

OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE

by

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Introduction:

Ordinarily, anyone may set in motion the criminal law, either in writing or orally, either by a complaint before the Police or before the Magistrates court. However, owing to the character of certain offences under the Indian Penal Code as affecting the Public, or particular persons only, the legislature, in its wisdom, has restricted this right in respect of certain offences, more particularly enumerated in section 195 of CrPC, 1973, and the concerned Public servants or the concerned courts can only take cognizance of the offences therein mentioned chapter XXVI, section 340 to section 352 of Cr.P.C deal with the provisions as to offences affecting administration of justice. The court making the complaint has to be satisfied that it appears that an offence under clause (b) of sub-section (1) of section 195 of the code has been committed and that it is expedient in the interests of justice that an Inquiry should be made into that offence.

➔ Section 340 of Cr.P.C: - **Procedure in cases mentioned in section 195**

- I) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, -
 - a) record a finding to that effect;
 - b) make a complaint thereof in writing;
 - c) send it to a Magistrate of the first class having jurisdiction;
 - d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and
 - e) bind over any person to appear and give evidence before such Magistrate.
- II) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an

application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.

III) A complaint made under this section shall be signed; -

a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

b) in any other case, by the presiding officer of the Court.

IV) In this section, " Court" has the same meaning as in section 195.

→ Section 341 of Cr.P.C:- **Appeal.**

→ Section 342 of Cr.P.C:- **Power to order costs**

Any Court dealing with an application made to it for filing a complaint under section 340 or an appeal under section 341, shall have power to make such order as to costs as may be just.

→ Section 343 of Cr.P.C:- **Procedure of Magistrate taking cognizance**

I) A Magistrate to whom a complaint is made under section 340 or section 341 shall, notwithstanding anything contained in Chapter XV, proceed, as far as may be, to deal with the case as if it were instituted on a police report.

II) Where it is brought to the notice of such Magistrate, or of any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage, adjourn the hearing of the case until such appeal is decided.

→ Section 344 of Cr.P.C:- **Summary procedure for trial for giving false evidence**

→ Section 345 of Cr.P.C:- **Procedure in certain cases of contempt**

→ Section 346 of Cr.P.C:- **Procedure where Court considers, that case should not be dealt with under section 345**

→ Section 347 of Cr.P.C:- **When Registrar or Sub-Registrar to be deemed a Civil Court**

→ Section 348 of Cr.P.C:- **Discharge of offender on submission of apology**

When any Court has under section 345 adjudged an offender to punishment, or has under section 346 forwarded him to a Magistrate for trial, for refusing or omitting to do anything which he was lawfully required

to do or for any intentional insult or interruption, the Court may, in its discretion, discharge the offender or remit the punishment on his submission to the order or requisition of such Court, or on apology being made to its satisfaction.

→ Section 349 of Cr.P.C:- **Imprisonment or committal of person refusing to answer or produce document**

If any witness or person called to produce a document or thing before a Criminal Court refuses to answer such questions as are put to him or to produce any document or thing in his possession or power which the Court requires him to produce, and does not, after a reasonable opportunity has been, given, to him so to do, offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant under the hand of the Presiding Magistrate or Judge commit him to the custody of an officer of the Court for any term not exceeding seven days, unless in the meantime, such person consents to be examined and to answer, or to produce the document or thing and in the event of his persisting in his refusal, he may be dealt with according to the provisions of section 345 or section 346.

→ Section 350 of Cr.P.C:- **Summary procedure for punishment for non-attendance by a witness in obedience to summons**

- I) If any witness being summoned to appear before a Criminal Court is legally bound to appear at a certain place and time in obedience to the summons and without just excuse neglects or refuses to attend at that place or time or departs from the place where he has to attend before the time at which it is lawful for him to depart, and the Court before which the witness is to appear is satisfied that it is expedient in the interests of justice that such a witness should be tried summarily, the Court may take cognizance of the offence and after giving the offender an opportunity of showing cause why he should not be punished under this section, sentence him to fine not exceeding one hundred rupees.
- II) In every such case the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials.

