Complaint Cases & Procedure

(Sections 200-204 CrPC & Sections 275-278 BNSS)

S.S. Upadhyay

- Former District & Sessions Judge
- Former Legal Advisor to Different Governors, Uttar Pradesh, Lucknow
- Former Addl. Director (Training) Institute of Judicial Training & Research, UP, Lucknow.
- Lokpal, Dr. APJ Abdul Kalam University of Technology & Engineering, UP, Lucknow & its Affiliated Engineering Colleges
- Mobile : 9453048988
- E-mail: ssupadhyay28@gmail.com
- Website: lawhelpline.in

1. **Complaint: What is? Section 2 (1)(h) of the BNSS:** " Complaint "means any allegation made orally or in writing to a Magistrate, with a view to his taking action under the BNSS, that some person, whether known or unknown, has committed an offence, but does not include a police report. According to Explanation added to Section 2 (1)(h), a police report disclosing commission of non-cognizable offence after investigation and submitted to the court shall be deemed to be the complaint and the Investigating Officer to be the complainant.

2. **Cognizance: Meaning of ?:** Taking cognizance of an offence is not the same thing as issuance of process. 'Cognizance' means when the Magistrate or the court applies his/its judicial mind to the facts mentioned in a complaint or a police report or upon information received from any person that an offence has been committed. See: State of Karnataka Vs. Pastor P. Raju, (2006) 6 SCC 728.

3. **Cognizance': Meaning of ?** : 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 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 later 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.

4. **Cognizance': Meaning of ?:** The word "cognizance" is not defined in the Code of Criminal Procedure. But the word "cognizance" is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means 'become aware of' and when used with reference to a court or a Judge, it cannot ' take notice of judicially'. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone. See: S.K. Sinha, Chief Enforcement Officer Vs. Videocon International Ltd., (2008) 2 SCC 492(Para 19)

5. **Cognizance of offences by Special Judge under P.C. Act, 1988 as amended in 2018:** Section 5 of the Prevention of Corruption Act, 1988 empowers the Special Judge to take cognizance of the offences under the said Act directly without the case being committed to him by the Magistrate. In trying the offences under the said Act, the Special Judge shall follow the procedure prescribed by the CrPC for trial of the warrant cases by Magistrate.

6. **Section 223 BNSS: Examination of complainant:** A Magistrate having jurisdiction while taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate: Provided that no cognizance of an offence under this section shall be taken by the Magistrate without giving the accused an opportunity of being heard: Provided further that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses— (a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or (b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 212: Provided further that if the Magistrate makes over the case to another Magistrate under section 212 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them: Provided further that in case of a complaint against a public servant, the Magistrate shall comply with the procedure provided in section 217.

7. **Section 224 BNSS: Procedure by Magistrate not competent to take cognizance of case:** If the complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall,— (a) if the complaint is in writing, return it for presentation to the proper Court with

an endorsement to that effect; (b) if the complaint is not in writing, direct the complainant to the proper Court.

8. **Section 225 BNSS: Postponement of issue of process by Magistrate:** (1) 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 212, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, 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,— (a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or (b) 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 223. (2) 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. (3) 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 Sanhita on an officer in-charge of a police station except the power to arrest without warrant.

9. **Section 226 BNSS: 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 225, 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.

10. **Section 227 BNSS: Issue of process by Magistrate in complaint case:** If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be— (a) a summons-case, he shall issue summons to the accused for his attendance; or (b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction. (2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed. (3) In a proceeding instituted upon a

complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint: Provided that summons or warrants may also be issued through electronic means. (4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

11. **Recording of reasons by courts in support of conclusion arrived at in their judgments and orders mandatory:** Recording of reasons in support of the conclusions arrived at in a judgment or order by the Courts in our judicial system has been recognized since the very inception of the system. Right to know the reasons for the decisions made by the Judges is an indispensable right of a litigant. Even a brief recording of reasoned opinion justifying the decision made would suffice to withstand the test of a reasoned order or judgment. A non-speaking, unreasoned or cryptic order passed or judgment delivered without taking into account the relevant facts, evidence available and the law attracted thereto has always been looked at negatively and judicially de-recognized by the courts. Mere use of the words or the language of a provision in an order or judgment without any mention of the relevant facts and the evidence available thereon has always been treated by the superior courts as an order incapable of withstanding the test of an order passed judicially. Ours is a judicial system inherited from the British Legacy wherein objectivity in judgments and orders over the subjectivity has always been given precedence. It has been judicially recognized perception in our system that the subjectivity preferred by the Judge in place of objectivity in a judgment or order destroys the quality of the judgment or order and an unreasoned order does not subserve the doctrine of fair play as has been declared by the Apex Court in the matter of Andhra Bank v. Official Liquidator, 2005 (3) SCJ 762. For a qualitative decision arrived at judicially by the courts, it is immaterial in how many pages a judgment or order has been written by the Judge as has been declared by the Apex Court in the matter of Union of India v. Essel Mining & Industries Ltd., (2005) 6 SCC 675.

