

## **Cognizance & Summoning of Accused**

( Sec. 173, 190, 200, 202, 203 & 204, 207 CrPC)

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1. **'Cognizance' what is ?** : Taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate as such applies his mind to the suspected commission of an offence. Once the Magistrate applies his mind to the offence alleged and decides to initiate proceeding against the alleged offender, it can be stated that he has taken cognizance of the offence and cognizance is in regard to the offence and not the offender. Cognizance is mainly of the offence and not the offender. Cognizance would take place at a point when a Magistrate first takes Judicial notice of the offence either on a complaint or on a police report or upon information of a person other than the police officer taking judicial notice is nothing but perusing the report of the police officer, proceeding further on that report by opening the file and thereafter taking further steps to ensure the presence of the accused and all other consequential steps including at a letter stage and depending upon the nature of offence alleged to pass a necessary order of committal to a court of session. See : **Prasad Shrikant Purohit Vs. State of Maharashtra, (2015) 7 SCC 440.**
2. **After commitment of the complaint case to sessions, Magistrate has no power to issue summons to an accused u/s 204(1)(b) CrPC** : After commitment of the complaint case to sessions, Magistrate has no power to issue summons to an accused u/s 204(1)(b) CrPC. The sessions Judge of course would be at liberty to proceed against such person/accused u/s 319 CrPC if warranted by the facts. See....**Jile Singh Vs. State of UP & another, (2012) 3 SCC 383.**
- 3.1 **Meaning of "charge-sheet" & "final report" u/s 173(2) CrPC** : Neither charge-sheet nor final report has been defined in the CrPC. Charge-sheet or final report, whatever may be the nomenclature only means a report u/s 173 CrPC which has to be filed by the police on completion of investigation. See : **Srinivas Gundluri Vs. SEPCO Electric Power Corporation, (2010) 8 SCC 206**

- 3.2 Copy of statement u/s 164 CrPC or case diary to accused only after cognizance of offence is taken:** Right of an accused to claim copy of statement recorded u/s 164 CrPC and copy of case diary will arise only after cognizance of the offence is taken as contemplated u/s 207 and 208 CrPC. See: **A Vs State of UP, (2020) 10 SCC 505 (Three-Judge Bench)**
- 4. Duty of magistrate in passing summoning order in complaint cases :** In the case of **Pepsi Foods Ltd. Vs. Special Judicial Magistrate, (1998) 5 SCC 749**, the duty of Magistrate while passing summoning order in a complaint case has been clarified by the Hon'ble Supreme Court thus : "Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused." See: **Krishna Lal Chawla Vs State of UP, AIR 2021 SC 110**
- 5. Summoning order in complaint case need not be reasoned :** Section 204 does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. This section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued but it is nowhere mentioned in the section that the explicit narration of the same is mandatory, meaning thereby that it is not a pre requisite for deciding the validity of the summons issued. See... **Bhushan Kumar & Another Vs. State (NCT of Delhi) & Another, AIR 2012 SC 1747**.
- 6. Prosecution of a person on complaint a serious matter ...** In the case of **Harshendra Kumar D. Vs. Rebatilata Koley, 2011 CrLJ 1626 (SC)**, the Director of a company who had not issued the cheque and had resigned from the company much before the date of issue of the cheque but even then he was

prosecuted by the complainant for offences u/s 138 read with 141 of the Negotiable Instruments Act, 1881 by filing a complaint before the magistrate, quashing the criminal proceedings initiated against the Director/ accused, the Hon'ble Supreme Court has held that criminal prosecution is a serious matter. It affects the liberty of a person. No greater damage can be done to the reputation of a person than dragging him in a criminal case.

7. **Duty of magistrate in passing summoning order in complaint cases---**The law as laid down by the Supreme Court in the case of Pepsi Foods Ltd. Vs. Special Judicial Magistrate, (1998) 5 SCC 749 has also been laid down in the cases noted below.....

1- Everest Advertising Pvt. Ltd. Vs. State Government of NCT of Delhi, AIR 1992 SC 604.

2- Bhagirath Arya Vs. State of UP, 2008 (61) ACC 853 (All)

8. **Duty of Magistrate while issuing summons to accused u/s 204 CrPC :**

While issuing summons to accused u/s 204 CrPC, Magistrate has only to see whether allegations made in complaint or prima facie sufficient to proceed against the accused. Magistrate need not enquire into merits or demerits of case. See : Fiona Shrikhande Vs. State of Maharashtra, AIR 2014 SC 957.

9. **Summoning order passed by Magistrate in complaint case must reflect application of mind :** Summoning order passed by Magistrate in complaint case must reflect application of mind. See: M/S GHCL Employees Stock Option Trust Vs. M/S India Infoline Ltd., AIR 2013 SC 1433.

10. **Recording of reasons by Magistrate in summoning order u/s 204 CrPC mandatory otherwise order to be set aside :** Recording of reasons by Magistrate in summoning order u/s 204 CrPC is mandatory otherwise the summoning order would be set aside. See : Sunil Bharti Mittal Vs. CBI, AIR 2015 SC 923 (Three-Judge Bench).

