

A discussion on Protest Procedural Code

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Protest is nowhere defined in the Criminal Procedure Code but is a very important aspect as the criminal law practice is concerned.

When any aggrieved person complains before the Magistrate under section 156(3) of the Cr.Pc, the Magistrate after being satisfied with the complaint petition gives instruction to the police for investigation.

After making investigation, the police submit his investigation report to the Magistrate under 173(2) of the Cr.Pc.

Magistrate may accept the final report of the Police and may reject the Protest Petition.

The Magistrate may accept the final report and may also treat the Protest Petition as a Complaint Petition and process it under Section 200 and 202 of Cr.Pc.

The Magistrate may accept the Protest Petition and reject the final report and take cognizance under Section 190 of the code.

The Magistrate is not bound to accept the final report submitted by the Police Officer.

The Magistrate can disagree with that report and can take the cognizance simply based upon the documents that are submitted or annexed with the police report.

"The power under Section 319 Cr. PC is a discretionary and an extraordinary power.. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner."

The Supreme Court held that not all Protest Petition should meant as Complaint Petition and observed with respect to Para 41 therein as:

"In the facts of this case, having regard to the nature of the allegations contained in the protest petition and the annexures which essentially consisted of affidavits, if the Magistrate was convinced on the basis of the consideration of the final report, the statements under Section 161 of the Code that no prima facie case is made out, certainly the Magistrate could not be compelled to take cognizance by treating the protest petition as a complaint."

"That is, if the material is such that it persuades the court to disagree with the conclusions arrived at by the Investigating Officer; cognizance could be taken under Section 190 (1) (b) of the Code for which there is no necessity to examine the witnesses under Section 200 of the Code."

After filing of FIR under section 154 of the Cr.Pc the Police start its investigation. If the Police found that there exists all the alleged offences then Police files Charge-sheet under section 190(b) of the Code before the concerned Magistrate.

On the contrary if Police found that that no offence exists then he submits a Final Report under section 173 of Cr.Pc. On aggrieved of the

Final Report the Complainant files a Protest Petition before the Magistrate under section 91 read with section 190(a) of the Cr.Pc. Though there is nowhere Protest Petition is defined in the Code!

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