12. **Meaning of "speaking and reasoned order" passed by application of mind ?:** An order can be said to be speaking, reasoned and passed after application of mind when it discloses:
(i). facts constituting the offence alleged in the complaint or FIR/ case of the prosecution
(ii). discussion of evidence led in support of such offence,
(iii) discussion of the ingredients constituting particular offences
(iv) conclusion arrived at by the court

13. **Prosecution of a person on complaint case is a serious matter**: In the case not below, 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. See: Harshendra Kumar D. Vs. Rebatilata Koley, 2011 CrLJ 1626 (SC).

14. **Magistrate must apply his mind and record reasons while passing summoning order in complaint case:** 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:

(i) Pepsi Foods Ltd. vs. Special Judicial Magistrate, 1998 SCC (Criminal) 1400.

(ii) M/S GHCL Employees Stock Option Trust Vs. M/S India Infoline Ltd., AIR 2013 SC 1433.

15. **Passing detailed order by Magistrate and giving detailed reasons for taking cognizance not necessary:** It is not necessary to pass a detail order giving detailed reasons while taking cognizance. The order taking cognizance should only reflect application of judicial mind. If the Magistrate after going through the complaint petition and the statements of the witnesses or after going through the FIR, case diary and charge sheet or the complaint, as the case may be, comes to a conclusion that the offence is made out, he is bound to take cognizance of the offence. The order should

reflect application of judicial mind to the extent that from the FIR, the case diary or complaint, offence is made out. See: S.K. Sinha, Chief Enforcement Officer Vs. Videocon International Ltd., (2008) 2 SCC 492

16. **Duty of Magistrate in passing summoning order in complaint cases:** In the case noted below, 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: Pepsi Foods Ltd. Vs. Special Judicial Magistrate, (1998) 5 SCC 749

17. **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.

18. **Recording of reasons by Magistrate in summoning order u/s 204 CrPC mandatory otherwise order would 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).

19. **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.
(Note: *In this case, both the Editor of the newspaper and the journalist were held guilty in complaint case for publishing defamatory matter and provisions of Press and Registration of Books Act, 1867 were involved therein*).

20. 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 demerits of the case. In other words, the scope of enquiry u/s 202 is limited to finding out the truth or false hood 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 no 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 of falsehood of the allegations made 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 adverting to any defence that the accused may have. Law 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)

21. **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 false hood 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 no 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 of falsehood of the allegations made 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 adverting to any defence that the accused may have. Law 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 Sections 200 to 204 CrPC, 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 SCC (Criminal) 313 (SC)

22. **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:** While dismissing complaint u/s 203 CrPC, 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. See:

(i). Dr. Mathew Abraham Vs. V. Gopal Krishnan, 2008 CrLJ 2686 (Kerala)

(ii). Prakasan Vijaya Nivas Vs. State of Kerala, 2008 CrLJ 1272 (Kerala)

23. Magistrate to exercise restrain under sub-sections (3) & (4) of Section 175 BNSS before ordering registration of FIR against public servant: Accordingly, in our firm opinion, sub-sections (3) and (4) must be read harmoniously, with the latter understood as a procedural restraint upon the power conferred under both the sub-sections for ordering an investigation, and not as a substantive substitute for the former. To give meaning, we hold that the opening words in sub-section (4) which reads "Any Magistrate empowered under Section 210, may, upon receiving a complaint against a public servant ....." have to be purposively read as 'Any Magistrate empowered under Section 210, may, upon receiving a complaint in writing against a public servant of commission of offence arising in course of the discharge of his official duties, supported by an affidavit, order investigation, subject to ... '. See: Judgement dated 27.01.2026 of the Supreme Court passed in Criminal Appeal No. 4629 of 2025, XXX Vs. State of Kerala (Paras 38 & 39)

24. Previous sanction of concerned Government required for taking cognizance of offences u/s 175(4) BNSS committed by public servant: So read, in the case of public servants, where the allegation is that an offence was committed in course of the discharge of official duties, the law now provides a two-tier protection. The first operates at the threshold stage, in the form of additional safeguards under sub-section (4) of Section 175 (when a prayer is made seeking an order for investigation against a public servant), and next under sub-section (1) of Section 218 (before cognizance is taken of the offence alleged). The second tier, with which we are presently not concerned, operates at the stage of taking cognizance when the "previous sanction" of the concerned Government is required. See: Judgement dated 27.01.2026 of the Supreme Court passed in Criminal Appeal No. 4629 of 2025, XXX Vs. State of Kerala (Para 40)

25. Affidavit in support of complaint made to magistrate u/s 175(3) BNSS: We make it clear that an affidavit, such as the one referred to in sub-section (3) of Section 175, must fulfil the conditions provided in Section 333, BNSS which reads as follows:

"333. Authorities before whom affidavits may be sworn.—(1) Affidavits to be used before any Court under this Sanhita may be sworn or affirmed before—

(a) any Judge or Judicial or Executive Magistrate; or

(b) any Commissioner of Oaths appointed by a High Court or Court of Session; or

(c) any notary appointed under the Notaries Act, 1952 (53 of 1952).

