

Trial of summon cases under CrPc

By **Rachna Dalal** - February 20, 2019



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In this article, Rachna Dalal discusses Trial of Summon cases under CrPc.

Introduction

“Summon” is a document that commands a person to whom it is served to appear before the court and to answer the complaint made against him. Summon is issued by the Magistrate to the accused under section 204(1) (a) of Cr.P.C, 1973. “Summon case” means a case relating to an offence, not being a warrant case[1]. Summon cases can be referred from the definition of the warrant case i.e., offences punishable with death, imprisonment for life and imprisonment for the terms exceeding two years called as warrant cases[2]. So summon cases are those in which punishment will not exceed imprisonment for two years. It can be said that summon cases are not of serious nature, so it needs to be decided speedily, without dispensing the requisites of the fair trial. The procedure to deal with such matter provided in section 251 to 259 of Cr.P.C, 1973 which is not as serious/formal as other trials (Session trial, warrant case instituted on the police report and warrant cases instituted otherwise than on police report).

The main emphasis in the present article is on the procedure of the summon cases. General steps of a procedure in summon case is same as other trials, but this trial is less formal for the speedy remedy.

Procedure of trial in summon-cases

Explanation of the particulars of the offence

Section 251 provides that it is not mandatory to frame charges but the section does not dispense with the explanation of the particulars of the offence when accused is brought or appear before the Court. This is done to make the accused cognizant for the allegations made against him. If in case unable to convey the particulars than this will not vitiate the trial and it will not lead to the prejudice with the accused as this

irregularity is remediable under section 465 of the code[3]. Under section 251 courts shall ask the accused whether the accused pleads guilty, and section 252 and 253 needs to comply for conviction on such plea of guilty.

Conviction on plea of guilty

Section 252 and 253 provides conviction on the plea of guilty. Section 252 provides plea of guilty in general and section 253 provides plea of guilty in case of the petty cases. In case accused plead guilty, the answer is affirmative than in accordance with law court will record the plea in the exact words of the accused on the basis of which accused can be convicted on the Court's discretion. If not affirmative than the court needs to proceed further with Section 254. If the accused plead guilty, and the charges against him do not constitute any offence than mere plea will not amount to the conviction of the accused. As the magistrate has the discretion to convict on the plea or not, if on plea the accused is convicted than the magistrate shall proceed according to section 360 otherwise hear the accused on the question of sentence and sentence him according to law. If the plea of guilty is not accepted than magistrate shall proceed according to section 254.

Procedure if the accused not convicted on plea

Section 254 provides about both prosecution and defence case if the accused not convicted on plea under section 252 and 253.

Prosecution case

The magistrate will hear the accused and take all the evidence. In the hearing, the prosecution will be given chance to open its case by putting facts and circumstances which constitute the case and by revealing the evidence which he relied upon to prove the case. The magistrate on the application of the prosecution, serve summon to any witness to attend and to produce any document or thing. The magistrate will prepare the memorandum of the evidence according to section 274. Same as other trials in summon cases also the magistrate will comply with section 279 i.e., interpretation of evidence to the accused and 280 i.e., recording of the demeanor of the witnesses.

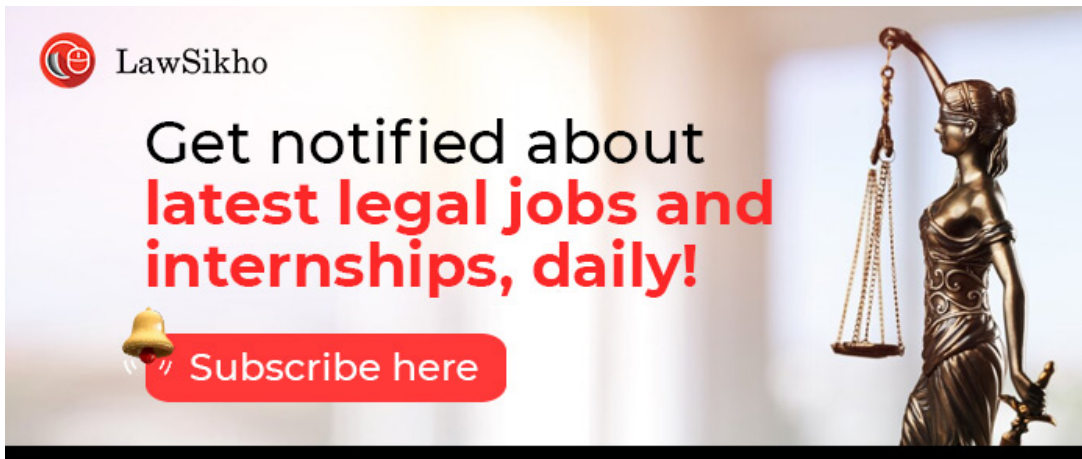
Hearing of the defence: – (Defence Case)

