

Final Report & its Disposal

(Section 173 (2) CrPC/ Section 193 (3) BNSS)

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1. **Meaning of "charge-sheet" & "final report" u/s 173(2) CrPC/ u/s 193 (3) BNSS :** Neither charge-sheet nor final report has been defined in the CrPC. Charge-sheet or final report, whatever may be the nomenclature only means a report u/s 173 CrPC which has to be filed by the police on completion of investigation. See : Srinivas Gundluri Vs. SEPCO Electric Power Corporation, (2010) 8 SCC 206.
2. **Cognizance offence and commitment of case to Sessions by Magistrate on receiving final report from police u/s 173(2) CrPC/ u/s 193 (3) BNSS:** In the case noted below, a police report was submitted by the police, under Section 173(2) of the Code sending up one accused for trial, while including the names of the other accused in column 2 of the report. Magistrate did not straight away proceed to commit the case to the Court of Session but, on an objection taken on behalf of the complainant, treated as a protest petition, issued summons to those accused who had been named in column 2 of the charge-sheet, without holding any further inquiry, as contemplated under Sections 190, 200 or even 202 of the Code, but proceeded to issue summons on the basis of the police report only. The learned Magistrate did not accept the Final Report filed by the Investigating Officer against the accused, whose names were included in column 2, as he was convinced that a prima facie case to go to trial had been made out against them as well, and issued summons to them to stand trial with the other accused, Nafe Singh. Magistrate has a role to play while committing the case to the court of sessions upon taking cognizance on the police report submitted before him u/s 173(2) CrPC. In the event the Magistrate disagrees with the police report he has two choices. He may act on the basis of a Protest Petition that may be filed or he may while disagreeing with the police report issue process and summon the accused but he would have to proceed on the basis of the police report itself and either enquire into the matter or commit it to the court of session if the same was found to be triable by the sessions court if he was satisfied that a prima

facie case had been made out to go to trial despite the final report submitted by the police. In such an event, if the Magistrate decides to proceed against the persons accused, he would have to proceed on the basis of the police report itself and either inquire into the matter or commit it to the Court of Session if the same was found to be triable by the Session Court. See: Dharam Pal Vs. State of Haryana, AIR 2013 SC 3018 (Five-Judge Bench) (Paras 21, 24, 25)

3. **Magistrate has ample power to disagree with the police report received u/s 173(2) CrPC and take cognizance of offences against non-charge sheeted accused as well:** Magistrate has ample powers to disagree with the Final Report that may be filed by the police authorities under Section 173(2) CrPC and to proceed against the accused persons de hors the police report, which power the Session Court does not have till the Section 319 stage is reached. See: Dharam Pal Vs. State of Haryana, AIR 2013 SC 3018 (Five-Judge Bench) (Para 23)
4. **Duty of Magistrate when cognizance on police report received under 173(2) CrPC already taken but on further investigation u/s 173(8) CrPC police submits final report :** Supplementary police report received from police u/s 173(8) CrPC shall be dealt with by the court as part of the primary police report received u/s 173(2) CrPC. Both these report have to be read conjointly and it is the cumulative effect of the reports and the documents annexed thereto to which the court would be expected to apply his mind to determine whether there exists grounds to presume that the accused has committed the offence and accordingly exercise its powers u/s 227 or 228 CrPC. See : Vinay Tyagi Vs. Irshad Ali, (2013) 5 SCC 762.
Note : *The ruling in Vinay Tyagi case elaborately deals with the power of court regarding (i) further investigation (ii) reinvestigation (iii) supplementary police report received u/s 173(8) CrPC (iv) power of court to take second time cognizance of the offences on receipt of supplementary police report u/s 173(8) CrPC (v) mode of dealing with final report and supplementary police report received u/s 173(8) CrPC disclosing commission of offences.*
5. **Issuing notice to informant by Magistrate on receipt of final report must:** On receiving final report from investigating officer, it is mandatory duty of Magistrate to issue notice to the informant (or the injured person or the victim of the offence) to make his submissions against the final report. See :
 - (i) Bhagwant Singh Vs. Commissioner of Police, AIR 1985 SC 1285 (Three-Judge Bench)
 - (ii) Sanjay Bansal Vs. Jawajarla Vats, AIR 2008 SC 207