(2) Affidavits shall be confined to, and shall state separately, such facts as the deponent is able to prove from his own knowledge and such facts as he has reasonable ground to believe to be true, and in the latter case, the deponent shall clearly state the grounds of such belief.

(3) The Court may order any scandalous and irrelevant matter in the affidavit to be struck out or amended." See: Judgement dated 27.01.2026 of the Supreme Court passed in Criminal Appeal No. 4629 of 2025, XXX Vs. State of Kerala (Para 41)

26. Special procedure u/s 175(4) BNSS for complaint against public servant: The power to order investigation is conferred upon a judicial magistrate by sub-section (3) of Section 175. Sub-section (4) of Section 175 too confers such power but prescribes a special procedure to be followed in case of a complaint against a public servant alleging commission of offences in the discharge of official duties. See: Judgement dated 27.01.2026 of the Supreme Court passed in Criminal Appeal No. 4629 of 2025, XXX Vs. State of Kerala (Paras 42 & 43)

27. Word 'complaint' u/s 175(4) BNSS does not include oral complaint: The expression "complaint" in sub-section (4) of Section 175 does not encompass oral complaints. Having regard to the text of the provision and the context in which it is set, and in light of our conclusion that sub-section (4) is not a provision which stands alone or is a proviso to sub-section (3), the term must derive its meaning in sync with allegations of cognisable offence levelled in an application of the nature referred to in sub-section (3) of Section 175, i.e., an application supported by affidavit. Sub-section (3) and sub-section (4) of Section 175 are not isolated silos but must be read in harmony with sub-section (4) forming an extension of sub-section (3). See: Judgement dated 27.01.2026 of the Supreme Court passed in Criminal Appeal No. 4629 of 2025, XXX Vs. State of Kerala (Para 44)

28. Step wise duty of Magistrate on receiving complaint u/s 175(4) BNSS: Upon receiving a complaint under sub-section (4) of Section 175, BNSS alleging commission of an offence by a public servant arising in course of the discharge of his official duties, the magistrate may do either of the following:

(i) Reading the complaint, if the judicial magistrate is prima facie satisfied that commission of the alleged act giving rise to an offence arose in course of discharge of official duties by the public servant, such magistrate may not have any option other than following the procedure prescribed under sub-section (4) of Section 175 of calling for reports from the superior officer and the accused public servant.

(ii) Or, on a consideration of the complaint, where the judicial magistrate entertains a prima facie doubt depending upon the circumstances as to whether the offence alleged to have been committed by the public servant arose in course of discharge of his official duties, such magistrate might err on the side of caution and proceed to follow the procedure prescribed in sub-section (4) of Section 175.

(iii) Or, where the judicial magistrate is satisfied that the alleged act of offence was not committed in the discharge of official duties and/or it bears no reasonable nexus thereto, and also that the rigours of sub-section (4) of Section 175 are not attracted, the complaint may be dealt with in accordance with the general procedure prescribed under sub-section (3) of Section 175. See: Judgement dated 27.01.2026 of the Supreme Court passed in Criminal Appeal No. 4629 of 2025, XXX Vs. State of Kerala (Para 46)

29. **Dismissal of complaint u/s 175(3) BNSS by Magistrate filed against public servant:** It is hereby clarified that the judicial magistrate would continue to retain the authority to reject an application under sub-section (3) of Section 175, lodged against a public servant, where such magistrate finds that the allegations made therein are wholly untenable, manifestly absurd, or so inherently improbable that no reasonable person could conclude that any offence is disclosed. However, it is needless to observe, such an order of rejection ought not to be based on whims and fancy but must have the support of valid reasons. See: Judgement dated 27.01.2026 of the Supreme Court passed in Criminal Appeal No. 4629 of 2025, XXX Vs. State of Kerala (Para 47)

30. **Option of Magistrate when police does not submit report to him called for u/s 175(4)(a) BNSS:** A situation may arise where, in an appropriate case, the judicial magistrate has called for a report from the concerned superior officer under clause (a) of sub-section (4) of Section 175, but such officer fails to comply with the direction or does not submit the report within a reasonable period of time. What is the course open to the magistrate in such a situation? In the unlikely event of such a situation, we hold, the judicial magistrate is not obliged to wait indefinitely for compliance and may proceed further in accordance with sub-section (3) of Section 175 after considering the version of the accused public servant under clause (b) of sub-section (4) of Section 175, if on record. What would constitute ‘reasonable time’ cannot be determined in rigid or inflexible terms and must necessarily depend upon the facts and circumstances of each case before the judicial magistrate who has to take the call. See:

