

SUMMARY OF WORKSHOP PAPER

(To Be Held On 20th November 2016.)

CRIMINAL SIDE

Topic:- Scope and Object of Section 154, 156(3) and Section 200 to 210 of Criminal Procedure Code, 1973.

INTRODUCTION:-

In India, the administration of criminal justice system is controlled under the provisions of the Criminal Procedure Code, 1973 (hereinafter referred to as “the Code”). Like in many other parts of the world, under the Indian criminal jurisprudence, the system accepts two procedures for redressing the grievance of a victim against the offender including that by the State itself. The Code is concerned with “how the law is enforced”. Criminal law involves “what law is enforced”. The two accepted methods for enforcing administration of criminal justice system are a direct access and invocation of the Courts system, while the other is adopting the channel through (Police/Investigating agency) the State agency.

SCOPE AND OBJECT OF SECTION 154, 155 & 156(3) of the Code :-

2] The information given to Police Officer and reduced to writing as required by Section 154 of the Code is known as “First Information”. First Information Report did not mention in the Code, but these words are understood to mean information recorded under this Section. It is an important document may be put in evidence to support or contradict the

evidence of the person, who gave the information. The investigation under this chapter proceed on the first information. In certain circumstances F.I.R. may be relevant under section 11 of the Indian Evidence Act, 1872.

3] The principle object of First Information Report from the point of view of the informant is to set the criminal law in motion and from the point of view of the investigation authority is to obtain the information about the alleged criminal activities so as to able to take suitable steps to trace and to bring to book the guilty.

4] The condition which is *sine-qua-non* for recording First Information Report is that there must be an information and that information must disclose cognizable offence. If any information disclosing a cognizable offence is laid before an officer-in-charge of Police Station satisfying the requirement of Section 154(1), the said Police Officer has no other option except to enter the substance thereof in the prescribed form i.e. to say to register a case on the basis of such information. Where an F.I.R. relating to a cognizable offence is filed the officer-in-charge of the Police Station is bound to register the same, he cannot refuse to register the same because there has been some enquiry.

5] In this respect, the Five Judges Bench of Hon'ble Supreme Court, in case of Lalita Kumari V/s. State U.P. AIR 2014 SC 187, held that, the condition that is sine qua non for recording an FIR under Section 154 of the Code is that there must be information and that information must disclose a cognizable offence. If any information disclosing a cognizable offence is led before an officer in charge of the police station satisfying the requirement of Section 154(1), the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on

the basis of such information.

6] As per Section 155 (1) of the Code, the police officer receiving information of a non-cognizable offence must enter the substance of it in a book kept in such form as the State Government may prescribe and then refer the informant to the Magistrate. No police officer can investigate the non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial as per Section 155(2) of Code of Criminal Procedure.

7] The Hon'ble Bombay High Court in case of Shri Mukesh Laxman Das Talreja vs The Inspector Of Police, MANU/MH/0145/2006 while discussing section 155(2) observed that, section makes it clear that the permission is a mandatory provision and if there is non-compliance of the said provision, the investigation which is carried out by the police officer would be rendered illegal and void.

Object of Sec. 156(3) of the Code

8] The object of Sec. 156(3) of the Code is that the aggrieved person shall not be remedy less in case of refusal of police machinery to take the information as to commission of cognizable offence. As per Sec. 156(3) of the Code, the Magistrate upon receipt of information by way of complaint, is empowered to direct the investigation by the hands of police machinery and after order of Magistrate, the police officer of concern police station, to whom the investigation is directed, is duty bound to register the F.I.R. and start investigation about the alleged offences. The scope of Sec.156(3) of the Code is limited to cognizable offences and in case of non-cognizable offences, the Magistrate has no power to direct the investigation.

9] The powers vested in the Court under section 156(3) of Criminal Procedure Code are pre-cognizance in contradistinction to powers vested in the court when the matter comes up before the court post-cognizance. Though this provision empower the Magistrate to order an investigation, the legislature in its wisdom had extended no further power to the Magistrate to control or inter-check or stop or give direction to the mode of investigation. The scheme of investigation postulate investigation of crime under the Code is left entirely to the Police Officer and the Magistrate cannot interfere in the scope of investigation under the provisions of Section 190 of the Code.

