

Magistrate power

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Magistrate power to take cognizance of the offence After the stage of investigation is completed and the final report is forwarded by the police to competent magistrate, the second stage of fair trial begins that is taking of the cognizance of the offence by the magistrate. In this stage some of the necessary steps have to be take place. These steps are: - (i)to take cognizance of the offence, ii)then the magistrate enquire that whether any prima facia case exist against the accused person and if it exist then, (iii)to issue process against the accused person in order to secure his presence at the time of trial, (iv)to supply to the accused person the copies of police statement. Cognizance of the offence: - Meaning: - In the Criminal Procedure Code the term 'Cognizance of the offence' is not defined but taking the cognizance of the offence is the first step towards the trial.

The literally meaning of Cognizance is knowledge or notice and the taking cognizance of offence means taking notice or becoming aware of the commission of the offence. But the meaning of this expression is now well settled by the Courts. Taking cognizance does not involve any formal action of any kind but it occurs as soon as a magistrate applies his mind to the commission of the offence for the purpose of proceedings to take steps towards the Inquiry or Trial. It also includes intention of initiating a judicial proceedings against an offender in respect of an offence.

By whom the Cognizance of the offence is taken: - Under Section 190 of the Code, any magistrate of first class may take cognizance of any offence and any magistrate of second class, if specially empowered by the Chief Judicial Magistrate, may take the cognizance of the offence. But the court of session is not to take the cognizance of the offence directly as it is under the original

jurisdiction unless the case is given to it by the magistrate. When the cognizance is taken: - A magistrate take the cognizance of the offence: - i) upon receiving a complaint of facts which constitute such offence. (ii) upon a police report of such facts, (iii) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed The word 'Complaint' mentioned in the above paragraph is defined under the Section 2(d) of the Code 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, but it does not include a police report. So ordinarily a private citizen intending to initiate criminal proceedings in respect of an offence has two ways open to him. He may give information to the police if the offence is cognizable one, or he may go to the magistrate and file a complaint irrespective of the fact that whether the offence is cognizable or noncognizable. Now the question arises whether the magistrate is bound to take the cognizance in the above circumstances. In this the Supreme Court in the case of Gopal Das V. State of Assam (1961) 2 Cri L. J. 39

Observe that Section 190 of the Code does not means that once a complaint is filed, a magistrate is bound to take the cognizance of the offence if the facts stated in the complaint disclose the commission of any offence. But it becomes necessary for the magistrate to consider the reports of the police before taking the cognizance in case the final report is made to the magistrate after the investigation by the police. Transfer of case on the application of the accused: - The magistrate may also take the cognizance of the offence upon his own knowledge or information.

But Section 191 of the Code requires that the accused person must have to be informed before taking of any evidence that he is entitled to have the case inquired into or tried by another magistrate and if the accused objects the proceedings being conducted before the magistrate taking the cognizance of the offence, the case will have to be transferred to such other magistrate as may be specified by the Chief Judicial Magistrate. Also the refusal to the request of the transfer in such a case would be illegal.

Section 192 of the Code, has empowered the Chief Judicial Magistrate or a duly authorised magistrate of first class to transfer a case to another competent magistrate and the transfer made under the Section 192 can only be made after taking cognizance of the offence. Limitation on the power to take cognizance of an offence: - Section 195-199 are exception to the general rule regarding the cognizance of the offence contained in Section 190. These are given below: - 1. Prosecution for contempt of lawful authority of public servants: -

Under Section 195(1) it is provided that the cognizance of the following offences cannot be taken by any court : - (i) offence is punishable under section 172-188 of the IPC, (ii) offence of abetment, attempt to commit, etc (iii) offence of criminal conspiracy. except on the complaint in writing by the public officer concerned there or the complaint made by any public servant who is senior to the public officer concerned. The section 172-188 of the Code given in this section relates to the offence of contempt of lawful authority of public servants.

For example: preventing the service of the summons, not obeying the legal order of the public servants, not producing documents so required by the
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public servants. and where the complaint has been made by a public servant, any authority to which he is subordinate can order the withdrawal of complaint and send a copy of such order to the court, and on the receipt of such order by the court, no further proceedings shall be taken on the complaint. 2. Prosecution for offence against public justice and for offences relating to the document given in evidence: -

Under Section 195(1)(b) no court can take the cognizance: - (i)of any offence punishable under any of the following sections of the I. P. C. namely 193-196, 199, 200, 205-211 and 228 when such offence is alleged to have been committed in or in relation to the any proceeding in the court, (ii)of the offence punishable under section 475 or 476 of IPC when such offence is alleged to have been committed in respect of document produced or given in evidence in a proceedings in any court, or iii)of any criminal conspiracy to commit or attempt to commit or the abetment of any offence mentioned above except the complaint in writing of that court, or of some other court to which that court is subordinate.

3. Prosecution for offences against the State: - Under Section 196(1) of the Code, any court shall not take the cognizance of the: - (a)any offence punishable under section 153-A, 153-B, section 295-A or Section 505 of IPC or (b)a criminal conspiracy to commit such offence, or (c)any such abetment, of the offence. except with the previous sanction of the Central Government or the State Government. The offences above referred under the IPC relates to the offences against the State, for example : - promoting the enmity between the two groups of people, outraging the religious feeling of particular class etc. The object of this restrictive provision is to prevent

unauthorised persons of state does not institute suit against each other for just a small matter. 4. Prosecution for offence of criminal conspiracy: -

Under Section 196(2) any court cannot take the cognizance of the offence which is punishable under S. 120-B of the I. P. Code other than punishable under death, imprisonment for life or other imprisonment for which the term is two years or upward unless the state government or the district magistrate has consented in writing to the initiation of the proceedings. The State Government or the District magistrate may before giving the consent can order the investigation by the police officer.