

UTTARAKHAND JUDICIAL AND LEGAL ACADEMY

READING MATERIAL

ON

“INQUIRY & INVESTIGATION

UNDER SECTION 225 BNSS/ 202 CRPC”

Section 225 BNSS - Postponement of Issue of Process:

(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.

Evidence On Oath:

(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.

Power of investigation :

(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.

Nature of Cases :

The nature of cases dealt with under Section 202 are cases where material available is not clear to proceed further.

The Magistrate is in seisin of the matter having taken the cognizance. He has to decide whether there is ground to proceed further.

The Magistrate has not find clear material to proceed against the accused and a case for summoning has not yet been found.

Purpose :

This provision has limited purpose of deciding “whether or not there is sufficient ground for proceeding”.

Object of enquiry u/s 202 CRPC (225 BNSS) :

The object of the enquiry is to ascertain the truth or falsehood of the complaint, but the Magistrate making the enquiry has to do this only with reference to the intrinsic quality of the statements made before him at the enquiry which would naturally mean the complaint itself, the statement on oath made by the complainant and the statements made before him by persons examined at the instance of the complainant.

Chandra Deo Singh v. Prokash Chandra Bose, AIR 1963 SC 1430

Object of an enquiry under Section 202 Cr. P.C. is to prevent harassment of innocent persons by indiscriminate issue of the process, where there is no sufficient material for proceeding against them.

If the Magistrate after enquiry thinks that there is sufficient ground for proceeding he is entitled to issue the process.

J.K. International v. State, 2001 SCC OnLine Del 580

Scope of Section 202 CRPC (225 BNSS) :

The scope of an inquiry under the section is limited to finding out the truth or falsehood of the complaint in order to determine the question of the issue of process.

The inquiry is for the purpose of ascertaining the truth or falsehood of the complaint; that is, 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.

Vadilal Panchal v. Dattatraya Dulaji Ghadigaonkar, AIR 1960 SC 1113

(a) The Magistrate instead of following the procedure stated above may, if he thinks fit, postpone the issue of process and hold inquiry for the purpose of deciding whether or not there is sufficient ground for proceeding against the person accused. Such inquiry can be held by him or by the police officer or by any other person authorised by him.

(b) However, where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, the direction of investigation by the police officer is not permissible and he is required to hold inquiry by himself. During that inquiry he may decide to examine the witnesses on oath. At that stage, the proviso further gives mandatory directions that he shall call upon the complainant to produce all his witnesses and examine them on oath.

Rosy v. State of Kerala, (2000) 2 SCC 230

Inquiry under the section is not a Trial :

The section does not say that a regular trial for adjudging the guilt or otherwise of the person complained against should take place at that 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.

Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736

What is 'prima facie case' or 'sufficient ground for proceedings' ?

Term sufficient grounds means satisfaction that a prima facie case is made out against the accused person and not sufficient ground for the purpose of conviction.

S.W. Palanitkar and others vs. State of Bihar and another, AIR 2001 SC 2960

Category of Cases : Illustrations

As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- (a) Matrimonial disputes/family disputes
- (b) Commercial offences
- (c) Medical negligence cases

(d) Corruption cases

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

Lalita Kumari v. Govt. of U.P., (2014) 2 SCC 1

Role and Duty of the Magistrate :

Indeed an alert and experienced Magistrate with a little circumspection and sagacity can see through the game of the complainant and can call for any documents or summon any witnesses who in his opinion will be able to throw light on the case and help in arriving at a conclusion whether the complaint is devoid of any substance or a prima facie case is made out.

There is no strait-jacket rule.

If there is any hesitation or doubt in the mind of the court, it can summon any witnesses or call for any documents which in the opinion of the court can aid the court in confirming or removing such hesitation or doubt. Of course, the discretion vesting in him in this respect has to be exercised judicially.

S. Nihal Singh v. Arjan Das, 1982 SCC OnLine Del 270

Other Expectations from a Magistrate :

The Magistrate is neither expected to play into the hands of the complainant and chew meekly what he is fed by the complainant nor is he expected to hold a brief for the accused and summon witnesses with a view to find out the defence of the accused, if any.

He is neither a post office nor an automation and he is to exercise his jurisdiction as the exigency of the situation demands, the only limitation being that he cannot convert the enquiry into a full scale trial.

Of course, he is under a statutory obligation to examine the complainant and the witnesses, if any, produced by him.

When a complaint made by Court :

Under Section 200 proviso (a) it is not necessary for a Magistrate when a complaint is made by a court to examine the complainant and neither Section 200 nor Section

202 requires a preliminary enquiry before the Magistrate can assume jurisdiction to issue process against the person complained against.

Ranjit Singh v. State of Pepsu, 1959 SCC OnLine SC 92

Whether it is mandatory that a Magistrate, before issuing process to the accused on a complaint disclosing an offence which is exclusively triable by a Court of Session shall call upon the complainant to produce all his witnesses and examine them on oath ?

