E Lectures.

9th Semester (Code of Criminal Procedure)

Unit –III :-

CONDITIONS REQUISITE FOR INITIATION OF PROCEEDINGS.

SECTION 190.Cognizance of offences by Magistrates.

The word cognizance is of great importance and has to be understood well as a student and as a professional in the field of law whether in the capacity of a lawyer or a judge because this term forms the very essence of the entire provision of law. The word cognizance is defined in the Wharton's Law Lexicon, 14th edition, as 'the hearing of a thing judicially'. It has been held that the cognizance therefore has a reference to the hearing and to the determination of the case in connection with the commission of an offence and not merely to a magistrate's learning that some offence has been committed and his ordering that the matter be investigated. The criminal proceedings are not instituted until the magistrate has taken cognizance of an offence alleged under one or other of the clauses of sub section (1) of this section. The mere presentation of a challan by the police under section 173 in a magistrates court or the mere presentation of a complaint by a private individual does not constitute the institution of criminal proceedings. Thus the power to take cognizance on a complaint is not unguided. The magistrate verifies the complaint; he can refer it to the police investigation, he can take evidence himself. The section authorizes the magistrate to take cognizance

under any one of the three clauses. But for taking cognizance the magistrate requires something more. The magistrate must apply his mind to the facts of the case and decide on a course of action in furtherance of such application of mind for the purpose of further proceedings with the matter in accordance with the subsequent provisions of the code. Thus it also has to be kept in mind that cognizance and commencement of the proceedings are not synonymous in their connotation. Cognizance is something prior to, and does not necessarily mean, the commencement of the judicial proceedings against anyone. The expression 'to take cognizance' has not been defined in the code nor does the code prescribe any special form of taking cognizance. The word cognizance is however used in the code to indicate the point when the magistrate takes judicial notice of an offence. It is a word of indefinite import and is perhaps not always used in exactly the same sense. Thus it would mean applying one's mind to the facts stated in the report and then proceeding further in the matter under the relevant provisions of the code. In its broad and literal sense it means taking notice of an offence and would include the intention of initiating judicial proceedings against the offender in respect of that offence or taking steps to see whether there is any basis for initiating judicial proceedings. At the stage of taking cognizance the magistrate has simply to be satisfy whether the allegations against the accused prima facie make out a case for trial or not and nothing beyond that. On receiving a complaint the magistrate may come to a conclusion that there is no ground for proceeding with the case and in that case the complaint is to be dismissed under section 203. If however he finds that there is a case for proceeding with the complaint he takes cognizance under this section But if he is unable to

come to either of these conclusions he may either order an enquiry under section 202 or an investigation under section 156(3).

Section 191:

The words " shall ……is entitled" are mandatory and a magistrate cannot refuse to comply with them. Silence on the part of the accused to take any objection as to the trial by a magistrate taking cognizance of the case against him under clause c in the face of the obligation imposed on the magistrate by law to inform the accused of his right to object to the trail by such magistrate, cannot prejudice him, and there cannot be any waiver of his rights in such a case. The accused, if he elects to be tried by another court, must signify his election before any evidence is taken.

Section 192:

This section deals with the transfer of cases by magistrates, as section 407 deals with transfers by high court, section 406 with transfers by supreme court and section 408 and 409 with transfers by session judges.

The chief judicial magistrate may transfer cases to magistrates subordinate to him. The jurisdiction under this section may be exercised by a chief metropolitan magistrate or a magistrate in respect of cases of which cognizance was taken by their predecessors. The terms of the section do not require the order of transfer to be in writing.

Subsection 1 refers to the cases in which the cognizance has been taken by the chief judicial magistrate himself, whereas subsection 2 empowers the chief

judicial magistrate to authorize any first class magistrate who has taken cognizance to transfer cases to a specified magistrate.

Section 193:

Section 193 of the code completely bars the taking of cognizance of any offence by the court of sessions as a court of original jurisdiction without commitment in absence of any express provision to the contrary in the code or any law for the time being in force. The section is in a way a disabling one.