→ Section 351 of Cr.P.C:- **Appeals from Convictions under Sections 344, 345, 349 and 350**

- I) Any person sentenced by any Court other than a High Court under section 344, section 345, section 349 or section 350 may, notwithstanding anything contained in this Code appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

- II) The provisions of Chapter XXIX shall, so far as they are applicable, apply to appeals under this section, and the Appellate Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.
- III) An appeal from such conviction by a Court of small causes shall lie to the Court of Session for the sessions division within which such Court is situated.
- IV) An appeal from such conviction by any Registrar or Sub-Registrar deemed to be a civil Court by virtue of a direction issued under section 347 shall lie to the Court of Session for the sessions division within which the office of such Registrar or Sub-Registrar is situated.

→ Section.352 of Cr.P.C:- **Certain Judges and Magistrates not to try certain offences when committed before themselves**

Except as provided in sections 344, 345, 349 and 350, no Judge of a Criminal Court (other than a Judge of a High Court) or Magistrate shall try any person for any offence referred to in section 195, when such offence is committed before himself or in contempt of his authority, or is brought under his notice as such judge or magistrate in the course of a judicial proceeding.

- **Only Court or public servant can file complaint:-** Under Section 195 of the Code of Criminal Procedure, no Court can take cognizance of the offences mentioned in that section, except on the complaint in writing of the public servants or Courts mentioned in the section.
- **Successor of an officer before whom offence was committed can lodge complaint:-** Section.340, 345 of Cr.P.C are supplementary of Section 195. The Civil, Revenue or Criminal Court can take action either suo motu or on application. The power to make a complaint is conferred on the Court and not on the particular officer who presides over the Court. Consequently the successor of a Magistrate or Judge is competent to direct prosecution in respect of an offence committed before his predecessor.
- **Expediency and interests of justice - the main consideration:-** The main point which the Court has to consider in initiating proceedings under Sections 340, 341 and 343 of Cr.P.C is whether it is expedient in the interests of justice that an inquiry should be made and a complaint filed. The mere fact that there is reason to believe that an offence has been committed is not sufficient to justify a prosecution. It is equally well settled that prosecution should not be ordered unless a prima facie case is made out and unless there is a reasonable chance of conviction. It must be borne in mind in this connection that indiscriminate institution of prosecution does not promote the "interests

of justice” as failure of such cases is apt to encourage rather than discourage the offences. Section 340, 341 and 343 of Cr.P.C gives the Court power to make a preliminary inquiry and this power should be freely used. Notice should ordinarily be given to the persons concerned and any explanation and evidence given by them should be carefully considered before ordering prosecution.

- **Speedy procedure for perjury etc:-** When the Court is of the opinion that any person appearing before it as a witness has committed any of the offences mentioned and that for the eradication of the evils of perjury and fabrication of false evidence and for the interests of justice, it is expedient that the witness should be prosecuted for the offence, the Court should at the time of the delivery of the judgment or final order record a finding to that effect. The Court should also state the reasons for its opinion. The Court may, if it so thinks fit, after giving the witness an opportunity of being heard, make a complaint in writing over its signatures setting forth therein the evidence which, in the opinion of the Court, is false or fabricated. If an appeal has been preferred against the decision arrived at in the judicial proceeding in which the matter has arisen, the hearing of the complaint shall be adjourned until such appeal is decided. The Appellate Court, after giving the person against whom a complaint has been made an opportunity of being heard, may, if it so thinks fit, direct the withdrawal of the complaint. The Appellate Court, may where the Court from whose decision the appeal has been filed has not made any complaint, exercise the powers conferred on the subordinate Court for making such a complaint. Where the Appellate Court makes such a complaint the provisions of sub-section (1) shall apply and no such order shall be made without giving the person affected thereby an opportunity of being heard.
- **Gross cases to be brought to book:-** The offences of giving and fabricating false evidence are unfortunately very common in the Courts and it may not always be possible to prosecute every person who is guilty of these offences. It is, however, expedient in the interests of justice that all gross or serious cases of such offences are properly taken notice of and brought to book. The Judges consider that the law against perjury and allied offences should be fully vindicated against all persons who are convicted and Magistrates should impose deterrent sentences when convictions are obtained.
- **Special care to be taken in recording evidence where a witness appears to be giving false evidence. Contradictory statements : and liability of being charged:-** When a witness appears to be giving false evidence and there is possibility of his being prosecuted, special care should be taken in recording the evidence in a precise and clear manner reading it

