

Dismissal of Complaint under CrPC

Introduction

This article deals with the circumstances under which a Magistrate can take an account of the offence done. The action taken by the Magistrate in the offence implies that the Magistrate shall have put a thought to the offence mentioned in the police report with the view kept in mind regarding the further proceedings which are necessary for the trial of the person accused of that offence. This article also talks about the procedure of action taken by the magistrate and which are Preparatory to the trial of the case. [Section 200](#) to [Section 203](#) the [Criminal Procedure Code \(1973\)](#) are important to eliminate or avoid the false, inappropriate and without due cause filed complaints aimed at harassing the accused person.

Importance of Complaint Proceedings under Judicial Magistrate

Everyday court experiences suggest that many of the complaints are ill-founded and it is essential that these complaints should from the very beginning be circumspectly looked after. Moreover, the complaints which do not have a piece of proper evidence to make it consider worthy should be subjected to further examination so that only in actual cases court should summon the accused person.

It is important not to forget that an order summoning a person to appear in a court of law for the criminal charge implies serious consequences and has the scope to make an accused person deprive of his or her liberty which is considered to be so precious and sacred in our Republic. Such an order should not be passed without the sanction by law. With this end in view Section 200 to 203 have been enacted and their main scope is to be able to distinguish genuine cases from the false ones so as to root them out in the beginning without calling upon the party against whom the complaint is made.

The Weeding-out operation practised by the Magistrate under Sections 200 to 203 is solely and exclusively applicable to the cases where the cognizance is taken

on a complaint. For apparent reasons, such a special method or practice is not needed in cases where the cognizance has been taken on a police report.

Complaint Proceedings under Judicial Magistrate

Examination of the complainant

[Section 200](#) of CrPC says that a Magistrate, who is authorised to take account of the offence took place on a complaint, shall consider upon the oath presented by both complainant and witnesses if there is any and later the material obtained from this examination shall be reduced to writing along with the sign of the complainant and the witnesses and also of the Magistrate. According to the definition provided in [Section 2\(d\)](#) of CrPC, a complaint can be in any of the forms both oral or written. Nor does Section 200 or any other section require the complainant to present a written complaint to the Magistrate personally. Therefore, the complaints sent to the Magistrate through posts are valid and he can take action on such complaints also.

Whether the complaint is in the form of writing or oral, Section 200 of Crpc makes it legally mandatory to be examined by the Magistrate on oath. The mere objective of such an examination of the complaint presented to the Magistrate is to establish whether there is any direct or actual case against the person who is being accused of the offence in the following complaint. Further, it aims to restrict the issue of process on a complaint which is either false or inappropriate or may be intended only to harass a person by accusing him of an offence.

The provisions provided under Section 200 are not a mere formality but instead made by the legislature to protect and guard the accused person against the unwarranted complaints. These provisions are not discretionary but mandatory to be performed by the Magistrate. In some cases, the non-examination or improper examination of the complaint by the Magistrate has been considered merely non-uniform and not "ineffective of the proceedings" in the absence of failure of justice towards the accused. It is also considered that the non-examination of the complaint by the Magistrate may cause harm to the complainant, not the person who has been accused by him. There is no need for re-examination regarding the case 'complaint by a public servant or court' and 'Magistrate forwards the case to a different Magistrate under [Section 192](#)'.

The procedure by Magistrate not competent to take cognizance of the case

According to [Section 201](#) of CrPC, "If a complaint is made before a Magistrate who is not competent to take cognizance of the case, then Magistrate will do either of the two things as follows-

1. If a Complaint is made in writing, then the Magistrate needs to refer the following case to the proper court for the presentation with the support for that effect.
2. If the Complaint is not in writing, then the Magistrate shall direct the complainant to the proper Court.

Postponement of issue of process

According to [Section 202](#), the order of investigation is called "Post Cognizance Investigation" which is not the investigation done under [Chapter 12 of CrPC \(Section 156\(3\)\)](#). Therefore, any report submitted under this order shall be done as per Section 202 CrPC and not as that of [Section 173\(2\)](#) of CrPC. This investigation under Section 202 CrPC is for the limited purpose as asked for by the Judicial Magistrate. However, the Judicial Magistrate will not order investigation under Section 202 if:

- The matter is exclusively triable by the Court of Session.
- When the complaint has been made by the public servant and the matter is not exclusively triable by the Court of Session.

According to this section, the collection of evidence can be done by the police officer or by any such person who is considered to be fit and is authorised by the Judicial Magistrate on that behalf.

The main objective of the investigation directed under this section is to aid the Magistrate in making up a decision to move towards the issue of process and this process should not be thorough and exhaustive in nature. There need not be any investigation to be directed if the offence is specially carried out for trial by the Court of Session which is ultimately going to indirectly help in achieving an inquiry made by the Magistrate himself.