6. **Final report & powers of Magistrate thereon** : The Magistrate has following four options on receipt of a final report from investigating officer:
- (i) to accept the formal form
 - (ii) in the event a protest petition is filed, to treat the same as a complaint petition and if a prima facie case is made out, to issue process to the accused
 - (iii) to take cognizance of the offences against a person, although a final form has been filed by the police, in the event he comes to the opinion that sufficient materials exist in the case diary itself therefor
 - (iv) to direct re-investigation into the matter. See:
 - (i) Popular Muthiah Vs. State, (2006) 7 SCC 296 (*para 54*)
 - (ii) Minu Kumari Vs. State of Bihar (2006) 4 SCC 359
 - (iii) Abhinandan Jha Vs. Dinesh Mishra, AIR 1968 SC 117
 - (iv) Pakhando Vs. State of UP, 2001 (43) ACC 1096 (All) (DB)
7. **Final report & powers of Magistrate thereon** : On completion of investigation and after receiving a final report from investigating officer u/s 173(2) CrPC, the Magistrate is bound to issue notice to the informant of the FIR and may also issue notice to the injured person or relative of the deceased/victim of the offence to make his submissions on the final report. The Magistrate has following three powers on receipt of the final report
- (i) he may accept the final report and drop the proceedings or
 - (ii) he may disagree with the final report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offences and issue process to the accused or
 - (iii) he may direct further investigation to be made by the police u/s 156(3) CrPC. See : **Bhagwant Singh Vs. Commissioner of Police, AIR 1985 SC 1285 (Three-Judge Bench)** (*para 4 & 5*)
8. **Affidavits of witnesses accompanying protest petition against final report not to be considered by the Magistrate** : Protest petition with accompanying affidavits of complainant and his witnesses filed against the final report received from the investigating officer cannot be considered by the Magistrate for taking cognizance of the offences. Procedure of complaint case has been provided under Chapter XV of the CrPC. No statement of complainant and his witnesses who had filed their affidavits was recorded by Magistrate u/s 200 & 202 CrPC. Magistrate should have either passed the order on the protest petition on the basis of the material

in the case diary or should have treated the protest petition as complaint but he could not have taken cognizance of offence on the basis of affidavits. Magistrate has thus considered extraneous material i.e. the protest petition and the affidavits while taking cognizance and, therefore, his cognizance taking order was declared illegal. See :

- (i) Dinesh Kumar Soni Vs. State of UP, 2010 (5) ALJ 719 (All)
- (ii) Ramakant Vs. State of UP, 2010 (5) ALJ (NOC) 611 (All)
- (iii) Pakhandi Vs. State of UP, 2001 (43) ACC 1096 (All--DB)
- (iv) 2009 (1) JIC 956 (All)
- (v) 2007 (3) JIC 485 (All)

9. **30.2. Cognizance by Magistrate on receiving final report/police report u/s 173(2) CrPC :** The Magistrate has a role to play while committing the case to the court of sessions upon taking cognizance on the police report submitted before him u/s 173(2) CrPC. In the event the Magistrate disagrees with the police report he has two choices. He may act on the basis of a Protest Petition that may be filed or he may while disagreeing with the police report issue process and summon the accused but he would have to proceed on the basis of the police report itself and either enquire into the matter or commit it to the court of session if the same was found to be triable by the sessions court. Dharam Pal Vs. State of Haryana, AIR 2013 SC 3018 (Five-Judge Bench).

10. **Duty of Magistrate when cognizance on police report received under 173(2) CrPC already taken but on further investigation u/s 173(8) CrPC police submits final report :** Supplementary police report received from police u/s 173(8) CrPC shall be dealt with by the court as part of the primary police report received u/s 173(2) CrPC. Both these report have to be read conjointly and it is the cumulative effect of the reports and the documents annexed thereto to which the court would be expected to apply his mind to determine whether there is exists grounds to presume that the accused has committed the offence and accordingly exercise its powers u/s 227 or 228 CrPC. See : Vinay Tyagi Vs. Irshad Ali, (2013) 5 SCC 762.
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11. **Cognizance by Magistrate u/s 190 CrPC in a sessions trial case can be taken only once :** In this case, police had not charge-sheeted one of the

several accused persons for offences u/s 304-B, 498-A IPC and had sent to the court final report in his case. Informant moved application u/s 190 CrPC to the Magistrate to take cognizance of offences against the non-charged accused person as well who was though named in FIR but not charge-sheeted by police. Magistrate rejected the application and refused to summon the accused and committed the case of the charge-sheeted accused persons to sessions. Sessions court took cognizance of offences against the non-charge-sheeted accused also u/s 193 CrPC. The Supreme Court held that cognizance by Magistrate u/s 190 CrPC in a sessions trial case can be taken only once. After commitment of the case u/s 209 CrPC to the sessions, the sessions court can take cognizance of further offences in exercise of its powers u/s 193 CrPC. See: Balveer Singh Vs. State of Rajasthan, (2016) 6 SCC 680.

