

20. **Object of complaint.**

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 complaint before

transferring the case under section 192.(or sending it to the Court of Session).

- (b) When the complaint is made in writing nothing herein contained shall be deemed to require the examination of the 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 the official duties.
- (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. (Section 200 Cr.P.cC).

The Scope of Chapter XVI of the Cr.P.C. is to make distinction between

baseless and substantial cases from the very beginning with the object of ensuring that no person shall be compelled to answer a criminal charge unless the Court is satisfied that there is a prima facie case for issuing process against him. By this process the Court is afforded an opportunity of confirming or removing any hesitation it may feel in respect of issuing process against the accused. It is only when the Magistrate is satisfied that there is a prima facie case that he would issue process. This inquiry is not intended to be a substitute for a regular trial but only a

preliminary inquiry, which is held with the object of saving a person complained against on baseless allegations from facing unnecessary harassment of a criminal trial. (PLD 1972 Kar 351).

One of the main object of section 200 Cr.P.C. is to protect the public against

false, frivolous or vexatious complaints filed against them in Criminal Courts and the Magistrates ought not to lightly accept

written complainant and proceed to issue processes unless they have thoroughly sifted the allegations made against the accused and are satisfied that a prima facie case has been made out against those who are accused of criminal offences. (PLD 1996 Kar 253 + PLD 1966 S.C. 171).

21. Procedures and Mode.

The essential requirement of section 200 Cr.P.C. are that the substance of the examination of the complainant shall be reduced to writing and shall be signed by the complainant and also by the Magistrate. (PLD 1959 Lah 186). Section 200, Cr.P.C. makes it clear that the examination of the complainant can only succeed and not precede the taking of cognizable, for, it is an act to be done after the taking of cognizance, whatever, might be the meaning of the word cognizance or whatever might amount to taking cognizance. (PLD 1960 Dacca 631). There is no requirement of law that the Court on receipt of a direct complaint must hold preliminary inquiry. If a prima facie case is made out, Court can take cognizance of the same after examination of the complainant on oath and if no such case is made out, court is competent to dismiss the same. (2001 P.cr.L.J. 914).

At the stage of section 203 and 204 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 section 200 and 202 there is prima facie evidence in support of the charge levelled against the accused. All that he has to see is whether or not there is sufficient ground for proceedings against the accused. If there is prima facie evidence, that will be a sufficient ground for issuing, process to the accused and committing them for trial to Court of Session. (KLR 1984 Cr.C. 89).

22. Investigation in complaint.

If a direct complaint is lodged before the Magistrate u/s 200 than under sub-section (1) of section 202 Cr.P.C., Magistrate is empowered to direct the police to investigate the case and in such event the investigating officer of police is authorized to exercises all powers available to him in the Criminal Procedure Code for investigating the case including the power to arrest the accused persons. (2003 YLR 1316; PLD 1992 Pesh. 138) Sessions Judge in the capacity of ex-officio justice of peace has power to issue direction to the police for registration of FIR under section 22-A, 22-B, Cr.P.C. (PLD 2002 Kar 328; 2004 YLR 56).

Withdrawal of urgent complaint would operate acquittal of accused and complainant is debarred from filing the second complaint which otherwise is not maintainable u/s 403 Cr.P.C. as well as under Art. 132 of the Constitution of Pakistan. (2001 P.Cr.L.J. 914)

Where a complaint is dismissed or the accused is discharge, a second complaint for the same offence is not barred. The Magistrate taking cognizance of such complaint should therefore proceed in the manner laid down under this section. Whenever, a Court is satisfied that the previous order of dismissal was due to manifest error or had resulted in the miscarriage of justice it can entertain the second complaint on the same allegation. (2001 YLR 1107).

Accused filing counter complaint of the same incident in trial Court against the complainant, his father, brother and widow of the deceased after four months of the occurrence. Story advanced by the accused was found false and frivolous, liable to be dismissed. (2001 P.Cr.L.J. 914).

Court permitting the complainant to withdraw the same and file a fresh complaint. Filing of fresh complaint in no manner violate the provisions of section 369. (2001 YLR 1107).

23. Recording of Statement.

Whenever a direct complaint is filed the statement of the complainant as well as statements of the witnesses should be recorded by the Magistrate himself in order to exclude all possibilities of prompting and such statements shall not be allowed to be recorded by the Reader of the Court or any clerk. It must also be borne in mind that the implication or non implication of the proposed accused depends upon these statements and therefore, extra caution and care should be taken so that an innocent person is not made an accused by the complainant who otherwise

might succeed in doing so when such statements are recorded by the Reader or Clerk. (1994 P.Cr.L.J. 430) Omission to record statement is not an illegality but an irregularity curable. (1990 P.Cr.L.J.713).

Omission on part of complainant to sign his statement does not cause any prejudice to accused. Law does not require to associate accused person in preliminary inquiry, summoning of accused up held. (1988 P.Cr.L.J 477).

24. Association of accused person.

A person complained against is not an accused person and cannot be associated with proceedings in the complaint case unless he has been summoned as an accused person. Therefore, the association of the person complained against in preliminary proceedings is also illegal. (1969 P.cr.L.J. 547).