10] In **Sureshchand Jain -Vs- State of M.P.** ,AIR 2001 SC 571 Hon'ble Supreme Court said that "Any Judicial Magistrate, before taking cognizance of the offence, can order investigation u/s 156(3). If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an F.I.R.. There is nothing illegal in doing so. Even if a Magistrate does not say in so many words while directing investigate u/s 156 (3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant so that the police officer could take further steps contemplated in Chapter XII of the Code only thereafter.

11] In another case of **C.B.I. -Vs – State of Rajanstha** ,AIR 2001 SC 668 Hon'ble Supreme Court held that "A magistrate has no power under Sec. 156(3) to direct that the C.B.I. should conduct investigation of any offence. The primary responsibility of conducting investigation into the offence in any

cognizable case vest in the in-charge police officer” Similar view was also taken in **Narasimhaiah Vs- State of Karnatka** [2002 CRLJ 4795]. Therefore, the magistrate is empowered under Sec. 156(3) to direct the station officer to investigate a cognizable offence.

12] After passing of order of investigation under section 156(3) of the Code, it is necessary for the Magistrate to forward a true copy or certified copy of the complaint along with the communication of the order passed by him under section 156(3) of the Code of Criminal Procedure to the concerned police station and shall keep original record with the court which could be used for various purposes in future. Certain guidelines are issued by the Hon'ble Bombay High Court in this regard in the case of **Ajit Ramrao Thete and ors. V/s. State of Maharashtra and ors. Criminal Application No.1091/2013.**

13] In **State of Maharashtra Vs Shashikant Ekanth Shinde**, 2013 All M.R.(Cri) 3060 Hon'ble Bombay High Court, Nagpur Bench, held that **Magistrate should not take casual approach while directing the investigation under section 156(3) of the Code.** When a petition or complaint is presented before Magistrate in which request is made for taking action as mentioned in Section 2 (d) of the Code, the Magistrate has to ascertain whether the contentions made in petition/complaint constitute any offence. If they constitute some offence, then the Magistrate is expected to take decision whether the matter needs to be referred to the Police for investigation as provided U/s.156 (3) of the Code or he needs to proceed further as provided in Section 200 and subsequent section of Chapter XI of the Code. There is discretion to the Magistrate in this regard. Though police officer is duty bound to register the case on receiving information of

cognizable offence, the Magistrate is not bound to refer the matter to Police under section 156 (3) of the Code.

14] In **Priyanka Shrivastava Vs. State of U.P.**, AIR 2015 SC 1758 Hon'ble Apex Court observed that, In our considered opinion, a stage has come in this country where section 156(3) Code of Criminal Procedure applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible.

15] In **Devarapalli Laxminarayana Reddy Vs Narayana Reddy**, MANU /SC/ 0108/1976 the Hon'ble Supreme Court explained the powers of the Magistrate under Section 156(3), 200 and 202 of the Code of Criminal Procedure. Wherein it is held that, it is well settled that when a Magistrate receives a complaint, he is not bound to take cognizance if the facts alleged in the complaint, disclose the commission of an offence. This is clear from the use of the words “may take cognizance” which in the context in which they occur cannot be equated with “must take cognizance”. The word “may” gives a discretion to the Magistrate in the matter. If on a reading of the forwarding of the complaint to the police for investigation under Section 156(3) of the Code , will be conducive to justice and save the valuable time of the Magistrate from being investigate, he will be justified in adopting that course as an alternative to taking cognizance of the offence, himself.

16] In **Panchabhai Popatbhai Butani Vs. State of**

Maharashtra ,2010(1) MhLJ 421 Full Bench of Hon'ble Bombay High Court observed that, Normally a person should invoke the provisions of Section 154 of the Code before he takes recourse to the power of the Magistrate under Section 156(3) but in cases where the police fail to act instantly and the facts of the case show that there is possibility of the evidence of commission of the offence being destroyed and/or tampered with or an Applicant could approach the Magistrate directly under Section 156(3) of the Code by way of an exception. Further, observed that, “No particular format of the application or petition to Magistrate under Section 156(3) of the Code has been prescribed and therefore, a complaint/ petition under Section 156(3) cannot be rejected on the ground of its format alone, in so far as it satisfies ingredients of an offence and avers inaction of the police or makes out a case justifying direct intervention of the Court.”