Judgement dated 27.01.2026 of the Supreme Court passed in Criminal Appeal No. 4629 of 2025, XXX Vs. State of Kerala (Para 48)

31. Sanction u/s 197 CrPC for taking cognizance when necessary: The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for any thing done by them in the discharge of their official duties without rescannable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. But before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. One safe and sure test in this regard would be to consider if the omission or neglect on the part of the public servant to commit the act complained of could have made him answerable for a charge of dereliction of his official duty, if the answer to this question is in the affirmative, it may be said that such act was committed by the public servant while acting in the discharge of his official duty and there was every connection with the act complained of and the official duty of the public servant. This aspect makes it clear that the concept of Section 197 does not get immediately attracted on institution of the complaint case. Use of the expression, "official duty" implies that the act or omission must have been done by the public servant in the course of his service and that it should have been in discharge of his duty. See : Center for Public Interest Litigation & Another Vs. Union of India & Another, AIR 2005 SC 4413 (Three-Judge Bench).

32. Sanction u/s 197 CrPC not required when sanction u/s 19 of the PC Act, 1988 has already been granted : A Full Bench of the Hon'ble Allahabad High Court has held as under :

(i) For prosecution under PC Act, 1988, once sanction u/s 19 of the said Act is granted, there is no necessity for obtaining further sanction u/s 197 of the CrPC.

(ii) Where a public servant is sought to be prosecuted under the PC Act, 1988 read with Section 120-B IPC and sanction u/s 19 of the PC Act, 1988 has been granted, it is not at all required to obtain sanction u/s 197 CrPC from the State Government or any other authority merely because the public servant is also charged u/s 120-B IPC

(iii) The offences under the PC Act, 1988 as well as charge of criminal conspiracy cannot be said to constitute "acts in discharge of official

duty". See : Full Bench Judgment dated 25.01.2006 of the Hon'ble Allahabad High Court delivered in Criminal Revision No. 22882/2004, Smt. Neera Yadav Vs. CBI (Bharat Sangh).

33. **Authority competent to grant sanction u/s 19 of the P.C. Act, 1988 can also grant sanction u/s 197 CrPC:** Sanction required under Section 197 CrPC and sanction required under the 1988 Act stand on different footings. Whereas sanction under the Penal Code in terms of the Code of Criminal Procedure is required to be granted by the State; under the 1988 Act it can be granted also by the authorities specified in Section 19 thereof. It is not in dispute that the Deputy Inspector General of Police was the competent authority for grant of sanction as against the respondent R in terms of the provisions of the 1988 Act. The State, thus, could not have interfered with that part of the said order whereby requisite sanction had been granted under the 1988 Act. The contention to the effect that the order of sanction passed by the Deputy Inspector General of Police was a composite one and, thus, the State could cancel the same, is unacceptable. Offences under the Penal Code and offences under the 1988 Act are different and distinct. On the face of the allegations made against R, they do not have any immediate or proximate connection. The test which is required to be applied in such a case is as to whether the offences for one reason or the other punishable under the Penal Code are also required to be proved in relation to offences punishable under the 1988 Act. If the answer to the said question is rendered in the negative, the same test can be applied in relation to a matter of sanction. See: Romesh Lal Jain Vs. Naginder Singh Rana & Others, (2006) 1 SCC 294 *(paras 11 & 12).*

34. **Test for necessity of composite sanction u/s 19 of the P.C. Act, 1988 and u/s 197 CrPC also** : Test to determine for sanction order to amount to a composite order, there must be an immediate or proximate connection between the P.C. Act and the IPC offences for which accused is charged. The test to be applied in such a case would be whether the offences under IPC are also required to be prove in relation to the offences under the P.C. Act, 1988. See : Romesh Lal Jain Vs. Naginder Singh Rana & Others, (2006) 1 SCC 294.

