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TRIAL OF SUMMON CASES BY MAGISTRATE- Lovepreet Kaur¹**Abstract**

The Criminal body of justice is an essential part of the State. As the Criminal law plays an important role in our society and without it our society is incomplete. If there is no criminal law, rules or regulations regarding serious and minor offences, punishment for crimes, what procedure followed during trial. Then our society could not operate properly. Crimes would be committed and there would no punishment or rehabilitation. Also, Criminal law helps to protect the citizens from criminals.

This paper will deal with the concept of summons such as what are summons, in which conditions summons are to be served, which official will serve the summons. Further, it will focus on the idea of trial of summons cases by magistrate which include what procedure will followed by the judicial official during the trial of summon cases. As there is no difference between the trial of summons cases instituted on the police charge sheet or which instituted on personal complaint. Summons case only indicates an offence and not a warrant case. On the other side, warrant cases are those cases in which offence is punishable with death or imprisonment exceeds two years.

The analysis of paper deal with the provisions of the trial of summons cases. Sections 251 to 259 under The Code of Criminal Procedure Code, 1973 shows the procedure of trial of the summons cases.

Keywords:

Magistrate, Offence, Procedure, Trial, Summon Case

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1. Introduction

For criminal trials there was a well approved statutory, administrative and judicial framework in India. Principally, the Indian Penal laws are governed by different acts such as The Code of Criminal Procedure, 1973, The Indian Penal Code, 1960 and The Indian Evidence Act, 1872.

At the same time in Indian criminal law, the Indian Penal Code and Code of Criminal Procedure code are known as twin sisters.² The Code of Criminal Procedure is comprehensive and exhaustive procedural law which contains laws, rules or regulations regarding conducting criminal trial, in which manner evidence will be collecting, inspection of witnesses, interrogation of accused, arrests, rules and procedure to be adopted by Police and Courts, bail, process of criminal trial, procedure of conviction, and the rights of the accused for a fair trial. In India, criminal trial is principally governed by The Code of Criminal Procedure, 1973.³

Before starting discussion on trial of summons cases by magistrate, it is necessary to understand the concept of trial. It means the decision or judgement of the court to decide whether person is guilty or innocence. It is very crucial part of the case proceedings. Section 190 of the Code of Criminal Procedure states the requirements need to be fulfilled to start proceedings before magistrate. Further, Section 240 of the Code of the Criminal Procedure provides powers to magistrate to either take the case into consideration or reject it on some grounds⁴. It means this section helps to decide whether trial is going to start or not. The different trials are divided on the basis of seriousness of the offences. There are four procedures of criminal trial by magistrate which are recognized in the Code of Criminal Procedure Code, that are session trial, procedure for trial of summon cases, procedure for trial of warrant cases and procedure for summary trial. The Chapter XX of the Code of the Criminal Procedure which includes Section 251 to Section 259 that deals with the trial of summon cases.

2. Trial and Its Types

²Available at:<https://www.legalbites.in/trial-in-summons-cases/> (last visited on April 1, 2021).

³Available at:<https://blog.iplayers.in/69101-2/> (last visited on April 2, 2021).

⁴ The Code of the Criminal Procedure, 1973 s.240.

In Code of Criminal Procedure, not anywhere meaning of trial is given. In simple words, it is a formal meeting in court where judge or jury takes into account evidences to decide whether person is guilty of crime or not. Also, it a legal hearing to decide a particular case.

It is a formal judicial examination during which facts and law are taken into consideration between parties to decide the case by the court in whose jurisdiction such case falls.⁵

In Indian Criminal law, trial is divided on the basis of punishment in offences committed by accused that are:

- **Session Trial:** This trial is conducted in session court, it is conducted in those cases in which punishment is death or imprisonment for life or imprisonment more than seven years. The trial conducted in session court after forwarded by the court of magistrate.
- **Trial of Warrant Case:** These are those cases in which case begins only after filing of FIR in police station or by filing it before magistrate. Further, in the offence should punishable with death imprisonment for life or imprisonment exceeding two years.
- **Trial of Summon Case:** In this type of trial, only that case is tried in which imprisonment is less than two years. In these cases, it is not necessary to frame a charge. Or summons issued by magistrate under Section 204(1)(a) of the Code of the Criminal Procedure.
- **Summary Trial:** These are the trials that are conducted speedily and with simple procedure of recording of trial. During this trial only small cases are taken into consideration. Section 206 to Section 265 deals with summary trial.⁶