11. **Recording of reasons by Magistrate in summoning order u/s 204 CrPC not required :** In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of enquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons. There is no legal requirement imposed on a Magistrate for passing detailed order while issuing summons. The process issued to accused cannot be quashed merely on the ground that the Magistrate had not passed a speaking order. Section 204 CrPC does not mandate the Magistrate to explicitly state the reasons for issuance of summons. See....

- (i). **Bhushan Kumar Vs. State NCT of Delhi, AIR 2012 SC 1747**
- (ii). **Nupur Talwar Vs. CBI, AIR 2012 SC 1921**
- (iii). **Dy. Chief Controller Vs. Roshanlal Agarwal, AIR 2003 SC 1900**
- (iv). **Kanti Bhadra Shah Vs. State of WB, AIR 2000 SC 522**

12. **Disclosure of reasons by Magistrate in summoning order passed in complaint case not required** : Where in a complaint case the Magistrate had taken cognizance of offences u/s 406, 420, 408, 409, 477-A, 120-B read with Section 34 of the IPC without discussing the reasons behind taking cognizance of the offences and passing of the summoning order, it has been held by the Hon'ble Allahabad High Court that it may be presumed that the Magistrate was satisfied that there was sufficient material for taking cognizance. Detailed discussion was not required. Once the Magistrate issues process, even without writing words "cognizance", it is presumed that he has taken cognizance. Writing of words "cognizance is taken" is not necessary. See : **Ms. Sonia Gobind Gidwani & Another Vs. State of UP & Others, 2013 (83) ACC 312. (All).**

13. **Truth of allegations in complaint not to be gone into at the stage of cognizance**: At the stage of taking cognizance of offences in a complaint case, it is impermissible to go into the truthfulness or otherwise of the allegations made in the complaint and one has to proceed on a footing that the allegations made are true. See.. **Gambhirsinh R.Dekare Vs. Fhalgunbhai Chimanbhai Patel, AIR 2013 SC 1590.**

*(In this case Editor of the news paper and the journalist both were held guilty in complaint case for publishing defamatory matter and provisions of Press and Registration of Books Act, 1867 were involved therein).*

14. **Duty of magistrate in passing summoning order in complaint case** : As regards the duty of a Magistrate while passing summoning order in a complaint case, the Hon'ble Supreme Court has ruled thus : "Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and

may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

See : **Pepsi Foods Ltd. Vs. Special Judicial Magistrate, (1998) 5 SCC 749**  
(para 10)

**15. Effect of irregularity in taking cognizance of offences punishable under Special Act as well as IPC :** In the case noted below, a Single Judge of the High Court of Karnataka dismissed two petitions instituted by the appellants for quashing the criminal proceedings initiated against them in Special CC No.599/2015 (arising out of Crime No.21/2014) for offences punishable under the provisions of Sections 409 and 420 read with Section 120B IPC, Sections 21 and 23 read with Sections 4(1) and 4(1)(A) of the Mines and Mineral (Development and Regulation) Act 1957 and Rule 165 read with Rule 144 of the Karnataka Forest Rules 1969. Upholding the cognizance taking order passed by the Special Judge by setting aside the order of the High Court, the Hon’ble Supreme Court ruled as under:

- (i) The Special Court does not have, in the absence of a specific provision to that effect, the power to take cognizance of an offence under the MMDR Act without the case being committed to it by the Magistrate under Section 209 CrPC. The order of the Special Judge dated 30 December 2015 taking cognizance is therefore irregular;
- (ii) The objective of Section 465 is to prevent the delay in the commencement and completion of trial. Section 465 CrPC is applicable to interlocutory orders such as an order taking cognizance and summons order as well. Therefore, even if the order taking cognizance is irregular, it would not vitiate the proceedings in view of Section 465 CrPC;
- (iii) The decision in **Gangula Ashok** (supra) was distinguished in **Rattiram** (supra) based on the stage of trial. This differentiation based on the stage of trial must be read with reference to Section 465(2) CrPC. Section 465(2) does not indicate that it only covers challenges to pre-trial orders after the conclusion of the trial. The cardinal principle that

guides Section 465(2) CrPC is that the challenge to an irregular order must be urged at the earliest. While determining if there was a failure of justice, the Courts ought to address it with reference to the stage of challenge, the seriousness of the offence and the apparent intention to prolong proceedings, among others;

- (iv) In the instant case, the cognizance order was challenged by the appellant two years after cognizance was taken. No reason was given to explain the inordinate delay. Moreover, in view of the diminished role of the committal court under Section 209 of the Code of 1973 as compared to the role of the committal court under the erstwhile Code of 1898, the gradation of irregularity in a cognizance order made in Sections 460 and 461 and the seriousness of the offence, no failure of justice has been demonstrated;
- (v) It is a settled principle of law that cognizance is taken of the offence and not the offender. However, the cognizance order indicates that the Special Judge has perused all the relevant material relating to the case before cognizance was taken. The change in the form of the order would not alter its effect. Therefore, no ‘failure of justice’ under Section 465 CrPC is proved. This irregularity would thus not vitiate the proceedings in view of Section 465 CrPC;
- (vi) The Special Court has the power to take cognizance of offences under MMDR Act and conduct a joint trial with other offences if permissible under Section 220 CrPC. There is no express provision in the MMDR Act which indicates that Section 220 CrPC does not apply to proceedings under the MMDR Act;
- (vii) Section 30B of the MMDR Act does not impliedly repeal Section 220 CrPC. Both the provisions can be read harmoniously and such an

interpretation furthers justice and prevents hardship since it prevents a multiplicity of proceedings;

