



Study on the trial of Warrant cases under CRPC

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Abstract: One of the fruitful things that is given by Britain to India, during her reign was the laws of the British legal system especially the concept of criminal justice system and its related legislations. Our Indian Penal Code, Evidence Act and Civil Procedure Code are the products of the British legislators, which underwent only minor changes even after the independence till now. Likewise, the Criminal Procedure Code was also introduced by the British, laid a concrete foundation for the present Criminal Procedure Code, 1973, which deals with the procedure to be followed by various courts in any criminal proceedings. In addition to it, the Act also imposes duties on the police officers who are a part of the criminal justice system in India. This paper focuses on the chapter 19 - 'Trial of warrant cases by the Magistrates', which forms a crucial part of the Act.

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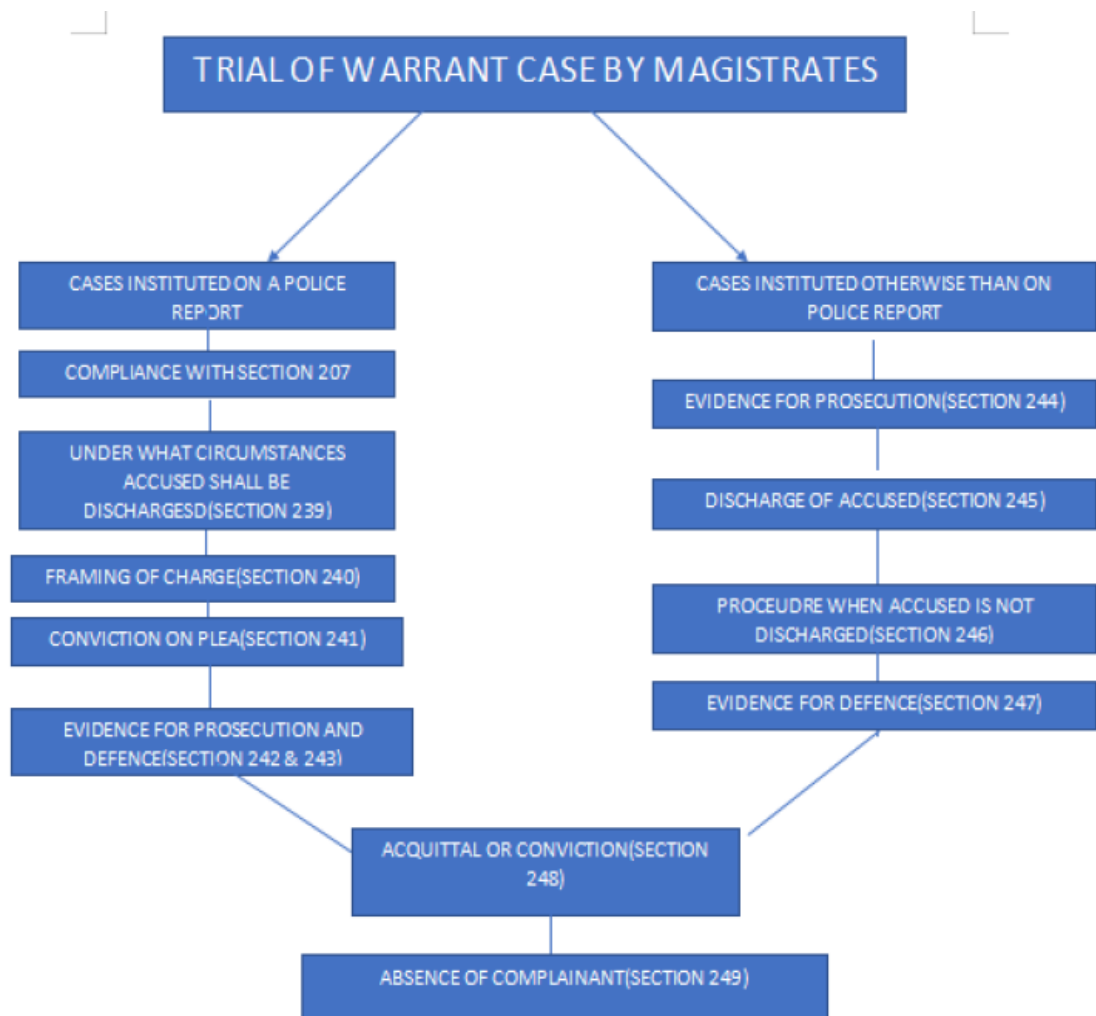
Introduction:

The term Trial has been used in the Code enormously, but it has nowhere been defined in the code. This makes it difficult to determine what constitutes a trial and whatnot. It may seem that it hardly makes any difference but in the practical sense, it becomes imperative to define the term Trial. Trial means an adjudication of guilt of accused by the competent authority.

The term warrant case is defined in the code. Section 2(x) defines "warrant case" means a case

relating to an offense punishable with death, imprisonment for life or imprisonment for a term exceeding two years. Generally, the warrant case includes those bunch of cases that are more serious in nature as compared to summons cases.

