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held that if a



This change has been incorporated in the present Code, and it is now provided by S. 204 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 summon-case:

He must issue his summons for the attendance of the accused; or

(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, in the matter. Moreover, no summons or warrant can be issued against the accused under this section, unless a list of prosecution witnesses has been filed.

If under any law, any process fee or other fee is payable, no process can be issued until such fee is paid. If such fees are not paid within a reasonable time, the Magistrate can dismiss the complaint. The Madras High Court has held that a neglect to maintain a wife is not an offence, and therefore, an application for maintenance under S.

125 of the Code should not be dismissed owing to the applicant's failure to comply with an order for the payment of process fees. (Poonammal, — 16 Mad. 234) It has also been held that if a complaint is dismissed for non-payment of process fees, such a dismissal does not amount to an acquittal, and the complainant is not debarred from filing a fresh complaint in the

matter. (Sheorajasi, — 32 Cr. L. J. 203) It is also to be remembered that, under Article 361 of the Constitution, no process for the arrest or imprisonment of the President or the Governor of a State can be issued by any Court during the term of office of such a person.

When a person files a complaint and supports it by his oath, rendering himself liable to prosecution and imprisonment if it is false, he is entitled to be believed, unless there is some apparent reason for disbelieving him, and he is entitled to have the persons (against whom he complains) brought before the Court and tried. The only condition necessary for the issue of process is that the complainant's deposition must show some sufficient ground for proceeding in the matter. Therefore, unless there is sufficient ground for proceeding with the complaint, or sufficient material to justify issue of a process, the Magistrate should not issue the process. Thus, S. 204 gives a wide discretion to the Magistrate as regards granting or refusing a process. Needless to say, this discretion should be exercised with great caution, and an accused should not be dragged into the Court to answer a charge, merely because a complaint has been lodged against him. In determining whether he should issue a process or not, the Magistrate must proceed according to the provisions of the Code, and then if he is of the opinion that a prima facie case has been made out, he ought to issue the process. In such a case, he cannot refuse to issue the process merely because he is of the opinion that the proceedings are unlikely to result in a conviction.

If he finds sufficient evidence against the accused, he must issue the process. (Subal,—53 Cal. 606; Sher Singh,—36 C. W. N. 16) The Calcutta

High Court has held that if, from the examination of the complainant, it appears that there is reason for the issue of process against all the accused, the Magistrate would be wrongly exercising his discretion if he issues a process only against some of the accused. In such a case, he ought to issue a process against all of them.

(Bishan, — 4 C. W. N. 560) However, if two counter-complainants prefer complaints before a Magistrate, he can validly issue a process in one case, and postpone the issue of a process in the other case, until disposal of the first case. (Lalit,—24 Cr.

L. J. 120) S.

205, which contains a salutary rule of procedure, provides that whenever a Magistrate issues a summons, he may dispense with the personal attendance of the accused, and allow him to appear through his Pleader, if there is sufficient reason for doing so. It will be seen that this section deals with exemption from initial appearance, and not with exemption from appearance at the final trial. This power can be exercised by a Magistrate only when a summons has been issued, but not when a warrant is issued. However, at any stage of the proceedings, the Magistrate may, in his discretion, direct the personal attendance of the accused, and if necessary, enforce such attendance in the manner prescribed by the Court. The Mysore High Court has observed that where the alleged offences are of a serious nature involving moral turpitude, and are punishable with a sentence of imprisonment, whilst granting exemption under this section, the status of the

accused should not be considered. Although there is no specific exemption made by S.

205 in favour of a pardanashin woman, the Magistrate must exercise his discretion in such a case with reference to the social status of the woman, the custom of the society, and the nature of the offence. Ordinarily, an exemption from personal appearance should be granted to such a woman, unless a strong prima facie case has been made out for ordering otherwise. Thus, it has been held that a Magistrate is not justified in refusing exemption to such a woman merely on his impression that she is not a pardanashin lady, or on the ground that other ladies of the same class, who were also pardanashin, had appeared in Court out of their own free will. Thus, in a case decided by the Calcutta High Court, a pardanashin lady belonging to a very respectable family was summoned under the Bengal Municipal Act. She applied for permission to appear by a pleader, but the same was refused by the Magistrate. The High Court held that the conduct of the Magistrate in insisting upon dragging a respectable lady to Court in a petty case ought to be seriously condemned.

(Anila, — 51 Cr. L. J. 1325) In another case, when after service of summons, the accused did not attend in person, but appeared by a pleader, who requested the Magistrate to dispense with the personal appearance of the accused; it was held that such an appearance was a valid appearance. In the circumstances, the Magistrate could not prosecute the accused under S. 174 of the Indian Penal Code, for disobedience to the summons.

