

Inquiry and Inspection Under Section 202 CrPC

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Object Of Section 202 CrPC

Hon'ble Supreme Court in Shivjee Singh vs Nagendra Tiwary and Others 2010 Cr.L.J. 3827, held that,

“The object of examining the complainant and the witnesses is to ascertain the truth or falsehood of the complaint and determine whether there is a prima facie case against the person who, according to the complainant has committed an offence. If upon examination of the complainant and/or witnesses, the Magistrate is prima facie satisfied that a case is made out against the person accused of committing an offence then he is required to issue process. Section 202 empowers the Magistrate to postpone the issue of process and either inquire into the case himself or direct an investigation to be made by a police officer or such other person as he may think fit for the purpose of deciding whether or not there is sufficient ground for proceeding. Under Section 203, the Magistrate can dismiss the complaint if, after taking into consideration the statements of the complainant and his witnesses and the result of the inquiry/investigation, if any, done under Section 202, he is of the view that there does not exist sufficient ground for proceeding. On the other hand, Section 204 provides for issue of process if the Magistrate is satisfied that there is sufficient ground for doing so.

The expression "sufficient ground" used in Sections 203, 204 and 209 means the satisfaction that a prima facie case is made out against the person accused of committing an offence and not sufficient ground for the purpose of conviction. This interpretation of the provisions contained in Chapters XV and XVI of Cr.P.C. finds adequate support from the judgments of this Court in R.C. Ruia v. State of Bombay, 1958 SCR 618, Vadilal Panchal v. Duttatraya Dulaji Ghadigaonkar (1961) 1 SCR 1, Chandra Deo Singh v. Prokash Chandra Bose (1964) 1 SCR 639, Nirmaljit Singh Hoon v. State of West Bengal (1973) 3 SCC 753, Kewal Krishan v. Suraj Bhan (1980) Supp SCC 499, Mohinder Singh v. Gulwant Singh (1992) 2 SCC 213 and Chief Enforcement Officer v. Videocon International Ltd. (2008) 2 SCC"

Scope Of Section 202 CrPC

The aforesaid view was reiterated in Mohinder Singh v. Gulwant Singh (1992) 2

SCC 213 in the following words:

- "The scope of enquiry under Section 202 is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should issue or not under Section 204 of the Code or whether the complaint should be dismissed by resorting to Section 203 of the Code on the footing that there is no sufficient ground for proceeding on the basis of the statements of the complainant and of his witnesses, if any. But the enquiry at that stage does not partake the character of a full dress trial which can only take place after process is issued under Section 204 of the Code calling upon the proposed accused to answer the accusation made against him for adjudging the guilt or otherwise of the said accused person. Further, the question whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of the enquiry contemplated under Section 202 of the Code. To say in other words, during the course of the enquiry under Section 202 of the Code, the enquiry officer has to satisfy himself simply on the evidence adduced by the prosecution whether prima facie case has been made out so as to put the proposed accused on a regular trial and that no detailed enquiry is called for during the course of such enquiry."

- Referring to the judgment of *Rosy v. State of Kerala* 2000 (1) SCR 107, the Hon'ble Supreme Court has stated regarding the scope of section 202 CrPC, "Further, it is settled law that the inquiry under Section 202 is of a limited nature. Firstly, to find out whether there is a prima facie case in issuing process against the person accused of the offence in the complaint and secondly, to prevent the issue of process in the complaint which is either false or vexatious or intended only to harass such a person. At that stage, the evidence is not to be meticulously appreciated, as the limited purpose being of finding out "whether or not there is sufficient ground for proceeding against the accused". The standard to be adopted by the Magistrate in scrutinising the evidence is also not the same as the one which is to be kept in view at the stage of framing charges. At the stage of inquiry under Section 202 CrPC the accused has no right to intervene and that it is the duty of the Magistrate while making an inquiry 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."

- **Legal Provisions under the old Act of CrPC under Section 202 vis a vis New Act Bharatiya Nagrik Suraksha Sanhita Section 225.**

Legal Provisions under Section 202 CrPC

- **“202. 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 192, 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 Sessions; 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 200”

- (2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness 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.
- (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 Code on an officer in charge of a police station except the power to arrest without warrant.