35. **Retired Public Servant & Sec. 197 CrPC :** If the accused public servant had ceased to be a public servant on the date when the court took cognizance of the offences under the P.C. Act, Section 197 Cr.P.C. is not attracted. See:
    (i) State of Orissa V. Ganesh Chandra Jew, (2004) 8 SCC 40.
    (ii) State of Himachal Pradesh V. M.P. Gupta (2004) 2 SCC 349

(iii) S.K. Zutshi V. Sri Bimal Debnath, 2004 (50) ACC 198 (SC)

36. Sanction u/s 197 CrPC required only when the offence committed is attributable to or has direct nexus with the official duty of the public servant : Whereas an order of sanction in terms of Section 197 CrPC is required to be obtained when the offence complained of against the public servant is attributable to the discharge of his public duty or has a direct nexus therewith, but the same would not be necessary when the offence complained of has nothing to do with the same. A plea relating to want of sanction although desirably should be considered at an early stage of the proceedings, but the same would not mean that the accused cannot take the said plea or the court cannot consider the same at a later stage. Each case has to be considered on its own facts. Furthermore, there may be cases where the question as to whether the sanction was required to be obtained or not would not be possible to be determined unless some evidence is taken, and in such an event, the said question may have to be considered even after the witnesses are examined. See: Romesh Lal Jain Vs. Naginder Singh Rana & Others, (2006) 1 SCC 294 *(para 33).*

37. Stage of raising plea of sanction : Interpreting the provisions u/s. 196, 197, 156, 196(1-A) Cr.P.C., it has been held by the Supreme Court that the plea of sanction can be raised at the time of taking cognizance of the offence or any time thereafter. But the plea of sanction cannot be raised or Sec. 197 Cr.P.C. is not attracted at the stage of registration of FIR, investigation, arrest, remand of the accused u/s. 167 Cr.P.C. or submission of the police report u/s. 173(2) Cr.P.C. When a case is under IPC and PC Act, 1947, question as to need of sanction u/s. 197 Cr.P.C. not necessarily to be raised as soon as the complaint is lodged. It can be raised at any stage and from stage to stage. If the cognizance of the offence has been taken without sanction, the plea of want of sanction can be raised by the accused after the commitment of the case and when the accused are called upon to address the court u/s. 227 and 228 Cr.P.C. See:

(i) State of Karnataka vs. Pastor P. Raju, AIR 2006 SC 2825
(ii) K. Kalimuthu vs. State by DSP, 2005 (3) SCJ 682
(iii) Birendra K. Singh v. State of Bihar, 2000 (4) ACC 653 (SC)

38. Court may when defer to decide the question of sanction u/s 197 CrPC at a later stage of the case ? : In a case where ex facie no order of sanction has been issued when it is admittedly a prerequisite for taking cognizance of the offences or where such an order apparently has been passed by the authority not competent therefor, the court may take note thereof at the outset. But where the validity or otherwise of an order of sanction is required to be considered having regard to the facts and circumstances of

the case and furthermore when a contention has to be gone into as to whether the act alleged against the accused has any direct nexus with the discharge of his official act, it may be permissible in a given situation for the court to examine the said question at a later stage. See : Romesh Lal Jain Vs. Naginder Singh Rana & Others, (2006) 1 SCC 294 *(para 38).*

39. **Stage of necessity of sanction in complaint case:** In the case noted below, the accused, a police officer, had conducted a search without warrant and Magistrate had taken cognizance against him of the offences u/s 342, 389, 469, 471, 120-B IPC without sanction for prosecution u/s 197 CrPC. The Hon'ble Supreme Court held that in the above case, sanction u/s 197 CrPC for prosecution of the police officer was necessary. Protection of Section 197 CrPC is available to a public servant when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable Act. Therefore, the concept of Section 197 CrPC does not get immediately attracted on institution of the complaint case. The test to determine whether omission or neglect to do that act would have brought on the charge of dereliction of his official duty. See:

(i) Rakesh Kumar Mishra Vs. State of Bihar (2006) 1 SCC 557 (paras 6 & 13)

(ii) Center for Public Interest Litigation Vs. Union of India, AIR 2005 SC 4413.

40. **Public servant & sanction** : A public servant cannot be prosecuted for acts done in connection with his official duty. See: Jaya Singh vs. K.K. Velayutham, 2006 (55) ACC 805 (SC).

41. **Sanction against retired public servant not required :** If the public servant has ceased to be a public servant on the date of cognizance of the offence by the court, sanction for his prosecution is not required. See. R.S. Nayak Vs. A.R. Antulay, AIR 1984 SC 684 (Five-Judge Bench).

42. **Sanction for prosecution of a retired public servant is essential u/s 197 CrPC but not for offences under P.C. Act, 1947 or P.C. Act, 1988 :** Necessity of obtaining sanction u/s 197 CrPC for prosecution of a retire public servant is must. But an accused facing prosecution for offences under the P.C. Act, 1947 or the P.C. Act, 1988 cannot claim any immunity on the ground of want of sanction if he ceased to be a public servant on the date when the court took cognizance of the said offences. The correct legal position, therefore, is that an accused facing prosecution for offences under the old P.C. Act, 1947 or the new P.C. Act, 1988 cannot claim any

immunity on the ground of want of sanction if he ceased to be a public servant on the date when the court took cognizance of the said offences. But the position is different in cases where Section 197 CrPC has application. See : Rakesh Kumar Mishra Vs. State of Bihar, (2006) 1 SCC 557 *(paras 16, 17, 18 & 21)*

43. **Error in sanction when not material** : In the absence of anything to show that the error or irregularity in sanction u/s 19 of the P.C Act, 1988 has caused failure of justice and once cognizance has been taken, it can not be said that cognizance has been taken on invalid police report. See : Ashok Tshering Bhutia Vs. State of Sikkim, 2011 CrLJ 1770 (SC).

