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Abstract

Either we talk about the primitive societies or the modern we must come across crimes. The crime may be of any kind like theft relating to property, beating while quarreling which is related to body and defamation related to rights of the individual. It becomes necessary for the ruler of any country to control this sort of acts in his jurisdiction. So, they make laws one of such laws of India is Criminal Procedure Code, 1973 which is the procedural law. When a crime happens the further procedure to be followed by the police and courts are mentioned in Code of Criminal Procedure. Part XVI of Criminal Procedure Code deals with the commencement of proceedings before the magistrate. In this article we will clearly discuss how the proceedings before magistrate start and the provisions relating to it.

Keywords

Magistrate, cognizance, summons, warrants, proceedings, complaint, jurisdiction, accused and police.

Introduction

One of the earliest pieces of legislation that governs India's fundamental Criminal law is the Code of Criminal Procedure, 1973. The many steps and procedures that must be taken while conducting the criminal proceedings are mentioned. The beginning of the proceedings before the magistrate is covered in Chapter XVI of The Code of Criminal Procedure. In order to avoid difficulties throughout the proceedings, the Magistrate must adhere to all of the provisions mentioned in the chapter XVI. Section 204 to 210 of Criminal Procedure Code deals with the process of commencement of proceedings before the magistrate.

Scope

The magistrate can initiate proceedings only after making cognizance. Cognizance literally means knowledge or notice, and taking cognizance of offence means taking notice, or becoming aware of the alleged commission of an offence[1]. The circumstances under which the magistrate can take cognizance is defined in section 190 of the criminal procedure code. It stated that

Subject to the provisions of Chapter, any Magistrate of the first class, and any Magistrate of the

second class specially empowered in this behalf under Sub-Section (2), may take cognizance of any offence—

1. upon receiving a complaint of facts which constitute such offence;
2. upon a police report of such facts;
3. upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

The magistrate after making cognizance either dismiss the complaint or accept the complaint and initiate proceedings. The criminal procedure code categorizes cases into two categories: summary cases and warrants cases. The punishment given out to each of them is where they diverge most. The typical punishments for crimes in warrants cases include the death penalty, life in jail, or a maximum sentence of two years. Summary

trials may be used to try crimes for which the death sentence or life in prison cannot be imposed. The start of the proceedings is the subject of this chapter.

In *MacCulloch vs. State, 1974*[2], the Supreme Court ruled that the provisions of Section 200 are not merely a formality, but were intended by the legislature to be carried out in order to safeguard accused persons against unjustified accusations.

To begin the trial process, the magistrate must be competent to take cognizance of the accused offence. According to Section 201, if the magistrate is unable to take cognizance of an offence, he must

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

Dismissal of complaint

Section 203 gives the Magistrate the authority to reject a complaint. In the event that the Magistrate determines that there are insufficient reasons to proceed, he may dismiss the case. After carrying out a suitable investigation or inquiry in accordance with Section 202, the Magistrate arrives at this determination. If the processing fee is not paid in a proper manner, the Magistrate may also reject the complaint; this basis for dismissal is specified in Section 204.

The magistrate has the authority to reject the complaint or the procedural matter when:

1. After the complaint is reduced to writing in accordance with Section 200, the magistrate determines that no crime has been committed;
2. If the magistrate doubts the complainant's statements;
3. If the magistrate determines that additional investigation is necessary, he may postpone the matter.

Issuing of summon case and warrant case

If it is determined that there are enough grounds to continue, Section 204 of this Act gives the Magistrate the authority to issue a process. If it is a summons case, the magistrate may issue a summons. In a warrant case, a warrant is issued. In order to make the accused appear before the relevant Magistrate by a specific date, the

Magistrate may also call him. If the “process- fee” is past due in any way, the Magistrate is not permitted to issue a process until it is paid in a timely manner. The accused cannot be served with a summons or warrant until the prosecution witness list is made available. Under Article 361 of the Indian Constitution initiation of process for arresting or imprisoning the president or the governor of any state cannot be done. They have sovereign immunity. Any kind of warrants cannot be imposed on president or the governor of the state during their term in the office.

Magistrate’s power to dispense with the personal attendance of the accused

According to section 205 of chapter XVI of Criminal Procedure Code magistrate have the power to dispense the personal attendance of the accused person. The magistrate may exempt accused person his personal attendance during the proceedings. He can appear through his pleader if there are certain reasonable causes in doing so. If necessary, the Magistrate may also order the accused to personally appear at any point throughout the investigation. The magistrate can exempt the accused to appear in initial proceedings but this will not carry out till the final proceedings. The court has complete discretion over the matter after applying pertinent judicial principles, and the exemption from personal attendance cannot be asserted as a right. The Magistrate has the power to dispense the personal attendance only in case of summon cases but no such exemption be made in warrant case. The Magistrate takes into account a number of considerations while dispensing attendance, including:

1. social position.
2. practices and customs.
3. the distance from the accused’s home.
4. the requirement for personal attendance with reference to the crime and the trial’s phases.