After the prosecution evidence under 254 and examination of defence under section 313, in the continuance of this, the court will proceed with the defence hearing under section 254(1). In the hearing of the defence means accused will be asked for accused say against the prosecution evidence. Failure of hearing of the accused in any case will amount to the fundamental error in the criminal trial and it can not be cured under section 465. Evidence produced by the accused will be recorded in the same manner as in case of prosecution under section 274, 279, 280. After the submission of the evidence of the defence, he will be allowed to submit his arguments under section 314.

Acquittal or conviction

After recording the evidence under 254 the magistrate will acquit the accused if he finds the accused not guilty. If the accused is guilty than Magistrate shall proceed according to Section 360 or 325 otherwise, sentence him according to the law.

Accused appear or brought before the court



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Explanation of the particulars of the offence

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Conviction on the plea of guilty

procedure when not convicted on a plea

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Acquittal evidence

Conviction

Prosecution hearing and record of

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Defence hearing and record of evidence

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Submission of argument under section 314

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Acquittal/conviction

Non-appearance or the death of the complainant

According to section 256 on the date fixed for the appearance of the accused nonexistence of the complainant will empower the court to acquit the accused unless the court has the reason to adjourn the case to some other day. Section 256(1) is also applicable in case of the death of the complainant. In case the representative of the dead complainant does not appear for 15 days where the defendant appeared, the defendant can be acquitted held by the Supreme Court.^[4]

Discharge in case of Summon cases

I summon cases instituted otherwise than the complaint Section 258 authorize the first class Magistrate, with the prior sanction of the Chief Judicial Magistrate, to stop the proceeding at any stage. Therefore if he stops the proceeding 'after record of the evidence' than it is the pronouncement of a judgment of acquittal, and in case stops 'before the record of the evidence' it is released which has the effect of discharge.

It is controversial that in summon case instituted on complaint Magistrate do not have any power of dropping of the case even if he has no sufficient ground to proceed against the accused. This is because if the Magistrate does so then he will recall his own order. Supreme Court said that the issue of process is interim order of the Magistrate, not the judgment so it can be recalled. No provision is required to empower the magistrate to drop the case in such circumstances[5]. In summon cases on complaint Magistrate cannot discharge, review and recall the order of the issue of the process. There is no dropping of the case, the trial court has to conclude the trial.[6] In summon cases the Magistrate of the trial court has no power to drop the proceeding in the absence of such provision in the law. A person can approach the High Court under section 482 of Cr.P.C in such circumstances[7]. There is no provision of discharge in summon cases instituted on complaint accused will be either convicted or acquitted.[8]

Analysis

The trial of the summon cases is less formal than other trial procedure just for the speedy remedy. Therefore the Section 258 which does not empower the Magistrate to drop the case, even in the absence of sufficient ground is somehow prejudice to the accused. Court's opinion in the K.M. Matthew case was that the Magistrate has the implied power to drop the case if the allegation against accused does not prove the commission of any crime. In various judicial pronouncements, it has dissented. In *Arvind Kejriwal* case Supreme Court held law does not specifically empower Magistrate in regard to dropping of the case under 258 and passed the case to the high court to deal with it under section 482. But the point needs to be considered that the High court also again need to look into the case to find out whether there is any sufficient ground to proceed against the accused, all this will impede the main objective of the summon case i.e. speedy trial. Though this matter was addressed before the apex court in various cases, it must be scrutinized again to keep the fair trial and the right of the accused out of jeopardy in such circumstances.

[1] Section 2(w) of Criminal procedure code, 1973

[2] Section 2(x) of Criminal procedure Code, 1973

[3] *Manbodh Biswal v. Samaru Pradhan* 1980 Cri LJ 1023(ori); *Nayan Ram v. Prasanna Kumar*, 1953 cri LJ 1574;

[4] *S. Rama Krishna v. S Rami Reddy* (2008) 5 SCC 535

[5] *K. M. Matthew v. State of Kerala* (1992) 1 SCC 217

[6] *Subramaniam Sethuraman v. State of Maharashtra & Anr*, (2004) 13 SCC 324