44. **Sanction when public servant holding more than one public office :** Where the public servant was holding more than one public office and the question of sanction for misusing or abusing one of his public offices arose, it has been held by the Hon'ble Supreme Court that sanction of authority competent to remove him from office allegedly misused or abused alone is necessary and not of all competent authorities. See : R.S. Nayak Vs. A.R. Antulay, AIR 1984 SC 684 (Five-Judge Bench).

45. **Stage of sanction u/s 197 CrPC :** In a case of trial of accused for offences u/s 18 (a) (i) read with Sec. 27, 27-A, 17-C of the Drugs & Cosmetics Act, 1940, it has been held by the Supreme Court that the question of sanction u/s 197 Cr PC for prosecution should be left open to be decided by the trial judge at the end of the trial. See : State of Maharashtra Vs. Deva Hari Deva Singh, 2009 (64) ACC 117 (SC).

46. **Stage of sanction u/s 197 CrPC :** Question of validity of Sanction u/s 19 of the P.C. Act, 1988 can be raised at an earlier stage of proceedings. After the order of remand passed by the High Court, the Special Judge acted upon and entertained the matter. See : CBI Vs. Ashok Kumar Aggarwal, 2014 (84) ACC 252 (SC).

47. **Sanction u/s 19 of the P.C. Act, 1988 not required if the criminal conspiracy is to commit offences punishable with imprisonment for two years or above :** Sanction u/s 19 of the P.C. Act 1988 not required if the criminal conspiracy is to commit offences punishable with imprisonment for two years or above. See : Shiv Nandan Dixit Vs. State of UP, (2003) 12 SCC 636.

48. **Speaker competent to grant sanction of prosecution of Member of Parliament**: Speaker of Lok Sabha and Chairman of Rajya Sabha are

competent to grant sanction of Member of Parliament. See: P. V. Narsimha Rao Vs. State, CBI, (1998)4 SCC 626(Constitution Bench)

49. Courts are open institutions to public and even sub-judice issues can be debated by the public and the press: Supreme Court set aside the order of the Delhi High Court directing the deletion of a Wikimedia page on defamation proceedings initiated by ANI against Wikimedia on the ground that the page was prima facie contemptuous and amounted to interference in court proceedings. The Supreme Court held that the courts are the open institutions to public and even sub-judice issues can be debated by the public and the press. Media reporting about judicial proceedings cannot be curbed lightly. It was further held by the Supreme Court that both the Judiciary and Media are the foundational pillars of democracy, which is a basic feature of the Constitution. For the liberal democracy to thrive, both should supplement each other. See: Judgment dated 09.05.2025 of the Supreme Court in Wikimedia Foundation Inc. Vs. ANI Media Private Limited, 2025 SCC OnLine SC 1075

50. Section 195(1)(b)(ii) CrPC would be attracted only when the offence was committed after the document was produced before the Court : A Constitution Bench of the Hon'ble Supreme Court has held that the protection engrafted under Section 195(1)(b)(ii) CrPC would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in proceeding in any Court i.e. during the time when the document was in *custodia legis***.** See: :

(i) P. Swaroopa Rani Vs. M. Hari Narayana, AIR 2008 SC 1884
(ii) Iqbal Singh Marwah Vs. Meenakshi Marwah, (2005) 4 SCC 370 (Five-Judge Bench)
(iii) Sachidanand Singh Vs. State of Bihar, AIR 1998 SC 1121 (Three-Judge Bench).

51. Bar of Section 195(1)(b)(ii) CrPC not attracted where forgery of document was committed before the document was produced in the Court : Bar of Section 195(1)(b)(ii) CrPC is not attracted where forgery of document was committed before the document was produced in the Court. See :

(i) Sada Singh Vs. State of UP, 2002 (1) JIC 817 (All)
(ii) Bahadur Vs. Chandra Bhushan, 2000 (40) ACC 559 (All)

52. If the forged document is not produced before the Court, Section 195(1)(b)(ii) CrPC: Where the alleged forged deed of power of attorney was not produced or given in evidence in any Court, it has been held that Section 195(1)(b)(ii) CrPC was not attracted in the case and hence complaint for offence under Section 471 IPC by the Court was not required. See: Sailendra Pradhan Vs. Vipparla Jyoti, 2006 CrLJ 1483 (Orissa)