Though the section is to be strictly interpreted, it is subject to the exception contained in the words " except otherwise expressly provided in the court".

Section 195:

This section speaks that no court shall take cognizance of any offence under the mentioned sections of the IPC except on complaint in writing of the public servant concerned. This section is one of the sections which prohibits a court from taking cognizance of certain offences unless and until a complaint has been made by some particular authority or person.

This section creates an absolute bar against the court taking cognizance of the cases except in the manner provided by the section. As the section bars the jurisdiction of the magistrate to take cognizance, if he does take cognizance against the provisions of this section, the cognizance would be illegal and without jurisdiction.

The object of the section is to safeguard against the irresponsible and reckless prosecutions by private individuals in respect of the offences which relate to

the administration of justice and contempt of lawful authority. It is to minimize the possibility of needless harassment by rash, baseless or vexatious prosecution.

As per sub section 1 (b), the offence must have been committed "in or in relation to, any proceeding in any court". These words are of very general and wide import and cover proceedings in contemplation before a criminal court.

Section 196:

This section is again a disenabling section and not enabling. Cognizance of offences under sub section 1 can only be taken on a complaint sanctioned by the government. The object of the sanction is to prevent unauthorized person from intruding in state affairs by instituting state prosecution. Thus prior sanction of the government is necessary. Thus sanction after filing of the complaint does not fulfill the requirements of this section. In absence of sanction, the prosecution is illegal. Subsection 2 only applies to a prosecution for conspiracy punishable under section 120-B of the IPC.

Section 197:

Public servant must be one who is removable from his office either by the government or with the sanction of the government. No court shall take cognizance of an offence committed by a public servant except with the previous sanction of the central/state government where the person is or was at the time of the commission of the offence employed, in connection with the affairs of the union.

It was held in state of Orissa vs ganesh chander jew (2004 CrLJ 2011 S C) that the expression 'no court shall take cognizance of such offence except with the

previous sanction' used in section 197(1) of the code makes protection to the public servant mandatory. Further the words 'no' and 'shall' bars the very cognizance of the complaint by any court without obtaining previous sanction of the central or state government, as the case may be. It was further held that the use of expression 'official duty' implies that act or omission must have been done by the public servant in the course of his service and it should have been done in discharge of his duties. This section does not extend its protection cover to every act or omission done by a public servant in service but restricts its scope of operation to only those acts or omissions which are done by a public servant in discharge of official duties. Further the expression 'who is or was' shows that the sanction is required even in cases where a retires public servant is sought to be prosecuted.

The object of the section is primarily to guard against vexatious proceedings against public servants so that they do their work with dedication and fearlessly. Thus before such criminal proceedings are launched against public servants, it has been considered proper that the well considered opinion of a superior authority is obtained.

Thus before this section is invoked the following conditions must be satisfied:

a) The person accused of an offence is or was a public servant,
b) The accused must be a person removable from his duty only with the sanction of the state government or of the central government according to whether the person is employed in connection of his affairs of the state or central government,

c) He must be accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties,
d) He is or was employed, at the time of the commission of the alleged offence, in connection with the affairs of the union or state, as the case may be.

If these conditions are not fulfilled, the case will not attract the protection which is afforded by this section.

Section 198:

Thus section like sections 193,195 and 197 regulates the competence of the court and bars its jurisdiction in certain cases. What this section does is to prohibit cognizance except upon complaint made by the person aggrieved with certain exceptions. Thus a complaint by a person other than the one aggrieved may be made only with the permission of the court.

Section 198-A:

A court can take cognizance of an offence under section 498-A IPC on a police report of facts which constitute an offence. At the same time the relative of the married woman as enumerated in section 198-A CrPC can also file a complaint in regard to the offence under section 489-A IPC.

To eradicate the evil of dowry demands and the consequent harassment to the married women, the parliament enacted this act under which the husband or relative of the husband is punishable with imprisonment upto 3 years in case cruelty was caused to the married woman.