3. What is Summon?

In general, summons is a document which is issued by the Court to specific person to appear at specific time for specific purpose. It may issue directly to the person or indirectly to officer who may carry out the instructions.⁷

Summons is a document or form which is issued by Court to call a person to appear before Court.⁸ Also, we can say that it is official notice of lawsuit. Summons are issued under Section 204(1) of Code of Criminal Procedure by magistrate to accused.

Under Section 61 of the Code of Criminal Procedure, mention that summons issued by judge should be in writing, a duplicate second copy, signed by judge of such court and also carry

⁵Available at:<https://legal-dictionary.thefreedictionary.com/Trial> (last visited April 2, 2021).

⁶Available at:<http://lawtimesjournal.in/what-are-the-different-kinds-of-trials-in-criminal-procedure-code/> (last visited on April 2, 2021).

⁷Available at:<https://www.britannica.com/topic/summons> (last visited on April 2, 2021).

⁸Available at:<https://www.hg.org/legal-articles/what-is-a-summons-34255> (last visited on April 3, 2021).

the seal of the court. If any the mentioned element is not present in the summons, then it will be considered as invalid summons.⁹

4. Summons How Served

When case is instituted by plaintiff against defendant, that time summons is served. The directions were given by the Court to issue summons to the defendant, in order to ensure that there was fair trial in providing justice. In case no summons was served then no action will be taken against the defendant. If summons were served but person does not appear before court it will be taken as Contempt of Court and shall be punished.¹⁰

➤ **How Summons should be form:** According to Section 61 of the Code of Criminal Procedure, mention that summons issued by judge should be in writing, a duplicate second copy, signed by judge of such court and also carry the seal of the court.

➤ **Mode of Service of Summons:** According to Section 62, summons shall be served by police officer, any officer of the court issuing it or any public servant. The Summons should serve to the person to whom it is summoned or if such officer thinks fit can take and sign a receipt on back of duplicate.¹¹

➤ **Summons to Corporate or Societies:** According to Section 63, If Court is issuing summons to corporate it will only come into effect if it served on secretary, local manager or any other principal officer of the corporation. Or if, in India summons was issued to Chief officer of the corporation it should be through registered post.¹²

➤ **When summoned person not found:** According to Section 64, after proper examination when summoned person not found then the officer may serve the summons to adult member of his family or to whom summons served officer should take his sign on back of the other duplicate.

A servant of the family is not considered as member of the family.¹³

➤ **When service of summon not effected as before provided:** According to Section 65, when officer was not able to serve summons under section 62, 63 and 64 then he nay attaches duplicate of summons to some noticeable part of the house in which summoned person resides.

⁹ The Code of Criminal Procedure, 1973 s. 61.

¹⁰ Available at: <https://www.lawnn.com/summons-summons-served-mode-service-etc/> (last visited on April 3, 2021).

¹¹ The Code of Criminal Procedure, 1973 s.62.

¹² The Code of Criminal Procedure, 1973 s.63.

¹³ The Code of Criminal Procedure, 1973 s.64.

After proper investigation, court may declare that summons is served or issue fresh summons as court thinks fit.¹⁴

➤ **Summons to Government Servant:** According to Section 66, if summons is served to person who in government service, then court may issue summons to the head of the department, then such person further serves the summons according to the section 62 of the Code of Criminal Procedure and also returned it to court under his signature with the endorsement.

Thus, such signature will be treated as evidence¹⁵.

➤ **Service of Summons outside local limits:** When Court issued a summons, which will be served outside its jurisdiction, then court may send duplicate summons to the magistrate in whose jurisdiction person summoned resides. Then they further serve to that person.¹⁶

➤ **Proof of service in such cases and when serving officer not present:** According to Section 68, when summoned outside the jurisdiction of the court or officer who served summons is not present in the court then claim that summons have been served, an affidavit to be made before magistrate, it shall be admissible in evidence that duplicate summons which have been served or with whom it was left and also record the statement shall be deemed to be correct unless and until the contrary is proved.

