

**All about Commencement of Proceedings under**  
**Code of Criminal Procedure, 1973**

**By Sakshi Rewaria**

**I. Commencement of Proceedings before Magistrates**

**(Chapter 16, CrPC)**

**Q1. How are offences been classified in the CrPC?**

Ans. The classification of offences in the Schedule was, however, not based on any general principle, and was not the same as between a summons- case and a warrant-case, because a warrant might have to be issued in a summons-case, and vice-versa. A simpler procedure was, therefore, considered desirable, so that a summons would issue in a summons- case, and a warrant in warrant-case, unless otherwise ordered by the Magistrate.

**Q2. Can summons or Warrants be issued against an accused if witness has not been filed?**

Ans. No summons or warrant can be issued against the accused under this section, unless a list of prosecution witnesses has been filed.

**Q3. What is the condition necessary for the issue of process?**

Ans. The only condition necessary for the issue of process is that the complainant's deposition must show some sufficient ground for proceeding in the matter. Therefore, unless there is sufficient ground for proceeding with the complaint, or sufficient material to justify issue of a process, the Magistrate should not issue the process.

**Q4. How does Magistrate determine whether the process is issued or not?**

Ans. In determining whether he should issue a process or not, the Magistrate must proceed according to the provisions of the Code, and then if he is of the opinion that a prima facie case has been made out, he ought to issue the process.

**Q5. Can a Magistrate dispense accused with personal attendance?**

Ans. Whenever a Magistrate issues a summons, he may dispense with the personal attendance of the accused, and allow him to appear through his Pleader, if there is sufficient reason for doing so.

**Q6. When can Magistrate's power to dispense accused with personal attendance be issued?**

Ans. His power can be exercised only when a summons has been issued, but not when a warrant is issued. However, at any stage of the proceedings, the Magistrate may, in his discretion, direct the personal attendance of the accused, and if necessary, enforces such attendance in the manner prescribed by the Court.

**Q7. Can a Magistrate refuse exemption of a pardanashin lady?**

Ans. A Magistrate is not justified in refusing exemption to such a woman merely on his impression that she is not a pardanashin lady, or on the ground that other ladies of the same class, who were also pardanashin, had appeared in Court out of their own free will.

**Q8. Can Magistrate exercise power to a compoundable offence?**

Ans. Yes, enlarged by the 1978 Amendment, now the State Government may empower a Magistrate to exercise the powers with respect to a compoundable offence, or any offence punishable with less than three months imprisonment, or fine, or both, if the Magistrate is of the opinion that, having regard to the facts and circumstances of the case, the imposition of fine only would meet the ends of justice.

**Trial Before a Sessions Court**

**(Chapter 18, CrPC)**

**Introduction**

When a report is been filed in a police station, the cognizance of the case is been taken up by the competent magistrate and if it is triable then under section 209, Cr.P.C., the case is been transferred before the “Court of Sessions.”

**Q1. Who is a Public Prosecutor?**

Ans. A public Prosecutor is any person appointed as such and includes any person acting under the directions of a public servant.

The trial of every prosecution shall be conducted by the Public prosecutor before the Sessions Court.

**Q2. Who shall defend accused in the trial before the Sessions Court?**

Ans. Every Accused person has a right to be defended by the counsel of his choice and if the court is of the view that the accused has no sufficient means to appoint a pleader, the court shall appoint a lawyer at the expense of the state to defend the accused person.

**Q3. How is the opening of the case done before the Sessions Court done?**

Ans. When the accused person is brought before the court related to commitment of case under Section 209, the case is been opened by the prosecutor describing the accusation/s against the person and briefly states the evidences in his favour proving the guilt of the accused.

**Q4. On what circumstances accused can be discharged?**

Ans. The court after taking into consideration record of the case, submissions of the parties, finds that there are no sufficient grounds on which proceeding shall be conducted against the accused, it shall discharge and the reason of such act shall be recorded.

