

Warrant, Summons and Summary Trial | 17 Oct 2023

Introduction

The word 'Trial' is not defined under the Code of Criminal Procedure, 1973 (CrPC). However, it is commonly understood that **the stage of trial begins after the framing of charge and ends with conviction or acquittal of the accused.**

It is the judicial adjudication of a person's guilt or innocence. Also, we can say that it is an important process to determine whether the accused is guilty of an offence or not.

Types of Trial

- **India follows the adversarial system, where generally the onus of proof is on the State (Prosecution)** to prove the case against the accused, and until and unless the allegation against the accused is proved **beyond reasonable doubt**, the accused is presumed to be innocent.
- Under the CrPC, trials have been categorized as:
 - **Session Trial (Chapter XVIII, Section 225 to 237)**
 - Warrant Trial (Chapter XIX, Section 238 to 250)
 - Summons Trial (Chapter XX, Section 251 to 259)
 - Summary Trial (Chapter XXI, Section 260 to 265)

Trial of Warrant Case by Magistrates

- **Chapter XIX from Sections 238 to 250** provides for the trial of warrant case by magistrates. As per **Section 2(x) of the CrPC** warrant case relates to offences punishable with death, imprisonment for life or imprisonment for a term exceeding two years.
 - Under the Chapter, two procedures are provided for the trial of a warrant case by a magistrate, namely cases instituted on a police report i.e., from **Sections 238 to 243** and cases instituted otherwise than on police report i.e., from **Sections 244 to 250.**
- In respect of cases instituted on police report, it provides for the magistrate to discharge the accused upon consideration of the police report and documents sent with it.
- In respect of the cases instituted otherwise than on police report, the magistrate hears the prosecution and takes the evidence. If there seems to be no prima facie case, the accused is discharged.
- The warrant Case instituted on Police Report involves following steps:

Cases Instituted on a Police Report

- According to **Section 238 of CrPC** when a case is instituted on police report the magistrate shall comply with **Section 207 of the Code.**
- **Discharge:** After considering the police report and the documents attached with it under Section 173 of CrPC and giving prosecution and the accused the opportunity of hearing, if the magistrate is of the opinion that the charge against the accused is groundless. The accused shall be discharged under **Section 239.**
- **Framing of Charge:** Upon examination, if the magistrate is of the opinion that there are grounds for presuming that the accused has committed the offence, magistrate shall frame the charge under **Section 240** and such charge shall be read out and explained to the accused.
- **Evidence for Prosecution: As per Section 242(1) of CrPC**, if the accused refuses to plead or does not plead, or claims to be tried, or the Magistrate does not convict him under **Section 241 (Conviction on plea of guilty)**, the Magistrate shall fix a date for the examination of witnesses.
- The proviso to **Section 242(1)** is added by the Amendment Act of 2009 which says that the Magistrate shall supply in advance to the accused the statement of witnesses recorded during investigation by the police.
 - As per **Section 242(2)** of the Code, the Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

- As per **Section 242(3)** of the Code, on the day fixed for the examination of witnesses, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution. The Magistrate may permit the cross examination of any witness to be deferred until any other witness has been examined or recall any witness for further cross-examination.
- **Evidence for Defence:** As per **Section 243(1)** of the Code, after the completion of the prosecution evidence, the submission of the prosecution arguments, and the examination of the accused person under **Section 313(1)(b)**, the accused shall then be called upon to enter his defence and produce his evidence.
 - As per **Section 243(2)** of the Code, if the accused applies to the Magistrate to issue process for calling any witness for examining or cross-examination or to produce a document/thing, the Magistrate shall issue process unless:
 - He considers that such application is made for vexatious purpose or for defeating the ends of justice, or
 - The accused had, prior to entering upon his defense, either cross-examined or had the opportunity of cross-examining any witness.

In the former case, the Magistrate is required to record his reasons in writing for refusal to issue process, and, in the latter, he may, if satisfied that it is necessary for the ends of justice to compel such attendance, issue process.

Cases Instituted otherwise than on a Police Report

- **Evidence for Prosecution:** As per **Section 244 of the Code**, when the accused is brought before a Magistrate, he should proceed to hear the prosecution and take all such evidence as may be produced. The Magistrate may also summon such people to whom the prosecution wishes to give evidence in support of its case.
- The accused can be discharged under **Section 245** and under **Section 246** charge shall be framed against the accused if the accused is not discharged there after the accused must be asked whether he wants to plead guilty or not.
- Evidence for defence is taken under **Section 247**.

Conclusion of Trial

Section 248 of CrPC mentions the acquittal or conviction.

- If the accused is not found guilty by the magistrate, an order of acquittal shall be recorded.
- Where a magistrate finds the accused guilty but does not proceed in accordance with **Section 325 or Section 360 of CrPC**, a sentence may be passed against the accused.

Trial of Summon Cases by Magistrates

- **Section 2(w) of the CrPC** states "summons-cases" means a case relating to an offence, and not being a warrant-case.
- The **trial procedure** prescribed for summons cases is **contained in Chapter XX from Sections 251 to 259** of the Code.