- (viii) Since cognizance was taken by the Special Judge based on a police report and not a private complaint, it is not obligatory for the Special Judge to issue a fully reasoned order if it otherwise appears that the Special Judge has applied his mind to the material;
- (ix) A combined reading of the notifications dated 29 May 2014 and 21 January 2014 indicate that the Sub-Inspector of Lokayukta is an authorized person for the purpose of Section 22 of the MMDR Act. The FIR that was filed to overcome the bar under Section 22 has been signed by the Sub-Inspector of Lokayukta Police and the information was given by the SIT. Therefore, the respondent has complied with Section 22 CrPC; and
- (x) The question of whether A-1 was in-charge of and responsible for the affairs of the company during the commission of the alleged offence as required under the proviso to Section 23(1) of the MMDR Act is a matter for trial. There appears to be a *prima facie* case against A-1, which is sufficient to arraign him as an accused at this stage. See: **Judgment dated 29.11.2021 of the Hon'ble Supreme Court delivered in Criminal Appeal No. 1288 of 2021, Pradeep S. Wodeyar Vs. The State of Karnataka.**

**16. Extent of scrutiny of evidence at the stage of passing summoning order in complaint cases**---At the stage of issuing process the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be *prima facie* satisfied whether there are sufficient grounds for proceeding against the accused. It is not the province of the magistrate to enter into a detailed discussion of the merits or the de\_merits of the case. In other words, the scope of enquiry u/s 202 is limited to finding

out the truth or falsehood of the complaint in order to determine the question of the issue of the process. The enquiry is for the purpose of ascertaining the truth or falsehood of the complaint i.e. for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process and commencement of proceedings against the person concerned. The section does not say that a regular trial for adjudging the guilt or otherwise, of the person complained against should take place at the stage, for the person complained against can be legally called upon to answer the accusation made against him only when a process has issued and he is put on trial. It will be clear from the above that the scope of enquiry u/s 202 of the Cr PC is extremely limited—limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint (i) on the material placed by the complainant before the court, (ii) for the limited purpose of finding out whether prima facie case for issue of process has been made out, and (iii) for deciding the question purely from the point of view of the complaint without at all advert to any defence that the accused may have. It is well settled that in proceedings u/s 202 the accused has got absolutely no locus-standi and is not entitled to be heard on the question whether the process should be issued against him or not. Therefore at the stage of Sec. Cr PC as the accused has no locus-standi the magistrate has absolutely no jurisdiction to go into any materials or evidence which may be produced by the accused, who may be present only to watch the proceedings and not to participate in them. Indeed, if the documents or the evidence produced by the accused are allowed to be taken by the magistrate, then an inquiry u/s 202 converts into a full dress trial defeating the very object for which this section has been engrafted. See--- **Nagawwa Vs. Veeranna Shivalingappa Nonjalgi, 1976 SCCr R 313 (SC)**

- 17. No meticulous evaluation of evidence by magistrate at the time of passing summoning order in complaint case--** At the stage of issuing process the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused. It is not the province of the magistrate to enter into a detailed discussion of the merits or the demerits of the case. In other words, the scope of enquiry u/s 202 is limited to finding out the truth or falsehood of the complaint in order to determine the question of the issue of the process. The

enquiry is for the purpose of ascertaining the truth or falsehood of the complaint i.e. for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process and commencement of proceedings against the person concerned. The section does not say that a regular trial for adjudging the guilt or otherwise, of the person complained against should take place at the stage, for the person complained against can be legally called upon to answer the accusation made against him only when a process has issued and he is put on trial. It will be clear from the above that the scope of enquiry u/s 202 of the Cr PC is extremely limited—limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint (i) on the material placed by the complaint before the court, (ii) for the limited purpose of finding out whether prima facie case for issue of process has been made out, and (iii) for deciding the question purely from the point of view of the complaint without at all advert to any defence that the accused may have. In fact it is well settled that in proceedings u/s 202 the accused has got absolutely no locus-standi and is not entitled to be heard on the question whether the process should be issued against him or not. Therefore at the stage of Sec. Cr PC as the accused has no locus-standi the magistrate has absolutely no jurisdiction to go into any materials or evidence which may be produced by the accused, who may be present only to watch the proceedings and not to participate in them. Indeed, if the documents or the evidence produced by the accused are allowed to be taken by the magistrate, then an inquiry u/s 202 converts into a full dress trial defeating the very object for which this section has been engrafted. See--- **Nagawwa Vs. Veeranna Shivalingappa Nonjalgi, 1976 SCCr R 313 (SC)**

**18. Examining all witnesses u/s 202 (2) not necessary even if complaint involves offences triable by court of Sessions :** Examining all witnesses u/s 202 (2) is not necessary even if complaint involves offences triable by court of Sessions. See.....