2) SCOPE OBJECT AND EVIDENTARY VALUE OF FIR :-

17] The **scope and application** of the FIR is that, the information given to a police officer and reduced to writing as required by section 154 of the Code is known as the “First Information Report”. First Information Report is not mentioned in the Code but these words are understood to mean information recorded under section 154 of the Code (**Ramakant Singh-vs-State of Bihar..2006 Cr.L.J. 4752**) FIR is an important document and may be put in evidence to support or contradict the evidence of the person who gave the information. The investigation under the provisions of the Code proceeds on the First Information. In certain circumstances, FIR may be relevant under section 11 of the Evidence Act. (**Prafulla Bora-vs-State of Assam**) 1988,Cr.L.J. 428)

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19] **Evidentiary value** of the FIR is that, the FIR is not substantive evidence. It can be used only to contradict the maker thereof or for corroborating his evidence and also to show that the implication of the accused was not an afterthought. (**Ravi Kumar-vs-State of Punjab, 2005 (1) Crimes 372**). FIR is an information of cognizable offence and if there is any statement made therein, it can only be used for the purpose of contradicting and discrediting a witness under section 145 of the Evidence Act. (**Nanhku Singh-vs-State of Bihar, AIR 1973 SC 491**) . The FIR is the piece of evidence resgestae. In certain cases the First Information Report can be used under section 32(1) of the Evidence Act as to the cause of informant's death or as part of the informer's conduct (**Damodhar Prasad-vs-State of Maharashtra, AIR 1972 SC 622**) . FIR cannot be used to contradict other witnesses. (**Dharma Ram-vs-State of Maharashtra, AIR 1973 SC 476**).

3) STATE AMENDED PROVISIONS OF SECTION 156(3) OF the Code

20] Recently Hon'ble Supreme Court in **Anil Kumar v. M.K. Ayyappa,**

MANU/SC/1002/2013 : 2014 CRL.LJ. 1 observed that even for reference of the case to the police for investigation under Section 156(3) of the Code for any of the offences punishable under the Prevention of Corruption Act, sanction as contemplated under Section 19(1) of PC Act is necessary.

21] Accordingly, on **9th June 2015** the Government of Maharashtra also amended Section 156(3) and Sec. 190 of the Code by which it took away the discretionary powers of courts in case a complaint is filed against public officials. According to the amendment, no FIR can be registered against a public representative without the sanction from a competent authority. For instance, the police won't be able to file an FIR against any MLA or MP without the sanction from the speaker of the house. The amendment extends to lowest level elected representatives and public officials like panchayats and municipalities.

22] Now in view of Maharashtra amendment in Section 156 and 190 of the Code no magistrate can order an investigation or take cognizance under this section against a person who is or was a public servant as defined under any other law for time being in force, in respect of the act done by such public servant while acting or purporting to act in the discharge of his official duties, except with the previous sanction under section 197 of the Code of Criminal Procedure or under any law for time being in force

23] The legislature asserted that the amendment aims at protecting the public officials against false, frivolous and politically motivated cases. The assertion here needs to be scrutinized properly as sufficient protection was already granted to protect the dignity and image of public officials. The amendment is analysed in the light of different case laws related to the

subject.

24] In the case of **CBI Vs. Rajesh Gandhi, 1997 Cr.L.J.63**, the Hon'ble Supreme Court held that no one can insist that an offence be investigated by a particular agency. This view is re-interated in the authority of **Sakiri Vasu Vs. State of U.P. and another**, reported in **2008(2) SCC 409**. In this authority it is further held that, after registration of crime, the concerned Magistrate can monitor the investigation. In the case of **Vasant Vs. S.Y.Khaire**, reported in **2001(3) Mh.L.J.-409**, it is held by Hon'ble Bombay High Court that, the Magistrate has powers to ensure that his order under section 156(3) is complied with. Once the investigation is ordered, it cannot be stopped.

