

Code of Criminal Procedure, 1898

Section 173 - Report of police officer: Notes Where the information discloses a cognizable as well as a non-cognizable offence the

1965)2 Cr LJ 250. Where in a cognizable case under Section 289, Penal Code the accused was not supplied copies of record under Section 173, it is only fair for the Magistrate to have at least allowed the accused to go through the statements made to the police when objection was taken at the close of the trial. 1960 Cr LJ 335 : AIR 1960 Cal 158. The Magistrate may accept or may not accept the report from the police under Section 173 recommending the dropping of the proceedings. 1960 Cr LJ 1226: AIR 1960 Mys 237. In view of the directory nature of the provisions of Section 173 (4) the prosecution may prove additional documents in the usual way even after the commencement of the trial, provided the accused gets a full opportunity to cross-examine the prosecution witnesses in the light of their documents. ILR 1959 Cut 485: 1960 Cr LJ 1231: AIR 1960 Ori 150. A Magistrate empowered to take cognizance of any offence is competent to take cognizance even of offences exclusively triable by a Special Judge under Section 7(1) of Criminal Law Amendment Act, 1952. 61 Bom LR 591:1959 Cr LJ 1153: AIR 1959 Bom 437. Prosecution is not precluded to produce a man as witness on its behalf whose name has not been included in the report or whose statement has not been furnished. 63 Cal WN 454: 1959 CrLJ 318: AIR 1959 Cal 176. The accused is entitled to be supplied copies of the statements of the prosecution witnesses taken by the police in the course of investigation of the non-cognizable offence under Section 22, Cattle Trespass Act. 62 Bom LR 407: 1960 Cr LJ 1421: AIR 1980 Bom 476. An order under Section 173 issuing 'A summary' is not an administrative order but a judicial order. 1959 Cr LJ 1153: ILR 1959 Bom 1088 : AIR 1959 Bom 437. Where no statements are recorded either under Section 161(3) or Section 164 then no right under sub-section (4) of Section 173 accrues to the accused. 1960 CrLJ 791: AIR 1960 Andh Pra 329. List of witnesses given by the police in the charge-sheet does not disable the prosecution from examining any other witness. 1960 Cr LJ 791 : AIR 1960 Andh Pra 329. It is only after a careful consideration of the material placed by a police officer in his report that he will be justified in calling for a charge-sheet. 61 Bom LR 1956: 1960 Cr LJ 800: AIR 1960 Bom 240. The information given to a Magistrate under Section 153 (2) is as much a report as a report under Section 173, Cr. P.C.) and he can take cognizance on such a report under Section 190 (1) (b). 1959 Cr LJ 1112 : 1959 Raj LW 138 : AIR 1959 Raj 191. Rule 203 of the Bombay Police Manual, Vol. III deals with the submission of final reports to be submitted by the Police Station Officer under Section 173, Cr. P. Code. 61 Bom LR 591 : 1959 Cr LJ 1153 : AIR 1959 Bom 437. The commitment order without recording an evidence is not illegal, unless it appears from it that the Magistrate had not perused the documents referred to in Section 173, Cr. P. C., and like a post office forwarded the case to Sessions for trial. 1960 CrLj 447 :1960 All LJ 838: AIR 1960 All 236. The non-compliance of the provisions of Section 173 (4) Cr. P. Code cannot vitiate the proceedings or completely shut out the reports in question. 1959 Cr LJ 448 : AIR 1959 Him It is not correct to say that the effect of a breach of the duty cast upon the police officer under Section 173(4) is to debar the prosecution for ever from examining any person, a copy of whose police statement has not been supplied to the defence. 61 Bom LR 118: 1959 Cr LJ 959 : AIR 1959 Bom 314. Where the police did not include A's name as accused in final report under Section 173 but mentioned his name under heading "not sent up "the question of discharge of A. would not arise when he was not sent up upon charge-sheet submitted by police. AIR 1967 SC 1167: 1967 Cr LJ 1081. For power of Magistrate to call for charge sheet when the police have submitted final report.-See note in Section 109. AIR 1968 SC 117. [(1) Every investigation under this Chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer-in-charge of the police station shall- (a) forward to a Magistrate empowered to take cognizance of the offence on a police report, a report, in the form prescribed by the State Government, setting forth the names of the parties, the nature of the information and the names of the person who appear to be acquainted with the circumstances of the case; and stating whether the accused (if arrested) has been forwarded in custody or has been released on his bond, and, if so, whether with or without sureties, and (b) communicate, in such manner as may be prescribed by the State

Government, the action taken by him to the person if any by whom the information relating to the commission of the offence was first given.] (2) Where a superior officer of police has been appointed under Section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer-in-charge of the police station to make further investigation. (3) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit. [(4) After forwarding a report under this section, the officer-in-charge of the police station shall, before the commencement of the inquiry or trial, furnish or cause to be furnished to the accused, free of cost, a copy of the report forwarded under sub-section (1) and of the first information report recorded under Section 154 and of all other documents or relevant extracts thereof, on which the prosecution proposes to rely, including the statements and confessions, if any, recorded under Section 164 and the statements recorded under sub-section (3) of Section 161 of all the persons whom the prosecution proposes to examine as its witnesses. (5) Notwithstanding anything contained in sub-section (4), if the police officer is of opinion that any part of any statement recorded under subsection (3) of Section 161 is not relevant to the subject-matter of the inquiry or trial or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interests, he shall exclude such part from the copy of the statement furnished to the accused and in such a case, he shall make a report to the Magistrate stating his reasons for excluding such part: Provided that at the commencement of the inquiry or trial, the Magistrate shall, after perusing the part so excluded and considering the report of the police officer, pass such orders as he thinks fit and if he so directs, a copy of the part so excluded or such portion thereof, as he thinks proper, shall be furnished to the accused.]