1. **Ajab Singh Vs. State of UP, 2012(76) ACC 747(All)**
2. **Shivjee Singh Vs. Nagendra Tiwary & others, 2010 (70) ACC 607(SC)**

**19. Magistrate to satisfy himself regarding truth or falsehood of evidence u/s 200/202 Cr PC---**At the stage of issuing process the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are

sufficient grounds for proceeding against the accused. It is not the province of the magistrate to enter into a detailed discussion of the merits or the demerits of the case. In other words, the scope of enquiry u/s 202 is limited to finding out the truth or falsehood of the complaint in order to determine the question of the issue of the process. The enquiry is for the purpose of ascertaining the truth or falsehood of the complaint i.e. for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process and commencement of proceedings against the person concerned. The section does not say that a regular trial for adjudging the guilt or otherwise, of the person complained against should take place at the stage, for the person complained against can be legally called upon to answer the accusation made against him only when a process has issued and he is put on trial. It will be clear from the above that the scope of enquiry u/s 202 of the Cr PC is extremely limited—limited only to the ascertainment of the truth or falsehood of the allegations made in the complaint (i) on the material placed before the court, (ii) for the limited purpose of finding out whether prima facie case for issue of process has been made out, and (iii) for deciding the question purely from the point of view of the complaint without at all advert to any defence that the accused may have. It is well settled that in proceeding u/s 202 the accused has got absolutely no locus-standi and is not entitled to be heard on the question whether the process should be issued against him or not. Therefore at the stage of Sec. Cr PC as the accused has no locus-standi the magistrate has absolutely no jurisdiction to go into any materials or evidence which may be produced by the accused, who may be present only to watch the proceedings and not to participate in them. Indeed, if the documents or the evidence produced by the accused are allowed to be taken by the magistrate, then an inquiry u/s 202 convert into a full dress trial defeating the very object for which this section has been engrafted. See---**Nagawwa Vs. Veeranna Shivalingappa Nonjalgi, 1976 SCCr R 313 (SC)**

- 20. Complaint case when to be dismissed u/s 203 Cr PC?--- (A) In the case of **Sirpal Vs. State of UP, 2009(67) ACC 425 (Allahabad High Court)**, it has been held that if the case of the complainant stated in his complaint does not appear to be probable out of evidence u/s 200/202 Cr PC and the complaint is filed by the complainant just to harass his opponent then the judicial process**

cannot be allowed to be used as an instrument to harassment or oppression of his opponent and such complaint should be dismissed.

**21. Complaint case when to be dismissed u/s 203 Cr PC?**---In the case of **Charan Singh Vs. Smt. Shanti Devi, 2004 Cr LJ 2408 (Allahabad High Court)**, it has been held that if after inquiry u/s 200/202 Cr PC and after considering the evidence u/s 200/202 Cr PC the magistrate is of the opinion that there is no sufficient ground for proceeding with the case, he may dismiss the complaint.

**22.1 Order dismissing complaint u/s 203 CrPC must be reasoned and speaking one**---In the cases of **Saroj Kumar Ray Vs. Smt. Santilata Mallick, 2004 Cr LJ 5088 (Orissa High Court)** and **Chandra Deosingh Vs. Prakash Chandra Bose, AIR 1963 SC 1430**, it has been laid down that the order dismissing complaint u/s 203 Cr PC should be speaking one.

**22.2 Second complaint after dismissal of first u/s 203 CrPC when can be filed?:**

Second complaint, after dismissal of the first u/s 203 CrPC, can be filed in respect of the same incident on new facts or when the first complaint was dismissed in default or when a special or exceptional case is made out. A second protest petition stands on a similar footing as a second complaint. See: **Samta Naidu Vs. State of M. P. , (2020) 5 SCC 378**

**23. Assigning reasons must even when complaint is dismissed in part in respect of some of many accused or in respect of some of many offences**---

In the cases of **Dr. Mathew Abraham Vs. V. Gopal Krishnan, 2008 Cr LJ 2686 (Kerala High Court)** and **Prakasan Vijaya Nivas Vs. State of Kerala, 2008 Cr LJ 1272 (Kerala High Court)** wherein it has been laid down that while dismissing complaint u/s 203 Cr PC, magistrate is required to assign reasons even when the dismissal is in part in respect of some of many accused or in respect of some of many offences.

**24. No meticulous evaluation of defence evidence by magistrate while dismissing the complaint u/s 203 Cr PC**---In the case of **Surinder Pal Jetley Vs. Bhisham Singh, 1995(32) ACC 18(Allahabad High Court)** it has been laid down that the magistrate has no powers to meticulously examine the defence version while dismissing the complaint u/s 203 Cr PC.

