

Q. 1.(d) Complaint and First Information Report.

Ans:

i) A Complaint is made to a Magistrate who examines the Complainant on oath before dealing with it. The Complaint is made before the Magistrate u/s 190(i)(a) of Cr.P.C. And after taking Cognizance of an offence as stated in the Complaint the Magistrate then proceeds u/s 200, u/s 202 and u/s 204 Cr.P.C.

The first information report is given to a Police Officer who does not examine the informant on oath. An F.I.R. (first information report) is made u/s 157 Cr.P.C.

ii) The essential difference between a Complaint and an information when given to a Magistrate is that a Magistrate acts on Complaint because he is asked in the Complaint to do so, but it is purely a matter of his discretion to act or not to act on an information and while dismissing a Complaint he must record his reason in writing. He need not record anything when he does not want to act on information.

iii) The principal element in an information is ~~that~~ the disclosure of an offence but the principal element in a Complaint is the prayer for prosecution.

- Q 1: Distinguish between Inquiry and Trial
- a) Cognizable offence and non-Cognizable offence
 - b) Investigation and Inquiry
 - c) - - - - -
 - d) - - - - -
 - e) - - - - -

Ans. 1) (b) Cognizable offence and non-Cognizable offence.

'Cognizable offence' means an offence which is ~~shown~~ and Cognizable Case means a case in which, a police-officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant as defined in Sec. 2(c) of the Cr.P.C. offences for which special authority to arrest is given to Special Officers are not Cognizable offences e.g. an offence u/s 5 of the Bombay Prevention of Gambling Act.

In order to be a Cognizable Case under this Section it would be enough if one or more (not necessarily all) of the offences are Cognizable offences. The Cr.P.C. does not contemplate any case to be partly non-Cognizable. (Ref: Vaddamudi vs. Kutumba Rao, (1961) 2 CrLJ 605)

'Non-Cognizable offence' means an offence for which, and 'non-Cognizable Case' means a case in which, a police officer has no authority to arrest without warrant as defined in Sec. 2(e) of the Cr.P.C. 1973

Cognizable offences are serious in nature while non-Cognizable offences are non-serious in nature

In Cognizable offence police has a duty to investigate the matter while in non-Cognizable offence police cannot investigate into the matter without warrant of the Magistrate

Contd. 1 (a) Distinguish between Inquiry and Trial.

- Ans: i) An inquiry and a trial are both held by Magistrate or Court, but while a trial is always a judicial proceeding, an inquiry may or may not be a judicial proceeding.
- ii) A trial always ends in either convictions or acquittal; inquiries end in various orders according to circumstances except order of conviction or trial.
- iii) A trial is always in respect of an offence; an inquiry may be in respect of an offence as well as in respect of matters which are not offences.
- iv) No trial can be held without appearance of the accused either personally or through counsel when appearance of the accused is exempted by the Court on prayer of the accused. But ~~not~~ there are several inquiries which are ex-parte proceedings.
- v) No trial can be held in a police case without the accused being challenged while an inquiry may be held even otherwise being a proceeding comprising anything done by a Magistrate or Court. ~~As for example~~ Thus an inquiry before the issue of process u/s 202 Cr.P.C, a statement u/s 164 Cr.P.C, an inquest or inquiry into the cause of death are proceedings held without the accused being challenged.
- vi) While a 'trial' ends in judgement, an 'inquiry' ends in a final order only as determined by the scope of inquiry. A 'judgement' is a determination of legal relations, a final order is not such determination.

Contd.: Q. 1 (a)

Vii) A trial at any of its interlocutory stages may involve an inquiry e.g. an inquiry into the state of mind of the accused; no inquiry in any of its stages includes a trial

1(c) Distinction between Investigation and Inquiry

Ans: i) An inquiry is conducted by a Magistrate or court while investigation is made by a Police Officer or by any person other than a Magistrate who is authorised by a Magistrate in this behalf - i.e. to investigate. An inquiry is "inquiry" when it is conducted by a Magistrate otherwise it is an investigation.