over to the witness and bringing it in conformity with what he declares to be the truth. For, ambiguities in the statement often furnish loopholes for plausible explanations and result in failure of justice. It should be noted that when contradictory statements are made before different Courts and it is difficult to decide which of the two statements was false, the person making such statements can be charged in the alternative Vide Section 221(1) of Cr.P.C, illustration (b).

- **Complaint must set forth all material facts. No examination of complainant:-** As stated already, Courts are now required to file a regular complaint when a prosecution is ordered in respect of an offence specified in Section 195, Section 352 of Cr.P.C precludes the Court from taking cognizance of the offences itself. As in the case of a complaint by a private individual, the complaint must set forth all the material facts constituting the alleged offences. Section 200 of the Code dispenses with the examination of the presiding officer of the Court making the complaint in such cases.
- **Complaint can be lodged by the Court or by appellate Court:-** Section 195 provides that when any offence of the kind mentioned therein is committed in or in relation to proceedings in a Court, cognizance of the offence can be taken either on the complaint of that Court or some other Court to which such Court is subordinate. It is laid down in sub-section (3) of that section that for the purposes of the Section a Court is to be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such Court and in the cases of a Civil Court from whose decrees no appeal ordinarily lies to the principal Court of original jurisdiction. It is further provided that where appeals lie to more than one Court, the appellate Court of inferior jurisdiction is the Court to which the Court making the complaint is to be deemed to be subordinate for the purposes of the section. As a result, a Subordinate Judge from whose decrees appeals lie to the Senior Sub-Judge as well as the District Judge must be deemed to be subordinate to the former for the purposes of Section 195. Similarly a Magistrate empowered under Section 30 of the Code from whose decisions appeals lie to the Sessions Court as well as the High Court, would be deemed to be subordinate to the Sessions Court.
- **Appeal when Court files or refuses to file a complaint:-** Section.341(1) of Cr.P.C provides an appeal to the aggrieved party when the Court files or refuses to file a complaint under Sections 340 and 343 of Cr.P.C. Section 479-A, however, provides that there shall be no appeal from a finding recorded and complaint made under sub-section (1) of that Section and the provisions of the later Section would override the provisions of Sections 340, 343 of Cr.P.C.

- **Complaint of offence committed in course of commitment proceedings:-** When an offence is discovered or is alleged or suspected to have been committed in the course of commitment proceedings the Committing Magistrate should leave the matter in the hands of the Sessions Judge or should at least refrain from taking any steps until the case is decided by the Court of Sessions.
- **Prosecution of Commissioner appointed by Court:-** When any person, who is a Commissioner, appointed by a Court under the provisions of the Code of Civil Procedure, 1908, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his functions as Commissioner, no Court shall take cognizance of such offence except with the previous sanction of the Court which appointed him as Commissioner.
- **CONTEMPTS OF COURT:**
 - I) **Court can try the offence itself or send the case to another Court. Appeal from conviction:-** "Contempt of Court" is not defined either in the Indian Penal Code or in the Criminal Procedure Code. Section 345 of Cr.P.C, however, deals with certain offences under Sections 175, 178, 179, 180 and 228 of the Indian Penal Code, which are in the nature of "Contempt of Court" when such offences are committed in view and presence of the Court. The Court has the power to try such offences itself, but the punishment is limited to fine up to two hundred rupees or simple imprisonment in default of payment up to one month. The procedure laid down in Section 345 of Cr.P.C should be very carefully followed. If the Court considers that the offender should receive a higher penalty, it has discretion to send the case to another Magistrate. An appeal lies in every case of conviction for contempt to the Court which appeals from the decrees or orders of the convicting Court ordinarily lie. In the case of a conviction by a Court of Small Causes an appeal lies to the Sessions Court.
 - II) **Cases tried by Magisterial Courts should be sent to District Magistrates for examination:-** Every case in which a person is punished summarily for contempt of Court by an officer exercising less than full magisterial powers should be sent, on the completion of the proceedings in which the contempt occurred, to the District Magistrate for inspection. District Magistrates should carefully consider the cases thus submitted to them, and make such comments thereon as appear called for, or if necessary, report the case for the consideration of the High Court on the revision side.
 - III) **Contempt by ignorant people:-** It must be distinctly understood that it is not intended to lay down that the power given to Courts by