25. **Affidavit not to be read u/s 202 CrPC** : In an enquiry into an offence by Magistrate u/s 202 CrPC, personal examination of witnesses is imperative. Filing of affidavit at the stage of Section 202 CrPC is not permissible. See....
- (i) **Smt. Ganga Chauhan Vs. State of UP, 2012 (76) ACC 25(All---LB)**
  - (ii) **Hari Singh Vs. State of UP, 1992 CrLJ 1802(All)**
26. **Cognizance by Magistrate on receiving final report/police report u/s 173 CrPC** : The Magistrate has a role to play while committing the case to the court of sessions upon taking cognizance on the police report submitted before him u/s 173(3) CrPC. In the event the Magistrate disagrees with the police report he has two choices. He may act on the basis of a Protest Petition that may be filed or he may while disagreeing with the police report issue process and summon the accused but he would have to proceed on the basis of the police report itself and either enquire into the matter or commit it to the court or session if the same was found to be triable by the sessions court. **Dharam Pal Vs. State of Haryana, AIR 2013 SC 3018(Five-Judge Bench).**
27. **Issuing notice to informant by Magistrate on receipt of final report must** : On receiving final report from investigating officer, it is mandatory duty of Magistrate to issue notice to the informant (or the injured person or the victim of the offence) to make his submissions against the final report. See :
- (i) **Bhagwant Singh Vs. Commissioner of Police, AIR 1985 SC 1285 (Three-Judge Bench)**
  - (ii) **Sanjay Bansal Vs. Jawajarla Vats, AIR 2008 SC 207**
28. **Final report & powers of Magistrate thereon** : The Magistrate has following four options on receipt of a final report from investigating officer :
- (i) to accept the formal form
  - (ii) in the event a protest petition is filed, to treat the same as a complaint petition and if a prima facie case is made out, to issue process to the accused
  - (iii) to take cognizance of the offences against a person, although a final form has been filed by the police, in the event he comes to the opinion that sufficient materials exist in the case diary itself therefor
  - (iv) to direct re-investigation into the matter. See.
  - (i) **Popular Muthiah Vs. State, (2006) 7 SCC 296 (para 54)**
  - (ii) **Minu Kumari Vs. State of Bihar (2006) 4 SCC 359**
  - (iii) **Abhinandan Jha Vs. Dinesh Mishra, AIR 1968 SC 117**
  - (iv) **Pakhando Vs. State of UP, 2001 (43) ACC 1096 (All--DB)**
29. **Final report & powers of Magistrate thereon** : On completion of investigation and after receiving a final report from investigating officer u/s 173(2) CrPC, the Magistrate is bound to issue notice to the informant of the

FIR and may also issue notice to the injured person or relative of the deceased/victim of the offence to make his submissions on the final report.

The Magistrate has following three powers on receipt of the final report :

- (i) he may accept the final report and drop the proceedings or
- (ii) he may disagree with the final report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offences and issue process to the accused or
- (iii) he may direct further investigation to be made by the police u/s 156(3) CrPC. See : **Bhagwant Singh Vs. Commissioner of Police, AIR 1985 SC 1285 (Three-Judge Bench)** (para 4 & 5)

**30.1. Affidavits of witnesses accompanying protest petition against final report not to be considered by the Magistrate** : Protest petition with accompanying affidavits of complainant and his witnesses filed against the final report received from the investigating officer cannot be considered by the Magistrate for taking cognizance of the offences. Procedure of complaint case has been provided under Chapter XV of the CrPC. No statement of complainant and his witnesses who had filed their affidavits was recorded by Magistrate u/s 200 & 202 CrPC. Magistrate should have either passed the order on the protest petition on the basis of the material in the case diary or should have treated the protest petition as complaint but he could not have taken cognizance of offence on the basis of affidavits. Magistrate has thus considered extraneous material i.e. the protest petition and the affidavits while taking cognizance and, therefore, his cognizance taking order was declared illegal. See :

- (i) **Dinesh Kumar Soni Vs. State of UP, 2010 (5) ALJ 719 (All)**
- (ii) **Ramakant Vs. State of UP, 2010 (5) ALJ (NOC) 611 (All)**
- (iii) **Pakhando Vs. State of UP, 2001 (43) ACC 1096 (All--DB)**
- (iv) **2009 (1) JIC 956 (All)**
- (v) **2007 (3) JIC 485 (All)**

**30.2. Non compliance with Section 207 CrPC vitiates charge**: If the copies of statements of witness & documents relied in support of charges are not supplied to the accused, then order framing charges against the accused is not proper for non-compliance of the mandatory provision of Section 207 CrPC. See: **Pramod Kumar sharma Vs. State of UP, 2011 CrLJ 1088 (All)**.

**30.3. Contents in memory card or pen drive cannot be supplied to accused u/s 207 CrPC**. Contents in memory card or pen drive cannot be supplied to accused u/s 207 CrPC. See: **P. Gopalkrishnan Vs. State of Kerala, (2020) 9 SCC 161**

**31(A-1).Section 195/340 CrPC when not attracted** : Where forged document (sale deed) was produced in evidence before court and the same was relied on by the party for claiming title to property in question, it has been held by the

Supreme Court that since the sale deed had not been forged while it was in *custodia legis*, therefore, bar in Section 195 CrPC against taking of cognizance of offences u/s 468, 471 of the IPC was not attracted. See : **C.P. Subhash Vs. Inspector of Police, Chennai, 2013 CrLJ 3684 (SC)**. Ruling relied upon (i) Iqbal Singh Marwah vs. Minakshi Marwah, AIR 2005 SC 2119 (Constitution Bench).

