"General Exceptions" in IPC- *Investigation vs Trial*

– Abdul Khader Kunju S,
Asst. Public Prosecutor, Kerala

It is the wrongful act that constitutes offence, but every wrongful act need not be an offence. Only those acts, which are classified as offence will invite punishment. And, if at all the act, *per se*, is designated as offence, in certain conditions it will be justifiable. To put it differently, those acts, which are otherwise offences are not offences in certain situations. The 'general exceptions' containing in Indian Penal Code (IPC) is such a situation, and by its operation, the act or omission of a person, which would constitute an offence, would make that act no offence. The short, but interesting question posed in this essay is whether any duty is cast upon the investigating agencies to investigate also into the general exceptions that may exonerate the wrong doer from culpability. Or, where the investigator finds during investigation, that, any of the general exceptions are applicable to the act done, should he opt to prosecute the wrong doer compelling him to prove his defense in trial, else, can he report the Magistrate that the act done by the person is not an offence in view of the application of general exceptions. In any case, what is the ambit of section 105 of the Indian Evidence Act, 1872 (IEA). Though this topic is touched often by the top courts, the law on the investigation into the "General Exceptions" is not developed perfectly, and there are divergent opinions among the courts. Hence, my effort is to examine about the role of the investigator in a case under investigation, where "General Exceptions" have application.

In criminal justice delivery system, not only the impartial and fair trial, but the proper investigation into the commission of offence also has a very important role to play. The investigation into the offence must be done for the purpose of unearthing the truth.

Denoting the quality of investigation the Supreme Court said:

> ***36. "The quality of a nation's civilisation", it is said, "can be largely measured by the methods it uses in the enforcement of criminal law" and going by the manner in which the investigating agency acted in this case causes concern to us. In every civilised society the police force is invested with the powers of investigation of the crime to secure punishment for the criminal and it is in the interest of the society that the investigating agency must act honestly and fairly and not resort to fabricating false evidence or creating false clause only with a view to secure conviction because such acts shake the confidence of the common man not only in the investigating agency but in the ultimate analysis in the system of dispensation of criminal justice. Let no guilty man go unpunished but let the end not justify the means. The Courts must remain ever alive to this truism. Proper results must be obtained by***

recourse to proper means - otherwise it would be an invitation to anarchy.[1]

As said by the Apex Court, "***under the Code investigation consists generally of the following steps: (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places of seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under section 173."***[2]

The formation of opinion of the investigating officer to decide whether the accused must be put to trial has to be done considering the entire evidence collected by him, which include facts favorable to both the complainant and the accused.

Chapter IV (s. 76 to 106) of the Indian Penal Code, 1860 (IPC) deals with each and every situation, where the general exceptions have application. The situations include 'mistake of fact' to 'right of self defense'. The acts, which constitute offences, even if it causes injury to any person/s, if done in relation to general exceptions, such as mistake of fact (as mentioned in s. 76), acts of judge (as mentioned in s. 77), accident (as mentioned in s. 80), act of child (as mentioned in s. 82 and 83), self defense (as mentioned in s. 96 to 106) etc. are not offences. In short, none of the acts which are specified as offences throughout the IPC are offences if those acts are done on the ground of any of the exceptions. The example for an exception said by Lord Macaulay was as:- ***"So if Z embraces the Mahomedan religion, and consents to undergo the painful rite which is the initiation into that religion, those who perform the rite ought not to be punished for injuring Z's person."***[3] Since such acts are not offences, the investigating agency cannot prosecute the person who committed it.

Instead of repeating about the grip of Chapter IV on every other definition of offences, the lawmakers also enacted s. 6 of IPC. All the sections in IPC defining offences are to be read conjointly with s. 6. Section 6 says that ***"throughout this Code every definition of an offence, every penal provision, and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the Chapter entitled "General Exceptions", though those exceptions are not repeated in such definition, penal provision, or illustration."*** It can then be understood that for every act of offence, it is necessary that that act was done devoid of any ground for an exception. E.g.

1. Rampal Pithwa Rahidas vs. State of Maharashtra (1994 Cri LJ 2320)
2. H.N. Rishbud and vs. The State of Delhi: AIR1955SC196
3. The Works of Lord Macaulay- Note B 'On the Chapter of General Exceptions'

The allegation is that A caused hurt to B. To become the act of hurt an offence, it must be understood that A caused hurt to B not as a mistake of fact that he was bound to cause hurt, it must be understood that A did not act as a self defence, it must be understood that at the time he caused the hurt A was not suffering from unsoundness of mind, that A did not act in response to the consent given by B and so on.

