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The Theory of "Complaint" Under The Code of Criminal Procedure, 1973

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Abstract: The Judiciary plays key role in maintaining the letter and spirit of legislature, it is an incomparable institution of the State that ought to go by the book only and to provide new dimensions to the concept of welfare state by taking cognizance and by adjudicating the grievances of general public. The office and duty of a magistrate is of high confidence and is above the day to day general practices of courts because he has to apply his judicial mind within the frame work of legislature intent that's why under the law a magistrate is bestowed with discretionary powers to take cognizance and to issue process either suo - moto or upon receiving a direct complaint in writing. Thus the provisions of chapter XV of the Code of Criminal Procedure, 1973 provides procedure with regard to complaints to Magistrates. Through this article the entire concept of complaint is tried to be simplified for general understanding.

Key words: Complaint, Cognizance, Section 190, Section 200, Cr.P.C, 1973

I. INTRODUCTION

Law is the rule and bond of man's action or it is a rule for the well governing of civil society, to give to every man that which both belongs to him. Law, in its most general and comprehensive sense, is thus defined by Blackstone, in the Commentaries, "A rule of action", and is applied indiscriminately to all kinds of actions, whether animate or in - animate, rational or irrational. And it is that rule of action which is prescribed by some superior, and which the inferior is bound to obey. Under the provisions of Section 154, 155,190 and 200 Cr.P.C the law can be sent in to motion to take appropriate action when any offence is alleged or suspected to be committed. In *Jijibhai Govind*,[1] it is observed that there are two modes in which a person aggrieved may seek to put the criminal law in to motion :-

1. By giving information to the police (Section 154 Cr.P.C)
2. By lodging a Complaint before a Magistrate (Sections 190 & 200 Cr.P.C)

It was observed in All India Institute of Medical Sciences employees Union v UOI,[2] that when the informant submits an FIR to the police relating to the commission of cognizable offence but no action is taken by the police then it is open for the complainant to file a petition of complaint before the Magistrate having jurisdiction to take cognizance of the offence.

II. WHAT DO WE MEAN BY A COMPLAINT?

The term "Complaint" is defined under Section 2 (d) of Cr.P.C. According to the Section a Complaint Means 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, but does not include a police report. Further explaining that a report made by a police officer in a case which discloses, after investigation, the commission of a non- cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant.

III. UNDER WHICH SECTION OF CODE OF CRIMINAL PROCEDURE, 1973; A COMPLAINT IS FILLED BEFORE MAGISTRATE.

A complaint is to be file under section 190 of the Cr.P.C. However the Code of Criminal Procedure does not specifically speak such a thing. It defines the term "Complaint". Moreover Section 190 speaks about the Cognizance of offences taken by a Magistrate of 1st class, also provides that a 2nd class magistrate may also be empowered by the chief Judicial Magistrate to take cognizance of offences, information of which received by them through :-

1. Complaint
2. Upon police Report
3. Information received through any person other than a police officer
4. Upon his own knowledge.

[1] (1896) 22 Bom., 596

[2] (1996) 11 SCC 582

What actually the section postulates is the *"Cognizance of the offence by Magistrates*". What is taking cognizance has not been defined in the code. The word 'cognizance' thus merely means "became aware of and when used with the reference to a court or Judge it means "to take notice judicially".[3] Whereas Section 200 of the Code provides for the Examination of Complainant by Magistrate after taking Cognizance upon his complaint. Thus in the light of all above it is quite clear that a Complaint is to be filled under section 190 of the Code so that the Magistrate may take cognizance of it. Also section 190(1) (a) specify that Cognizance is to be taken by the Magistrate upon receiving of complaint upon which he take cognizance under the section.

IV. WHEN A MAGISTRATE IS SAID TO BE TAKEN COGNIZANCE UPON THE COMPLAINT?

It was held in *Kishun Singh v State of Bihar*,[4] that when the Magistrate take notice of the accusations and applies his mind to the allegations made in the Complaint or the Police report or information and on being satisfied that the allegations, if proved, would constitute an offence, decides to initiate judicially proceedings against the alleged offender, he is said to have taken cognizance of the offence.

V. WHAT ACTUALLY A MAGISTRATE DOES DURING TAKING COGNIZANCE UPON COMPLAINT?

In *Raghubans Dubey v. State of Bihar*,[5] this Court held that once cognizance has been taken by the Magistrate, he takes cognizance of an offence and not the offenders; once he takes cognizance of an offence it is his duty to find out who the offenders really are and once he comes to the conclusion that apart from the persons sent up by the police some other persons are involved, it is his duty to proceed against those persons. The summoning of the additional accused is part of the proceeding initiated by his taking cognizance of an offence.

According to Section 200 of the Cr.P.C when a Magistrate 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, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses.