53. **Section 195(1)(b)(ii) CrPC when not attracted to a forged document ?** Where accused had got his name mutated in revenue records by producing in the revenue court forged documents i.e. the death certificates etc. of the complainant and on coming to know, the complainant who was falsely shown by the accused to have died appeared and lodged FIR and after investigation a charge-sheet for the offences u/s 120-B, 420, 218, 466, 467, 468, 471 of the IPC was filed and the accused had taken the plea of Bar of prosecution u/s 195(1)(b)(ii) CrPC, it has been held by the Hon'ble Allahabad High Court that since the forgery of documents was committed before the documents were produced in court, therefore, Bar of prosecution u/s 195(1)(b)(ii) CrPC was not attracted. See: Sada Singh Vs. State of UP, 2002 (1) JIC 817 (All).

54. **Action u/s 195/340 CrPC to be taken in only in the interest of justice and not to satisfy the grudge of a private litigant :** Even when an application is made by one of the parties, it becomes a matter between the court and the alleged perjurer. An action u/s 340 CrPC is undertaken in the interest of justice and not to satisfy the grudge of a private litigant. Every case of perjury need not result in prosecution. See :

(i) Ashok Kumar Aggarwal Vs. Union of India, 2014 (84) ACC 244 (SC)
(ii) Zeba Khalil Vs. State of UP, 2006 (54) ACC 354 (All)(DB).

55. **Court can act suo motu u/s 195/340 CrPC :** Action u/s 195/340 CrPC should be taken only when the court on objective consideration of the entire facts and circumstances is of the belief and opinion that the interest of justice so requires. The court may act *suo motu* also. See : Zeba Khalil Vs. State of UP, 2006 (54) ACC 354 (All)(DB).

56. **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).

57. **Strictures against Sessions Judge, Rampur for not understanding the scope of Section 195/340 CrPC:** Strictures against Sessions Judge, Rampur were recorded by the Hon'ble Allahabad High Court for, contrary to the provisions of Section 195/340/344 CrPC, directing the SSP, Rampur in a judgment delivered in Sessions Trial to register and investigate FIR against the complainant/PW for having lodged false FIR against the accused person. See : Lekhraj Vs. State of UP, 2008 (61) ACC 831 (All).

58. **Witness may file complaint u/s 195-A CrPC if threatened by accused or any other person :** Threatening any witness to give false evidence has been made offence w.e.f. 16.04.2006 punishable u/s 195A of the IPC with imprisonment upto 7 years or fine or with both. A witness threatened by the accused can file complaint u/s 195 CrPC as inserted w.e.f. 31.12.2009.

59. **Procedure for witnesses in case of threatening etc. (Section 195-A CrPC)** : Section 195-A CrPC reads thus : A witness or any other person may file a complaint in relation to an offence under section 195A of the IPC (45 of 1860)**.**

60. **Complaint under Special Acts:** Cognizance of offences under special Acts is taken outright on the basis of the allegations made in the complaint without examining the complainant public servant and his witnesses. Some of the special Acts are enumerated below:

(i) Indian Forest Act, 1927
(ii) Motor Vehicles Act, 1988
(iii) Uttar Pradesh Excise Act, 1910
(iv) Mines and Minerals (Development and Regulation Act, 1957
(v) Uttar Pradesh Weights and Measurement Act, 2009
(vi) Legal Metrology Act, 2009

61. **Procedure for investigation, inquiry and trial of offences under Special Acts: Section 4 BNSS :** As per the procedure contained in the Special Act and if no procedure is provided in the special Act, then in accordance with the procedure of the BNSS 2023.

62. **Absence and death of complainant: Section 279 BNSS:** After giving 30 days time to complainant to appear, the Magistrate may dismiss the complaint. Section 279 BNSS, as far as possible, shall apply in the event of death of the complainant.

63. **Withdrawal of complaint: Section 280 BNSS:** Before passing final order, Magistrate may permit withdrawal of complaint against all or any of the accused and acquit him.

64. **BW/ NBW and Bail:** In the case noted below, the Supreme Court has ruled that BW or NBW against a person can be issued only under the following conditions :

(1) Non bailable warrant should be issued to bring a person to court when summons or bailable warrant would be unlikely to have the desired result. NBW can be issued when it is reasonable to believe that the person will not voluntarily appear in the court, or

(2) The police authorities are unable to find the person serve him with a summons, or

(3) It is considered that the person could harm someone if not placed into custody immediately.