the Code of Criminal Procedure to punish contempts summarily is never to be resorted to. It is the duty of every Court to maintain the order and dignity of its proceedings, and sometimes this can only be effected by the punishment of the offender. In this connection, however, it is pointed out that a distinction may well be drawn between a disrespect committed by an ignorant villager, who hardly understands the impropriety of his conduct and disrespectful behaviour on the part of a person higher up in the scale of society. In the case of an ignorant rustic, a Court may often be content to pass over without punishment an act which would properly call for punishment if committed by a person of higher education and fuller knowledge of what is due to the dignity of a Court of Justice.

- IV) **High Court powers in respect of Subordinate Courts:-** No Court except the High Court can take cognizance of "Contempts out of Court," such as for example comments in news papers on pending cases, etc. Under Section 3 of the Contempt of Courts Act, 1952, the High Court has and exercises the same jurisdiction, powers and authority in respect of contempts of Courts subordinate to it as it has and exercises in respect of contempts of itself.

The High Court cannot however take cognizance of contempts alleged to have been committed in respect of a Court subordinate to it where such contempt is an offence punishable under the Indian Penal Code.

- V) **Defamations of public servants:-** Complaints for defamation of public servants in respect of their conduct in the discharge of public functions can also be made under Section 199 and 237 of Cr.P.C. It may, however, be pointed out that if the accusation by the public servant is found by the Court to be false and frivolous or vexatious, the public servant can be ordered by the Court to pay compensation to the accused, up to an amount of one thousand rupees.
- VI) **Non-attendance of witnesses:-** Section 350 of Cr.P.C provides a summary procedure for punishing a witness for non-attendance in obedience to a summons issued for his appearance before a Criminal Court. If the Court before whom the witness was to appear is satisfied that it is expedient, in the interests of justice, to try the witness summarily, the Court may take cognizance of the offence and after giving the witness an opportunity of showing cause why he should not be punished, sentence him to fine not exceeding one hundred rupees. The Court should, so far as practicable, follow the procedure prescribed for summary trials in cases in which an appeal lies.

- **As observed in a Madras High Court case:-** “This salutary rule is founded on common sense. The dignity and prestige of Courts of law must be upheld by their presiding officers, and the courts would never leave it to the parties aggrieved to adopt such proceedings to settle personal revenge. Ramaswamy versus P Mudaliar – AIR 1938 Mad 173, p.174.
- **Application under this Section 340:-** May be taken out in any Court, Civil, Criminal or Revenue Courts, or in a Statutory Tribunal, which is declared as a Court by that Act to be a Court for the purposes of Section 195. The Application may be taken in the form of a Notice of Motion / Misc. Application, duly verified by the Applicant. No particular form appears to have been prescribed for this Application.
- **A broad approach to drafting of any case may be undertaken in three chronological “Heads” :-**
 1. Reliefs prayed for / claimed;
 2. Grounds for Reliefs prayed for / claimed; (both factual and legal);
 3. Narration of facts substantiating the said grounds.
 4. Further, there may be narration of such facts in the beginning of the draft, which would lay foundation for “material facts of the case”.

Grounds for Reliefs prayed for / claimed implies (a) the essence / conclusion of material facts; and (b) other legal provisions which supports the reliefs prayed for / claimed.

