

PART B.-INITIATION OF
PROCEEDINGS

Section 190 of the Code of Criminal Procedure provides that a magistrate who is specially empowered in this behalf may take cognizance of any offence:-

- (a) upon receiving a complaint of facts which constitute such offence;
- (b) *upon a report in writing of such facts made by any Police officer;*
- (c) upon *information* received from any person other than a Police officer, or upon the *Magistrate's own knowledge or suspicion*, that such offence has been committed.

Note.--A magistrate of third class cannot take cognizance of an offence upon information or knowledge,

2. In most cases magistrates take cognizance either under clause (a) upon a complaint or under clause (b) upon the report of a police officer.

A magistrate taking cognizance of an offence under clause (c) must, before any evidence is taken, inform the accused person that he is entitled to have the case tried by another Court, and if the accused objects to being tried by such magistrate, the case must be committed to the Court of Sessions, or transferred to another magistrate (section 191).

3. Complaints of offence made in writing should be received during office hours on all days other than public holidays. Upon the institution of a complaint, the date of presentation should be immediately endorsed thereon, together with the name of the Magistrate to whom the case is to be sent for inquiry or trial under section 192 of the Code, and the complainant directed to appear before him either the same day or one of the following days for examination of the complaint and the witnesses present, if any. Similarly, if the complaint has not been *made in writing*, the *magistrate* should direct the complainant and his witnesses to the proper Court.

4. The first duty of Magistrate taking cognizance of an offence on complaint is to examine the complainant and the witnesses present, if any, on oath and to

Manner in which magis-trate may take cognizance of an offence.

Right of accused for transfer of a case taken up by a magistrate on information or knowledge.

Complaints how to be dealt with.

Oral examination of complainant and preliminary inquiry.

record the substance of the examination in writing The same shall be signed by the complainant and the witnesses and also by the magistrate. Such examination of the complainant, etc., is not necessary where a complaint in writing is made (a) by a court or a public servant acting or purporting to act in the discharge of his official duties or (b) when a magistrate empowered under section 192 of the Code decides to transfer the complaint to a Subordinate rria7istrate. The duties of a magistrate receiving a complaint are detailed in sections 200 to 203 of the Code to the latter of which strict attention should be paid. Magistrate of the first and second classes, who alone have the power to direct an inquiry under section 202, should not refer complaints of non-cognizable offences to the Police for inquiry, except for every special reasons, and in all trials cases one of the other modes of inquiry permitted by the section should be adopted

When process should issue against accused.

5. When the complainant and the witnesses present, if any, have been examined and any inquiry or investigation ordered under section 202 has been completed, the magistrate may dismiss the complaint, if, in his judgment, there is no sufficient ground for proceedings. If the Magistrate finds sufficient ground for proceeding he should issue process *for the* attendance of the accused. No summons or warrant shall, however, be issued against the accused -until a list of prosecution witnesses has been filed and in proceedings instituted upon a complaint made in writing the summons or warrant shall be accompanied by a copy of the complaint, (sub-sections (1-A) and (1-B) of section 204).

Importance of examination of complain-ant before issue of process.

6. The examination of complainants and the witnesses prescribed by the Code of Criminal Procedure is not a mere formality, as the result of this examination enables the magistrate to determine whether he will put the machinery of the Criminal Court in motion by issuing summons or warrant to cause the attendance of the accused before him. Section 203 lays down that if, in the judgment of the magistrate, there is no sufficient ground for proceeding, he shall dismiss the complaint. The preliminary examination, therefore, if properly made, will frequently result in the sum

person from the trouble and annoyance of appearing at the bar of a Criminal Court. In the interest of the Public, therefore, as well as with a view to the rapid dispatch of work, a careful observance of the law in this particular is incumbent upon magistrates.

7. The provisions of the law as to the procedure of the police in investigating offences and submitting reports in regard thereto are dealt with in this Volume in Chapter 11, Police. The power to hold a preliminary magisterial inquiry into cases reported by the Police, conferred by section 159 of the Code, should not be lost sight of. For the duties of magistrates in ordering remands to Police custody, Chapter II, referred to above, should be consulted. After completion of the investigation the police present a report (usually called a challan under section 173 of the Code and upon such report magistrate can take cognizance under clause (b) of Section 194. Section 173 has been recently amended by Act No. 26 of 1955 and the new sections (4) and (5) provide that before the commencement of the inquiry or trial the accused should have been furnished, free of cost, a copy of the report forwarded under sub-section (1)., of the first information report recorded under section 154 and of all other documents or relevant extracts thereof, including statements and confessions, if any, recorded under section 164 and statements of all prosecution witnesses recorded under sub-section (3) of Section 161. Where copies of portions of the documents and police record mentioned above have been withheld by the police officer under sub-section (5) the magistrate shall at the commencement of inquiry or trial consider how far the police officer was justified in not supplying copies of these documents, etc., and may direct copies of parts ex-eluded or portions thereof, as he thinks proper, to be supplied to the accused. Thereafter the magistrate shall proceed in warrant case instituted on police report according to the procedure laid down in Section 251-A of the Code as inserted by Act No. 26 of 1955.

8. The question of jurisdiction requires careful attention at the initial stage. Schedule II of the Code of Criminal Procedure shows the classes of Courts by which different offences are triable. In determining the

Presentation of
police report.
Changes in Law.

Inquiry into nature of
offence and other
preliminaries in order
to see whether the
Court has
jurisdiction.

nature of the offence, the facts ascertained by the examination of the complainant and his witnesses and the preliminary inquiry (if any), should be taken into consideration and importance should not be attached to the particular section specified or the offence alleged in the complaint, as complaints are often drafted by men ignorant of law, and there is also a tendency to exaggerate the nature of the offence. It should be also remembered that certain offences cannot be taken cognizance of at all except upon the complaints of certain persons or Courts or with the previous sanction of the Government (*vide sections 195-199-A, Criminal Procedure Code*).

Jurisdiction also depends on the place of commission of offence.

9. The question of jurisdiction arises also with reference to the place of inquiry or trial. The general rule prescribed by section 177 is that an offence shall be ordinarily inquired into and tried by a Court within the local limits of whose jurisdiction it was committed but the subsequent sections create various exceptions to this rule.

Cases where place of commission of offence is uncertain.

10. When for instance it is uncertain in which of several local areas an offence was committed; or where an offence is committed partly in one local area and partly in another; or where the offence is a continuing one and continues to be committed in more local areas than one, or where the offence consists of several acts done in different local areas; it may be inquired into or tried by a Court having jurisdiction over any of such local areas. The same rule applies to offences committed on a journey, which may be inquired into or tried at any place through which the offender or property affected passed in the course of such journey.

Procedure where magistrate thinks that he has no jurisdiction or cannot impose proper

11. If a magistrate finds that the offence disclosed is not triable by him, he should report the case to the District Magistrate for its transfer to a competent Court. He should take similar action when he finds that although he has jurisdiction to try the offence, he will not be able to impose an adequate sentence in the event of a conviction. (For further instructions on this subject *see para 8 of Chapter 1-D and Chapter 19, relating to sentences.*)