Section 199:

Provisions of this section are mandatory and provide that a complaint can only be made by the aggrieved person. Therefore if the magistrate takes cognizance of the offence of defamation on complaint filed by one who is not the aggrieved, the trail and the conviction will be illegal.

Sub section 2 is to save a public servant from the embarrassment of a private prosecution in respect of a defamatory statement made against him in the discharge of his public duties. It is aimed to protect the high dignitaries set out in the section.

Filling of complaints:

Section 200:

The object of this examination is to see that the members of the public are not unnecessarily harassed by false and frivolous accusations. To avoid this mischief, the magistrate before he issues a process and summons a person accused of an offence, should satisfy himself of the truth or falsehood of the complaint and then see if the matter in the complaint requires inquiry by a court of law. The section lays down the preliminary procedure which the magistrate shall follow on receiving a complaint. Under this section it is obligatory to examine the complainant and the witnesses. As mentioned in may old and new rulings of the superior courts, the object of this provision is to prevent the issue of process in cases where the examination of the

complainant would show that the complaint is clearly false, frivolous or vexatious and that further proceedings would tend merely to harass unnecessarily an accused person and waste the time of the court.

Section 201:

The want of competency contemplated by this section may be due to:

1. The magistrate not being empowered under section 190, or
2. Want of local jurisdiction, or
3. Want of previous sanction under section 132 or 196-199 or complaint under section 195 read with section 340 or under some special or local law, or
4. The magistrate not being qualified to try under schedule I or to comit the trial.

If on the perusal of the complaint the magistrate finds that he has no jurisdiction, he is not bound to examine the complainant, and indeed he cannot do so, but should return it, after making the endorsement required by this section, when the complaint is in writing.

Section 202:

This section contains yet another check to prevent false and vexatious complaints being filed. The section makes it clear that a magistrate is not bound to issue process immediately a complaint is filed before him. If he has a doubt about the truth of the complaint, it gives him power to postpone the issue of process if he thinks fit and either inquire into the case himself or direct an investigation by a police officer or such other person as the he thinks fit for the purpose of ascertaining whether or not there is sufficient ground for

proceeding. In addition to the scrutiny of the complaint the section provides an opportunity to the magistrate to find out what material there is to support the allegations made in the complaint.

Thus the object of the section is three fold:

i) To ascertain the facts constituting the offence,
ii) To prevent abuse of process resulting in wastage of time of the court and harassment to the accused'
iii) To help the magistrate to judge if there is sufficient ground calling for investigation and for proceeding with the case.

The enquiry or investigation under this section is designed to afford the magistrate an opportunity of either confirming or removing such hesitations as he feels in respect of issuing process against the accused. The nature of enquiry varies with the circumstances of each case.

Section 203:

Under this section a magistrate may dismiss a complaint, if after considering the statement on oath of complainant and of witnesses and the result of the inquiry or investigation under section 202, there is no sufficient ground for proceedings. This section may be resorted to –

(a) When after examination of the complainant and the witnesses present under section 202, the magistrate has reasons not to believe the truth of the complaint, or

(b) After such examination, the magistrate entertains a reasonable doubt of such complaint, which doubt is confirmed by a proper report called for under section 202.

It would be open for the magistrate to dismiss the complaint in his opinion no offence is made out, without taking cognizance. Again it must be noted that material on which the magistrate has to act while disposing of a complaint under this section are expressly limited by section itself ie firstly statement on oath, if any, of the complainant and the witnesses produced by him and secondly the result of the investigation or inquiry under section 202. The use of any other material besides the above is absolutely unwarranted.

Section 204:

It may be noted first that 'process' means issue of summons or issue of warrants, as the case may be.

The issue of process is a matter of judicial determination. Before issuing process the magistrate has to examine the complainant and hence the issue of process has to be by the magistrate who has taken cognizance or by one to whom the case has been transferred. At the time of issuing process the magistrate is mainly concerned with the allegations made in the complaint or evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceedings against the accused. It is not required by the magistrate to enter into detailed discussion or the merits and demerits of the case.