**Q5. What is the process of framing of charges in the Sessions Court?**

Ans. According to Section 228(1), Cr.P.C., If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

- a. **is not** exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant- cases instituted on a police report;
- b. **is** exclusively triable by the Court, he shall frame in writing a charge against the accused.

**Q6. What are the essentials things taken into consideration while framing of charges in the Sessions Court?**

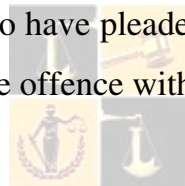
Ans. The court has power to find out whether or not a *prima facie* case has been made against the accused. The test to determine a prima facie case against the accused would naturally depend upon the facts of each case and it is difficult to lay down universal application.

At this stage of trial of Section 227 or 228, the standard test, proofs, judgment are not sufficient to find whether accused is guilty or not. At such stage a very strong suspicion founded upon materials on record which leads the court to form a presumptive opinion as to existence of factual ingredients constituting the offence alleged, may justify framing of charge against the accused in respect of commission of offence, as per decided in various cases like *State of Bihar v. Ramesh Singh, (1997) 4 SCC 39; Yogesh V. State of Maharashtra, (2008) 10 SCC 394, Etc.*

**Q7. What happens when a person pleads guilty?**

Ans. As per Section 229, If the accused pleads guilty, the Judge shall record the plea and may, in his discretion, convict him thereon.

A person is said to be taken to have pleaded guilty when he pleads guilty to the facts stating ingredients of the offence without adding anything external to it.



It has also been stated by Supreme Court in case of *Pawan Kumar V. State of Haryana, (1996) 4 SCC 17*, that if an accused who has not been confronted with substances of allegations against him, and pleads guilty is violation of a provision of law, that plea is not a valid at all.

**Q8. What are the steps been taken while observing the examination of witness?**

Ans. **Part A- Examination of Witness**

As per section 231 Cr.P.C.,

- a. On the date so fixed, the Judge shall proceed to take all such evidence as may be produced in support of the prosecution.

- b. The Judge may, in his discretion, permit the cross- examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross- examination.

The prosecution has a duty to examine all the witness essential for unfolding prosecution witness. And if the court is of the view that the examination of witness has not been done properly by the witness, the court is justified in stating a decision adverse to the prosecution.

### **Part B- Record of evidence**

Once examination of the witness is been done, next comes is recording of evidences. As per Section 276-

- a. In all trials before a Court of Session, the evidence of each witness shall, as his examination proceeds, be taken down in writing either by the presiding Judge himself or by his dictation in open court or his direction and Superintendence, by an officer of the court appointed by him in this behalf.
- b. Such evidence shall ordinarily be taken down in the form of a narrative, but the presiding judge may, in his discretion take down or cause to be taken down, any part of such evidence in the form of question and answer.

If the witness gives evidence in language of court, or gives in any other language, a true translation of evidence shall be prepared in the language of the court. Once evidence has been written, it shall be read out to him, and if it is necessary it shall be corrected.

### **Q9. Can an accused be acquitted after hearing parties?**

Ans. If after examining the witnesses and the accused, the court is of the view that there are no evidences that justifies that the accused has committed any offence; the court shall record an order for acquittal of the accused person, (Section 232).

**Q10. What is the procedure to be followed for conviction of the accused person?**

Ans. If the court convicts the accused person,

The court may release him after admonition or on probation of good conduct according to Section 360 or the provisions of the Probation of offender Act, 1958, and if the accused is not released then the court shall hear him further on question of sentence.