➤ **Summons on witness by post:** The Court issue the summons to the witness, should be served through registered post which is addressed to witness where he normally resides or carry his business or any personal work for gain.¹⁷

When acceptance to be signed by the witness, an endorsement purporting to be made and if he refuses to take summons received, then postal employee made endorse it back. Then depends on the Court issuing it to declare that summons have been served.

5. **What is Summon Case?**

According to the Section 2(w) of the Code of the Criminal procedure, summon cases are those cases which are not warrant case.¹⁸ There is no clear definition given under this section. Also, referred from the definition of warrant cases, such as warrant cases are those case in which offences are punished with death, imprisonment for life or imprisonment exceeds two

¹⁴ The Code of Criminal Procedure, 1973 s.65.

¹⁵ The Code of Criminal Procedure, 1973 s.66.

¹⁶ The Code of Criminal Procedure, 1973 s.67.

¹⁷ The Code of Criminal Procedure, 1973 s.69.

¹⁸ The Code of Criminal Procedure, 1973 s.2(w).

years. So, summons cases are those cases in which offences are punished with imprisonment for less than two years. Summons cases are not serious in nature, which means it needs to decide speedily without ignoring fair trial. The result from two definitions is that the classification of summon cases and warrant cases depends on seriousness of crime.¹⁹

There is only one procedure prescribed for trial of summon cases which is from Section 251 to 259 of the Code of Criminal Procedure. Since, these cases involve offence of a less serious nature than that offence trial as warrant case, the procedure is simple and less formal without however undermining the cause of justice.

6. Stages in Trial of Summon Cases

- **Pre-Trial:** At pre trial stage, the process of filing FIR or conducting investigation take place.
- **Charges:** In summon cases trial, the charges are not framed. When accused appear before court or brought before court, the magistrate would state the substance of accusation the accused such as facts of the case or laws.
- **Conviction on plea of guilty:** After telling facts of the case, magistrate shall ask the accused whether he pleads guilty or has defence to support his case. In case accused pleads guilty the magistrate after recording statement in the words of the accused and may convict him according to his discretion.²⁰
- **Conviction on plea of guilty and absence of the accused:** In case accused plead guilty but do not appear before court then he has to send letter of plead guilty along with fine specified in the summons through registered post or messenger. Then, magistrate may on his discretion convicts the accused.
- **Prosecution and Defence Evidence:** In summons cases the procedure followed for trial is very simple, the elaborated procedure is eliminated. In case accused does not plead guilty then the process of trial begins. The prosecution and the defence may present their evidences in the support of their case. The magistrate has power to take the statement of the accused.²¹
- **Judgement:** In summons cases magistrate may acquit or convict the accused, he has sole discretion depends on the magistrate. The parties are not allowed to argue on the amount of

¹⁹Available at: <https://blog.ipleaders.in/summon-case-crpc/> (last visited on April 4, 2021).

²⁰Available at: <https://acadpubl.eu/hub/2018-119-17/1/31.pdf> (last visited on April 5, 2021).

²¹Available at: <https://www.lawnotes4u.in/2018/12/stage-of-criminal-trial-in-summon-cases.html> (last visited on April 5, 2021).

sentence passed by the magistrate in summon case. In case accused is acquitted then the prosecution has right to appeal to higher authoring. This right is also extended to the accused.²²

7. Procedure of Trial in Summon Cases

• Substance of accusation to be stated to the accused

According to Section 251 of the Code of Criminal Procedure, in summon cases, whenever accused seems or brought before the jurist, the particulars of the offences should be expressed to him. It is necessary to asked to him whether he plea guilty or not. Thus, accused has any defence to form. In these cases, it is not necessary to border a proper charge.²³

• Conviction on plea of guilty

Under Section 252 of the Code of Criminal Procedure, if accused plea guilty then magistrate shall record its plea which are close to the word spoken and used by the accused. Then, it depends on the magistrate that he convicts him on it or not.