Two different types of enquiries :

It is evident that the legislature intended two different types of enquiries, a *discretionary enquiry* in ordinary complaint cases and a *mandatory enquiry* in complaint cases under S. 202.

In the discretionary enquiry the Magistrate can either enquire into the case himself or direct an investigation to be made by a police officer or such other person as he thinks fit.

But in a mandatory enquiry in a complaint case that discretion is taken away by proviso (a) to S. 202(1). The Magistrate will have to conduct the enquiry himself and he cannot order investigation. It is true that the said discretion is absent in another category of cases coming under proviso (b) to S. 202(1) also.

In a discretionary enquiry in ordinary complaint cases S. 202(2) gives the option to the Magistrate to take evidence of witnesses on oath or not as he thinks fit. That means he can even record a summary of the statements of witnesses. But in a mandatory enquiry in a complaint case that discretion is not there and the proviso to sub-s. (2) says that he shall call upon the complainant to produce all his witnesses and examine them on oath.

Moideenkutty Haji v. Kunhikoya, 1987 SCC OnLine Ker 25

Discretionary Power of the Magistrate :

If in a complaint case also the legislature intended the discretion to be with the Magistrate to dispense with the enquiry under S. 202 and proceed to dismiss the complaint under S. 203 or issue process under S. 204 on his satisfaction after compliance of S. 200 alone, it is beyond comprehension why formation of his opinion in complaint cases alone was made dependent upon examination of all witnesses simply because he wanted some more assurance and proceeded to have an enquiry under S. 202 for that purpose. Unlike in an ordinary complaint case the

dismissal of a complaint under S. 203 or issue of process under S. 204 in a complaint case could only be after the mandatory enquiry under S. 202.

Investigation by ‘Police’ :

The Magistrate has jurisdiction to direct an investigation to be made by a police officer for the purpose of deciding whether or not there is sufficient ground for proceeding provided that no such direction for investigation shall be made unless the complainant and his witnesses present in Court have been examined on oath under Section 200.

Deena Nath Acharya v. Daitari Charan Patra, 1975 SCC OnLine Ori 102

Scope of Police Powers U/S 202 CRPC :

It was held by Hon’ble Supreme Court that power to arrest accused is not available under S. 202.

“The nature of cases dealt with under Section 202 are cases where material available is not clear to proceed further. The Magistrate is in seisin of the matter having taken the cognizance. He has to decide whether there is ground to proceed further. If at such premature stage power of arrest is exercised by police, it will be contradiction in terms. As regards denial of opportunity to record confession under Section 27 of the Evidence Act, it has to be kept in mind that admissibility of such confession cannot guide exercise of power of arrest. Source of power of arrest is governed by other provisions and not by Section 27. It is only if arrest is otherwise permissible that provision of Section 27 may be invoked. If exercise of power of arrest is not otherwise warranted, admissibility of confession under Section 27 of the Evidence Act, 1872 cannot facilitate such exercise. We, thus, hold that police of its own cannot exercise its power of arrest in the course of making its report in pursuance of direction under Section 202.”

Ramdev Food Products (P) Ltd. v. State of Gujarat, (2015) 6 SCC 439

In *Ramdev Food Products (P) Ltd. v. State of Gujarat, (2015) 6 SCC 439*, the Hon’ble Supreme Court framed the following questions for consideration (Para 6) :

- (i) Whether discretion of the Magistrate to call for a report under Section 202 instead of directing investigation under Section 156(3) is controlled by any defined parameters ?
- (ii) Whether in the course of investigation in pursuance of a direction under Section 202, the police officer is entitled to arrest an accused ?

(iii) Whether in the present case, the Magistrate erred in seeking report under Section 202 instead of directing investigation under Section 156(3)?

Answer (i)

“22.1. The direction under Section 156(3) is to be issued, only after application of mind by the Magistrate. When the Magistrate does not take cognizance and does not find it necessary to postpone the issuance of process and finds a case made out to proceed forthwith, direction under the said provision is issued.

22.2. The cases where Magistrate takes cognizance and postpones issuance of process are cases where the Magistrate has yet to determine “existence of sufficient ground to proceed”.

Category of cases falling under para 120.6 in *Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1]* may fall under Section 202.

Answer (ii)

27. Police of its own cannot exercise its power of arrest in the course of making its report in pursuance of direction under Section 202.

Answer (iii)

27.While a transaction giving rise to cause of action for a civil action may also involve a crime in which case resort to criminal proceedings may be justified, there is judicially acknowledged tendency in the commercial world to give colour of a criminal case to a purely commercial transaction. This Court has cautioned against such abuse.

35. In view of above, we find that the Magistrate and the High Court rightly held that in the present case report under Section 202 was the right course instead of direction under Section 156(3). The question is answered accordingly.”

Section 156 (3) & Section 202 CRPC

Power under Section 156(3) can be invoked by the Magistrate before taking cognizance and was in the nature of pre-emptory reminder or intimation to the police to exercise its plenary power of investigation beginning with Section 156 and ending with report or charge-sheet under Section 173.