12. **Magistrate when to reject the final report received u/s 173(2) CrPC ?**
: If the police report received u/s 173(2) CrPC says that no case is made out, Magistrate is still free, nay, bound, if the case according to him is made out to reject the report and take cognizance. It is also open to him to order further investigation u/s 173(8) CrPC. Court is not bound by the report submitted by police u/s 173(2) CrPC. It is not the innocence but the involvement of the accused in the commission of the offence that is material at this stage. However, once legal requirements to constitute the alleged offence qua the accused or one of them are lacking, there is no point in taking cognizance and proceeding further as against him. See : Sanjaysinh Ramrao Chavan Vs. Dattatray Gulabrao Phalke & Others, (2015) 3 SCC 123.
13. **Revisional court not to interfere with the summoning order passed by Magistrate by rejecting final report unless the same is perverse or based on no material** : Where the Magistrate while rejecting the final report submitted by the Investigating Officer had taken cognizance u/s 190(1)(b) of the CrPC of the offences u/s 302/34 & 201/34 IPC against the accused Dr. Rajesh Talwar and Dr. Nupur Talwar for committing murders of Arushi & Hem Raj and for tampering with the proofs and on revision being filed by the accused persons named above before the Hon'ble Allahabad High Court, the Hon'ble Revisional Court had interfered with the cognizance taking order passed by the Magistrate, it has been held by the Hon'ble Supreme Court that "Order whereby cognizance of offence has been taken by the Magistrate should not be interfered with unless it is perverse or based on no material. Superior Court should exercise utmost restraint and caution before interfering with an order of taking cognizance by the Magistrate, otherwise the holding of a trial will be stalled. The superior courts should maintain this restraint to uphold the rule of law and

sustain the faith of the common man in the administration of justice. See: Dr. Mrs. Nupur Talwar Vs. CBI Delhi & another, AIR 2012 SC 847.

14. **Meaning of "charge-sheet" & "final report" u/s 173(2) CrPC :** Neither charge-sheet nor final report has been defined in the CrPC. Charge-sheet or final report, whatever may be the nomenclature, only means a report u/s 173 CrPC which has to be filed by the police on completion of investigation. See : Srinivas Gundluri Vs. SEPCO Electric Power Corporation, (2010) 8 SCC 206
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 - (iii) Abhinandan Jha Vs. Dinesh Mishra, AIR 1968 SC 117
 - (iv) Pakhandi Vs. State of UP, 2001 (43) ACC 1096 (All--DB)
 - (v) 2013 CrLJ 2977 (SC)
 - (vi) Bhagwant Singh Vs. Commissioner of Police, AIR 1985 SC 1285 (Three-Judge Bench)
17. **Final report & powers of Magistrate :** On completion of investigation and after receiving a final report from investigating officer u/s 173(2) CrPC, the Magistrate is bound to issue notice to the informant of the FIR

and may also issue notice to the injured person or relative of the deceased/victim of the offence to make his submissions on the final report. The Magistrate has following three powers on receipt of the final report :

- (i) he may accept the final report and drop the proceedings or
- (ii) he may disagree with the final report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offences and issue process to the accused or
- (iii) he may direct further investigation to be made by the police u/s 156(3) CrPC. See : Bhagwant Singh Vs. Commissioner of Police, AIR 1985 SC 1285 (Three-Judge Bench) (*Para 4 & 5*).

18. Magistrate can take cognizance on protest petition/complaint even after acceptance of final report : Magistrate can take cognizance on protest petition/complaint even after acceptance of final report. See : Rakesh Vs. State of UP, AIR 2014 SC 3509.

19. Affidavits of witnesses accompanying protest petition against final report not to be considered by the Magistrate: Protest petition with accompanying affidavits of complainant and his witnesses filed against the final report received from the investigating officer cannot be considered by the Magistrate for taking cognizance of the offences. Procedure of complaint case has been provided under Chapter XV of the CrPC. No statement of complainant and his witnesses who had filed their affidavits was recorded by Magistrate u/s 200 & 202 CrPC. Magistrate should have either passed the order on the protest petition on the basis of the material in the case diary or should have treated the protest petition as complaint but he could not have taken cognizance of offence on the basis of affidavits. Magistrate has thus considered extraneous material i.e. the protest petition and the affidavits while taking cognizance and, therefore, his cognizance taking order was declared illegal. See :

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- (vi) Dharam Pal Vs State of Haryana, AIR 2013 SC 3018(Five-Judge Bench) (*Paras 24 & 25*)
