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Summons Under Criminal Procedure Code, 1973



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Key Takeaways

- Section 61-69 in the Criminal Procedure Code deals with the Process to Compel Appearance.
- Required procedure must be followed and Form I in Schedule II should be filled and signature of the officer presiding the court and seal of the court is required.
- The court must make sure that the service of summons is duly served on the person.
- A warrant for arrest for non-appearance can only be done after due diligence is done in identifying the person on whom summons is to be served.

Introduction

In the [previous post](#), provisions regarding summons were reviewed while discussing important sections in the Cr.P.C. In this post, we will discuss provisions regarding summons in relation to certain queries asked in the forum with solution/advice provided by our experts. Chapter VI in the Code of Criminal Procedure Code, 1973 deals with the process to compel appearance. Summon is a type of document which requests a person to appear/be present before the court for conduct of the legal proceedings. According to Section 62(2) of CrPC, a summons will be served by a police officer or a by an officer of court issuing it or other public servants. The summons, if possible, shall be served personally by delivering or tendering him with the duplicate of the summons copy.

How will the Summons be issued

Service of summons will be issued to a person where he ordinarily resides or conducts business. Section 64 provides that when the person is not found, it shall be served to the adult male member of the family residing with him by providing duplicate of the service. It is to be noted that the explanation to this section clearly mentions that a servant is not a member of the family.

Section 63 of the CrPC provides for service of summons on a corporate body or society. It states that service of summons shall be served on the organisation's secretary, local manager or other principal officer of the corporation or by a letter sent through a registered post addressed to the chief officer of the corporation.

If the summons could not be served upon the person/party as provided in Section 62, 63 and 64, the serving officer shall affix the duplicate of the summons on a conspicuous part of the house where the party summoned ordinarily resides.

If the person on whom the service of summons is to be issued is a government employee, the court will send the duplicate to the head of the office in which he works.

A Court issuing a summons to a witness directs a copy of the summons to be served by registered post addressed to the witness at the place where he ordinarily resides or carries on business or personally works for gain.

In *HDFC Bank Ltd V. Amit Kumar Singh (2009)*, the Supreme Court reiterated that a summons to an accused cannot be sent by a post but should be delivered personally. Only when the summons is to be issued to a witness, it can be sent through a registered post.

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In *Sanjay Kumar V. State of Bihar (2018)*, the Patna High Court held that it is the duty of the court to enquire about the service of the summons. If the summons is not served, it is the ultimate duty of the court to see to it that they are served. The court further observed that liberty of an individual and social interest should be balanced and the

judicial power conferred upon them to issue warrants must be used with utmost caution so as not to cause any prejudice to any parties.

This court referring to Patna High Court's judgement in Cr. Misc No. 629 observed that at the first instance, the court should order serving of summons. If the accused is avoiding the summons, the court, in the second instance should issue bailable warrant. In the third instance, when the court is satisfied that the accused is avoiding the court's proceeding intentionally, the process of issuance of the non-bailable warrant should be resorted to. Personal liberty is paramount; therefore, the court cautioned that courts should, at the first and second instance, refrain from issuing non-bailable warrants.

What happens if the person upon whom summons is served does not appear before the court?

Section 87(b) of Cr.P.C provides that if such person fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure, the court may, after recording its reason in writing, issue warrant of such person. The Court after making such inquiries as it thinks fit, may either declare that the summons has been duly served or order fresh service in such manner as it considers proper as provided under Section 65 Cr.P.C.

In Ram Chandra Mishra V. The State (1994), the Orissa High Court held that temporary absence does not attract Section 64 and due diligence must be carried out to serve the summons. There must be an attempt to find out the person summoned against and the process server's report should show that an attempt was made. In the absence of proof that the person summoned cannot, after exercise of due diligence, be found, service on adult male member of the family residing with him is not valid.

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If a petition is filed under [Section 125 of Cr.P.C for maintenance](#) and if the husband is wilfully avoiding the service of summons or court proceedings the court has the power to hear the case and pass ex parte orders. It is to be noted here that this proviso in Section 126 is an exception to the rule laid down in Section 126 which states that all proceedings in this case will be heard in the presence of the person against whom an order for payment of maintenance is desired. It is again clear that the court should have taken sufficient steps to find the person on whom the summons is to be served.

Procedure involved in serving summons to the accused

Section 61 provides for a form of summons and states that it shall be in writing signed by the presiding officer of the court. The process application should be submitted at the filing section of the respective court. It should be prepared in accordance with the [Second Schedule Form I](#). A duplicate copy should be delivered personally by a police officer or an officer of court or other public servant personally to the party, if possible. The person on whom summons is served shall sign on the back side of the court copy.

Experts also suggest that if the notice was not served to the home address, the address of the workplace can be provided. If the person upon whom service of summons is to be issued is in a foreign country, the Ministry of Home Affairs by a [circular](#) dated 11th February 2009 issued guidelines for the same.

Conclusion

There is a lot queries regarding various issues such as getting a certified copy from courts and the information as to next hearing date.

The experts have answered various [queries regarding summons](#) and [its procedure](#) briefly and other general queries of querists. Responding to one such query as to alleged exorbitant fees collected by an advocate for process of summons, the experts who have vast experience in this profession say that one should trust his/her advocate or if they have any suspicion of foul play, it must be amicably settled for avoiding further burden of additional stress and litigation. If there is definite exploitation, the experts advise legal steps against the advocate as a last resort.

For reference, a Certified Copy (CC) can be obtained from the copying section or can be applied thorough online mode as per the facilities in the respective courts after payment of certain amount towards it and time taken will vary according to the urgency. If the court lists the present case for future date for orders or for any other business, it can be checked in the e-courts online system of the respective districts for next hearing date and the business on that date.

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