Moreover, in the case where the complaint has not been made by the court then there need not be any investigation directed unless the complainant and the witnesses have been examined on the basis of an oath. [Section 465](#) of CrPC will not be able to cure the proceeding in the case of directing an investigation before

such examination but will spoil the proceeding instead. The magistrate has the discretion to take or not to take any account of the witness on the oath if the Magistrate wants to decide the case himself.

[Section 202\(2\)](#) of CrPC talks about the idea that in cases of offences which are entirely triable by the Court of Session the inquiry should be Broad-based in nature whereas unlike in the cases left on the discretionary action of the Magistrate. This broad-based inquiry is led by the Magistrate only in the situation where he is unable to make his mind whether to dismiss the complaint or proceed further to issue a process upon the complaint. In the case of trial by the Court of Session, it is explicitly required by the Magistrate to call upon the complainant along with all his witnesses and examine them on oath and here the word 'All' means all of them not 'some'. This provision helps the accused person to prepare him for defence with respect to the accusations put on him by the complainant and examination of all the witnesses is not a mere formality. Under Section 202 there is no provision provided to compel the complainant to be present in the court during the Examination of the witnesses on oath and especially when the complainant has been already examined on oath. Dismissal of the complaint by the Magistrate in such a situation will be considered illegal.

Dismissal of the complaint

According to [Section 203](#) of CrPC, "The Magistrate can also dismiss the complaint if inquiry or investigation under Section 202 result no ground for proceedings", i.e, after considering the statements of the complainant and its witnesses under Section 200 and the result of investigation under Section 202, the Judicial Magistrate is of the opinion that there is no sufficient ground to proceed in the matter, he shall dismiss the complaint with brief recorded reasons. A second complaint on the same facts could be entertained only in exceptional cases.

Issue of Process

As per [Section 204](#) CrPC, if the Judicial Magistrate taking Cognizance of an offence considers that there is sufficient ground to proceed in the matter, he shall issue process against the accused person in the following manner:

- If it's a summons case, he shall issue a summons for the attendance of the accused
- If it's a warrant case, he may issue a warrant or if he thinks fit, may issue a summon for causing the accused to appear at a certain date and time.

This whole procedure of issuing summons or warrants under Section 204 CrPC is to make the accused person aware of the prosecution witnesses and to prepare his defence.

Once the Judicial Magistrate has issued summons or warrants in a case, he cannot recall his order of issue process. Therefore, the only recourse available to the aggrieved person to challenge the issuance of process under Section 204 CrPC is by invoking [Section 482 CrPC](#).

Dismissal of complaint

Section 203 of CrPC authorises a Magistrate to take cognizance on a complaint by the complainant to build an opinion regarding the sufficiency of grounds to continue with the proceeding of the case. This opinion must be based on the statements made by the complainant and his witnesses and further depends on the result of the investigation or of an inquiry as per Section 202. The Magistrate is required to apply his mind on the material facts available regarding the case and then form an opinion whether those grounds are sufficient or not to continue further with the proceeding of the case.

The case is entirely triable by the Court of Session at the stage of Section 203 and Section 204 of CrPC. All that the Magistrate is required to do is to study or examine the complaint properly and to check that the evidence recorded during the introductory inquiry under the Section 200 and Section 202 are direct evidence in support of the charges put on the accused person. At the later stage that is as per Section 203, the Magistrate is not required to measure the available evidence precisely and leave it for the trial court to perform. The quality to be maintained in examining the evidence should not be the same as maintained during the stage of framing charges. The standards of proof and opinion should not be applied exactly during the stage of framing charges like applied finally before establishing the accused person guilty of the offence. So if, the stage of Section 202 or 204 provides with the direct evidence to support the allegation put on the accused in the complaint related to the case exclusively triable by the Court of Session, that will be sufficient ground for issuing the process to the accused and further committing him for the trial to the Court of Session.

As per the Section 203, the magistrate in exercising his discretion should not allow himself to get manipulated by consideration of the motive by which the complainant may have acted in the matter and not by any other consideration outside the facts which are presented by the complainant in support of his complaint against the accused. Mere lapse of time between the attempt of offence and date of the complaint made by the complainant is no ground for throwing out the complaint, though that may be relevant considering at the trial for evaluating evidence when presented.

The order of dismissal of the complaint by the Magistrate is subject to the examination by higher courts and can be reviewed later. Therefore, the recording of the reasons behind the dismissal of the complaint would be useful for such an examination of the complaint. At this stage, it should be possible for the accused to satisfy the Magistrate that there was no case existing at all against him and that he can recall the order issuing process as per the Section 204 and further dismiss the complaint under Section 203. In the *Chiman Lal v Datar Singh and Ors. (1997)* case, it was held that the dismissal of a complaint is inappropriate where the Magistrate is unable to examine the material facts and witnesses as stated under 202 of CrPC.