**30(A-2). Section 195(1)(b)(ii) CrPC when attracted?:** Section 195(1)(b)(i) CrPC refers to offences of false evidence and offences against public justice while Section 195(1)(b)(ii) CrPC relates to offences in respect of documents produced or given in evidence in proceeding in any court. Prosecution can be initiated only by sanction of court under whose proceedings offence referred to in Section 195(1)(b) CrPC was allegedly committed. Object of Section 340 CrPC is to ascertain whether any offence affecting administration of justice was committed in relation to any document produced or given in evidence in court during the time when the document or the evidence was in *custodia legis* and whether it is also expedient in the interest of justice to take such action. Court has not only to ascertain prima facie case but also to see whether it is in public interest to allow criminal proceedings to be instituted. In the present case, the Magistrate had erred in taking cognizance of offence under Section 193 IPC on the basis of a private complaint and the High Court was justified in setting aside the order of the Magistrate. **See: Narendra Kumar Srivastava Vs. State of Bihar and Others (2019) 3 SCC 318.**

**30(B). Principles of natural justice not violated if accused is not provided hearing before filing of court complaint u/s 340 CrPC:** Where in a land acquisition proceedings, the claimants/land owners after playing chicanery on the court had wangled a bumper gain as compensation and the reference court which granted a quantum leap in awarding compensation to the land owners/claimants later found that they had used forged documents of sale deeds inveigling such a bumper gain as compensation and hence the court ordered some of the claimants/landowners to face prosecution proceedings in a criminal court. The court is not under a legal obligation to afford an opportunity to be heard to claimant/landowner before ordering such prosecution. The scheme underlying Section 340, 343, 238, 243 of the Code of Criminal Procedure clearly shows there is no statutory requirement to afford an opportunity of hearing to the persons against whom that court might file a complaint before the Magistrate for initiating prosecution proceedings. Once the prosecution proceedings commence, the person against whom the accusation is made has a legal right to be heard. Such a legal protection is incorporated in the scheme of the Code of Criminal Procedure itself. Principles of natural justice would not be hampered by not hearing the person concerned at the stage of deciding whether such person should be proceeded against or

not. The court at the stage envisaged in Section 340 of the Code is not deciding the guilt or innocence of the party against whom proceedings are to be taken before the Magistrate. At that stage, the court only considers whether it is expedient in the interest of justice that an inquiry should be made into any offence affecting administration of justice. See: *Pritish Vs. State of Maharashtra*, AIR 2002 SC 236 (Three-Judge Bench).

**30(C).Section 195/340 CrPC when not attracted** : Where forged document (sale deed) was produced in evidence before court and the same was relied on by the party for claiming title to property in question, it has been held by the Supreme Court that since the sale deed had not been forged while it was in custodia legis, therefore, bar in Section 195 CrPC against taking of cognizance of offences u/s 468, 471 of the IPC was not attracted. See : **C.P. Subhash Vs. Inspector of Police, Chennai, 2013 CrLJ 3684 (SC)**. Ruling relied upon (i) **Iqbal Singh Marwah vs. Minakshi Marwah, AIR 2005 SC 2119 (Constitution Bench)**.

**30(D).Unconditional apology for perjury can be accepted by the Court u/s 195/340 CrPC** : Where an accused had made false statements before the company court and proceedings against him for the offence of perjury was initiated u/s 195/340 CrPC and the accused had filed affidavit before the Hon'ble Supreme Court tendering unconditional apology and humbly begged to be pardoned by stating that he never had intention to show any disrespect or dishonor to court and the alleged false statements were unintentional and he would not indulge in any such adventures in future, the Hon'ble Supreme Court accepted the unconditional apology of the accused and exonerated him of the said offence of perjury. It has also been held that other parallel proceedings under the provisions of the Contempt of Courts Act, 1971 and u/s 21 of the Company Secretaries Act, 1980 would not be proper. See : **Dhiren Dave Vs. Surat Dyes & Others, (2016) 6 SCC 253**.

**30(E).Stricture against Sessions Judge for misunderstanding the provisions of Sec. 156(3) CrPC r/w. Sec. 195/340 CrPC** : Where the Sessions Judge had recorded findings in the judgment in a sessions trial that the informant had lodged false FIR against the accused and, contrary to the provisions u/s. 195/340/344 CrPC, directed the SSP in his judgment for registration of FIR against the informant u/s. 182 of the IPC, the Allahabad High Court quashed the directions of the Sessions Judge as being illegal and without jurisdiction and directed the Registrar General of the High Court to send a copy of the judgment of the High Court to the Sessions Judge concerned for his guidance in future. See---**Lekhraj vs. State of U.P., 2008 (61) ACC 831 (All)**

**31. Words "informant" and "complainant" are different words in law** : In many of the judgments, the person giving the report under Section 154 of the Code is described as the "complainant" or the "de facto complainant" instead of "informant", assuming that the State is the complainant. These are not words of literature. In a case registered under Section 154 of the Code, the State is the prosecutor and the person whose information is the cause for lodging the report is the informant. This is obvious from sub-section (2) of Section 154 of the Code which, inter alia, provides for giving a copy of the information to the "informant" and not to the "complainant". However the complainant is the person who lodges the complaint. The word "complaint"

is defined under Section 2(d) of the Code to mean any allegation made orally or in writing to a Magistrate and the person who makes the allegation is the complainant, which would be evident from Section 200 of the Code, which provides for examination of the complainant in a complaint case. Therefore, these words carry different meanings and are not interchangeable. In short, the person giving information, which leads to lodging of the report under Section 154 of the Code, is the informant and the person who files the complaint is the complainant. See : **Ganesh Vs. Sharanappa & Another, (2014) 1 SCC 87 (para 14).**

