

Loopholes in criminal investigations



PART from maintaining law and order by engaging themselves in prevention of crime and enforcement of laws in some petty offences, detection and investigation of crime, arrest of accused and collection of evidence are one of the major duties of the police force. In absence of separate investigating agency, the police who are rather busy in a plethora of issues investigate the criminal offences in a lackadaisical manner. Though separate judicial magistracy started its journey about seven years ago, delayed, defective and biased investigation of crimes is one of the major stumbling blocks that haunt our crippling criminal justice system.

Investigation stage

A police case which is also popularly known as General Register (GR) case is set in motion by filing a First Information Report (FIR) concerning commission of cognisable offence to the officer-in-charge of a police station (section 154 of Code of Criminal Procedure, CrPC). A police officer may investigate any cognisable offence without the order of the Magistrate (section 156 CrPC).

After recording the police case, officer-incharge may himself investigate the case or instructs a police officer and not the below rank of Sub Inspector to investigate the same. In practice, investigating officer inspects the place of occurrence, prepares the sketch map along with the index of the spot, records the statements of the witnesses who are supposed to be acquainted with the facts and circumstance of the occurrence (section 161Cr PC), seizes the seized articles (alamat) and thus prepares the seizure lists in presence of witnesses (Section 103). Then arrests or tries to apprehend the accused and suspects and forwards them to the nearest Magistrate within 24 (twenty four) hours of their arrest (article 33 of Constitution of Bangladesh), detains and interrogates them in his custody, prays for detention in his custody (remand) (section 167), produces the accused or victim before the Magistrate to have his confession/ statement recorded (section 164 of Code of Criminal Procedure 1898, section 22 of the

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and submits the police report (section 173). Police Regulations 1943, Code of Criminal Procedure 1989, or concerned special laws, Evidence Act 1872, Constitution and precedents are the authority and guidelines to which the investigating officers must adhere to.

Sometimes they conducts the inquest of the

deceased victim (section 174), sends the

deceased for autopsy, collects medical certifi-

cates & expert reports, maintains diary of

proceedings of investigation (section 172),

Defects in investigation

The Code of Criminal Procedure does not provide for any specific time limit within which investigation is to be completed. However, there is a statutory indication in section 167(1) that investigation is to be completed within 24 (twenty four) hours. Further, section 167(5) empowers the cognisance taking Magistrate or Judge to grant bail to the accused if investigation is not completed within 120 (one hundred and twenty) days.

Police Regulations also state that even most difficult criminal investigation should not take more than 15 (fifteen) days if the investigation goes at stretch (Regulation 261). Quite strangely, criminal investigating department or detective branches, rapid action battalion take longer period in completing their investigation than the regular police force take.

In practice investigating officers do not record the statements while examining the witnesses, but subsequently make a summary of what the witnesses said at the time of examination. They prepare the record of those statements at their 'free time'. As a result, many vital points are found to be missing in their recorded statements. The statements of witnesses thus recorded cannot be used by the prosecution, but can be used by the defence under section 162 to contradict a prosecution witness in the manner provided by section 145 of the Evidence Act 1872. Investigating officers has very little idea about the importance of statements made under section 161.

Sometimes sketch map and index of the place of occurrence are prepared without

clear specification. Also alamat are seized in the police station long after the occurrence which is produced by the informant. It is the duty of the police officer to seize alamat at the place of occurrence or hospital immediately after the occurrence. Delayed seizure at some other places other than the relevant place of occurrence surely invites doubt.

There is no need of recording the statement of informant during investigation. However, in many cases, investigating officers record the statement of informant who himself is the victim. There is also delay in collecting medical certificates and other expert reports.

Moreover, investigating officers sometimes do not send a case diary along with remand prayer. As a result, accused is sent to the jail custody pending hearing of the remand prayer for some other date. In this way accused becomes acquainted with hardened criminals in jail custody and makes deliberate attempt to dodge the investigating officer even he is in remand in a subsequent date. Keeping the accused for long in police

custody before being forwarded to the Magistrate for recording his confession under section 164 obviously destroys the veracity of such confession. Sometimes investigating officer submits final report on the plea of allibi of the accused. Informant and investigating officer being the same officer is also fatal to the prosecution case.

There is no pre-trial conference of the investigating officer and the public prosecutor, and most the investigating officers have no knowledge on law of evidence. Investigating officers also feel reluctant to give testimony during trial though Court issues all possible processes. Sometimes, during trial there is no trace of investigation officer who has been transferred to some other places.

