PROCEDURE TO FILE A CRIMINAL CASE IN COURT

To make a complaint,there must be an accusation made with a view to the receiver exercising action under the Criminal Procedure Code, imposing the same person with a selective offence.

A mere presentation of the petition to a Magistrate to let him take executive action is not a complaint within the titles of the definition.

ESSENTIALS OF A VALID COMPLAINT:

The essentials of a valid Complaint as per Section 2 (d) of the Code of Criminal Procedure are:

* The accusation must be made to a Magistrate and not to a judge.
* The statement must be made with a sense to the Magistrate’s holding action under the Criminal Procedure Code.
* A mere declaration to a Magistrate by way of erudition without any purpose of asking him to take action is not a complaint.
* The accusation must be that an assault has been perpetrated. It is not important that a distinct offence be stated; only the assertion of fact must establish an offence.

PROCEDURE FOR FILING A COMPLAINT WITH A MAGISTRATE

The procedure has been enunciated in Section 200 of Code of Criminal Procedure Act, 1973 which are as follows.

1. The complaint has to be filed with the magistrate who has the jurisdiction to try the offence complained of. However in cases where the complaint is accidentally filed with the magistrate not having the jurisdiction, the magistrate is duty bound to return the complaint to be presented to the appropriate magistrate by stating the necessary details thereof.
2. The complaint may be made orally or in writing. However it is always better to furnish it in writing.
3. Unlike the filing of the FIR, whereafter the police straightaway proceed to investigate the offence complained of and arrest the suspects, in case of the complaint the magistrate will not proceed with it without examining the complainant and witnesses (note-only the witnesses who are present at the time of filing such complaint).
4. Thereafter the magistrate will make a written report of the examination and sign it himself as well as get it signed by the complainant and the witnesses.
5. Thereafter if the magistrate is satisfied that the complaint coupled with the examination discloses an offence he shall proceed with taking “cognizance” of the offence (which simply means that he would summon the accused suspects for the purpose of trial)
6. However if the magistrate is not satisfied that the complaint (and examination) discloses any offence, he may take one of the two options available to him: he may either dismiss the complaint or he may order the police to undertake some further investigation under Section 202 of the Code.
7. After the police officer reports back to the magistrate his findings the magistrate may proceed with either of the steps stated in point 5 and point 6 (minus the investigational order, of course, which has already been given).

In Rajesh Balchandra Schalke vs State of Maharashtra[[1]](#footnote-0) it was held that for the purpose of issuing process under Section 200 of the Code of Criminal Procedure, 1973, it is open to the Magistrate to rely upon the verification in the form of affidavit filed by the complainant in support of the complaint and the Magistrate is not obliged to call upon the complainant to remain present before the Court, nor to examine the complainant or his witnesses upon oath for taking the decision whether or not to issue process.

In Percy Fernandes vs Smt. Anita Patrao[[2]](#footnote-1) it was held that when a complaint is made by a Court, it is not necessary for a Magistrate to examine the complainant and that neither Section 200 nor Section 202 requires a preliminary enquiry before the Magistrate can assume jurisdiction to issue process against the person complained against.

1. AIR 201 NOC 160 BOM [↑](#footnote-ref-0)
2. 2005 (1) ALD Cri 17 [↑](#footnote-ref-1)