4) DISTINCTION BETWEEN 156 (3) and 202 of the Code:-

25] The prime difference between investigation u/s. 156[3] and enquiry by the Magistrate or investigation by police in terms of Sec.202 of Cr.PC is that, for the investigation u/s.156[3] registration of FIR in police station is must, however in enquiry or investigation u/s.202 no registration of FIR is needed.

26] An order made u/s. 156[3] of CR.PC is in the nature of peremptory reminder or information to police to their exercised planairy powers of investigation and the Section 156[1] of the Code such an investigation embrace the entire continues process which begins with the collection of the evidence u/s. 156[3] of the Code and ends with the report u/s. 173 or Sec. 169 of the Code

27] On the other hand section 202 of the Code comes in a at stage when some evidence has been collected by the Magistrate in a proceeding under

chapter XV of the Code, but same is deemed insufficient to take decision as to the next step in the prescribed procedure. In such situation the Magistrate should empowered u/s. 202 of the Code to direct within the limits circumscribe by the sections and investigation for the purpose of deciding whether or not there is sufficient ground for proceeding. Thus, the object of the investigation u/s. 202 of the Code is not initiate fresh case on police report, but to assist the magistrate in completing proceeding already instituted upon the complaint before him. Similar are the observation of Hon'ble Supreme Court in **Suresh chandra V/s. State of MP 2001, SCC [Cri] 377.**

5) TAKING COGNIZANCE OF OFFENCE U/S 190 and 197 of the Code:-

28] **In Superintendent and Remembrancer of Legal Affairs, West Bengal v. Abani Kumar Banerjee, AIR 1950 Cal 437,** Hon'ble Justice Das Gupta observed that "What is taking cognizance has not been defined in the Criminal Procedure Code and I have no desire to attempt to define it. It seems to me clear however that before it can be said that any magistrate has taken cognizance of any offence under section 190(1)(a), Criminal Procedure Code, he must not only have applied his mind to the contents of the petition but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter - proceeding under section and thereafter sending it for inquiry and report under section When the magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind, e.g. ordering investigation under section or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence."

29] A three judges Bench of Hon'ble Supreme Court in the case of

R.R.Chari.Vs State of U.P, AIR 1951 SC 260 by referring the observation in the case of **Superintendent and Remembrancer of Legal Affairs, West Bengal case supra** observed that, the observations "taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a magistrate as such applies his mind to the suspected commission of an offence".

Essential Ingredients of Sec.197 OF the Code

30] In order to apply provisions section 197 of the Code, it is necessary to fulfill two essential conditions, namely (1) that the offence must be committed by public servant and (2) that public servant employed in connection with the affairs of Union or State is not removable from the office save by or with the sanction of the Central Government or the State Government, as the case may be. If the above conditions are fulfilled then further inquiry would be necessary whether the alleged act has been committed by the public servant while acting or purporting to act in discharge of his official duties.

31] Recently, the Apex Court in **S.R. Sukumar Vs Sunaand Raghuram, 2015 Cr.L.J. 3829** observed that "Cognizance of offence" means taking notice of the accusations and applying the judicial mind to the contents of the complaint and the material filed therewith. It is neither practicable nor desirable to define as to what is meant by taking cognizance. Whether the Magistrate has taken cognizance of the offence or not will depend upon facts and circumstances of the particular case.

32] Under section 200, the Code, when the complainant is examined, the Magistrate cannot be said to have ipso facto taken the cognizance, when the

Magistrate was merely gathering the material on the basis of which he will decide whether prima facie case will be made out for taking cognizance or not. “Cognizance of offence” means taking notice of the accusation and applying the judicial mind to the contents of the complaint and the material filed therewith. It is neither practicable nor desirable to decide as to what is meant by taking cognizance. Whether the Magistrate has taken the cognizance of the offence or not will depend upon the facts and circumstances of the particular case.