Let's read some of the important judgments on this topic. In **Bapu @ Gajraj Singh vs. State of Rajasthan**[4]**,** the Supreme Court opined that ***"The onus of proving unsoundness of mind is on the accused. But where during the investigation previous history of insanity is revealed, it is the duty of an honest investigator to subject the accused to a medical examination and place that evidence before the Court and if this is not done, it creates a serious infirmity in the prosecution case and the benefit of doubt has to be given to the accused."*** Hence, in **Bapu's** case the Supreme Court made it clear that the non-investigation in to the mental condition of the accused, in appropriate cases, will cause doubt in the prosecution case. Another decision which talks about the scope of investigation into the general exception is **A.K. Chaudhary vs. The State of Gujarat**[5], in which the High Court of Gujrat opined that ***"the general exceptions provided under Chapter IV of the Code makes it clear that the intention of the legislature to keep such actions which are provided in the category of general exceptions, out of the sweep of various offences which are made as punishable under IPC"*** and the Court held that "***in considering that whether accusation made in the complaint makes out a case for commission of offence or not, the police while reaching to the prima facie satisfaction of suspecting the commission of cognizable offence, cannot ignore the general exception as provided under IPC as per Chapter IV of IPC.***"

The decision dedicated to this topic was delivered by the High Court of Kerala in **Shibu vs. State of Kerala**[6]. Speaking for the Division Bench, K. Hema, J observed that "***a reading of Section 6 IPC and its object makes it abundantly clear that a penal provision or a definition of every offence under IPC cannot be read detached from the "General Exceptions". But this is seldom done, despite the mandate under Section 6 of IPC. A reading of "General Exceptions" in Chapter IV of IPC read with Section 6 IPC makes it clear that "General Exceptions" are drafted in such a way so that it shall apply to every penal provision or definition an offence under IPC and illustration thereto"*** and it is so held that "***whenever an offence under IPC is allegedly committed by a person, the investigating officer must satisfy himself first that the act or acts allegedly committed by him constitute offence as per definition in IPC. He must also ascertain whether such act or acts constitute the particular offence, if the definition of such offence is read and understood, subject to "General Exceptions" contained in Chapter IV of IPC. Merely because certain act or acts***

4. (2007)8 SCC 66
5. MANU/GJ/0581/2005
6. 2013(4) KLT 323

*committed by accused constitute an offence as per definition under IPC, investigating officer shall not mechanically lay charge against any person for such offence, for the mere reason that those acts constitute offence as defined in IPC. He shall further confirm that an offence is made out against a person despite what is contained in the General Exceptions etc., because of the mandate in Section 6 IPC."*After having given very valid reasons in **Shibu's** case, it was held that "*provisions contained in Chapter IV IPC titled as "General Exceptions" do not merely provide any defence to an accused at the trial. Such provisions have great significance even at the investigating stage itself. An investigating officer will have power to file a final report against a person alleging commission of an offence under IPC, only if he finds on investigation that an offence is committed by such person."*

Another decision on this subject is **P. Pugalenthi vs. State of Tamil Nadu**[7] wherein the High Court of Madras speaking through S. Nagamuthu, J held that, "*it is crystal clear that the an offence either culpable homicide or murder as defined under Sections 299 and 300 of I.P.C. are also subject to the exceptions contained in Chapter IV titled "General Exceptions". Section 96 of I.P.C. declares that nothing is an offence which is done in the exercise of the right of private defence. Section 100 states as to when the right of private defence of body extends to causing of death. Thus, during the course of investigation, if the police officer finds that the act of the accused falls squarely within the ambit of Section 100 of I.P.C. then, he cannot file a positive final report to the effect that an offence either under Sections 302 or 304 I.P.C. has been committed."*

In **A.K. Chaudhary's** case(supra)also it was held as hereunder:

> *"..if the Police finds that the allegations made in the complaint on its face value, if taken, may not fall in the category of general exception, as provided under IPC, it may further investigate into the matter, and after the investigation, if the case is found to be not falling into general exceptions, the Police may further proceed for investigation by interrogation, etc. Therefore, there is no substance in the contention raised that while proceeding for investigation of a complaint in respect to cognizable offence, the general exceptions are not at all to be considered by the Police. If such a contention is accepted, it would result into treating all the actions as offence, though otherwise are out of the category of offence in view of the general exceptions provided under IPC and such would also result into nullifying the effect of provisions of IPC providing for general exceptions.*[8]

So when it is found in the investigation that there was exercise of right of private defence on the part of the accused, as the act done by him does not amount to an offence, he cannot be prosecuted.