**32. Magistrate has no jurisdiction to recall or review order issuing summons u/s 204 CrPC :** Magistrate has no jurisdiction to recall or review order issuing summons u/s 204 CrPC. See : **Devendra Kishanlal Daglia Vs. Dwarkesh Diamonds Pvt. Ltd., AIR 2014 SC 655.**

**33. Charge-sheet filed in non-cognizable offences to be treated as complaint u/s 2(d) CrPC :** Charge-sheet filed in non-cognizable offences has to be treated as complaint u/s 2(d) CrPC and the magistrate may take cognizance by proceeding as complaint case. See : **Rambabu Kuswah Vs. State of UP, 2014 (84) ACC 198 (All).**

**34(A). Hearing accused before ordering further investigation u/s 173(8) CrPC not necessary:** There is no inhibition for court to direct further investigation u/s 173(8) CrPC. Hearing of accused or co-accused before ordering further investigation u/s 173(8) CrPC is not necessary. See: **Satishkumar Nyalchand Shah Vs. State of Gujarat, (2020) 4 SCC 22**

**34(B). Primary police report u/s 173(2) & supplementary police report u/s 173(8) to be read conjointly :** Supplementary police report received from police u/s 173(8) CrPC shall be dealt with by the court as part of the primary police report received u/s 173(2) CrPC. Both these report have to be read conjointly and it is the cumulative effect of the reports and the documents annexed thereto to which the court would be expected to apply his mind to determine whether there is exists grounds to presume that the accused has committed the offence and accordingly exercise its powers u/s 227 or 228 CrPC. See : **Vinay Tyagi Vs. Irshad Ali, (2013) 5 SCC 762.**

**Note :** *The ruling in Vinay Tyagi case elaborately deals with the power of court regarding (i) further investigation (ii) reinvestigation (iii) supplementary police report received u/s 173(8) CrPC (iv) power of court to take second time cognizance of the offences on receipt of supplementary police report u/s*

*173(8) CrPC (v) mode of dealing with final report and supplementary police report received u/s 173(8) CrPC disclosing commission of offences.*

35. **Two case diaries submitted by two different investigating agencies after two investigations to be read conjointly** : Supplementary police report received from police u/s 173(8) CrPC shall be dealt with by the court as part of the primary police report received u/s 173(2) CrPC. Both these report have to be read conjointly and it is the cumulative effect of the reports and the documents annexed thereto to which the court would be expected to apply his mind to determine whether there is exists grounds to presume that the accused has committed the offence and accordingly exercise its powers u/s 227 or 228 CrPC. See : **Vinay Tyagi Vs. Irshad Ali, (2013) 5 SCC 762.**

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- 36(A). **Police officer has power of further investigation u/s 173(8) CrPC even after submission of police report u/s 173(2) CrPC** : Police officer has power of further investigation u/s 173(8) CrPC even after submission of police report u/s 173(2) CrPC. The power of the police officer u/s 173(8) CrPC is unrestricted. Needless to say, Magistrate has no power to interfere but it would be appropriate on the part of the Investigating Officer to inform the court. See :

- (i) **Dharam Pal Vs. State of Haryana, (2016) 4 SCC 160** (paras 21 & 22)
- (ii) **Vinay Tyagi Vs. Irshad Ali, (2013) 5 SCC 762**
- (iii) **Bhagwant Singh Vs. Commissioner of Police, (1985) 2 SCC 537** (para 38)(Three-Judge Bench)

- 36(B). **After discharge of accused, Magistrate cannot order further investigation u/s 173(8) CrPC without application of I.O. u/s 173(8) CrPC** : Once cognizance is taken and accused is discharged by Magistrate, Magistrate cannot suo motu order further investigation and direct investigating officer to submit report. Investigating Officer is at liberty to file application for further investigation u/s 173(8) CrPC. See: **Bikash Ranjan Rout Vs. State Through The Secretary (Home). Government of NCT of Delhi, New Delhi, AIR 2019 SC 2002**

37. **Police must obtain permission of court for further investigation u/s 173(8) CrPC** : Where after submission of charge-sheet u/s 173(2) CrPC, the court had taken cognizance of the offences and thereafter the DIG had directed for further investigation, it has been held by a Division Bench of the Hon'ble Allahabad High Court that once the Magistrate had taken cognizance of an offence on the basis of the police report received u/s 173(2) CrPC and the police still wants to conduct further investigation, the minimum required from police is that the police should seek formal permission of the court to make further investigation. The order of the

DIG ordering further investigation was abuse of powers and the same was quashed. See : **Prakash Ahirwar Vs. State of UP, 2014 (86) ACC 768 (All) (DB).**

38. **Duty of Magistrate when cognizance on police report received under 173(2) CrPC already taken but on further investigation u/s 173(8) CrPC police submits final report** : Supplementary police report received from police u/s 173(8) CrPC shall be dealt with by the court as part of the primary police report received u/s 173(2) CrPC. Both these report have to be read conjointly and it is the cumulative effect of the reports and the documents annexed thereto to which the court would be expected to apply his mind to determine whether there is exists grounds to presume that the accused has committed the offence and accordingly exercise its powers u/s 227 or 228 CrPC. See : **Vinay Tyagi Vs. Irshad Ali, (2013) 5 SCC 762.**