33] The Apex Court in the Judgment in **Paramjit Kaur(Mrs) ..Vrs..State of Punjab and others (1996) 7 SCC 20** - “Protection of sanction is an assurance to an honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty, however, authority cannot be camouflaged to commit crime.” It is held in, “**Mohd. Hadi Raja Vs. State of Bihar and Anr., AIR 1998 SC 1945** that protection by way of sanction under Section 197 is not applicable to officers of Government companies of the public undertaking even when such public undertakings are State within meaning of Article 12 of the constitution of the India.

6) OBJECT OF SECTION 202 OF the Code:-

34] The object of the provisions of section 202 the Code is to enable the Magistrate to form an opinion as to whether process should be issued or not. The object of section 202 of the Code came up for consideration before the Hon'ble Supreme Court initially in **Chandra Deo Singh v. Prakash Chandra Bose [1964] 1 SCR 639**. In this case Hon'ble Supreme Court was dealing with the Old Criminal Procedure Code i.e. Chap. 16 (now Chapter 15 of the New Code). There is no substantial change excepting renumbering of the sec-

tions in this Chapter, which contains Sections 200 to 203. And wherein it has been held that the object of Section 202 of the Code is to enable the Magistrate to scrutinise carefully the allegations made in the complaint with a view to prevent the person named therein as accused from being called upon to face an obviously frivolous complaint. But there is also another object behind that provision and it is to find out what material is there to support the allegations made in the complaint. It is the boundant duty of the Magistrate while making an enquiry to elicit all facts not merely with a view to protect the interests of an absent accused person, but also with a view to bring to book a person or persons against whom grave allegations are made.

35] Whether the complaint is frivolous or not is necessarily to be determined on the basis of material placed before the Magistrate by the complainant. Whatever defence the accused may have can only be enquired into at the trial. An enquiry under Section 202 the Code can in no sense be characterised as a trial. Permitting an accused person to intervene during the enquiry would frustrate its very object and that is why the legislature has made no specific provision permitting an accused person to take part in the enquiry under Section 202 of the Code

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37] The object of an investigation under S. 202 is not to initiate a fresh case on police report but to assist the Magistrate in contemplating proceeding already instituted upon a complaint before him as held by *Hon'ble Apex Court has held in the case of D. Laxminarayana -Vs- Narayana Reddy, (1976) 3 SCC 252.* *Hon'ble Bombay High Court has held in the case of P.K. Ramkrushanan -Vs- Nilkant Kamble, 1996 Cr.L.J. 2119 (Bombay)* that, the Magistrate proceeded to issue process without waiting for the report of investigation by police as directed by him under S. 202 (1) of the Act is illegality. Hon'ble High Court quashed that order and directed the Magistrate to wait for police report and act upon it thereafter.

7) COMPLAINT TO MAGISTRATE (Section 202 to 204 of the Code)

38] Chapter XV of the Code deals with complaints to Magistrates. The complaint is defined under S. 2 (d) of the Code which means any allegation made orally or in a writing to a Magistrate for taking action against the person committed offence. *Hon'ble Apex Court in the case of Mohd. Yousuf -Vs- Afaq Jahan, AIR 2006 SC 705* has held that there is no particular format of a complaint. A petition addressed to a Magistrate, containing an allegation of offence committed and prayer made to be dealt the culprit suitably is a complaint. S. 2 (d) of the Code also nowhere directs that such complaint is to be made personally to the Magistrate therefore complaint sent by post is valid and it can be dealt with by the Magistrate. *Hon'ble Division Bench of Karnataka High Court has held in the case of Zac Poonen -Vs- Hidden Treasure Company, 2002 Cr.L.J. 481* that joint complaint filed by two persons is not maintainable. However one of the complainants can get himself deleted and the other complainant can proceed with the complaint to get over the technical defect.