The prime object of investigation is to detect the accused persons who have committed the offence. In this way investigating officer is to collect evidence to be used during trial. Therefore, a faulty investigation leads to miscarriage of justice when there is faulty evidence. It is worth mentioning that investigation is the basic substratum upon which trial of criminal cases is founded. I am of firm view that reforms in the criminal justice system should be initiated first at the investigation stage. In fine, I would like to reproduce observations of Hon'ble High Court Division as reported in 4 MLR 87 thus:

"We have come across many cases in which due to faulty investigation accused get benefit of reasonable doubt in spite of consistent and uniform evidence of prosecution witnesses about the occurrence. As a result, people of our country have been losing faith in the present system of administration of justice mainly due to the failure of the police to properly investigate the case and collect the evidence. It is high time that the system of the investigation of the criminal cases by the police alone should either be abandoned or completely reformed."



EMPLOYMENT BOND

Safeguard or coercion?

ASHIQUL A. KHAN and SK. LA-TAINUR RAHMAN

HE economy of Bangladesh is growing at an exponential pace, owing to the rise in export and inward remittance. Multinational companies are entering into the market with a view to establishing a strong presence in the country. Undoubtedly, experienced and skilled workforce is the key to meeting the objectives of the corporations. Being one of the most densely populated countries, the competition for securing employment is fierce. What jobseekers often fail to realise is that the business entities are struggling in the same way to find suitable candidates and moreover to retain employees who have the right skills and required experience.

Large corporations spend a significant portion of their budget on training their human resource personnel; employee retention is of immense importance to them. One of the common terms that jobseekers often hear, alongside employment contracts, is the term "employment bond". Usually employees may be required to sign an employment bond and the consequential experiences of the employees in this regard are often unpleasant. This may be the right time to delve into this issue and

analyse if employment bonds are being used as a tool for exploiting vulnerable jobseekers.

Employment bonds are essentially agreements between an employer and an employee. The general purpose of these agreements is usually tilted to the benefit of the employer. With many high demanding jobs in different sectors, a large number of employees are required to go through vigorous training in order to become fit for the desired positions. Employers expect trained employees to stay with the organisation for a certain period of time or else the investment bestowed upon them in the form of training will all go in vain. To ensure that companies

do not incur loss due to these necessary investments, employees are often required to sign a bond. With this employment bond in action, a certain clause is added and it is made mandatory for the employee to pay a fixed amount as penalty to the employer should she decide to quit before the end of the agreed minimum period of service.

In some cases, the company might look for a guarantor who would provide guarantee on behalf of the employee. In case of any breach of the employment bond, the guarantor will be equally liable and thus can also be made a party to any prospective suit. There are other types of employment bonds used quite frequently, where the employer explicitly prohibits the employee to join certain competitor companies after termination of the employment. Such measures are taken because when an employee joins a rival company, it might cause concept extortion and thus severe conflict of interest may arise. However, here we are going to concentrate on the previous type.

Section 74 of the Contract Act 1872 deals with compensation for breach of contract where a penalty is stipulated. Employment bonds mostly contain such a penalty clause where the amount

the employer shall be entitled to recover from the employee is stipulated. Fortunately, there is a safeguard in favour of employees because the said provision allows the employer to obtain only as much amount as is reasonable and such amount shall not exceed the stipulated amount. Therefore, the employer cannot ask for an unscrupulous or outrageous amount. In determining the compensation amount the court computes the actual loss that has been suffered by the employer due to the reason that the employee left without serving the whole duration as specified in the employment bond. Even if a specific amount is mentioned in the employment bond, the employer shall only be able to recover an amount that can be proved to be the actual loss suffered.

Employment bonds often suffer from various other formal defects. Apart from the requirement that conditions of employment bond must be reasonable, such an agreement has to be entered into by the parties (both employer and employee) with free consent. Since employment bonds contain conditions stipulating penalty for the expenses incurred by the employer due to the non-performance of obligations by the employee

in the nature of indemnity bond, such bonds will not be enforceable unless executed on stamp paper of appropriate value and properly signed by both parties.

It can be rendered that the employment bond comes as an aid towards the employer. However, that does not mean that the employees have to adhere to any claim by the employer or endure every dilemma they are forced to face. To ensure that no undue trouble arises later on, one should be careful while signing an employment bond. It should be carefully assessed if the bond covers only training expenses incurred by the employer and if the

amount stipulated therein is reasonable. It should also be checked that if the employer actually spends the mentioned amount for the said purpose. The employee needs to make sure that the deduction is proportionate with the period of service provided. Another thing that should be kept in mind is that the bond is likely to come into action only in cases of voluntary resignation and not in scenarios of redundancy or forced termination by the employer.

