

The Relevance of Police Custody of an Accused Person

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Under Chapter XII of the Code of Criminal Procedure the police have the power, in fact the duty, to record information about the alleged commission of a cognisable offence and thereafter to investigate the offence, arrest the accused and produce accused persons before a competent court so that the court can take cognisance and bring the accused to trial. Under Chapter V Cr.P.C. the power to arrest and the procedure after arrest is laid down in considerable detail. Under section 41 B when making an arrest a police officer is required to prepare a memorandum of arrest attested by at least one respectable witness and countersigned by the person arrested. Under section 41D Cr.P.C an arrested person has the right to meet an advocate of his choice, under section 54 he is required to be examined by an authorised medical officer, with the record of examination containing any injuries or marks of violence on the body of the arrested person, under section 55A the arresting officer is required to take reasonable care of the health and safety of the accused, under section 57 the arrested person must be produced before a Magistrate without delay and in any case not more twenty-four hours after arrest, in bailable offences the police may grant bail and under section 58, to further protect the interests of the accused, the officer incharge of a police station must report every arrest without a warrant to the District Magistrate or, if the D.M. so directs, to the Sub Divisional Magistrate having jurisdiction. A very special responsibility for the safety of the arrested person vests in the arresting officer and the officer incharge of a police station. Under section 174 every case of suspicious death shall be brought under inquest by a competent Executive Magistrate and in addition where a person dies in custody of the police, then further enquiry will be made by a Judicial Magistrate. Further, under section 436 Cr.P.C a person arrested for bailable offence shall be enlarged on bail by the police or a Magistrate and under section 437 a Magistrate may give bail to a person arrested for a nonbailable offence. In other words, the right to bail is normal, custody should be an exception.

This brings us to section 167 Cr.P.C. when the police, being unable to complete the investigation within twenty-four hours of the arrest of a person, may seek the orders of a competent Magistrate for detention of the accused in custody. Instead of giving bail the Magistrate may direct the detention of an accused person in police custody or in judicial custody as he deems fit. This custody will not normally exceed 15 days in the whole, provided that the Magistrate may authorise detention beyond this period but not for a period exceeding ninety days when the investigation relates to an offence carrying a sentence of not less than ten years imprisonment and sixty days in every other case. To take care of the interests of the accused police remand may not be given unless the accused is produced in person before the Magistrate. This is to ensure that the Magistrate is convinced that the accused has not been subjected to undue harassment or torture during detention.

The question arises about what purpose police custody of an accused serves. Under section 161 Cr.P.C the police is entitled to examine witnesses who may have knowledge about the offence or may be otherwise able to help the police. The police officer may reduce into writing any statement of a witness or he may record such statement by audio video electronic means. However, under section 162 Cr.P.C. statements made to the police may not be signed by the witness and, therefore, cannot be entered into evidence. The only purpose for which such a statement may be used is to contradict a witness as per section 145 of the Indian Evidence Act. Though such contradiction will not render the witness liable for action for perjury, the court may draw an inference at its discretion about the veracity of the sworn statement made by the witness during trial. Similarly under section 164 Cr.P.C. no police officer may record a confession, nor can any confession be recorded by a

Magistrate until he is convinced that the confession is being made voluntarily. Therefore, any statement made by an accused person to the police has no evidentiary value at all. Under section 24 Indian Evidence Act a confession caused by inducement, threat or promise is irrelevant and inadmissible. Under sections 25 and 26 of the Indian Evidence Act a confession to a police officer may not be proved in court, nor may a confession by an accused while in police custody be proved against him. It is only under section 27 of the Indian Evidence Act that information obtained from an accused person may be proved. The exact wordings of the section are reproduced below:

“How much of information received from accused may be proved: - Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”

It is for the purpose of section 27 that the police actually obtains custody of an accused. During police custody the accused is brought under interrogation. By and large the method of interrogation is rarely scientific or gentle. In fact it comes broadly within the definition of torture and the purpose is to extort information on the basis of which the police can try and collect evidence which can prove the crime. Because it is only that much part of a statement made by the accused in custody which leads to discovery of a fact or the physical material connected with the crime, such as a weapon, which is relevant that the police tries to pressurise an accused to give such information so that they can make recoveries based thereon. Quite often even such recoveries are faked. Therefore, the relevance of police custody is substantially reduced because ultimately the intention is to force from the accused some information on the basis of which he can be firmly implicated in the crime and his associates can be arrested. One reason for the dismal record of convictions is that instead of painstaking and scientific investigation of an offence the police tries to take short-cuts which can lead to information which, in turn, is relevant under section 27 of the Indian Evidence Act.

The reprehensible act of torture and its use in solving crimes is brought out by a classic case from Italy. In March 1978 an extremist communist militant organisation called The Red Brigade abducted Aldo Moro, former Prime Minister of Italy. The abduction lasted over for two months. The investigating officer made a request to General Carlo Alberto Dalla Chiesa, the head of the Italian National Police, the Carabinieri, to apply third degree methods to an arrested member of the Red Brigade because he would then be able to extract accurate information about Aldo Moro's whereabouts. General Chiesa gave a classical reply which should be the motto of every police force in the world. He said, “Italy can survive the loss of Aldo Moro, it would not survive the introduction of torture”. Information extorted by third degree is very often inaccurate because the accused, in order to escape torture, will willingly give replies as desired by the investigating officer. In a country whose Evidence Act in section 102 makes it mandatory for the burden of proof to lie on the person alleging a fact, which means that in a criminal prosecution the burden of proving guilt lies with the prosecution, in a country whose Constitution in Article 20 (3) provides that no person accused of an offence shall be compelled to be a witness against himself, the relevance of anything said in police custody is highly suspect and may not be used as proof against the accused. The question remains whether the provision of police custody should remain on the statute book at all.

In most civilised countries where there is rule of law the police do have the right to obtain a court order remanding an accused to police custody. At the same time there are very strict rules about how the accused will be treated during custody, there is a provision for audio video recording of interrogation, physical mishandling of the accused or application of pressure which might physically harm the accused is totally prohibited and

whereas an admission made by the accused in police custody is relevant and admissible, its evidentiary value will certainly be weighed by a court to determine whether it is made voluntarily or not. Perhaps confessions made to the police in India should continue to remain inadmissible, but surely section 162 Cr.P.C. can be amended so that witnesses are required to sign the statement made to the police. The trial court should have the discretion, in case of discrepancy between the statements to the police and the court to decide on the veracity of the two statements. The witness may be prosecuted for perjury if he is unable to explain the discrepancy. This would certainly make the task of the police easier while investigating an offence because witnesses would be deterred from giving false statements either before the police or before the court. The possibility of prosecution for perjury would be a deterrent to witnesses telling lies in court which negate the statement given to the police during investigation.

One has to be careful in India about the police and its lack of bias in investigating an offence, but let us at least give the police a fair chance so that instead of using extra legal means to control crime it adopts the forensic skills necessary to solve crimes. Unfortunately neither government, nor the National Police Commission, nor successive Law Commissions have analysed the real problem of investigation in India and least rationalised the laws so that science and interrogative skills become the main tools of investigation.