VI. PROCEDURE, AFTER TAKING COGNIZANCE UPON COMPLAINT UNDER SECTION 190 OF THE CR.PC.

It was held in *Pakhandu v State of U.P*,[6] that where cognizance has been taken under section 190 (i) (b) Cr.P.C only on the basis of Material collected during investigation and without taking in to account any extraneous material, the magistrate is not bound to follow the procedure laid down for Complaint Cases and to such proviso to sub section (2) of section 202, Cr.P.C shall have no application. It is now well settled that upon receipt of a police report under section 173(2) a Magistrate is entitled to take cognizance of offence under section 190 (1) (b) even if the police report is to the effect that no case is made out against the accused. In *Rashmi Kumar v Mahesh Kumar Bhada* ,[7] it was observed that when at the time of taking cognizance of the offence , the court has to consider only the averments made in the complaint or in the charge – sheet under section 173 and it is not open to the Court to shift or appreciate the evidence at that stage with reference to the material and come to the conclusion that no prima facie case is made for proceeding further in the matter. Section 191 of the Code provides that when a Magistrate takes cognizance of an offence under clause (c) of sub-section (1) of section 190, the accused shall, before any evidence is taken, be informed that he is entitled to have the case inquired into or tried by another Magistrate, and if the accused or any of the accused, if there be more than one, objects to further proceedings before the Magistrate taking cognizance, the case shall be transferred to such other Magistrate as may be specified by the Chief Judicial Magistrate in this behalf.

VII. ISSUE OF PROCESS AGAINST THE ACCUSED.

In *Poonam Chand Jain v Fazru*,[8] it was observed that Section 204 is a preliminary stage of trial contemplated in chapter XX of the code. Such an order made at a preliminary stage being an interlocutory order, same cannot be reviewed or reconsidered by the Magistrate, there being no provision under the code for review of an order by the same court. Hence it is impermissible for a Magistrate to reconsider his decision to issue process in the absence of any specific provision to recall such order. In was held in *Kalish Chudhariu v State of UP*,[9] that while issuing process section 204 of Cr.P.C , the Magistrate must, in Brief , set out the allegations made in the petition of the complaint, and materials brought on record and must state that in his opinion process should be issued. If at a subsequent stage, he satisfied that process should not have been issued, he can re-call it.
Section 204 of the Code provides that 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 his summons for the attendance of the accused, or

[3] Ajit Kumar Palit v State of West Bengal, (1963) I Cri L.J 797
[4] (1993) 2 SCC 16
[5] AIR 1967 SC 1167
[6] 2002 Cr.L.J 1210 (All)
[7] AIR 1997) 2 SCC
[8] AIR 2005 SC 38
[9] 1994 Cr.L.J 67 (All)

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.

No summons or warrant shall be issued against the accused under sub- section (1) until a list of the prosecution witnesses has been filed. 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. 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. Nothing in this section shall be deemed to affect the provisions of section 87.

VIII. PROTEST PETITION AGAINST THE COMPLAINT

An accused has a right to raise a preliminary objection to the maintainability of the complaint on the ground of limitation, Jurisdiction or any other analogous ground (by way of protest petition) it was held that such an objection should ordinarily be decided first.[10] It was held in *Qasim and others v The State and others*,[11] that every protest petition must not necessary be treated as a complaint. in majority of cases when police filed final report the Magistrate simply has to considered whether no case is made out on the basis of material available on record to accept the final report or whether prima facie is disclosed to take cognizance. Protest petition in such situation simply serve the purpose to invite the attention of the magistrate towards the material on record and for carefully scrutiny and for the application of mind of the magistrate. To satisfy all conditions of the complaint to the mind of the magistrate and must contain list of witness to be examined and complainant be examined under Section 200. In complaint, aprayer to punish the accused named in the complaint must be made. In absence of prayer for punishment, no document can be treated as complaint.[12]

IX. DISMISSAL OF THE COMPLAINT

Section 203 of the Code provides that 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 202, 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. Further if the dismissal of the complaint was not on merit but on default of the complainant to be present, there is no bar in the complainant moving the magistrate again with the second complaint on the same facts. But if the dismissal of the complaint is under section 203 was on merits, the position could be different.[13]

X. CONCLUSION

The crux of whole concept of the Complaint lies and rest within the Magistrate discreation to take cognizance of the complaint. As observed that when a complaint is filed before a magistrate the magistrate may simply order an investigation by the police. The police may then investigate the case and submit the report to the magistrate. In such a situation, when the magistrate then proceeds with the case. a question of some impontaT1 arises as to whether the magistrate had taken cognizance of the offence on the complaint before sending it for investigation or whether the case was sent to the police without taking 'cognizance' of the offence and the cognizance was taken only on the report submitted by the police. There are certain advantages to the complainant if cognizance was taken on a complaint. For instance, in the event of an acquittal of the accused in a complaint case, the complainant gets a right of appeal under Section 378(4). It is now well settled that when a petition of complaint is tiled before a magistrates the question whether he can be said to have taken "cognizance" of the offence alleged in the complaint under Section 90(1), depends upon the purpose for which he applies his mind to the complaint. If the magistrate applies his mind to the complaint for the purpose of proceeding with the complaint under the various provisions of Sections 200 to 203 (dealing with examination of complainant postponement of issue of process etc.), he must be held to have taken cognizance of the offences mentioned in the complaint; on the other hand, if he applies his mind to the complaint not for any such purpose, but only for the purpose of ordering an investigation under Section 156(3) of the Code, or for issuing a search warrant under Section 93, he cannot be said to have taken cognizance of the offence.

[10] Nichodemus, AIR 1955 Mad 561
[11] 1948 Cr.LJ 1677
[12] Sate of M.P V Suresh Kumar, 1986 Cr.L.J 37
[13] Jaitender Singh v Ranjit Kaur, AIR 2001 SC 784