a) Judicial enquiry

39] The judicial enquiry under section 202 is to be held by the Magistrate himself [**Ashok v Manish 1976 Cr.LJ 876 (Cal.)**]. So the Magistrate can make enquiry himself or by another person or direct police investigation (**Tula v Kishore AIR 1978 Supreme Court 2401**). But he cannot direct an Executive Magistrate to hold the enquiry. [**Ananta Charan Mallick v Sayed Goush Ali 1995 Cr.LJ 209 (Ori)**]

b) Amendment Act, 2005

40] False complaints are filed against persons residing at far off places simply to harass them. In order to see that innocent persons are not harassed by unscrupulous persons, this clause seeks to amend sub-section (1) of section 202 to make it obligatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction he shall enquire into the case himself or direct investigation to be made by a police officer or by such other person as he thinks fit, for finding out whether or not there was sufficient ground for proceeding against the accused.

c) Nature of inquiry

41] Inquiry under section 202 is a limited one and the standard of Magistrate's scrutiny of the evidence is not the same as that applied while framing charges (**Rosy v State of Kerala AIR 2000 SC 637**)

d) Offence exclusively triable by a Court of Sessions,

42] When the case is exclusively triable by a Court of Sessions, the proviso to section 202(2), the Code enjoins upon the Magistrate to examine the

complainant and all his witnesses who shall be examined during trial to decide whether process should be issued or not [**Zubedda Khatoon Vs. Assistant Collector of Customs 1991 Cr.LJ 1392 (Karn)(DB)**].

e) Dismissal of complaint

43] If on a bare perusal of the complaint or the evidence recorded or of the report of enquiry or investigation the Magistrate is satisfied that essential ingredients of the offence alleged are missing or the dispute is only civil in nature or there are such patent absurdities in evidence produced that it would be wastage of time to proceed further, the complaint can be dismissed [**Debendra Nath v State of W.B. AIR 1972 SC 1607**].

f) Issue of process

44] While issuing process under section 204, of the Code, the Magistrate must, in brief, set out the allegations made in the petition of complaint, and materials brought on record and must state that in his opinion process should be issued. It is only when the magistrate is satisfied that sufficient grounds exist to proceed further that he should process. Judicial process should not be an instrument of oppression or needless harassment (**Punjab National Bank v Surendra Prasad Sinha, AIR 1992 SC 1815**).

45] Issuance of process under section 204 is a preliminary step in the 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 Code of review of an order by the same court. Hence, it is impermissible for the Magistrate to reconsider his decision to issue process in the absence of any specific provision to recall such order (**Poonam Chand Jain v Fazru AIR 2005 SC 38**).

g) Consideration at the time of issue of process-

46] At the stage of issue of process, it is not for the consideration of the Magistrate as to whether the offence has been made out and what defences are open to him after issue of process. It is for the Magistrate to proceed with the trial and deal in accordance with the law (Anil Saran v State of Bihar (1995) 6 SCC 142)

h) Magistrate to explicitly state reasons -

47] In Bhushan Kumar v State (NCT) of Delhi AIR 2012 SC 1747 it was held that section 204 does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It is nowhere mentioned in the section that the explicit narration of the same is mandatory, meaning thereby that it is not a pre requisite for deciding the validity of the summons issued.

8) COMMITMENT OF CASE TO THE COURT OF SESSIONS WHEN OFFENCE IS EXCLUSIVELY TRIABLE BY IT:-

48] A plain reading of Section 209 shows that commitment is of 'the case' and not of 'the accused'. The Committing Court need not take any evidence before committing the case, it has only to see whether the case is exclusively triable by the Court of Sessions. Although the case is committed and not 'the accused' the Hon'ble Allahabad High Court in Haji Shafi v. State of U.P. reported in 2001 Cri.L.J. 330 held that presence of accused is must for committal. It was observed that the opening words of Section 209 the Code, are that "when the accused appears and brought before the Magistrate," in that case the Magistrate can commit the case, if the offence is triable by the court of Sessions. Therefore, presence of accused is must for committal. Apart from

this, the compliance of Section 207 and 208 the Code are to be made before committal. The compliance could not be made in the absence of the accused. Thus, the accused can not be committed to the court of Sessions, if they are not present in the court of Committing Magistrate."