Power of Magistrate to dismiss the private complaint which reveals no offence

According to the provisions of clause (a) mentioned under [Section 190\(1\)](#) of the CrPC, the magistrate has the power to take account of a private complaint. It is mandatory that the complaint filed by the complainant should contain the facts which establish offence and if these facts mentioned in the complaint turns out to be false in respect to the offence then Magistrate is not required to take an account of such complaint. He has the discretion to dismiss such complaints without making any further inquiries.

In *Mehmood Ul Rehman v. Khazir Mohammad Tunda (2015)* case, Supreme court held that: According to [Section 190\(1\)\(b\)](#) of CrPC, the Magistrate has the advantage over the police report which mentions the relevant facts related to the complaints and further, the [Section 190\(1\)\(c\)](#) of CrPC. provides that the Magistrate has the power to take account of the information or knowledge of the commission of offence received through any other person than the police report. But under [Section 190\(1\)\(a\)](#) Magistrate has a complaint as the only option. Therefore, the Magistrate is not required to take cognizance of the complaint directly and does not reveal the commission of any offence mentioned in the complaint by the complainant as per the [Section 190\(1\)\(a\)](#) and complaint is simply to be dismissed by the Magistrate. The steps taken by the Magistrate followed by [Section 204](#) should make it visible that he has put in his mind the facts and statements and there is a valid ground for legal proceeding against such offence further by interrogating the accused person on whom the accusations are made in respect to the offence committed to appear before the court. Only on satisfaction on the ground for proceeding would mean that the facts mentioned in the complaint would comprise an offence and when examined along with the recorded statements would directly make the accused person answerable before the court. There needs to be a speaking order passed as per [Section 203](#) of CrPC when the complaint is dismissed by the Magistrate and reasons needed to be stated briefly regarding the same. Thus, the above-mentioned judgement by the Supreme Court settles the issue by holding that the Magistrate may dismiss a

private complaint when there are facts mentioned in such complaint does not reveal any offence directly without making any further legal inquiry in such case.

Powers of magistrate

- Section 200 demands the Magistrate to examine both the Complainant and the Witnesses present. This obligation being essential, the Magistrate needs to ask the complaint if any witness is there or not. In the situation of absentee of the witness, the Magistrate should record the following fact in the order sheet.
- Inquiry or Investigation for Further Examination of the complaint by the Magistrate-

Any Magistrate receiving a complaint of an offence which he is authorised to take action on or which had been directed to him under [Section 192](#) of CrPC, If a Magistrate thinks it fit to postpone the issue of proceedings against the accused person and either can inquire into the case himself or direct an investigation to be made by a police officer or by any other person which he thinks is fit for the purpose of deciding whether or not there is sufficient evidence for the proceeding.

- Section 203 gives the power to dismiss the complaint under this section in every case and for which he shall briefly record his reasons for the same because it will help in determining whether the Magistrate while dismissing the complaint made by the complainant applied his mind to the facts available or whether exercised his discretion properly or not.

The objective behind the section

- The Examination of the Complaint on oath is not a mere formality that needs to be performed by the Magistrate and discharge of a complaint with such an examination is illegal and against the provisions of CrPC.
- A statement of oath lies in a different category that means it cannot be set equal with the statement which may be made without taking any oath. According to the Legislative order or means in requiring the statement on oath cannot be allowed to take place by the Provisions provided under [Section 465](#). However, it is not required by the Magistrate taking action on the complaint to constantly examine the witnesses mentioned in the petition of the complaint. So after examining the complainant on the basis of an oath which results in finding a direct case against the accused then the proceeding will follow and if the witnesses, in this case, were not examined by the Magistrate, the proceedings would not be ineffective under Section 200.

- Section 203 gives the power to dismiss the complaint under this section in every case and for which he shall briefly record his reasons for the same because it will help in determining whether the Magistrate while dismissing the complaint made by the complainant applied his mind to the facts available or whether exercised his discretion properly or not.
- The crucial duty of considering the relevant evidence materials and requirement of the recording of the reasons is an important protection against random dismissal of a complaint.
- Where a complaint has been charged on the accused persons regarding commission of several offences and the magistrate finds sufficient evidence for issuing of the proceeding against all of them or some of them in respect of the offences committed, his order will lead to the dismissal of the complaint against such persons in respect of other offences. Here also the provisions stated under Section 203 will come into play and the magistrate needs to provide the reasons behind why he considers that there are no adequate grounds to continue with the proceeding against the accused persons for which no action is commenced against them.

Landmark Judgments

Manharibhai Muljibhai Kakadia & Anr. Vs. Shaileshbhai Mohanbhai Patel & Ors.