As for as possible, if the court is of the opinion that a summons will suffice in getting the appearance of the accused in court, the summons or the bailable warrants should be preferred. The warrants either bailable or non-bailable should never be issued without proper scrutiny of facts and complete application of mind, due to the extremely serious consequences and ramifications which ensue on issuance of warrants. In complaint cases, at the first instance, the court should direct serving of summonses. In the second instance, should issue bailable warrant. In the third instance, when the court is fully satisfied that the accused is avoiding the court's proceedings intentionally, the process of issuance of NBW should be resorted to. See: Inder Mohan Goswami Vs. State of Uttaranchal, AIR 2008 SC 251.

65. **NBW when to be issued ? :** The Constitution, on the one hand, guarantees the right to life and liberty to its citizens under Article 21 and on the other hand imposes a durty and an obligation on the judges while discharging their judicial function to protect and promote the liberty of the citizens. The issuance of non-bailable warrant in the first instance without using the other tools of summons and bailable warrant to secure attendance of such a person would impair the personal liberty guaranteed to every citizen under the Constitution. ……There cannot be any straitijacket formula for issuance of warrants but as a general rule, unless an accused is likely to tamper or destroy the evidence or is likely to evade the process of law, issuance of non-bailable warrants should be avoided. The conditions for the issuance of non-bailable warrant are, firstly, if it is reasonable to believe that the person will not voluntarily appear in court; or secondly if the police authorities are unable to find the person to serve him with a summon and thirdly if it is considered that the person could harm someone if not placed into custody immediately. In the absence of the aforesaid reasons, the issue of non-bailable warrant a fortiori to the application under Section 319 CrPC would extinguish the very purpose of existence of procedural laws which preserve and protect the right of an accused in a trial of a case. The court in all circumstances in complaint cases at the first instance should first prefer issuing summons or bailable warrant failing which a non-bailable warrant should be issued. See : Vikas Vs. State of Rajasthan, (2014) 3 SCC 321.

66. **Only summons or bailable warrant to be issued in the first instance in complaint cases :** The court in all circumstances in complaint cases at the

first instance should first prefer issuing summons or bailable warrant failing which a non-bailable warrant should be issued. See :

(i) Satender Kumar Antil Vs. Central Bureau Of Investigation, AIROnline 2022 SC 956 (Paras 31& 32)

(ii) Vikas Vs. State of Rajasthan, (2014) 3 SCC 321.

67. **NBW when to be issued ? :** Where in a complaint case, the Magistrate had outright issued NBW against the accused persons, interpreting the scope of Article 21 of the Constitution in relation to the rights of personal liberty of a person, it has been held by the Supreme Court that the attendance of the accused could have been secured by issuing summons or at best by a bailable warrant. Detailed guidelines have been issued by the Hon'ble Supreme Court in this regard for observance by the courts and the Police Officers. A format of Register for entering therein the details of issue etc of NBWs has also been provided by the Hon'ble Supreme Court at the end of its judgment. See :

(i) Satender Kumar Antil Vs. Central Bureau Of Investigation, AIROnline 2022 SC 956 (Paras 31& 32)

(ii) Raghuvansh Dewanchand Bhasin Vs State of Maharashtra & Another, AIR 2011 SC 3393

68. **Magistrate to give reasons while issuing warrant:** Issuing a warrant may be an exception in which case the magistrate will have to give reasons. See: Satender Kumar Antil Vs. Central Bureau Of Investigation, AIROnline 2022 SC 956 (Para 37)

69. **Bail of warrantee** : Cases which would be governed by the Sections 436 and 437 CrPC, it is not necessary to apply the provisions of Sec. 88 of CrPC for the reason that Sections 436 and 437 CrPC are specific provisions and deal with particular kind of cases, whereas the scope of Sections 88 and 89 CrPC is much wider as discussed above. The case in which Section 436 CrPC is applicable, an accused person has to appear before the Court and thereafter only the question of granting bail would arise. Any one, who is an accused, has been conferred a right to appear before the Court and if the Court is prepared to give bail, he shall be released on bail. The same equally applies with respect to Sec. 437 CrPC also. Therefore, where a summon or warrant is issued by a Court in respect of an accused, the procedure u/s 436 and 437 CrPC has to be followed and summons or warrant, which have been issued by the Court, have to be executed and honoured. The necessary corollary would be that Sections 88 and 89 CrPC as such, would not be attracted in such cases. However we make it further clear that considering the language of aforesaid provisions, whether the bail bond is required to be executed u/s 88 CrPC or the Court gives bail u/s 436 and 437 CrPC, the

appearance of the person before the Court is must and can not be dispensed with at all. See : The Division Bench Decision dated 23.3.2006 rendered in Criminal Misc. Application No. 8810 of 1989, Babu Lal Vs. Smt. Momina Begum & Criminal Misc. Application No. 8811 of 1989, Parasnath Dubey Vs. State of U.P., circulated by the Allahabad High Court amongst the judicial officers of the State of U.P. vide C.L. No. 33 / 2006, dated 07.08.2006.

*****