On the other hand, Section 202 applies at post-cognizance stage and the direction for investigation was for the purpose of deciding whether there was sufficient ground to proceed.

Ramdev Food Products (P) Ltd. v. State of Gujarat (2015) 6 SCC 439

The Magistrate's powers under Section 156(3) of the Code to order investigation by the police have not been touched or affected by Section 202 because these powers are exercised before cognizance is taken.

Tula Ram v. Kishore Singh, (1977) 4 SCC 459

Is the Magistrate debarred from proceeding with the complaint according to the provisions of Sections 190, 200 and 204 of the Code after receipt of the final report by the police?

No.

If the Magistrate does not take cognizance on the complaint. He keeps the complaint aside and order investigation before deciding to take cognizance on the basis of the complaint.

After the final report is received the Magistrate decides to take cognizance of the case on the basis of the complaint and accordingly issue notice to the complainant.

Tula Ram v. Kishore Singh, (1977) 4 SCC 459

Order for Investigation, when the case is exclusively triable by the Court of Session:

If the allegations made against the accused made out a case exclusively triable by the Court of Session the Magistrate is clearly debarred from ordering any investigation, but he is not debarred from making any enquiry himself into the truth of the complaint.

Tula Ram v. Kishore Singh, (1977) 4 SCC 459

Section 202 CRPC is not mandatory:

It is not a condition precedent to the issue of process that the Court of necessity must hold the inquiry as envisaged by Section 202 or direct investigation as therein contemplated.

The matter is left to the judicial discretion of the court whether on examining the complainant and the witnesses if any as contemplated by Section 200 to issue process or to postpone the issue of process.

Upon a complaint being received and the court records the verification, it is open to the court to apply its mind to the facts disclosed and to judicially determine whether process should or should not be issued. It is not a condition precedent to the issue of process that the Court of necessity must hold the inquiry as envisaged by Section 202 or direct investigation as therein contemplated. The power to take cognizance

without holding inquiry or directing investigation is implicit in Section 202 when it says that the Magistrate may “if he thinks fit, 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..., for the purpose of deciding whether or not there is sufficient ground for proceeding”.

Therefore, the matter is left to the judicial discretion of the court whether on examining the complainant and the witnesses if any as contemplated by Section 200 to issue process or to postpone the issue of process. This discretion which the court enjoys cannot be circumscribed or denied by making it mandatory upon the court either to hold the inquiry or direct investigation. Such an approach would be contrary to the statutory provision.

A.R. Antulay v. Ramdas Srinivas Nayak, (1984) 2 SCC 500

In a session triable case, it is not incumbent upon of Committing Magistrate to record the evidence of all the remaining witnesses, if the complainant himself did not rely upon them.

Vijay Kumar v. State of Haryana, 1981 SCC OnLine P&H 90

Whether an Executive Magistrate can be asked to investigate a complaint under Section 202 of the Code of Criminal Procedure, 1973 ?

There does not appear to be any bar in directing an Investigation to be made by an Executive Magistrate under Section 202 of the new Code in order to collect evidence. An Executive Magistrate is Included amongst “such other person” referred to in Section 202.

Rampravesh Rai v. Bishun Mandal, 1980 SCC OnLine Pat 65

Complaint can not be dismissed in default at the stage of Sec. 202 CRPC :

There is nothing in the Code to compel the complainant to be bodily present during an enquiry under S. 202, Cr.P.C. The dismissal of the complaint cannot possibly be said to be under S. 295, Cr.P.C. because that Section would apply only after the case had been taken on file and process issued to the accused.

Lily Thomas v. V.K. Izuddin, 1973 SCC OnLine Mad 383

Whether the second complaint is maintainable?

There is no provision in the Code or in any other statute which debars a complainant from preferring a second complaint on the same allegations if the first complaint did

not result in a conviction or acquittal or even discharge. Section 300 of the Code, which debars a second trial, has taken care to explain that “the dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section”. However, when a Magistrate conducts an inquiry under Section 202 of the Code and dismisses the complaint on merits, a second complaint on the same facts cannot be made unless there are very exceptional circumstances. Even so, a second complaint is permissible depending upon how the complaint happened to be dismissed at the first instance.

Jatinder Singh v. Ranjit Kaur, (2001) 2 SCC 570

Whether the second complaint is maintainable, if the first complaint has been dismissed in the absence of the complainant or otherwise under section 203 of the Code ?

An order of dismissal under Section 203, Criminal Procedure Code, is, however, no bar to the entertainment of a second complaint on the same facts but it will be entertained only in exceptional circumstances, e.g., where the previous order as passed on an incomplete record or on a misunderstanding of the nature of the complaint or it was manifestly absurd, unjust or foolish or where new facts which could not, with reasonable diligence, have been brought on the record in the previous proceedings, have been adduced. It cannot be said to be in the interest of justice that after a decision has been given against the complaint upon a full consideration of his case, he or any other person should be given another opportunity to have his complaint inquired into.

Pramatha Nath Talukdar v. Saroj Ranjan Sarkar, AIR 1962 SC 876