Section 205:

This section covers the cases in which in the specified circumstances the personal appearances of the accused can be dispensed with by the court.

It is an essential principle of the criminal law that the trial of an indictable offence has to be conducted in the presence of the accused. This principle is

embodied in section 273 of the code. While, therefore, it cannot be denied that the presence of the accused at the trial is necessary, the code itself shows that the trial court has a discretion in certain circumstances to exempt his personal attendance. Thus if the accused person are duly represented by their respective counsels, their personal attendance should not be insisted upon by the court especially in cases of women accused.

Section 206:

The whole idea behind this section is to foster quick disposal of the cases which are numerous in number but are petty in nature. The provisions of this section will apply only in cases in which:

a. The offence is a petty offence, which means an offence punishable with fine only, not exceeding Rs 1000/- but not including an offence under the motor vehicle act or any other special law making similar provisions.
b. The offence must be one which may be disposed of summarily under section 260.

Further if the offence is one which is covered by the provisions of this section, the magistrate has to give the accused two options:-

a. Either to appear in the court personally or through the pleader, or
b. To plead guilty without appearing in the court in either of the two manners covered by the first option.

It is to be noted that if the magistrate deprives the accused of either the two options, he will have to record his reasons thereof in writing.

Section 207:

This section provides that the accused should be given relevant documents or extracts of them, in cases where proceedings have been instituted on a police report so that the accused is able to know the charge brought against him and the materials with the aid of which the charge is going to be substantiated by the prosecution. Non supply of the materials mentioned in section 207 which are relied by the prosecution is a ground that can be used successfully for setting aside a conviction.

The supply of the relevant copies of the documents and statements to the accused gives him an opportunity to have an overall picture of the case against him. It is helpful in meeting the case against him. The documents of whose copies are to be supplied to the accused have been classified as under:

(a) Copy of the charge sheet (ie report forwarded to the magistrate under section 173)
(b) Copy of the first information report recorded under section 154,
(c) Copies of all the documents or relevant extracts thereof, on which the prosecution proposes to rely, and
(d) Copies of the statements recorded under section 161(3) of all the persons whom the prosecution proposes to examine as its witnesses.

In addition to this, as has been held in State Vs Ranbir Singh (1965) 67 Punj. LR 1181, the statements and confessions of the accused persons recorded under section 164 would also be included in expression ‘documents or

relevant extracts thereof', the copies of which are to be supplied to the accused.

Section 208:

In the cases instituted otherwise than on a police report, copies of documents specified in clauses (i) to (iii) of this section viz

(i) Statements recorded under section 200 and 202,

(ii) Statements and confessions, if any, recorded under section 164, and

(iii) Documents produced before the magistrate and on which reliance is placed by the prosecution,

have to be furnished to the accused only if the offence is triable exclusively by the court of sessions. The only exception made under this section is in favor of the documents which are voluminous in which case the accused will be permitted to inspect them either personally or through his counsel.

Section 209:

The procedure under the old code requiring holding of an enquiry in cases exclusively triable by the court of sessions has been abolished as such an inquiry served no useful purpose. Such procedures involved great deal of delay in the trial of sessions. Under the new code a magistrate alone is competent to take cognizance of offences. A court of sessions cannot take cognizance of offences unless the case is committed to it by a magistrate.

The magistrate performs a judicial function under section 209 and must come to a conclusion whether a case involved an offence triable exclusively by a

court of session and so must scrutinize the materials on record before he comes to that conclusion.

Section 210:

Where a complaint case is pending before a magistrate and he has information that an investigation is pending before the police in relation to the very same offence which is the subject matter of the complaint case before him, the enquiry or trial whichever may be pending before the magistrate shall be stayed and a report called for from the police.

The object of section is not to harass a person twice and also not to authorize a person to vindicate his honour when the case is being investigated by the police. Sub section 2 is a cure and subsection 1 is a preventive measure. Thus to avoid taking cognizance of same offence twice, the preventive measure under sub section 1 has been provided.