- **Legal Provisions under Bharatiya Nagrik Suraksha Sanhita Section 225.**

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- “225. (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.”

- **(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.
- (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.”

Scheme of Section 200 to 204 Of CrPC

"200. Examination of complainant.- 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-

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them."

201. Procedure by Magistrate not competent to take cognizance of the case.

If the complaint is made to a Magistrate who is not competent to take cognizance of the offence, he shall,—

(a) if the complaint is in writing, return it for presentation to the proper Court with an endorsement to that effect;

(b) if the complaint is not in writing, direct the complainant to the proper Court.

202. Postponement of issue of process: (As read above)

203. Dismissal of complaint.

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.

204. Issue of process: (1) 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

(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.

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) 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.

(4) 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.

(5) Nothing in this section shall be deemed to affect the provisions of section 87.

10. In *Kewal Krishan v. Suraj Bhan* (1980) Supp. SCC 499, this Court examined the sceme of Sections 200 to 204 and held:

"At the stage of Sections 203 and 204 of the Criminal Procedure Code in a case exclusively triable by the Court of Sessions, all that the Magistrate has to do is to see whether on a cursory perusal of the complaint and the evidence recorded during the preliminary inquiry under Sections 200 and 202 of the Criminal Procedure Code, there is prima facie evidence in support of the charge leveled against the accused. All that he has to see is whether or not there is "sufficient ground for proceeding" against the accused. At this stage, the Magistrate is not to weigh the evidence meticulously as if he were the trial court. The standard to be adopted by the Magistrate in scrutinizing the evidence is not the same as the one which is to be kept in view at the stage of framing charges."

- **Difference between Investigation / Inquiry under Section 156 (3) and Sec 202 CrPC**
- Referring to various case laws like Devrapalli Lakshminaryanan Reddy & Ors. vs. V. Narayana Reddy & Ors. (1976) 3 SCC 252, National Bank of Oman vs. Barakara Abdul Aziz & Anr. (2013) 2 SCC 488, Madhao & Anr. vs. State of Maharashtra & Anr. (2013) 5 SCC 615, The Hon'ble Supreme Court in Ramdev Food Products Private Limited vs State Of Gujarat AIR 2015 SUPREME COURT 1742 has differentiated the two stating,
- *“The 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 Section 156 and ending with report or chargesheet 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.”*

- **Whether Inquiry under Sec 202 CrPC is Optional or Mandatory ?**
- As recently held in the case of ODI JERANG versus NABAJYOTI BARUAH & ORS 2013 Livelaw (SC) 702 date of Judgement 22.08.2023, the question whether inquiry under Sec 202 is optional or mandatory, “There cannot be any doubt that in view of the use of word "shall" in sub-section 1 of Section 202 of the CRPC and of Section 202 of the CRPC and the object of amendment made by the Act No. 25 of 2005, the provision will have to be held as mandatory in a case where the accused is residing at a place outside the jurisdiction of the learned Magistrate. In fact, in paragraph No.12 of the aforesaid decision relied upon by the learned counsel appearing for the petitioner, this Court held that in a case where one of the accused is a resident of a place outside the jurisdiction of the learned Magistrate, following the procedure under subsection 1 of Section 202 of the CRPC is mandatory. In the case of Vijay Dhanuka 2 , this Court found that before issuing summons, the learned Magistrate had examined the complainant and two other witnesses on oath and therefore, on facts, this Court found that a substantial compliance with sub-section 1 of Section 202 of the CRPC was made.”

Whether Examination of all the witnesses cited in complaint is Condition precedent for summoning the accused

Hon'ble Supreme Court in Shivjee Singh vs Nagendra Tiwary and Others 2010 Cr.L.J. 3827, held in this that,

“16. As a sequel to the above discussions, we hold that examination of all the witnesses cited in the complaint or whose names are disclosed by the complainant in furtherance of the direction given by the Magistrate in terms of proviso to Section 202(2) is not a condition precedent for taking cognizance and issue of process against the persons named as accused in the complaint and the High Court committed serious error in directing the Chief Judicial Magistrate to conduct further inquiry and pass fresh order in the light of proviso to Section 202(2).”

- **Thank You.**