Where there is difference between versions of witnesses in challan case and complaint case, trial is to be held in complaint case first. (1991 P.cr.L.J. Note 81 at page 56) Where prosecution story is the same and only number of accused connected with the commission of offence is different, both such cases can be consolidated and tried together. (PLD 1987 Lah 245; 1980 P.Cr.L.J. 90). But in actual practice what is done that one of

the two cases is taken up in which the larger set of accused are named and such witnesses not examined in the case taken up but whose names appears in the other case are examined as Court witnesses under section 540-A Cr.P.C. (PLD 1987 Lah 245).

25. Challan in non cognizable case.

Non cognizable offence, investigating officer filing challan without permission of Magistrate for investigation. Such challan is a complaint and not a police report. (1980 P.Cr.L.J. 742).

26. Preliminary Inquiry.

Under section 202 Cr.P.C. and 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(3), Cr.P.C. or transferred to it under section 191, Cr.P.C. or section 192 Cr.P.C. instead of issuing process, may,

if it thinks fit for the reasons to be recorded, postpone the same for compelling the attendance of the persons complained against and either inquire the same for case itself or direct an inquiry or investigation to be made by the police officer or by such other person as it thinks fit for the purpose of ascertaining the truth or falsehood of the complaint. The above section further provides that a Court of Session may, instead of directing an investigation under the provision of subsection (1), direct investigation to be made by any Magistrate subordinate to it for the purpose of ascertaining the truth or falsehood of the complaint. It also provides that any Court enquiring into a case under section 202, Cr.P.C. may, if it thinks fit, take evidence of witnesses on oath. Section 203, Cr.P.C. provides that 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 of on oath (if any) of the complainant and the result of the investigation or inquiry (if any) under section 202, Cr.P.C. there

is in its judgment no sufficient ground for proceeding recording his reasons for doing so. (1991 SCMR 1608).

A Magistrate, when holding a preliminary inquiry, can give the person complained against, an opportunity of explaining the circumstances against him, though the granting of such a concession on the part of the Magistrate is a mere act of grace and the accused has no right to it. Section 202, Cr.P.C. does not lay down any specific mode or procedure for the inquiry to be held there under but leave it to the discretion of the Magistrate, which of course is required to be exercised in a judicial manner to examine such witnesses and made such inquiries as he deems fit. (1974 P.Cr.L.J. Note 110 (P.69)).

27. Inquiry--- Object.

Object behind section 202, Cr.P.C. is to ensure satisfaction of the court about a prima facie case having been made out against accused before he is called upon to answer a criminal charge for which process may be issued by the Court. (1998 SCMR 922 + 1969 P.Cr.L.J. 692). Object of holding an inquiry under section 202, Cr.P.C. is limited to find out existence of a prima facie case. Court at such stage has before it only one-sided unchallenged version of the complainant, as neither the accused is present before the Court nor the witnesses are subjected to cross-examination. One of the objects of holding a preliminary inquiry under section 202, Cr.P.C. by the Court, no doubt, is to avoid issuance of process to the accused in a fit case, but to achieve this object Court cannot over stretch the proceedings so as to convert the preliminary inquiry into

a full fledged trial of the case. Possibility of the accusation turning out to be false or frivolous at the trial should not over bear the Court from issuing the process if the unchallenged testimony of the complainant, prima facie, discloses a case against the accused. Court while examining the existence or other wise of a prima facie case should also keep in view the provisions of section 250, Cr.P.C. which provide sufficient

safeguard to an accused against a false and frivolous accusation by the complainant. (1998 SCMR 922).

28. Remedies.

Dismissal of complaint----Remedy. Order passed under section 247, Cr.P.C. is appealable under section 417(2) subject to the grant of leave to appeal and it is immaterial whether the order of acquittal is passed on some evidence or for non prosecution in a complaint case, the aggrieved complainant can approach the High Court under section 417(2) Cr.P.C. No revision under section 439(5) is entertain able. (2002 P.Cr.L.J. 181, 513).

The order of discharge revisable while that of acquittal is appeal able. (1990 P.Cr.L.J. 1932, 1987 P.Cr.L.J. 294 rel.) Order passed under section 203 is revisable because it is judicial order and is subject to scrutiny by superior Courts. (1996 MLD 1867). However, where Trial Court while dismissing the complaint has neither acted illegal nor with material irregularity. Dismissal would entail revision. (1996 MLD 111). Accused after dismissal earns a double presumption of innocence. (1997 P.Cr.L.J. 416).

29. 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.(section 203, Cr.P.C.).

Section 203, Cr.P.C. empowers Magistrate before whom a complaint is made or to whom it is transferred or sent to dismiss the same if after considering the statement on oath of the complainant and the result of the investigation he comes to the

conclusion that there is no sufficient ground for proceeding. The reasons for dismissal of a complaint are to be brief and not elaborate or detailed but there must be valid reasons and furthermore must show that the Magistrate has applied his mind to the facts of the case and considered the evidence and the material produced in the inquiry. (1974 P.Cr.L.J. Note 110 at. 69).

30. Dismissal order not bar fresh complaint.

Order of dismissal of complaint under section 203, Cr.P.C. is no bar to the entertainment of second complaint on the same facts. (2000 P.Cr.L.J. 489). The dismissal of a complaint under this section does not operate as a bar to the re-hearing of a fresh complaint on the same facts by the same Magistrate. (1988 P.Cr.L.J. 730).