49] If offence is triable exclusively by the Court of Sessions, the Magistrate has no power to discharge the accused, but he shall have to commit the case in accordance with the provision of Section 209. Once the accused is charge sheeted to face trial for an offence exclusively triable by the Court of Sessions, the Magistrate shall have no other option but to commit the case to the Court of Sessions for trial. Even if it appears that distinct offences have been committed in the course of the same transaction. Some triable by the Magistrate and some exclusively triable by the Court of Sessions, the case involving all the offences shall have to be committed to the Court of Sessions for trial.

50] In a case on a police report or otherwise where some offence triable by Magistrate alleged to have been committed by one set of accused and some other offences exclusively triable by the Court of Sessions alleged to have been committed by another set of the accused, in the same occurrence or in the course of some transaction, the Magistrate cannot split the case but shall have to commit the case as a whole to the Court of Sessions for trial. Once a Magistrate commits a case, on the basis of charge sheet submitted by police, to the Court of Sessions, it does not prevent the Magistrate to commit the case on complainant with regard to the same occurrence or offence and also no detail inquiry is necessary in such complaint case before passing the committal order, but the Sessions Judge shall consolidate the two committal orders and true them as one case.

51] The section 209 and 323 of the Code of Criminal Procedure mainly deals with the provision of the committal of the case. The word “Commit” means to put into the charge. The committal of the case is the procedure by the authority of the Sessions Court put into the charge to conduct trial of the cases exclusively triable by it. As per Section 193 of the Code of Criminal Procedure Code the Sessions Court except otherwise expressly provide by the law no cognizance of the any offence shall take as the court of original jurisdiction unless case has been committed to it by the Magistrate.

9) PROCEDURE TO BE FOLLOWED WHEN THERE IS A COMPLAINT CASE AND POLICE REPORT IN RESPECT OF SAME OFFENCE. (Sec 210)

52] There was no similar provision in the old Code of Criminal Procedure, 1898. The new Section 210 has been inserted in the Code of Criminal Procedure, 1973, so as to ensure that private complaints do not interfere with the course of justice. To attract the provision it is necessary that when the complaint case is filed, police investigation is pending and in progress and the same is not completed. However, where Magistrate has already taken cognizance on Police Report and thereafter complaint is filed, S.210 the Code is not attracted. **Nitin Jairam Gadkari Vs State of Maharashtra 2005(1) Criminal Court Cases 76 (Bombay)**

53] The object of section 210 is not to harass a person twice and also not to authorize a person to vindicate his honour when the case is being investigated by the police. Sub-section (2) is a cure and sub-section (1) is a preventive measure.

54] It is held by the Hon'ble Patna High Court in M/s. Bhawan Alankar Vs. State of Bihar 2015 Cri. L.J.752. “The object of enacting Section 210 of the Code is three fold - (I) it is intended to ensure that private

complaints do not interfere with the course of justice; (ii) it prevents harassment to the accused at once and (iii) it obviates anomalies which might arise from taking cognizance of the same offence more than once. Such a provision was enacted because the makers of the Act thought in their wisdom that sometimes when serious case is under investigation by the police, some of the persons may file complaint and may quickly get an order of acquittal – either by cancellation or otherwise. Thereupon the investigation of the case becomes infructuous leading to miscarriage of justice in some cases. To avoid this, it has been provided that where a complaint is filed and the Magistrate has information that the police is also investigating the same offence, the Magistrate stays the complaint case, the Magistrate would try together the complaint case and the case arising out of the police report. But, if no such case is received, the Magistrate would be free to dispose of the complaint case. This new provision, as noticed earlier, is intended to secure that private complaints do not interfere with the course of justice.”

55] Apex Court in the case of **Sankaran Moitra Vs. Sadhna Das 2006 (4). SCC 584** held that, A bare reading of the above provision makes it clear that during an inquiry or trial relating to a complaint case, if it is brought to the notice of the Magistrate that an investigation by the police is in progress in respect of the same offence, he shall stay the proceedings of the complaint case and call for the record of the police officer conducting the investigation.

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Amravati

Amaravati

[S.B. Bhajipale]

[V.B. Rathod]

[Y.D. Koinkar]

Jt CJSD & Addl. CJM,

4th Jt. CJJD & JMFC

5th Jt. CJJD & JMFC

Amaravati

Amaravati

Amaravati

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