

accordance with the provisions of sub-section (1) of section 199B may, with the leave of the Court make a complaint on his behalf.

(N.W.F.P. Amendment-Delete Section 199).

199-A. Objection by lawful guardian to complaint by person other than person aggrieved. When in any case falling under section 198 or section 199, the person on whose behalf the complaint is sought to be made is under the age of eighteen years or is a lunatic, and the person applying for leave has not been appointed or declared by competent authority to be the guardian of the person of the said minor or lunatic, and the Court is satisfied that there is a guardian so appointed or declared, notice shall be given to such guardian and the Court shall, before granting the application, give him a reasonable opportunity of objecting to the granting thereof.

199-B. Form of authorization under second proviso to section 198 or 199. (1) The authorization of a husband given to another person to make a complaint on his behalf under the second proviso to section 198 or the second proviso to section 199 shall be in writing, shall be signed or otherwise attested by the husband, shall contain a statement to the effect that he has been informed of the allegation upon which the complaint is to be founded, shall be countersigned by the Officer referred to in the said provisos, and shall be accompanied by a certificate signed by the Officer, to the effect that leave of absence for the purpose of making a complaint in person cannot for the time being be granted to the husband.

(2) Any document purporting to be such an authorization and complying with the provisions of sub-section (1), and any document purporting to be a certificate required by that sub-section shall, unless the contrary is proved, be presumed to be genuine, and shall be received in evidence.

N.W.F.P. Amendment-[In section 199-A of the Code; omit the words 'or section 199' and delete section 199-B].

CHAPTER XVI - OF COMPLAINTS TO MAGISTRATE

200. Examination of complainant. A Magistrate taking cognizance of an offence on complaint shall at once examine the complainant upon oath, and the substance of the examination shall be reduced to writing and shall be signed by the complainant, and also by the Magistrate:

Provided as follows:

(a) when the complaint is made in writing nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under section 192 [or sending it to the Court of Sessions].

(aa) when the complaint is made in writing nothing herein contained shall be deemed to require the examination of a complainant in any case in which the complaint has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties:

(b) * * * * *

(c) when the case has been transferred under section 192 and the Magistrate so transferring it has already examined the complainant, Magistrate to whom it is so transferred shall not be bound to re-examine the complainant.

201. Procedure by Magistrate not competent to take cognizance of the case. (1) If the complaint has been made in writing to a Magistrate who is not competent to take cognizance of the case, he shall return the complaint for presentation to the proper Court with an endorsement to that effect.

(2) If the complaint has not been made in writing such Magistrate shall direct the complainant to the proper Court.

[202. Postponement of issue of process. (1) Any Court, on receipt of a complaint of an offence of which it is authorized to take cognizance, or which has been sent to it under Section 190, sub-section (3), or transferred to it under Section 191 or Section 192, may, if it thinks fit, for reasons to be recorded postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case itself or direct an inquiry or investigation to be made by [any Justice of the Peace or by] a police-officer or by such other person as it thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint.

Provided that, save where the complaint has been made by a Court, no such direction shall be made unless the complainant has been examined on oath under the provisions of Section 200.

(2) A Court of Session may, instead of directing an investigation under the provisions of sub-section (1), direct the investigation to be made by any Magistrate subordinate to it for the purpose of ascertaining the truth or falsehood of the complaint.

(3) If any inquiry or investigation under this section is made by a person not being a Magistrate [or Justice of the Peace] or a police-officer, such person shall exercise all the powers conferred by this Code on an officer-in-charge of a police-station, except that he shall not have power to arrest without warrant.

(4) Any Court inquiring into a case under this section may, if it thinks fit, take evidence of witnesses on oath.]

203. Dismissal of complaint. [The Court] before whom a complaint is made or to whom it has been transferred or [sent] may dismiss the complaint, if, after considering the statement on oath (if any) of the complainant and the result of the investigation or inquiry if any under section 202 there is in his judgment no sufficient ground for proceeding. In such case he shall briefly record his reasons for so doing.

CHAPTER XVII - OF THE COMMENCEMENT OF PROCEEDING BEFORE [COURTS]

204. Issue of process. (1) If in the opinion of a [Court] taking cognizance of an offence there is sufficient ground for proceeding and the case appears to be one in which, according to the fourth column of the second schedule a summons should issue in the first instance, [it] shall issue its summons for the attendance of the accused. If the case appears to be one in which, according to that column, a warrant should issue in the first instance, [it] may issue a warrant, or, if, [it] thinks fit, a summons for causing the accused to be brought or to appear at a certain time before such Court or (if [it] has not jurisdiction [itself]) some other Court having jurisdiction.

(2) Nothing in this section shall be deemed to affect the provision of section 90.

(3) 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 [Court] may dismiss the complaint.

205. Magistrate may dispense with personal attendance of accused. (1) Whenever a magistrate issue a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused, and permit him to appear by his pleader.

(2) But the Magistrate inquiring or trying the case may, in his discretion, at any stage of the proceedings direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinbefore provided.

CHAPTER XVIII - OF INQUIRY INTO CASES TRIABLE BY THE COURT OF SESSION OR HIGH COURT

206-220. [Chapter XVIII consisting of sections 206-220 omitted by Law Reforms Ordinance, 1972. item 82. Enforced in the Province of Punjab w.e.f. 26.12.1975.]

CHAPTER XIX - OF THE CHARGE FORM OF CHARGES

221. Charge to state offence. (1) Every charge under this Code shall state the offence with which the accused is charged.

(2) Specific name of offence; sufficient description. If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

(3) How stated where offence has no specific name. If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

(5) What implied in charge. The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

(6) Language of charge. The charge shall be written either in English or in the language of the Court.

(7) Previous conviction when to be set out. If the accused having been previously convicted of any offence, is liable by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge. If such statement has been omitted, the Court may add it any time before sentence is passed.

Illustrations

(a) A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in section 299 and 300 of the Pakistan Penal Code; that it did not fall within any of the general exceptions of the same Code; and that it did not fall within any of the five exceptions to sections 300 or that, if it did fall within Exception 1, one or other of the three provisos to that exception apply to it.