(Durgadas,—27 Cal. 985) Yet in another case, when the accused, who was ill in bed, was charged with an offence punishable with a fine only, and had sufficient property within the jurisdiction of the Magistrate (which would be available for realisation of the fine, in case of conviction), the Patna High Court held that the accused ought to be exempted from personal appearance and be allowed to appear through his Pleader. (Erfan AH.

—Cr. L. J. 749) Under S. 206, if a Magistrate is taking cognizance of a petty offence, and if the case can be summarily disposed of under S.

260 of the Code, the Magistrate must (unless he records a contrary opinion in writing) issue summons to the accused, requiring him either to appear in person or by a pleader on a specified date, or if he desires to plead guilty without appearing before the Magistrate, to transmit to the Magistrate before the specified date, such a plea in writing and the amount of fine specified in the summons, or to plead guilty through a Pleader and to pay such fine through the Pleader. The obvious intent of S. 206 is to avoid unnecessary inconvenience to a person accused of petty offences, i.

e., offences which are punishable only with a fine not exceeding Rs. 1, 000, but excluding offences punishable under Motor Vehicles Act, or any other law which provides for conviction of the accused in his absence on a plea of guilty. In such cases, an option is given to the accused to plead guilty to the charge, and remit the fine specified in the summons by post, or by messenger, or by a Pleader authorised by him in writing. The scope of S. 206 was considerably enlarged by the 1978 Amendment, so that now the State Government may empower a Magistrate to exercise the powers under the

section with respect to a compoundable offence, or any offence punishable with less than three months imprisonment, or fine, or both, if the Magistrate is of the opinion that, having regard to the facts and circumstances of the case, the imposition of fine only would meet the ends of justice. S.

207 lays down that in every case where the proceeding has been instituted on a Police Report, the Magistrate must, without any delay, furnish to the accused, free of cost, a copy of the following documents: (i) The Police Report; (ii) The First Information Report, [recorded under S. 154]; (iii) The statements [recorded under S. 161(3)] of all persons whom the prosecution proposes to examine as its witnesses, excluding from it any part in regard to which a request for such exclusion has been made by the Police Officer [under S. 173(6)]; (iv) The confessions and statements, if any [recorded under S. 164]; (v) Any other document, or relevant extracts thereof, forwarded to the Magistrate with the Police Report [under S. 173(5)]. If, however, the Magistrate feels that any document referred to in clause (v) above is voluminous, he may direct that, instead of furnishing a copy to the accused, the accused is only to be given an opportunity to inspect it, either personally or through a Pleader in Court. S.

208 provides that in a case which is instituted otherwise than a Police Report, if it appears to the Magistrate issuing the process that the offence can be tried exclusively by the Court of Sessions, the Magistrate must, without any delay, furnish to the accused, free of cost, a copy of each of the following documents: (i) The statements (recorded under S. 200 or S. 202) of all persons examined by the Magistrate.

(ii) The statements and confessions, if any (recorded under S. 161 or S. 164);
(iii) Any documents produced before the Magistrate on which the prosecution proposes to rely. If, however, the Magistrate is satisfied that any such document is voluminous, instead of furnishing the accused with a copy thereof, he may direct that the accused is only to be allowed to inspect it, either personally or through a Pleader in Court. S. 209 then lays down that in a case which is instituted on a Police Report, or otherwise if it appears to the Magistrate that the offence is triable exclusively by the Court of Sessions, he must— (a) Commit the case to the Court of Sessions, after complying with Ss.

207 and 208, and in the meanwhile, remand the accused to custody (subject, of course, to the provisions of the Code relating to bail); (b) Subject to the provisions of the Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial; (c) Send to the Court, the record of the case and the documents and articles, if any, which are to be produced in evidence; and (d) Notify the public prosecutor of the commitment of the case of the Court of Sessions. S. 210 of the Code has introduced a new procedure to be followed when there is both a complaint case and police investigation in respect of the same offence. It provides that, in such a case, the Magistrate must stay all the proceedings in respect of the inquiry or trial in the complaint case, and call for a report on the matter from the Police Officer who is conducting the investigation. If a Report is made by the investigating Police Officer, and on such a Report, cognizance of any offence is taken by the Magistrate; the Magistrate must try the complaint case and the case arising out of the Police Report, as if both the cases were instituted

on a Police Report. If, however, the Police Report does not relate to the accused in the complaint case or if the Magistrate does not take cognizance of any offence on the Police Report, he must proceed with the inquiry or trial stayed by him (as above) as per the provisions of the Code. There was no provision corresponding to S.

210 in the old Code. This new section is intended to ensure that private complainants do not interfere with the course of justice. According to the Joint Select Committee, when a serious case is under Police Investigation, some of the persons concerned sometimes file a complaint, and thereafter promptly get an order of acquittal, by collusion or otherwise.

The further investigation of such a case by the Police then becomes infructuous, thereby leading to a miscarriage of justice. It is to avoid this injustice, that the present section finds place in the new Code.