In the case [Manharibhai Muljibhai Kakadia & Anr Vs. Shaileshbhai Mohanbhai Patel & Ors. \(2012\)](#), Shaileshbhai Mohanbhai Patel, filed a criminal complaint in the Court of Chief Judicial Magistrate, Surat against Manharibhai Muljibhai Kakadia and Paresh Lavjibhai Patel. Appellants put charges against them that they had pre-planned a conspiracy by creating forged documents and achieved signatures of the complainant, his father and uncle, two sons of his uncle, and his elder brother. Further, used the said documents as authentic and original by producing the same before the District Registrar, and obtained the registration of Indoregency Cooperative Housing Society Limited by making a false representation. By doing so the accused (appellants) have caused financial loss and physical and mental distress to the complainant and his family members. He also has deceived the complainant and his family members by obtaining huge financial advantage by taking possession of the complainant's property. Thus, it was considered that the appellants have committed offences punishable under Sections [420](#), [467](#), [468](#), [471](#) and [120-B](#) under [Indian Penal Code \(1860\)](#).

Decision: Supreme Court held that in a revision petition preferred by the complainant before the High Court or the Sessions Judge challenging an order of the Magistrate dismissing the complaint under Section 203 of the Code at the stage under Section 200 or after following the process examined under Section 202 of the CrPC, the accused or a person who is suspected to have committed an offence is legally entitled to be heard by the revisional court.

In other words, where a complaint has been dismissed by the Magistrate under Section 203, made by the complainant can be challenged in a revision petition before the High Court or the Sessions Judge, the persons who are accused in the complaint have a right to be heard in such a revision petition. If the revisional court overrules the order of the Magistrate dismissing the complaint and then the complaint is restored to the file of the Magistrate and it is sent back for fresh consideration of the grounds. The persons who are mentioned in the complaint who have committed the offence have no right to participate in the proceedings nor are they entitled to any hearing of any sort whatsoever by the Magistrate until the consideration in respect of matter by the Magistrate for issuing of process. The judgments of the High Courts to the contrary are overruled.

The order passed under Section 203 could be called out in revision. The question whether a suspect is entitled to hearing by the revisional court in a revision preferred by the complainant challenging an order of the Magistrate dismissing the complaint under Section 203 has been answered in the confirmation by the Supreme Court.

Chandra Deo Singh Vs. Prokash Chandra Bose and anr.

In the case of [*Chandra Deo Singh Vs Prokash Chandra Bose and Anr. \(1963\)*](#), the honourable judge believed that since there is only one offence, i.e., the murder of Nageswar Singh, there can be only one trial and no further enquiry can be made in respect to the other persons who are being tried for that offence. As there was no availability of material facts on record by which the court could tell what happened to the enquiry against Asim Mondal and Arun Mondal after the dismissal of their application for revision by the High Court. That report had been received which shows the High Court directed that the commitment proceedings against these two persons have stayed pending which led to the disposal of the present appeal by this court. The Court said that it cannot appreciate the argument that an enquiry against a different person with reference to the same offence cannot be undertaken.

In view of what we have stated above, it is not necessary to say very much about the last ground. Section 203 of the Code of Criminal Procedure provides that where the Magistrate dismisses a complaint because according to his judgment there is no sufficient ground for proceeding with the trial, and he should record his reasons for doing so. Here, as already stated the Magistrate pursued the report of the enquiring Magistrate and then proceeded to dismiss the complaint. In support of this view, the dependency is placed upon the decision of the court.

Here, in this case, dismissal of a complaint by the Magistrate at the stage of inquiry under Section 203 was set aside by the Supreme Court by laying down that test was whether there was sufficient ground for the proceeding and not whether there was sufficient ground for conviction. The Court further noticed that where there is direct evidence, even though the accused may have a safeguard that the offence is committed by some other persons, then the matter has to be left to be decided by the appropriate forum at the appropriate stage and the issue of the process cannot be refused. Unless the Magistrate finds that the evidence presented before him is self-contradictory or essentially untrustworthy then the process cannot be refused if that evidence makes out a direct cause.

Conclusion

When the complaint is filed in writing before the Court, the magistrate after studying the complaint registers it. After registering it, the statement of the complainant under Section 200 Criminal Procedure Code (1973) is recorded on the same day and the case is fixed for recording evidence of the witnesses under Section 202 of the Code of Criminal Procedure for any other day. After recording evidence under Section 202 CrPC of the witness or witnesses and the case is fixed for arguments on summoning. Having heard the arguments on hearing, the case is fixed for next summoning. If the Magistrate finds or satisfies that evidence related to the offence are available in the complaint as per evidence under Section 200 and 202 of the Code of Criminal Procedure. The Magistrate issues the process under Section 204 of the CrPC. against the accused. On the other hand, if the Magistrate is satisfied after studying evidence under Section 200 and 202 CrPC. that no prima facie offence is made out and there is no sufficient ground for proceeding then he dismisses the complaint under Section 203 CrPC.