### **Trial of Warrant Case by Magistrate**

#### **(Chapter 19, CrPC)**

##### **Introduction**

When a warrant case is been instituted on a police report, all the records found while investigation done by the police is been made available before the said court and to the accused person as well. Records are non-existent been instituted otherwise than on a police report in a warrant case. The provisions dealing with the trial of warrant cases by the Magistrate can be divided into three groups:-

1. Provisions mainly applicable in respect of cases instituted on a police report (Section 238-243);
2. Provisions exclusively applicable in respect of warrant cases instituted otherwise than on a police report (Section 244-247); and
3. Provisions which are commonly applicable to all warrant cases whether instituted on a police report or otherwise (Section 248-250)

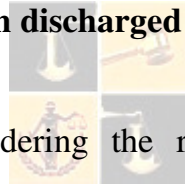
**PART A- CASES INSTITUTED ON A POLICE REPORT**

**Q1. When are the charges been framed? And what are the things taken into consideration while framing charges?**

As per Section 240(1), When the Magistrate has considered the matter and is of the opinion that the accused has committed an offence which should be tried, and in his opinion could be adequately be punished , a charge shall be framed against the accused in writing.

The court shall judicially consider the questions, and shall not frame the charges merely on the basis that prosecution authorities find it proper to institute the case.

**Q2. When is accused been discharged of the offence?**



The Magistrate after considering the record of the case shall hear the arguments, of both the parties in support of their case. As per judgement been made in *State of Mizoram v. K. Lalruata, (1992), Cri 970 (Gau)*, When order is to be discharged, the steps are to be taken into consideration as:

- a. Considering the police report and the document referred to in Section 173 and which are furnished to the accused;
- b. Examination , of the accused as per the necessity of the case stated by the Magistrate;
- c. Giving prosecution and accused an opportunity of being heard and then to consider whether the charge is groundless.



**Q3. What are the steps to be followed in prosecution evidence?**

Once there is completion of prosecution evidence, following steps are to be followed:

- a. As per Section 314, oral arguments and submissions of memorandum of arguments on behalf of the prosecution; and
- b. Examination of accused under section 313 (1)(b)

**Q4. When is the date of examination of witness been fixed?**

As per section 242;

- a. If the accused refuses to plead or does not plead, or claims to be tried or the Magistrate does not convict the accused under section 241, the Magistrate shall fix a date for the examination of witnesses.
- b. 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.
- c. On the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution

**PART B- CASE INSTITUED OTHERWISE THAN ON A POLICE REPORT**

**Q5. How are charges been formed when the case is been instituted otherwise than on a police report?**

The charges is been framed according to Section 246(1) ie.

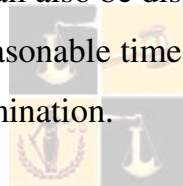
If, when such evidence has been taken, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

**Q6. What are the steps to be followed in prosecution evidence?**

All the witness when produced before the Magistrate, are examined before framing of charges, and the accused may also be recalled for further cross-examination.

Further according to section 246(6),The evidence of any remaining witnesses for the prosecution shall next be taken, and after cross- examination and re-examination (if any), they shall also be discharged.

The Magistrate may grant reasonable time to the accused person, if the accused wants time for his cross-examination.



**Q7. Is there any course been adopted by the Magistrate is special or different circumstances?**

- **When Magistrate has no Jurisdiction-** If, in the course of any inquiry into an offence or a trial before a Magistrate in any district, the evidence appears to him to Warrant a presumption-
  - a. that he has no jurisdiction to try the case or commit it for trial, or
  - b. that the case is one which should be tried or committed for trial by some other Magistrate in the district, or
  - c. that the case should be tried by the Chief Judicial Magistrate,

,He shall stay the proceedings and submit the case, with a brief report explaining its nature, to the Chief Judicial Magistrate or to such other Magistrate, having jurisdiction, as the Chief Judicial Magistrate directs.

- **When Magistrate cannot pass sentence sufficiently serve-** Whenever a Magistrate is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or, being a Magistrate of the second class, is of opinion that the accused ought to be required to execute a bond under section 106, he may record the opinion .(Section 325(1))

#### **PART C- COMMON PROVISIONS REGARDING CONCLUSION OF TRIAL**



#### **Q1. How is acquittal or conviction of an accused person been decided?**

As per Section 248 (2); When the Magistrate takes into consideration all the material facts, evidences, hears both the parties, then only the Judgement is been passed.