**Note** : *The ruling in Vinay Tyagi case elaborately deals with the power of court regarding (i) further investigation (ii) reinvestigation (iii) supplementary police report received u/s 173(8) CrPC (iv) power of court to take second time cognizance of the offences on receipt of supplementary police report u/s 173(8) CrPC (v) mode of dealing with final report and supplementary police report received u/s 173(8) CrPC disclosing commission of offences.*

39. **Second time cognizance of offences under added Sections in supplementary charge-sheet submitted u/s 173(8) CrPC** : Where supplementary charge-sheet was filed u/s 173(8) CrPC for offences other than those in the main charge-sheet, it has been held by the Hon'ble Allahabad High Court that the same does not require re-cognizance of matter as cognizance had already been taken and if re-cognizance is taken regarding added sections, then at the most, it may be called irregularity but it is not such irregularity which may vitiate trial and is very well covered by the provisions of Section 460(c) of the CrPC. See : **Nawal Kishore Vs. the State of UP & Another, 2015 CrLJ (NOC) 95 (Allahabad).**

40. **Further investigation u/s 173(8) CrPC is continuation of the earlier investigation** : Further investigation u/s 173(8) CrPC is the continuation of the earlier investigation and not a fresh investigation or a re-investigation to be started ab-initio wiping out the earlier investigation altogether, Sec. 173(8) clearly envisages that on completion of further investigation the Investigation Officer has to forward to the magistrate a "further report" or "reports" and not a "fresh report or reports" regarding the "further evidence" obtained during such investigation. See :

(i) **State of AP Vs. A.S. Peter, 2008 (60) ACC 685 (SC).**

(ii) **K. Chandra Shekahr Vs. State of Kerala, (1988) 5 SCC 223.**

41. **Magistrate can summon some other person as accused not named in FIR or charge-sheeted u/s 173(2) CrPC** : Person who has not joined as accused in the charge-sheet can be summoned at the stage of taking cognizance under S. 190. Thus, the Magistrate is empowered to issue process against some other person, who has not been charge-sheeted, but there has to be sufficient material in the police report showing his involvement. In that case, the Magistrate is empowered to ignore the

conclusion arrived at by the investigating officer and apply his mind independently on the facts emerging from the investigation and take cognizance of the case. At the same time, it is not permissible at this stage to consider any material other than that collected by the investigating officer. See : **Sunil Bharti Mittal Vs. CBI, AIR 2015 SC 923 (Three-Judge Bench).**

42. **Police has right of further investigation u/s 173(8) CrPC even after submission of charge-sheet u/s 173(2) CrPC** : Re-investigation of a case is forbidden in law. Even after submission of charge-sheet u/s 173(2) CrPC, police has right to further investigate but not for fresh investigation or re-investigation. See :
- (i) **Rama Chandrana Vs. R. Udhayakumar, (2008) 5 SCC 413**
  - (ii) **Mithabhai Pashabhai Patel Vs. State of Gujarat, 2009 (4) Supreme 368.**
43. **Recording of statement u/s 164 CrPC after submission of charge-sheet and taking of cognizance permissible**: Recording of statement u/s 164 CrPC after submission of charge-sheet and talking of cognizance is not re-investigation or fresh investigation. See : **Krishna Kumar Vs. State of UP, 2010 (70) ACC 279 (All)(LB).**
44. **Magistrate cannot suo motu direct a further investigation u/s 173(8) CrPC** : A Magistrate cannot suo motu direct a further investigation u/s 173(8) CrPC or direct a re-investigation into a case on account of the bar of Sec. 167(2) CrPC. See : **Reeta Nag Vs. State of W.B., 2010 (70) ACC 571 (SC).**
45. **Sessions Judge & not the Magistrate has power to direct further investigation u/s 173(8) CrPC after committal of case to the Sessions** : Charge-sheet u/s 120-B, 302, 201IPC -- cognizance taken by Magistrate--case committed to Sessions -- sessions trial pending before Sessions Judge--application u/s 173(8) CrPC for further investigation --proper procedure is to move Sessions Judge u/s 173(8) CrPC. See : **Virendra Prasad Singh Vs. Rajesh Bhardwaj, (2010) 9 SCC 171.**
46. **Cognizance by Magistrate u/s 190 CrPC in a sessions tribal case can be taken only once** : Cognizance by Magistrate u/s 190 CrPC in a sessions tribal case can be taken only once. After commitment of the case u/s 209 CrPC to the sessions, the sessions court can take cognizance of further offences in exercise of its powers u/s 193 CrPC. See : **Balveer Singh Vs. State of Rajasthan, (2016) 6 SCC 680.**
47. **Complaint case involving dispute of only civil nature liable to be quashed u/s 482 CrPC** : In the present case, the High Court quashed the complaint against the respondent-accused filed for the alleged offences u/s 420, 406 read with Section 34 IPC. Ingredients of offences of Sections 406 and 420 IPC were found not satisfied. Averments and allegations made in the complaint did not disclose any criminality on the part of the accused and civil dispute was tried to be converted into a criminal dispute. The Supreme Court held that the criminal proceedings were rightly quashed by the High Court u/s 482 CrPC. See: **Vinod Natesan Vs State of Kerala and others (2019) 2 SCC 401**

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