But if accused confess specific or all fees alleged by the prosecution anyhow pleads not guilty, then court needs to proceed according to law of examining the witness of prosecution and defence.²⁴

• Conviction on plea of guilty in petty cases when accused is absent

According to Section 253, after issuing of summons under section 206, if accused pleads guilty at his wish but do not want to appear before court then he shall transfer his plea to magistrate through post or messenger along with the amount specified in the summons.

Further, it depends on the magistrate that he convicts the accused on his plea in his absence or may give instructions to pay fine as specified in the summons, also the amount sent during transfer of plea will be adjusted towards fine.

If any pleader permitted by the accused or who plead guilty on his behalf during recording of plea, the magistrate will take words as nearly used by the pleader of the accused. Again, it depends on the magistrate whether he convicts and sentences him on such plea.²⁵

• Procedure when not convicted

²² Available at: <https://acadpubl.eu/hub/2018-120-5/3/229.pdf> (last visited on April 5, 2021).

²³ The Code of Criminal Procedure Act, 1973 s.251

²⁴ The Code of Criminal Procedure Act, 1973 s. 252

²⁵ The Code of Criminal Procedure Act, 1973 s. 253

Under Section 254, it was mentioned that if magistrate does not convict accused under Section 252 and Section 253 then he shall proceed to hear prosecution along with taking evidences from prosecution which bring out in support. Also hear accused side and take evidences which bring out in his defence. After taking into account the points of both prosecution and accused, if magistrate feels like to issue summons to any witness with directions to attend or bring out any paper, record or other thing which helps in proceedings of the case.

Before issue of summons to witness, the magistrate requires that rational expense should be deposited in court which will be incurred in attending the trial.²⁶

• **Acquittal or Conviction**

According to Section 255, after taking evidence under Section 254 by magistrate if he found accused not guilty then he shall record an order of acquittal. Further, if proceedings were not carried out by magistrate according to section 325 or section 360, and finds accused guilty then pass sentence under law upon him.

When offences are triable under Chapter XX of the Code of Criminal Procedure, in that cases magistrate has power to convict accused under Section 252 or section 255.²⁷

• **Non appearance or death of Complainant**

Under Section 256, when summons was issued on complainant, the day fixed appearance of the accused before court or any other day when hearing is adjourned, and the accused does not appear before court then magistrate has the power to acquit the accused except for any other reason he thinks to adjourn the hearing on some other day.

Also, when pleader or officer during prosecution represent complainant or when magistrate thinks personal attendance of complainant not necessary the magistrate may leave attendance and proceeds with hearing.

The previous point is also applicable in those cases where the non-appearance of complainant is due to his death.²⁸

• **Withdrawal of Complaint**

According to Section 257, before passing any order in any case, under Chapter XX of the Code of the Criminal Procedure, if complaint provides sufficient grounds to the magistrate that he wants to withdraw complaint against accused or in case of more than one accused

²⁶ The Code of Criminal Procedure Act, 1973 s. 254

²⁷ The Code of Criminal Procedure Act, 1973 s. 255.

²⁸ The Code of Criminal Procedure Act, 1973 s. 256.

against all or any of them. If magistrate satisfies with grounds, he may allow him to withdraw complaint and acquit the accused.²⁹

- **Power to stop proceedings in certain cases**

Under Section 258, when summon case institutes other than on complaint, then the proceedings of the case may stop at any stage by magistrate of the first class or with the permission of chief judicial magistrate by any other judicial magistrate after recording reasons. Under this section proceedings of the case may stop without passing any judgement. But if proceedings stop after recording evidence, then in that case judgment of acquittal shall be passed and accused will be released.

- **Power to convert summon cases to warrant cases**

Under Section 259, during the trial of summon case which deals with imprisonment for a term exceeding six months, in that case if magistrate thinks fit that for justice the offence should be tried with manner provided for trial of warrant case under Code of Criminal Procedure. Then magistrate needs to re hear the case or re call any witness as provided under this code for trial on warrant cases.³⁰

8. Fair Trial in Summon Cases

In India, accused has right to fair trial which is constitutional and statutory rights. The principle of natural justice is correlated with the concept of fair trial. The following points describes it as follows:

- We hear the term no man shall be a judge of his own cause which is derived from maxim nemo iudex in causa sua. This principle signifies the unbiased or independent justice to the people. Further, in summon cases to ensure justice or fair trial, the proceedings of the case shall be conducted by independent, unbiased and competent magistrate.³¹
- The second principle of fair trial includes that accused have right under Section 211 of the Code of Criminal Procedure of precise and specific accusation. The essential point of fair trial is that under Section 251 of the Code of Criminal procedure, the charges must be stated to accused for admitting or denying the plea of guilty.