If the Magistrate is of the view that the accused person is not guilty of the said offence, he shall pass order of acquittal of the person;

And if the Magistrate is of the view that the accused person is guilty of the offence, he shall hear the accused on the question of sentence and then pass the order.

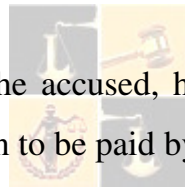
**Q2. What is the procedure if there is any previous conviction?**

If the accused is been previously convicted under Section 211(7), and it is not been admitted by the accused, evidences with respect to previous conviction is been recorded. And no such charge shall be passed by the Magistrate until and unless the accused has been convicted under Section 248(2).

**Q3. Is there any compensation given for accusation without any reasonable cause?**

If the Magistrate is of the view that there are no reasonable grounds making any accusation against the accused, he shall be called upon for such accusation to show why he should not pay compensation to the accused person (Section 250(1)).

After the Magistrate hears the accused, he may record the reasons; make an order fixing the compensation to be paid by such person to the accused person.



**Summon Case Before Magistrate**

**(Chapter 20, CrPC)**

**Q1. What do we mean by trial of a case?**

Ans. A trial is a coming together of parties to a dispute, to present information (in the form of evidence) in a tribunal, a formal setting with the authority to adjudicate claims or disputes.

**Q2. What do we mean by Summon case?**

Ans. The term “summons cases” has been defined, in a negative sense, under Section 2(w) of the CrPC as “*a case relating to an offence, not being a warrant case*”.

On the other hand, a “warrant case” means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years.

Summon case are relatively less serious in nature and the trial procedure in such is not elaborate or formal as that in warrant case.

**Q3. What is the procedure for trial in summon cases?**

- a. In a summon case, when the accused is asked to appeared before the Magistrate, the brief about the accusation against the person shall be informed to him and the formation of a formal charge against accused is not necessary.
- b. When an accused pleads to be guilty, his plea is to be recorded by the Magistrate and may be convicted. And if there are more than one accused, each and every person shall be recorded separately.
- c. If the accused is not been convicted by the Magistrate on his plea of guilty, the proceeding may move ahead to hear the prosecution by the Magistrate.
- d. Next is to take into consideration the evidences produced by the prosecution in its support and if require application to witness is been served to direct him appear in the proceeding or produce document before the court.
- e. The prosecution is allowed to submit his arguments after conclusion of prosecution evidence.
- f. The Magistrate then “hear” the accused and takes into consideration the evidences in his defence and allows to submit his arguments after conclusion of his evidences.

**Q4. Is there any Special course been adopted by the Magistrate if it does not have necessary jurisdiction of the case?**

Ans. Yes. Magistrate is of such view that the case shall be tried by CJM, then the matter is submitted before CJM or even may send it to a subordinate court if required.

**Q5. What happens when the accused is acquitted or convicted?**

Ans. If after taking into consideration all facts, circumstances and evidences it been found by the Magistrate that the accused is not guilty, he shall be acquitted.

And if it is been found by the Magistrate that accused is guilty of the offence, a sentence is been passed on the accused according to the laws.

**Q6. Can accused be convicted of an offence not charged?**

Ans. Yes. The accused may be convicted by the Magistrate of any offence which are been proved from the facts that accused has committed it and such act be taken by the Magistrate if satisfied that such would not amount to any prejudice to the accused.

**Q7. Does the court has any power to convert a summon case into a warrant case?**

Ans. If in the trial of the summon case the accused is been punished with imprisonment with more than *six months* and it is in the interest of justice, the offence may be tried as a warrant case.

The said case may be reheard in the manner of a warrant case and the witness may also be recalled.

**Q8. Is it permissible to try a warrant case as a summon case?**

Ans. No, it is not permissible to try a warrant case as a summon case.

**Q9. Is joint of charge or joint of trial applicable in such trials?**

Ans. The option of Joining of charges or Joining of trial of a person is applicable in summon cases.

**Q10. Is it necessary to frame formal charge in a summon case?**

Ans. It is not necessary to frame a formal charge in a summon case.

