

FACULTY OF JURIDICAL SCIENCES

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NAME OF FACULTY: Dr. Arun Verma

Lecture-20



CRIMINAL APPLICATION

What Is Criminal Complaint?

The code of criminal procedure defines the term complaint' as any allegation made orally or in writing to a Magistrate. It's done with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Cognizance By Magistrate Section 190:

Cognizance" in general meaning is said to be knowledge or notice', and taking cognizance of offences means taking notice, or becoming aware of the alleged commission of an offence. The dictionary meaning of the word cognizance is judicial hearing of a matter. The judicial officer will have to take cognizance of the offence before he could proceed with the conduct of the trial. Taking cognizance does not involve any kind of formal action but occurs as soon as a magistrate as such applies his mind to the suspected commission of an offence for the purpose of legal proceedings. So, taking cognizance is also said to be the application of judicial mind.

It includes the intention of starting a judicial proceeding with respect to an offence or taking steps to see whether there is a basis for starting the judicial proceeding. It is trite that before taking cognizance that court should satisfy that ingredients of the offence charged are there or not. A court can take cognizance only once after that it becomes functus officio.

If a magistrate involves his mind not for reason of proceeding as mentioned above, but for taking action of some other kind, example ordering investigation under Section 156(3) or issuing the search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of offence.

The term Cognizance of offence' has not been defined in the Criminal Procedure Code. Section 190, 191, 192, 193, 194, 195, 196, 197, 198, and 199 deals with methods by which and the limitations subject to which various criminal courts are established to take cognizance of

offences. However, the meaning of the term is well defined by the Courts. Taking cognizance is the first and foremost steps towards the trial. The judicial officer will have to take cognizance of the offence before he could proceed to conduct or trail.

In Section 190, Any Magistrate of the first class and the second class may take cognizance of any offence:

Upon receiving a complaint of facts related to offences. Upon police reports of facts. Upon information received from a person (other than a police officer), or upon his own knowledge. Section 200-203 talks about complaint to magistrate.

Examination Of Complaint Section 200:

A Magistrate with whom complaint filed, shall examine the complainant and also witnesses on oath. The contents in the complaint shall also examined and reduced in writing in a report. The report shall have signature of complainant, witnesses and also the Magistrate. Provided that, when the complaint made in writing, the Magistrate need not examine the complainant and the witnesses:

if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:

Provided further that if the Magistrate transfers the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

The procedure has been enunciated in Section 200 of Code of Criminal Procedure Act, 1973. For the purpose of explain the main points in a nutshell for practical use, I'll state them in bullet points:

The complaint has to be filed with the magistrate who has the jurisdiction to try the offence complained of. However, in cases where the complaint is accidentally filed with the magistrate not having the jurisdiction, the magistrate is duty bound to return the complaint to be presented to the appropriate magistrate by stating the necessary details thereof.

The complaint may be made orally or in writing. However, it is always better to furnish it in writing.

Unlike the filing of the FIR, where after the police straightaway proceed to investigate the offence complained of and arrest the suspects, in case of the complaint the magistrate will not proceed with it without examining the complainant and witnesses (note-only the witnesses who are present at the time of filing such complaint).

Thereafter the magistrate will make a written report of the examination and sign it himself as well as get it signed by the complainant and the witnesses.

Thereafter if the magistrate is satisfied that the complaint coupled with the examination discloses an offence, he shall proceed with taking cognizance of the offence (which simply means that he would summon the accused suspects for the purpose of trial)

However, if the magistrate is not satisfied that the complaint (and examination) discloses any offence, he may take one of the two options available to him: he may either dismiss the complaint or he may order the police to undertake some further investigation under Section 202 of the Code.

After the police officer reports back to the magistrate his findings the magistrate may proceed with either of the steps stated in point 5 and point 6 (minus the investigation order, of course, which has already been given).

Section 201 of CRPC Procedure by Magistrate not competent to take cognizance of the case:

If the complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall:

- if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect;
- if the complaint is not in writing, direct the complainant to the proper Court.

Section 202 of CRPC Postponement of issue of process:

Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made:

where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.

Section 203 of CRPC Dismissal of complaint

If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.

If the Magistrate does not satisfy that there is sufficient ground to issue process, then he shall dismiss the complaint under section 203 of the CrPC.

How to challenge the complaint:

When the Magistrate issued the process against the accused, he cannot take it back. The Code of Criminal Procedure does not provide the power of review so the Magistrate could not review its process or cancel the summon or warrant.

If the court has issued the process, then you cannot file any recall application under section 203 CrPC. In *Adalat Prasad v. Rooplal Jindal*, (2004) 7 SCC 338 the Supreme Court held that if the Magistrate did not dismiss the complaint and issued process, then the accused cannot approach the court under section 203 CrPC for dismissal of the complaint because the stage of section 203 has already over.

Hence, you cannot challenge the complaint under section 203 of the CrPC. The court does not hear the accused at the stage of section 203. The accused has no role at this stage (*Bholu Ram v. State of Punjab*, (2008) 9 SCC 140)

In the absence of the review power, you can challenge the complaint under section 482 CrPC. You may invoke the inherent power of the High Court under section 482 CrPC to do justice in your case (*Iris Computers Ltd. v. Askari Infotech (P) Ltd.*, (2015) 14 SCC 399).