The Prayers in this Application may be –

- a) To initiate Inquiry by the concerned Court; and
 - b) Thereafter may pleased to make a complaint in writing; and send it to a Magistrate of the first class having jurisdiction;
 - c) And take sufficient security for the appearance for the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate.
- **When a false charge is made to the Police and not to a court, no sanction u/s 195(b)(i) is needed.**

Bakshi versus Crown – AIR 1924 All 187

Dujai versus State – (1962) 1 CrLJ 627

- **False Information**

Daulat Ram versus State of Punjab AIR 1962 SC 1206

Section 340 prescribe the procedure to adopt proceedings in respect of offences barred under Section 195. **The section provides that there is no necessity for issuance of notice or opportunity of hearing to the party against whom the said proceedings are intended to be initiated – AIR 2002 SC 236;**

Sections 340, 195 r/w Sections 192, 193 of IPC – (2011) 12 SCC 640

Sections 211 and 500 of IPC r/w Sections 340 and 195 CrPC – (2011) 10 SCC 696 – Paras 23 to 26

Sections 195, 340 – Iqbal Singh Narang versus Veeran Narang – AIR 2012 SC 466 – Private complaint maintainable before competent magistrates court if false evidence were tendered before quasi judicial authorities – also – AIR 2010 SC 3791 – AIR 2003 SC 4591 – Ishwarchand Gupta versus Chandershekhar – [(2001) 1 RCR Criminal 171]

Section 195 – tendering of false evidence – AIR 2012 SC 466 – Para 14

- "Inquiry" is defined in Section 2(g) of the Code as "every inquiry, other than a trial, conducted under this Code by a magistrate or court." It refers to the pre trial inquiry, and in the present context it means the inquiry to be conducted by the magistrate. Once the court which forms an opinion, whether it is after conducting the preliminary inquiry or not, that it is expedient in the interest of justice that an inquiry should be made into any offence the said court has to make a complaint in writing to the magistrate of first class concerned. As the offences involved are all falling within the purview of "warrant case" of the Code the magistrate concerned has to follow the procedure prescribed in Chapter XIX of the Code. In this context we may point out that Section 343 of the Code specifies that the magistrate to whom the complaint is made under Section 340 shall proceed to deal with the case as if it were instituted on a police report, That being the position, the magistrate on receiving the complaint shall proceed under Section 238 to Section 243 of of the code.
- Section 341 of the Code confers a power on the party on whose application the court has decided or not decided to make a complaint, as well as the party against whom it is decided to make such complaint, to file an appeal to the court to which the former court is subordinate. But the mere fact that such an appeal is provided, it is not a premise for concluding that the court is under a legal obligation to afford an opportunity (to the persons against whom the complaint would be made) to be heard prior to making the complaint. There are other provisions in the Code for reaching conclusions whether a person should be arrayed as accused in criminal proceedings or not, but in most of those proceedings there is no legal obligation cast on the court or the authorities concerned, to afford an opportunity of hearing to the would be accused. In any event appellant has already availed of the opportunity of the provisions of section 341 of the Code by filing the appeal before the High Court as stated earlier.

- Once the prosecution proceedings commence the person against whom the accusation is made has a legal right to be heard. Such a legal protection is incorporated in the scheme of the Code. Principles of natural justice would not be hampered by not hearing the person concerned at the stage of deciding whether such person should be proceeded against or not.

Conclusion:

Be it noted that the court at the stage envisaged in Section 340 of the Code is not deciding the guilt or innocence of the party against whom proceedings are to be taken before the magistrate. At that stage the court only considers whether it is expedient in the interest of justice that an inquiry should be made into any offence affecting administration of justice. In *M.S.Sheriff and another V/s State of Madras and others*, a Constitution Bench of this Court cautioned that no expression on the guilt or innocence of the persons should be made by the court while passing an order under Section 340 of the Code. An exercise of the court at that stage is not for finding whether any offence was committed or who committed the same. The scope is confined to see whether the court could then decide on the materials available that the matter requires inquiry by a criminal court and that it is expedient in the interest of justice to have it inquired into.

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