Special summon in case of petty offences

Section 206 (2) states that the Magistrate may issue some special summons in instances of minor violations. For the purposes of this provision, a “petty offence” is any offence

that is only punished by a fine of up to one thousand rupees but any offence so punishable under the Motor Vehicle Act, 1939 or under any law provides the convicting the accused person in his absence on a plea of guilty is not included. According to Section 260, when a magistrate takes cognizance of a minor offence, the matter may be promptly dismissed; but, on occasion, the magistrate may issue a summons requiring the defendant to appear in person or through a pleader. If the accused appear through the pleader and confess his offence. He can make payment of fine through the pleader or through post under section 253 of the Criminal procedure code. A record of the justification for this choice is required. Magistrate taking the cognizance of petty offences will make summary trails. Section 260 and 261 of the code of Criminal Procedure talks about the procedure to be followed in case of summary trail. Appeal cannot be made in case of petty offences under section 376.

Supply of documents to the accused

Under chapter XVI of the Criminal Procedure Code sections 207 and 208 deals with the supply of documents to the accused. It is crucial to provide the accused with appropriate paperwork so they can comprehend the process that was used and the current state of the case. The submitted documents could possibly be used as needed in the future. Such records must be made available so that prejudice won't be present throughout the trial. A conviction can be overturned by using the clause in Section 207 about the magistrate's failure to provide materials. The provision of documents may be started in accordance with sections 207 and 208. Section 207 permits the production of documents when there has been a police report, or when a FIR has been made against the accused. Here, the term "document" refers to a court- issued cognizance or documents required for an inquiry or trial. The supply of copy of documents in case of otherwise the police report which means the complaint has be filed before the magistrate under section 208 of the criminal procedure code the procedure mentioned has to be followed.

Proceedings initiated on Police Report

When proceedings are started based on a police complaint, Section 207 mandates that the Magistrate give the accused individual specific copies of specified papers. The

documents must be given away without fee. The required paperwork must be submitted in the following formats:

1. that of the police;
2. The Section 154 First Information Report (FIR) is recorded;
3. the declarations that are recorded under Section 161's Subsection (3) of all individuals that the prosecution intends to cross-examine as witnesses;
4. if available, the confessions and declarations that are noted under Section 164;
5. any more pertinent documentation that is sent to the magistrate along with the police report.

In the case of *Viniyoga International New Delhi v. State*[3], it was decided that the accused had the right to obtain copies of any statements recorded in accordance with Section 161 as well as any documents the prosecution intended to rely on. Additionally, it was stated that the accused must receive copies of the challan. This section only covers how to present testimonies from those who were questioned; it makes no mention of what to do if some witnesses are not subjected to cross-examination.

Supply of copies of statements and documents to accused in other cases triable by court of session

In accordance with the provisions of Section 208, "Provision of copies of statements and documents to accused in other cases triable by court of session," in a case that is brought without the assistance of a police report, if the issuing magistrate determines that the offence can only be tried by the Court of Sessions, the issuing magistrate shall so order.

When the case involves an offence that can only be tried by the Court of Session

The court must provide particular documents to the accused where, in accordance with Section 208, the offence can only be tried by the Court of Session. These documents must be provided if the case is not filed based on the police reports. Those papers are:

1. Any papers that are presented to the magistrate on which the prosecution intends to rely; The statements recorded under Section 200 or Section 202 following the investigation by Magistrates;
2. the declarations and admissions that, if any, are noted under Section 161 or Section 164.

However, if the Magistrate is convinced that any such document is lengthy, he may order that the accused only be permitted to see it, either personally or through a Pleader in Court, rather than providing the accused with a copy of it.

Commitment of case to Court of Sessions

The commitment of the case to the Court of Session is mentioned in Section 209. In accordance with this clause, if a Magistrate determines, after instituting a case, that the offence is only triable by the Court of Session,

1. The Magistrate can send evidence and other relevant evidence to the concerned court to carry out the proceedings.
2. The Magistrate can also notify the Public Prosecutor of the commitment of the case to the Court of Session.
3. The accused can be remanded in custody until the proceedings are subject to the other provisions relating to bail.

Consolidation of Cases

Section 210 of Criminal Procedure Code deals with the procedure to be followed when there is both complaint case and police investigation regarding the same offence. If a police officer is investigating the same matter as a trial or inquiry, the Magistrate has the authority to halt the proceedings and request a report from the investigator. If the police report is unrelated to any of the accused in the case or if the magistrate declines to find an offence in the police report, he must resume the investigation or trial he

stayed in accordance with other code requirements. The Magistrate shall inquire into or try the complaint case and the case arising out of the police report jointly as if both the cases were instituted on the basis of a police report if a report is made by the investigating police officer in accordance with Section 173 and on the basis of such report, the Magistrate takes cognizance of any offence against any person who is accused.

Conclusion

Sections 204 to 210 mentioned in chapter XVI of Criminal Procedure Code deals with commencement of proceedings before the magistrate. For a society with less crimes the law should be stringent. Mere existence of law does not solve the problem the law should be rigid and clear. The procedure to be followed after commencement of proceedings before magistrate is clearly mentioned. When the law is clear then there would not be any kind of ambiguity. In order to regulate the next stages of the proceedings, the provisions in this chapter must be appropriately implemented. The issuing of proceedings is one of the key phases of a criminal investigation. Also crucial is giving the accused copies of any documents pertinent to the case. Therefore, it's crucial to closely abide by the guidelines outlined in this chapter to avoid interfering with other areas of the proceedings.