial in court accompanied by a written certificate for admitting electronic evidence.
- (d) The Investigating Officer must prepare a site plan with details and attach it to the spot panchnama. After this, a police draftsman must take a scaled site plan and the panchnama and the site plan must contain all the relevant details.
- (e) Statements of witness recorded, list of documents, material objects and exhibits seized during investigation and relied upon by the Investigating Officer must be given to the accused.
- (f) The State Governments can appoint advocates, other than



Public Prosecutors to advise the Investigating Officer during investigation.

92. Proper implementation of these suggestions made by the Supreme Court would effectively address some of the issues with failures in criminal investigation by the police.

93. It would further be pertinent to note here that the Law Commission of India in its 154th Report on the separation of investigation from law and order to ensure speedy investigation, better expertise and improved rapport with the people without any water tight compartmentalization in view of both functions being closely interrelated at the ground level.

III. Adherence to the recommendation made by the Supreme Court in *Prakash Singh Vs. Union of India* (2006) 8 SCC 1

94. In *Prakash Singh Vs. Union of India*, reported in (2006) 8 SCC 1, the Supreme Court recommended the separation of law and order from investigative duties of police.

95. In this regard, it is pertinent to mention that vide letter no. 24013/26/Misc/2017-CSR, III from Ministry of Home Affairs dated 23rd May, 2017, all the State Governments have been apprised of the 154th Law Commission Report and the judgment of the Supreme Court regarding separate and exclusive cadre of investigating agency. The letter emphasizes the need for conclusion of investigations in a time bound manner and has advised the States



to take following immediate steps in the direction of separating law and order from investigation duty:

- (a) Establish investigation cell in all Districts.
- (b) These cells may be headed by S.P. rank Officer and supported by other officers as deemed fit, taking into account the crime scenario.
- (c) All new cases may be entrusted to this new cell while investigations already underway may continue to be dealt as per existing system.
- (d) A roadmap may be made to separate law and order duty from investigation in a time bound manner.
- (e) An investigation monitoring cell may be established at State/UT HQ level to supervise and guide the local investigation teams. This cell may be headed by ADG rank officer.
- (f) Charge sheet must be filed as soon as the investigation gets completed so that trials get concluded early.
- (g) Proper and regular training may be arranged for Investigating Officers to improve their skill level in use of technology as well as techniques.
- (h) Take appropriate steps to ensure that all vacancies in the police force get filled in a time bound manner.



- (i) Consider outsourcing of non-core police functions to free more policemen for the core policing functions.

96. Rule 157-A, Chapter IX of the Bihar Police Manual provides for separation of law and order from police investigation. Although this rule leaves it to the discretion of the Superintendent of Police to earmark certain staff in a police station for investigation of professional crimes and others for maintenance of law and order.

97. There are clear directions of the Supreme Court, recommendation of the Law Commission of India (154th Report) as well as advisories issued by the Government of India in this regard. In the letter dated 23.05.2017 addressed to all the Chief Secretaries of the State Governments and UTs, the Ministry of Home Affairs, Government of India, citing recommendations of the Law Commission Report (154th) and the directions of the Supreme Court in ***Prakash Singh*** (Supra), advised the States and the UTs to take immediate steps in the direction of separating the law and order from investigation and to convey roadmap for its implementation. The directions include: Establish investigation cell in all Districts; These cells may be headed by S.P. rank Officer and supported by other officers as deemed fit, taking into account the crime scenario; An investigation monitoring cell may be established at State/UT HQ level to supervise and guide the local investigation teams. This cell



may be headed by ADG rank officer; Proper and regular training may be arranged for Investigating Officers to improve their skill level in use of technology as well as techniques.

98. It would appear from the counter affidavit filed on 20.09.2022 on behalf of the respondent no.2 that the investigation and law and order units are working separately in the police stations except Mahila and SC/ST police stations in Bihar.

99. If the recommendations of the Supreme Court, as mentioned above, is followed in letter and spirit, it will enable proper skill development of the investigative division and availability of specialized wing will definitely improve the investigation into imported crimes.

100. From the counter affidavit filed on behalf of the State, it does not appear as to whether the investigation cell in all districts of the State of Bihar being headed by SP rank officer and supported by other officials has been established. It is also not clear as to whether the investigation monitoring cell headed by ADG rank Officer has been established at the State level to supervise and guide local investigating team.

IV. Filling up of vacancies and increase of strength

101. We are of the opinion that due to mismatch of population and police ratio the police force faces several challenges



which hamper the quality of investigation. In this regard, the State must make endeavor to fill up all the vacancies and increase the sanctioned strength of police force, which should address the occupational stress and mental health issue of the police force, which would definitely go a long way in improving the quality of investigation of criminal cases.

102. In so far as the prayer of the petitioner in the writ petition is concerned, it has rightly been contended in the counter affidavit filed on behalf of the respondents that the case diary is not a public document and its secrecy is to be maintained in investigation. We do appreciate the stand of the State that there are constraints of man power and physical resources as well as legal limitation because of which digitization of case diary will take time and it is not proper for this Court to fix any time limit for digitization of case diary.

103. Apart from the solutions suggested and the observations made while highlighting the fallacies in investigation of offences under the Indian Penal Code and other Special Acts hereinafter, as the issue involved in the present case is of larger public interest, we deem it fit and proper to issue following guidelines to the respondents so that improvements can be made in the state of investigation process:-

- (a) For ensuring that the criminal investigation by the police



into a crime is in consonance with the settled procedure, a rule book of guidelines/instructions may be issued to the police with a direction for its strict compliance in every investigation.