Corporations should have recourse to modern management practices for retaining qualified employees but it is absolutely unacceptable when they resort to measures that amount to "bonded labour". Despite the absence of any comprehensive code for governing various aspects of employment contract as distinct from a labour code, the employees can safeguard their interests at least to some extent by being aware of the protections offered by the law of the land. Awareness of such measures will definitely equip the employee better to bargain a fair employment contract.

FIRM, LEGACY LEGAL CORPORATE.



THE WRITERS ARE LEGAL PRACTITIONER AT A LAW



To curb human trafficking

MUHAMMAD MAHDY HASSAN

ELIEF International (RI), Bangladesh has implementing two years long a project namely, "Protecting Victims of Human Trafficking in Bangladesh (PVHT)". As part of this project, RI has completed five capacity building training programs. These trainings brought together more than 175 officials of 35 NGOs from 30 districts in Bangladesh.

RI consulted the local government and law enforcement officials to identify the most proactive local organisations working actively to

curb human trafficking, and at the same time, also used newspaper advertisements to invite local organisations to nominate their members for participation in these trainings. The first training

organised on 21-22 April 2014 and the last, the 5th training, was organised on 21st May 2014 where Mr. Nazrul Islam, Country Director, Relief International, Bangladesh delivered his speech with some inspiring instruction to the participants. He said that, we like to work with small organisations because they really work for the

human trafficking issues focusing on adult male and connected as well to the existing support person; to build capacity of local NGOs and CBOs, to provide mini grants to generate awareness on the Human Trafficking Deterrence and

Suppression Act, 2012 through innovative use of Information, Education and Communication

(IEC). The program is supported by US State Department's Office to monitor and combat trafficking in persons. This training, it is hoped, will sharpen the skills of the existing social workers and civil society officials who are closest to the community members of the marginalised communities. Relief International trained the participants on means of identifying victims, especially the means of identifying male victims who do not know how to come forward to seek

> By these trainings, the participants understand the plight of the male victims is just as severe as those of the female victims. A training module has also been

Participants during the training

developed by Relief International, Bangladesh for this purpose. Ms. Rokeya Choudhury, Lecturer of Law, University of Dhaka is invited as trainer. Mr. Najmul Islam and Mr. Subrato Kumar Sorma, Senior Program Officer; and Ms. Sushmita Choudhury, Program Officer-Public Awareness and Campaign of Relief International, Bangladesh also facilitate the training sessions with their pragmatic knowledge. The expected goal of the training is to ensure that the most The objective of the training was to sensitise on vulnerable victims of trafficking will be rescued services and networks.



marginalised communities and they can reach to the potential victims of human trafficking in Bangladesh.

NABIL AHSAN IS BARRISTER-AT-LAW.

his station, it's a complete mayhem; vehicles from every direction competing with each other to go first resulting is a complete deadlock. Then why bother running these electrical signal lamps? The fact that there is a timer attached to it makes it an even greater mockery. It is rather interesting that the 11th Schedule of the Motor Vehicle Ordinance 1983 provides for a fine of Tk. 50 for disobeying traffic control light signal. One can write volumes in an academic journal to illustrate the idea of 'rule of law'; this simple picture

A foreigner not accustomed to the streets of Dhaka may interpret

this photo as signifying drivers not obeying traffic signal. I only

wish it was as simple as that. The fact is that the signaling system in

the streets of Dhaka has been rendered completely useless for

quite a while now. Even a few years back I remember traffic

sergeants stopping vehicles for not promptly stopping at a 'Red

Light'. These days, you might get yourself into an accident if you

are foolish enough to follow the signals at all. Always keep your

eyes at the arm of the traffic constable at an intersection. And after

10 P.M., when the all powerful constable is no longer standing in

nonetheless, is a visual representation of the concept of rule of law, or the lack of it in our streets. People are habitually being trained to disregard the law and psychologically, it only reinforces the message "its okay to not follow the law"!

From a traffic management perspective, it makes sense to have a functional automated signaling system. To make things flexible, smart signal systems may be installed which can be manually controlled depending on the flow of traffic. In many developed cities, traffic signals are centrally managed depending on the volume of traffic on a particular day. Also, strict compliance with traffic signals will make it safer for pedestrians to cross the street. The roads will be more predictable, there will be fewer accidents. I feel our traffic police should go back to controlling traffic by automated signals or if that is not possible then why not turn off these useless lamps and save electricity? It makes no sense to have police constables operate in constant discord with the letter of the law!