(Ref: Hashide Vs. Emperor, AIR 1940 Cal 97)

ii) The object of an inquiry is to ascertain the truth or falsity of certain facts for action thereon other than conviction or acquittal. Such action may be an order for the issue of process to compel appearance, or committal order, or order framing a charge or order for security to keep the peace or to be of good behaviour etc.

The object of an investigation is the collection of evidence.

iii) An inquiry may be a judicial or non-judicial proceeding whereas an investigation is always a non-judicial proceeding

Now

Q3. State when a person accused of committing a non-Cognizable offence can be arrested and also state whether he is entitled to be released on bail.

Ans:- As provided up 41 Cr.P.C. any Police Officer ^{may} without an order or warrant from a Magistrate arrest any person who commits in the presence of a police officer, a cognizable offence, of course, on satisfaction of certain conditions as laid down therein.

Sub-Sec. 2 of Sec-41 makes a bar for arresting a person concerned in a non-Cognizable offence but it is subject to the provisions of Sec-42 Cr.P.C.

Sec 42 Cr.P.C. makes provision for the arrest of a person not disclosing his name or residence or for giving false name or residence. For arrest under this Section a non-Cognizable offence should be committed by a person in the presence of police officer or against whom an accusation is made to a police officer for committing a non-Cognizable offence and then he must refuse to give his name and residence or may give wrong name and residence.

When after arrest the correct name and residence is ascertained, the person arrested shall be released on his executing a bond with or without sureties and if the person is not resident of India, the securities must be furnished by those who reside in India

Contd. Q (3)

If the name and residence of the person is not ascertained within 24 hours from the time of arrest or if he fails to execute a bond or to furnish security he shall be forwarded to the nearest Magistrate as enshrined in Article 22(2) of the Constitution of India.

Further, as per ~~Subs.~~ substituted Sub-Sec. 2 of Sec. 41 Cr.P.C. by the Cr.P.C. (Amendment) Act, 2008 (w.e.f. 01-11-2010) any officer-in-charge of a Police Station may, in like manner, or cause to be arrested any person, belonging to one or more of the categories of persons specified in Section 109 and 110 Cr.P.C. ~~Subs.~~

Such person when produced before the Magistrate shall be granted bail because he has not made any offence but his arrest is a preventive arrest only.

A police officer can also arrest a person without warrant if the case falls under Sections 151, 432(3) and 356 Cr.P.C.

Arrest ~~as~~ u/s 151 Cr.P.C. is to prevent the commission of Cognizable offences. No person arrested u/s 151(1) Cr.P.C. shall be detained in custody for a period exceeding twenty-four hours from the time of his arrest unless his further detention is required.

As per Section 432(3), if any condition on which a sentence has been suspended or remitted is, in the opinion of the appropriate

Ans is

Contd.

Government, not fulfilled, the appropriate Govt. may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police officer without warrant and remanded to undergo the unexpired portion of the sentence.

In this case question of granting bail does not arise

Further, ~~Sec 44~~^{Section 44}(1) Cr.P.C., empowers a Magistrate, Judicial or Executive to arrest or to get arrested any person in two circumstances: (1) when any offence (Cognizable or non-Cognizable, bailable or non-bailable) is committed in his presence within his local jurisdiction, (2) if he is competent to issue a warrant of arrest at the time and circumstances and the accused is presented before him in his local jurisdiction though the offence has not been committed in his presence.

Section 44(1) provides for granting bail to the person and he ~~may~~ shall be so released if the offence is bailable.

Sec. 44(2) does not make a provision for bail or custody. Therefore, a person arrested by a Magistrate under Sec. 44(2) Cr.P.C. cannot be sent to custody and should be released on bail as viewed by Allahabad High Court in Ram Chandra Vs. State of U.P. 1977 Cr.L.J. 1783 though Kerala High Court had different view.

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