- (b) The police accountability has to be made stricter and there must be proper action for any lapse.
- (c) Rule book may contain the following guidelines/directions:
 - (i) The SHO of a police station is bound to register FIR promptly in case of receipt of an information regarding a cognizable offence.
 - (ii) In case the SHO of a police station comes to know about the commission of a cognizable offence and no person comes forward to report about the same, the FIR should be registered against unknown on the basis of his self-statement.
 - (iii) As required by Section 172 of the Cr.P.C, every police officer making an investigation shall mandatorily, day by day enter his proceedings in investigation in the case diary. In the event there is no progress in investigation on a particular day because of any reason, the Investigating Officer will be required to



make an entry to this effect in the case diary immediately. Additionally, a special digital format for maintaining the case may be prepared. The entries in this will generate a date and time stamp and will, thus, ensure the mandated daily entries along with genuineness of the same.

- (iv) The Investigating Officer must ensure that no unauthorized person has any access to the case diaries and if someone manages to procure a copy through illegal means, proper legal measures should be taken after ascertaining those responsible for the same.
- (v) There must be strict compliance of Rule 176(a) of the Bihar Police Manual Volume-I which provides that “In each appropriate case, the Investigating Officer shall, as soon as possible, after arriving at the scene of occurrence, prepare a plan of it and shall attach it to the case diaries for the information of his superior officers. He may at his discretion prepare and send up a map or plan in any other case also. Detailed instructions in connection with preparing maps are given in Appendix 77. If the Investigating Officer cannot prepare a map of the PO any Amin or other



competent plan drawer may draw the map or plan”.

- (vi) A true and separate record must be maintained by the Investigating Officer of the examination of witnesses and the present practice of recording it directly in the case diary must be stopped with immediate effect. In strict compliance of Cr.P.C, the statements of witnesses recorded during the course of investigation under Section 161 must be inserted in the case diary.
- (vii) Recording of the statement of witnesses by audio-video electronic means must be adopted as the preferred mode and only where the same is not possible, the Investigating Officer may, after recording the specific reasons, record it on paper.
- (viii) The Investigating Officer must strictly follow the procedure laid down under Section 41-A Cr.P.C. and the guidelines issued by the Supreme Court in ***Arnesh Kumar v. State of Bihar***, reported in **(2014) 8 SCC 273**. Furthermore, the State of Bihar may comply with the direction of the Supreme Court to look into the guidelines for arrest, keeping in view section 41-A of Cr.P.C, akin to those which have been issued by the Delhi Police.



- (ix) The practice of completely basing entire investigation on the uncorroborated confessional statement of the accused must be avoided at all costs.
- (x) The confessional statement should not be made a part of the FIR under any circumstance. In cases where the police receive information of crime and thereafter the accused confesses to police in the same sequence, the confessional statement should not be made part of the FIR but rather of investigation and, steps must be taken to get a judicial confession recorded u/s 164 Cr.P.C.
- (xi) All efforts should be made by the Investigating Officer to submit the charge sheet before the court along with relevant reports/certificates like injury report, post-mortem report, prosecution sanction order, certificate for electronic evidence, Forensic Science Report, etc.
- (xii) In case, for any justifiable reason, the relevant reports are not procured while filing the charge sheet, it shall be incumbent upon the Investigating Officer to procure the same before the framing of charge so that a copy of the relevant report may be supplied to the



accused facing trial in defence.

- (xiii) In case, the Investigating Officer deliberately fails to submit the relevant reports/expert's opinion at the time of filing charge sheet or subsequent thereto at an appropriate state, adverse entries may be made in the service book of the concerned Investigating Officer.
- (d) Inordinate delay in visiting the crime scene should be avoided and reconstruction of crime scene should be done immediately after registration of the FIR.
- (e) Intensive and practical training should be regularly imparted to the police personnel in respect of procedures and law.
- (f) An urgent and effective step should be taken for separating law and order unit and investigation units in Mahila Police Station and SC/ST Police Station as separating other duties of the police from investigation will reduce the burden of tasks on a limited number of police officers.
- (g) The State may consider appointment of a legal officer to assist the police during investigation as the assistance of a legal officer would immensely benefit the police officer to know the intricacies of law in evidence.
- (h) The Investigating Officers should be sensitized about their



role especially in producing witnesses during trial.

- (i) The Investigating Officer should mandatorily prepare sketch map of the place of occurrence in heinous crime cases.
- (j) An arrangement should be made so that FSL experts may inspect the place of occurrence in heinous crime cases and submit their place of occurrence report, which would include sketch map pointing the location of important places and exhibits like fire arm, cartridge, bullet, bullet's mark, seminal/blood stains, saliva, etc.
- (k) An endeavor should be made to streamline the process of recording the scene of crime and collection and package of exhibits.
- (l) The Investigating Officer should also be imparted training on various topics related to proper lifting and packaging of exhibits from the place of occurrence as well as on various aspects of rerecording scene of crime through photography/videography and, thereafter, preparation of sketch map.
- (m) In addition to the above, an exclusive workshop for field officers for crime scene photography and videography should be organized on regular interval.



104. With the aforesaid observations, suggestions and directions, the writ petition is disposed of.

105. Registry is directed to transmit a copy of the order to the Chief Secretary, State of Bihar, the Director General of Police, Bihar, Patna, the Director, Bihar Police Academy, Rajgir, Bihar and the Director, Prosecution, Bihar for the needful.

(Ashwani Kumar Singh, J)

(Shailendra Singh, J)

Pradeep/-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	
Transmission Date	