²⁹ The Code of Criminal Procedure Act, 1973 s. 257.

³⁰ The Code of Criminal Procedure Act, 1973 s. 259.

³¹ Available at: [http://www.legalserviceindia.com/legal/article-644-fair-trial-in-summons-cases.html#:~:text=of%20fair%20trial,-By%20virtue%20of%20Sec.,shall%20pass%20a%20Speaking%20Order.\(lastvisited on April 5, 2021\).](http://www.legalserviceindia.com/legal/article-644-fair-trial-in-summons-cases.html#:~:text=of%20fair%20trial,-By%20virtue%20of%20Sec.,shall%20pass%20a%20Speaking%20Order.(lastvisited%20on%20April%205,%202021).)

- Again, to ensure fair trial in summon cases, the conviction on plea of guilty in the absence of accused in petty cases is allowed. As accused is allowed to represent through his pleader.
- The term Audi Alteram Partem which means hear the other side or both sides should be heard. This is another essential point of fair trial. This point is available during trial of summon cases under Section 254 when magistrate gave time for defence and represent them, this ensures fair trial.
- When the case was heard by independent and unbiased judge. After hearing the case when magistrate pass speaking order under Sec. 225 of acquittal or conviction with reasons that is fair trial.
- **Mahant Kausalya Das v. State of Madras**³²: The Court held that in criminal justice system to ensure fair trial, magistrate needs to record the statement of the accused in the same manner as words used by the accused then according to it magistrate discretion to convict him.
- **Rattiram v. State of Madhya Pradesh**:³³ In this, Court held that Chapter XX of the CRPC is included to provide fair trial in summon cases. As fair trial is the heart of the criminal justice system and if there is denial of fair trial means denial of human rights.

9. Analysis

Accused appear or brought before the court



Explanation of the particulars of the offence



Conviction on the plea of guilty

procedure when not convicted on a plea



³²AIR1966 SCR 229

³³Criminal Appealno. 223 of 2008

Acquittal

Conviction

Prosecution hearing and record of evidence



Defence hearing and record of evidence



Submission of argument under section 314



Acquittal/conviction

As we know that, for speedy remedy the procedure for trial of summon cases is less formal as compared to other trial procedures. A summon cases are those cases in which imprisonment is less than two years. There is no difference between in the procedure of trial of summon case instated on personal complaint or on police charge sheet. The cases as summon case is due to that magistrate's duty is to issue summon to accused in order to inform him about the offences which are committed by him and give opportunity to prove his part. When accused if fails to appear before magistrate, then there was enough power with magistrate to issue warrant of arrest against accused.

When any individual is blamed in summon cases, on which court is keeping watchful eye. At initial stage, accused is given an opportunity that whether he is guilty of offence or not. After giving opportunity to accused if he admits the offence, then his statement records as presented by him and sentenced as thinks fits by magistrate. While issuing summons under Section 206 in petty cases, it should also mention if accused plead guilty and don't appear before court then letter containing plea shall transfer by registered post to court conjointly amount of fine laid down in summons.

On the other hand, if accused denies that he had not done that offence. Then, the case moves on next stage where the complaint or his pleader must examine the accused for charge, what he said in his defence or what proofs are given by him. The parties in the case must be

represented by the pleaders. After that, magistrate takes into consideration all points said by accused along with proofs given by him in making decision regarding dismissal or conviction.

10. Case Laws

➤ **Nayan Ram v. Prasanna Kumar:**³⁴ In this case, the Court held that the accusation or charges are not stated to accused then it is remediable for accused under Section 465 of the Code.