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7. MANU/TN/0782/2016
8. A.K. Chaudhary and 2 Ors. vs. The State of Gujarat and 2 Ors. (GUJHC) : MANU/GJ/0581/2005

Dr. Arijit Pasayat, J, on this topic opined that ***"section 80 IPC is a part of Chapter IV IPC dealing with "General Exceptions". The "general exceptions" contained in Section 76 to 106 make an offence a non-offence. The "general exceptions" enacted by IPC are of universal application and for the sake of brevity of expression, instead of repeating in every section that the definition is to be taken subject to the exceptions, the Legislature by Section 6 IPC enacted that all the definitions must be regarded as subject to the general exceptions are part of definition of every offence contained in IPC, but the burden to prove their existence lies on the accused".***[9]

Now, let's examine the ambit of section 105 of IEA in such cases. Section 105 is as follows:

> **"Burden of proving that case of accused comes within exceptions.—***When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, (45 of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances."*

The Supreme Court, in many a case, explained the gamut of section 105 of IEA. In **K.M. Nanavati vs. State of Maharashtra**[10], it was observed thus: **"When an accused relies upon the General Exceptions in the Indian Penal Code or on any special exception or proviso contained in any other part of the Penal Code, or in any law defining an offence, s. 105 of the Evidence Act raises a presumption against the accused and also throws a burden on him to rebut the said presumption. Under that section the Court shall presume the absence of circumstances bringing the case within any of the exceptions, that is, the Court shall regard the non-existence of such circumstances as proved till they are disproved."**

On a plain reading of the section as well as the illustrations it makes us to feel that there is no escape from the clutches of the criminal liability unless the accused (who claims that his case comes within the exceptions), proves the existence of ground for "General Exceptions". The chance of proving such a case happens during the trial only, therefore, charge and trial would be the mandate. The law is very specific that the court shall presume the non-existence of availability of "General Exceptions". This is the context where, a Single Bench of the High Court of Kerala, without adverting to ***Shibu's*** case (supra) held that ***"the ingredients of Section 84 of the Indian Penal Code can only be taken as a defence during trial. It is not possible to throw out the Final Report in a case on the ground that the concerned accused was suffering from legal insanity. The legal insanity has to be proved by the concerned accused, who is harping upon***

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9. Shankar Narayan Bhadolkar vs. State of Maharashtra: 2004 Cri LJ 1778
10. AIR 1962 SC 605

such a defence."[11]

A close reading of s. 105 vouchsafe that the application of section 105 works in a different domain. The prime condition to give role to s. 105 is that there must be a person accused of an offence. And he must claim that his case comes under the exceptions, but in a case, where the investigation itself, or even the allegation itself clears that the person, who committed the wrongful act was protected by the "General Exceptions", he cannot be made an accused. So, in such a case, the scope of attracting section 105 is out of place. In ***Shibu's*** case (supra) the High Court of Kerala held that "***Section 105 of Evidence Act relates to burden of proof in a proceedings before Court and not elsewhere. Whatever is contained in Section 105 of Evidence Act relating to burden of proof is applicable only in a proceeding before Court and not before investigating officer or any other authority. Section 105 of Evidence Act is not applicable during investigation. The investigating officer is therefore, not competent to draw any presumption of sanity by virtue of Section 105 of Evidence Act. The accused is also not under any obligation to discharge any burden of proof before investigating officer that he was mentally unsound during investigation."***

In **P. Pugalenthi's** case (supra) The High Court of Madras also held in the above parlance that "f***or arriving at such a conclusion that the act of the assailants falls squarely within the ambit of Section 100 of the Code, during the course of investigation, the police officer is not concerned with Section 105 of the Evidence Act".***[12]

From all the above it is clear that the investigating officer, during investigation, if realizes that the accused was doing the offending act by resorting to or by availing of any of the benefits provided under "General Exceptions", he has a bounden duty to further investigate into that direction and report the Magistrate that the act done by the person is not an offence, because "***the duty of the Investigating Officers is not merely to bolster up a prosecution case with such evidence as may enable the Court to record a conviction but to bring out the real unvarnished truth.***"[13] The power of court to take cognizance of offence even in a case where the investigating officer opines that the act of the accused does not come under the purview of offence is not ignored here.

Abdul Khader Kunju S
Email : app.khader@gmail.com
Ph: 7702019269, 9495288513

11. Ashok Kumar R. vs. State of Kerala and Ors. (KERHC) : 2016 Cri LJ 4765
12. P. Pugalenthi vs. State of Tamil Nadu and Ors. (MADHC) MANU/TN/0782/2016
13 Jamuna Chaudhary and Ors. vs. State of Bihar : (1974) SCC (Cri) 250

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