Procedure in a Summons-Case

Substance of accusation to be stated - As per **Section 251 of the Code** when in a summons case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty, or has any defence to make, but it shall not be necessary to frame a formal charge.

- The Section only dispenses with a formal charge in a summons case, but it does not dispense with the statement of the particulars of the offence for which the accused is to be dealt with.

Conviction on plea of guilty - As per **Section 252 of the Code**, if the accused pleads guilty, it is imperative that the Magistrate shall record the plea of guilty as nearly as possible in the words used by the accused.

- **Conviction on plea of guilty in absence of accused in petty cases** - **Section 253 of the Code** is meant for the speedy disposal of petty cases. If a summons has been issued under **Section 206** (i.e., in cases of petty offences), and the accused desires to plead guilty without appearing before the Magistrate, he shall transmit to the Magistrate a letter containing his plea and also the amount of fine specified in the summons. The Magistrate may then convict the accused in his absence and sentence him to pay the specified fine.

Hearing of the prosecution or defence cases - As per **Section 254(1)** of the Code after the personal examination of the accused, if any, under **Section 313(1)(b)** the Magistrate shall “hear” the accused and take all such evidence as he produces in his defence.

- When **Section 254(1)** requires that the Magistrate shall hear the accused, it certainly means that he should ask the accused what he has to say in his defence against the incriminating evidence which is brought on record against him, and the accused should be heard on every circumstance appearing in evidence against him.
- As per **Section 254(2)** the Magistrate may, if he thinks fit, on the application of the accused, issue a summons to any witness directing him to attend or produce any document or other thing.
 - However, if the prosecution has made an application for the issue of summons to its witnesses, it is the duty of the Court to issue summons and to secure the witness by exercising all the powers given to it under the Code.
- As per **Section 254(3)** the Magistrate may, before summoning any witness on such application, require that the reasonable expenses of the witness incurred in attending for the purposes of the trial be deposited in court.

Acquittal or Conviction - As per **Section 255(1)** if the Magistrate, after taking the entire evidence adduced in the case finds the accused not guilty, he shall record an order of acquittal.

- As per **Section 255(2)** where the Magistrate **does not proceed in accordance with** the provisions of **Section 325 or Section 360**, he shall, if he finds the accused guilty, pass sentence upon him according to law.
- **Section 255(3)** gives the Magistrate discretion to proceed in those cases where the evidence for the prosecution establishes an offence other than that referred to in the complaint or summons.
 - However, the offence of which the accused may be convicted must appear to have been committed from the facts admitted by the accused or proved against him. Further, it should be seen that the accused is not prejudiced by the consideration of some charge of which he knew nothing.

Summary Trial

- A ‘**summary trial**’ implies **speedy disposal of a suit**. It is a type of trial in which matters are resolved quickly, the procedure is shortened, and the proceedings are recorded in a speedy manner.
 - In a summary trial, all the cases should be tried by the summons procedure.
- The object of summary trial is to have a record which is sufficient for the purpose of justice, and yet, not so long as to impede speedy disposal of the case.
- It is provided under **Chapter XXI of CrPC** and is provided under **Section 260 to 265**.

Power to Try Summarily

- According to **Section 260(1)** notwithstanding anything contained in the Code:
 - Any Chief judicial Magistrate
 - Any Metropolitan Magistrate
 - Any Magistrate of the First Class specially empowered in this behalf by the High Court, may, if he thinks fit, try in a summary way all or any of the offences:
 - Offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years;

- Theft, under Section 379, Section 380 or Section 381 of the Indian Penal Code where the value of the property stolen does not exceed two thousand rupees;
 - Receiving or retaining stolen property, under Section 411 of the Indian Penal Code where the value of the property does not exceed two thousand rupees;
 - Assisting in the concealment or disposal of stolen property, under Section 414 of the Indian Penal Code where the value of such property does not exceed two thousand rupees;
 - Offences under Sections 454 and 456 of the Indian Penal Code;
 - Insult with intent to provoke a breach of the peace, under Section 504, and criminal intimidation punishable with imprisonment for a term which may extend to two years, or with fine, or with both, under Section 506 of the Indian Penal Code;
 - Abetment of any of the foregoing offences;
 - An attempt to commit any of the foregoing offences, when such attempt is an offence;
 - Any offence constituted by an act in respect of which a complaint may be made under Section 20 of the Cattle-trespass Act, 1871.
- **Section 261** empowers the **Magistrate of the Second class** who has been invested with the powers by the High Court to try summarily any offence which is punishable only with fine or with **imprisonment for a term not exceeding six months** with or without fine.

Procedure/Record in Summary Trial

In summary trials, the procedure specified for the trial of summons-case is to be followed Section 262(1), subject to the following three qualifications:

- As per Section 262(2) no sentence of imprisonment for more than 3 months can be passed in any conviction under Chapter XXI.
- As per **Section 264 of the Code** in every case tried summarily in which the accused does not plead guilty, the Magistrate shall record the substance of the evidence and a judgment containing a brief statement of the reasons for the finding.
- As per **Section 265** of the Code every such record and judgment shall be written in the language of the court and signed by the Magistrate.