➤ **KM Mathew v. State of Kerala:**³⁵ Under Section 500 of the Indian Penal Code, accused summoned for an offence of defamation. Accused was the Chief Editor of the daily newspaper. After application for dropping of proceedings which states that not any specific ground made against him which means no specific offence was made. The plea was accepted by the magistrate and acquitted the person.

➤ **Ex. Head Constable Rajinder Singh v. Union of India &Ors.:** In this case, Court observed that in summon or summary trial cases, It is opened to magistrate that where cases are minor, technical in nature or include ladies, old, sickly persons or workers in factories or daily wagers, workers, busy business people of industrialists then Court should be liberal and exempt persons for personal attendance and may represent plead guilty through Counsel.

➤ **Mr. Banwari Lal Yadav vs Union Of India and Anr.**³⁶: In this case, the accused plea guilty to the charge but for reduction in punishment state that his mental condition was not proper. The Court keep in view the statement of the accused, then declared to alter to plea of guilty to not guilty.

➤ **Mahender Singh (Ex. Constable) v. Union of India &Ors.**³⁷: The Court held that if plea of guilty recorded in printed form properly, but not signed by the accused then it cannot be accepted as it effects the effectiveness of the proceedings. Further, punishment awarded will not be workable in pursuant to such plea of guilty.

➤ **S.Rama Krishna v. Rami Reddy:**³⁸ In this case, complainant died and many dates fixed for hearing then, Supreme Court held that if complainant is dead or the representatives of the complainant did not appear for 15 days then in that case defendant can be acquitted.

³⁴AIR 1953 Gau 161

³⁵AIR 2206, 1991 SCR 364

³⁶134 (2006) DLT 353

³⁷2008 (104) DRJ 749 (DB)

³⁸Criminal Appeal 755 of 2008

➤ **Arvind Kejriwal and Others v. Amit Sibal:**³⁹ It was held that there was no such provision that magistrate discharges the summon case in the law. The individual can approach High Court under Section 428 of the Code of Criminal Procedure.

➤ **R.K. Aggarwal v. Brig Madan Lal Nassa & Anr:**⁴⁰ In this case, Court held that there is no provision regarding discharge of summon case in law only acquittal or conviction is based on the complaint.

11. Difference between Summon and Warrant Case

| Basis | Summon Case | Warrant Case |
|---------------------|----------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Provision | Section 2(w) | Section 2(x) |
| Definition | Summons cases means a case relating to an offence not being a warrant case | Warrant cases means a case relating to an offence punishable with death, imprisonment for life or imprisonment not less than two years |
| Procedure | Only one procedure is prescribed for the trial of summon cases | For the trial of warrant cases by magistrate two types of trial is provided that are: (i) cases instituted on police report (ii) Cases instituted other than police report |
| Framing of Charge | Framing of charges is not necessary | Framing of charges is necessary |
| Issue of process | Summon shall be issue in summon cases | In warrant cases, either warrant or summon may be issued |
| Conversion | Trial of summon cases can be converted to trial of warrant cases | Trial of warrant cases cannot be converted into summon cases |
| Acquittal/Discharge | In case of non-appearance of complainant, magistrate may acquit | In case of non-appearance of complainant Magistrate may discharge the accused in |

³⁹(2014) HC Delhi 719

⁴⁰(2016) SCC Delhi 3720

the accused

some cases before framing the charge

12. Conclusion

From above points, it is concluded that trial of summon cases are less formal as compared to warrant cases. It helps to provides speedy justice to the person. In summon cases, there is no difference between the trial of cases instituted on police charge sheets or personal complaint. When summon cases are instituted on police charge sheet in that cases under Section 207, magistrate see that copies and also furnishes to the accused who appear before court. This is the only difference between two classes of cases.

The Chapter XX was added in the Code of the Criminal Procedure to avoid the delay in the trial and investigation of summon cases. It also gave opportunity to accused of fair trial. In every case, the Judges want to ensure fair trial or provide justice to people that is only possible with the help of the laws to give opportunity of hearing and defending the cases. Further, there are also some provisions added in the code with conformity to Constitutional requirements to provide legal aid to those who are not financially able to engage lawyers. The Section 304 of the Code stated that justice should be served and no person who commits the offence, accused shall be wrongly convicted.

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