



PRE-COGNIZANCE & POST COGNIZANCE STAGE

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Chapter XII (Sections 154 to 176 of Criminal Procedure Code.)
{Information To The Police And Their Powers To Investigate}

INTRODUCTION :

A statutory right is conferred on the police to make the investigation under this chapter before the inception of the prosecution case. There is restraint upon court to interfere with the power of the police.

Information In Cognizable Cases : (Sec. 154 of Cr.P.C.)

The main object of the first information report as enshrined under section 154 of the Cr.P.C. is to set the criminal law in motion . The investigation agency accelerates an action against the alleged criminal activity of the culprit on the score of the information received by it.

As soon as, the information is given to the police officer, he is to reduce to writing. The officer in-charge of police station has no choice but to register the case respecting the information disclosing a cognizable offence.

Upon failure of the police to record the complaint, an aggrieved person may move to the higher up of the police under section 154(3)

Police Officer's Powers To Investigate Cognizable Cases: (Section 156 of Cr.P.C.)

The section 156(1) interprets the power of police officer to investigate cognizable cases without the order of the Magistrate. The courts have no control in such cases over the investigation or over the action of the Police in such investigation.

Section 156(3) construes that the Magistrate is empowered under section 190 to order the investigation of the cognizable cases.

The powers of police under the aforesaid section to investigate the cognizable case is wide and unfettered. The condition precedent for such taking up investigation is that the police must have reason to suspect commission of a cognizable offence whether on information or otherwise and that can only be when FIR and other material disclose a cognizable offence.

If the police failed to swing an action against the culprit upon the report of the informant, the latter has an option to have recourse of section 156(3) of Cr.P.C.. (The Magistrate is clothed with the power under section 190 to direct the investigation of cognizable cases). The direction of Magistrate falls within the ambit of administrative domain to the police to inform them for exercising their power under section 156(3).

Once the police begins the investigation, an accumulation of evidence against the accused culminated into a report of charge-sheet under section 173 of Cr.P.C.

Information Respecting Non Cognizable Offence :(Section 155of Cr.P.C.)

The police officer is under obligation to follow the process under section 155(1) of the Cr.P.C. to proceed with the investigation in respect of non cognizable offences. An order of the Magistrate is a condition precedent to investigate a non cognizable case.

POST COGNIZANCE STAGES

Chapter XIII and XIV: (Section 177 to 203 of Cr.P.C.)

Jurisdiction of the Criminal Courts in Inquires And Trials :

The chapter XV relates to the complaint to Magistrates. If the complaint is made to the Magistrate for an action against the culprit under section 190(A) of the Cr.P.C., he requires to follow the procedure under section 200 of the Cr.P.C, He shall examine the complainant or witnesses so produced by him. Such examination shall however the not necessary where the complaint made by public servant in writing.

Deferment of issue process :

The very letter and spirit of Section 202 empowers any Magistrate to postpone the issue of process against the accused. The Magistrate may either probe into the case himself or direct the police or such any other person (say for example, Panchayat as enumerated under Section 183 of the Bombay Village Panchayat Act-1958) to furnish the report.

Where it appears to the Magistrate that the offence complained of is exclusively triable by the court of sessions, he can inquire into the allegation on production of witnesses.

Chandra Deo Singh Vs.Prakash Chandra Bose, AIR 1963 SC 1430., wherein the Hon'ble Apex court held that what the Magistrate has to see is whether there is evidence in support of the allegations of the complainant and not whether the evidence is sufficient to warrant conviction an inquiry under section 202 is not to be likened to a trial which can only take place after process is issued and there can be only one trial. Sec.202(1) itself the object of inquiry to ascertain the truth or falsehood of the complaint but the Magistrate making inquiry has to do this only with the reference to the intrinsic quality of statements made before him.

The report under U/sec.202 is meant to find out the falsehood or truth of the allegation in the complaint so as to aid the Magistrate. **(Reference: Devarapalli Laxminarayana Reddy. Vs. V.Narayana Reddi AIR 1976 SC 1672-Kisanlal Vs. Dharmendra Bafna AIR 2009 SC 2932.**

To proceed U/sec.202 is entirely a discretionary matter for the Magistrate if he thinks fit. He has power to direct reinvestigation by police into an offence with respect to which a final report has been submitted by the police.

A magistrate who receives a complaint disclosing an offence exclusively triable by the court of session, is not debarred by cl.(a) of the first proviso to S.202(1) of the Code of Criminal Procedure, 1973, from sending the same to the police for investigation under sec..156(3).

Broadly speaking, when on receiving a complaint, the magistrate applies his mind for the purposes of proceeding under section 200 and the succeeding sections in chapter XV of the Code of 1973 Magistrate is said to have taken cognizance of the offence within the meaning of section 190(1)(a) if, instead of proceeding under Chapter XV, he has, in the judicial exercise of his discretion, taken action of some other kind, such as issuingThe power to order police investigation a search warrant for the purpose of investigation, or ordering investigation by the police under section 156 (3), he cannot be said to have taken cognizance of any offence.

ISSUE PROCESS:- (Sec.204 of Cr.P.C.)- If the Magistrate taking cognizance of an offence is of the opinion that there is sufficient ground for proceeding, he may issue summons or warrant as the case may be, it may depending upon nature of the case. The Magistrate is under obligation to see whether there exist sufficient ground to proceed against the accused. On the basis of material collected under section 200 of Cr.P.C. The word sufficient grounds construes to mean satisfaction that prima-facie case

is made out against the accused and not sufficient ground for the purpose of conviction as observed in the case of **S.N.Palnitkar..Vs..State of Bihar AIR 2001 SC 2960.**

After examination of the witnesses, if the Magistrate is of the opinion that there finds sufficient material, he may issue process against the accused.

If there finds no material for proceeding against the accused, the Magistrate can dismiss the complaint under section 203 of Cr.P.C.

REFERENCE -

Criminal Procedure Code – Ratanlal and Dhirajlal 33 Edition.

All India Reporter (AIR) 1963 SC (Supreme Court 1430)

AIR 2009 SC 2932

AIR 2001 SC 2960

Bombay Village Panchayat Act 1958 (Bare Text)