

# Complaints to Magistrate | 07 Sep 2023

## Introduction

- **Complaint has been defined under Section 2(d) of the Code of Criminal Procedure, 1973 (CrPC)** as any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence.
  - It does not include a police report.
- Explanation appended to Section 2(d) of CrPC provides that a report made by the police officer, after investigation, if discloses the commission of a non-cognizable offence, it shall be deemed to be a complaint.
  - **In deemed complaint the police officer by whom such report is made shall be deemed to be the complainant.**
  - It must be however kept in the mind that if police officer takes the permission before the investigation and finds it a non-cognizable offence then it is not a deemed complaint.

## Essentials of the complaint

- The complaint must **relate to the commission of an offence.**
- The complaint may **be either written or oral.**
- The complaint **must be made to the Magistrate.**
- The complaint can be made by any person whether known or unknown.
- The complaint **must be made with a view to taking action under the CrPC.**
- Complaint is one of the modes whereby a Magistrate can take cognizance of an offence.
- A mere statement to a Magistrate by way of information, without asking the Magistrate to take action, is not a complaint.

## To whom a complaint can be made

**Section 190 (1) of CrPC empowers Judicial Magistrate of First Class or Judicial Magistrate Second Class specifically empowered by the Chief Judicial Magistrate to take cognizance upon receiving a complaint of facts which constitute an offence.**

## Complaints to Magistrate

### Section 200-203 discusses the provision of Complaints to Magistrate.

#### Section 200: Examination of complainant

- The Magistrate, taking cognizance of the offence, must examine the complainant on oath and his witnesses, if any.
- The substance of such an examination **shall be reduced to writing.**
- It shall be **signed by the complainant, witnesses, if any and by the Magistrate.**
- **The Magistrate need not examine the complainant and his witnesses:**
  - If a public servant acting or purporting to act in the discharge of his official duties or a Court has made a complaint in writing; or
  - If the Magistrate makes over the case for inquiry or trial to another Magistrate under Section 192.
- It is provided that **if the Magistrate makes over the case to another Magistrate under Section 192** after examining the complainant and the witnesses, **the latter Magistrate need not re-examine them.**

#### Section 201: Procedure when Magistrate not competent to take cognizance

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

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

**Section 202: Postponement of issue of process**

- Section 202 provides for the postponement of the issue of process by the Magistrate if:
  - The magistrate deems it fit.
  - The accused is residing at a place beyond the area in which the Magistrate exercises his jurisdiction, he shall 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.
- Magistrate on receiving complaint, if chooses to take cognizance, then he can adopt any of the following alternatives:
  - He can peruse the complaint and if satisfied that there are sufficient grounds for proceeding, he can directly issue process to the accused, but before he does so he must comply with the requirements of Section 200 and record the evidence of the complainant or his witnesses.
  - The Magistrate can postpone the issue of process and direct an inquiry himself.
  - The Magistrate can postpone the issue of process and direct an investigation by the police or by any other person.
- It has been further provided that no direction for investigation shall be made:
  - Where it appears to the Magistrate that the **offence complained of is exclusively triable by the Court of the Session.**
  - Where the complaint has not been made by a Court, **unless the complainant and the witnesses have been examined on oath under Section 200.**
- In an inquiry under sub section (1) to Section 202, if **magistrate** thinks fit, he can **take evidence of witnesses on oath**, but it is provided that if it appears to the Magistrate that the **offence complained of is exclusively triable by Court of Session**, he **shall call upon the complainant to produce all his witnesses** and examine them on oath.

**Section 203: Dismissal of Complaint**

- If after considering the statement on oath and inquiry, if any conducted under Section 202, the **Magistrate** thinks there is no sufficient ground for proceeding, he **shall dismiss the complaint.**
- Magistrate shall **record the reason for dismissing** such complaint.
- The expression **sufficient ground** used in this section **means the satisfaction that a prime facie case is made out** against the person accused of committing an offence and not sufficient ground for the purpose of conviction.
- These proceedings of the Magistrate will not be set aside merely on the ground that he is not empowered to do so.

**Difference between Complaint and FIR**

Basis of difference	Complaint	FIR
<b>Definition</b>	Complaint is defined under Section 2(d), which means any allegation made orally or in writing to a magistrate, with a view to his taking	FIR is not defined in the code. However, it can be said to be information given to the police first in point of

	action under the code, <b>that some person</b> , whether known or unknown has committed an offence.  It does not include police report	time relating to commission of a cognizable offence.
<b>Whom to Apply</b>	Complaint is made to a Magistrate.	First information report is made to the police officer.
<b>Nature of Offence</b>	A complaint may relate to a cognizable or non-cognizable offence.	First Information Report must relate to a cognizable offence.
<b>Investigation</b>	When complaint is filed no investigation is done by the police officer until directed by the competent authority.	When a FIR is lodged, a police officer starts with investigating the matter.
<b>Cognizance</b>	A magistrate takes cognizance on the complaint made to him at the very first stage.	At the first instance no cognizance is taken by the Magistrate until a particular FIR is reported to him.

## Case Laws

- **Rosy and Anr v. State of Kerala and Ors (2000):** The SC held that by the use of the words “shall” in Section 202, it appears that language used in the proviso is of mandatory nature to examine “all” witnesses of the complainant. **At the same time, it is a procedural law, and the word “shall” is to be read in the context of Section 200 which enables the magistrate to issue process without holding any inquiry and that inquiry under Section 202 is itself a discretionary one.**
- **In Shivjee Singh v. Nagendra Tiwary & Ors (2010)** the word “shall” has been interpreted differently as:
  - **The Court interpreted the word ‘shall’ used in proviso to Section 202(2) as prima facie indicator of mandatory character** of the provision contained therein, but a close and critical analysis thereof along with other provisions contained in Chapter XV and Section 226 and 227 and Section 465 would clearly show that non-examination on oath of any or some witnesses cited by the complainant is, by itself, not sufficient to denude the concerned Magistrate of the jurisdiction to pass an order for taking cognizance and issue of process provided he is satisfied that prima facie case is made out for doing so.
  - It is significant to mark that the word ‘all’ appearing in proviso to Section 202(2) is qualified by the word ‘his’. This implies that the complainant is not bound to examine all the witnesses named in the complaint or whose names are disclosed in response to the order passed by the Magistrate.
  - The Magistrate will not be precluded from taking the Cognizance and issue a process or passing committal order if magistrate fails to comply with the proviso of Section 202(2), provided that Magistrate is satisfied that there exists sufficient ground for doing so.
- **Kewal Krishan v. Suraj Bhan (1980):** The Supreme Court opined that at the stage of Section 202 or 204, if there is a prima facie evidence in support of allegation in the complaint relating to a case exclusively triable by the Court of Session, that will be sufficient ground for issuing process to the accused and committing him for trial to the Court of Session.