Provisions relating to the trial of warrant cases by magistrates are enumerated in chapter XIX of the Code of Criminal Procedure, 1973. The procedure for the trial of warrant case can be summarized as follows:



CASES INSTITUTED ON A POLICE REPORT

In cases which are instituted on a police report, after the commencement of a proceeding before a magistrate, Magistrate may issue a process i.e in warrant case, he may issue a warrant or, if he thinks fit, a summons, for causing the accused to be brought before the magistrate.

In case instituted upon a police report, it becomes important for an accused to get a fair chance to defend him. So to enable him to do so, and to ensure a fair trial, Section 207 provides a provision in this regard.

So according to section 207, duty is cast upon the magistrate to furnish accused, “free of cost”, a copy of important documents concerning the trial of the case, such as Police report, FIR, Statements of a prosecution witness, confessions and statements, etc.

It is an important provision which enables an accused to know about accusations against him. Without such provision, a situation of chaos would be created because neither the police nor the court will

help the accused to get access to documents and facts which he reasonably is entitled to be informed. After this process along with some other process, the next step is to frame a charge against the accused.

Section 238 of the code is supposed to enable the magistrate before which the case is presented to verify whether the compliance of section 207 is complied with or not. This provision act as a double check mechanism as this provision ensures that the accused is not deprived of his basic right.

GROUND FOR DISCHARGE

The magistrate shall discharge the accused if he considers the charge against the accused to be groundless and record reasons for doing so upon considering the following :

- Police report.
- Documents sent with it under section 173.
- Examining of accused.

- Giving the prosecution and accused the opportunity of being heard.

A ground for discharge emerges on this stage. If in the opinion of the magistrate, it appears to him that owing to some reasons, charges against the accused are groundless, then magistrate has the power to discharge the accused. A condition precedent is that the magistrate should record the reasons for discharge in writing. This provision provides an exit plan to the accused who may have been falsely accused in an offense and if prima facie it appears to the magistrate that case leveled against the accused is falsely and fictitiously construed.

The court must proceed with presumption that material brought on record by the prosecution are true and must evaluate such material with a view to find out whether facts disclose the existence of ingredients of the offense.

FRAMING OF CHARGE

After consideration, examination and hearing by the magistrate form an opinion that there are sufficient grounds for presuming that the accused has committed an offense triable under this chapter which could be sufficiently tried and punished by such magistrate, he shall frame in writing a charge against the accused.

This provision empowers a magistrate to apply his judicial and intellectual mind to ponder upon the possibility that the accused may have committed an offense, then he may proceed further by framing charge against the accused. This step is important as it results in making up of judicial mind of the magistrate that whether to prosecute and try the accused or not.

Another important point to remember is that the charge framed under this section shall be read and explained to the accused and he shall be asked whether he pleads guilty of the offense charged or claims to be tried. Although it may be noted that even if the accused pleads guilty under the provision of this section, he may not get any special benefits as compared to the **Plea Bargaining**. In the case of plea bargaining, the accused is entitled to get a reduced sentence if he fulfills certain conditions. But if he pleads guilty as per section 241 of the code then the magistrate shall convict him thereon and no special concession or incentive is provided to the accused. This reduces the chance of the accused pleading guilty under the provision of this section.

Another discrepancy in section 240 is that it does not provide for the situation in which the magistrate is not competent to try and punish the accused. Generally in such situations, the magistrate commits or make over the case.

Evidence for prosecution and defense

Evidence for Prosecution

If the accused refuses to or does not plead guilty, or claims to be tried under section 240 or the magistrate does not convict the accused under section 241, the magistrate shall fix a date for the examination of the witness. A condition precedent is that the magistrate shall supply in advance to accused, copy of the statement of a witness recorded during an investigation by police.

The magistrate may issue summons to the witness directing him to attend or to produce a document or other thing on the application of the prosecution. It may be noted that this is a discretionary power at the disposal of the magistrate, the magistrate has the authority to control whether to issue a summons or not depending on the facts and circumstances of each case. The next step is on the date fixed by the magistrate, he shall proceed to take all such evidence as may be produced in support of the prosecution. Generally, the power to cross-examine is provided to defense at this stage. Another power given to magistrate is that he may defer the cross-examination of any witness until any other witness or witnesses have been examined or he may recall any witness for further cross-examination.

In this way, the evidence for the prosecution is recorded by the magistrate.

Evidence for Defense.

As per section 243, after evidence of prosecution has been completed, the accused is called upon to enter upon his defense and produce his evidence and if the accused puts any written statement then the magistrate shall record it.

If the accused after entering upon the defense, applies to the magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or production of any document, or other things, the magistrate shall issue such process. Power is given to magistrate that if he thinks that such an application is made for the purpose of vexation or delay or for defeating the ends of justice and such grounds shall be recorded in writing by the magistrate. This provision provides for the provision of cross-examination of those persons which may possibly be left under the earlier stage. Also, another point to note is that if the accused has cross-examined or had a chance to cross-examine any witness, then he shall not be given such an opportunity unless the magistrate is satisfied conversely.

CASES INSTITUTED OTHERWISE THAN ON POLICE REPORT

Evidence for prosecution

In cases instituted other than a police report, when the accused appears or brought before the magistrate, he shall proceed to hear the prosecution and take all such evidence as may be produced in support of such

prosecution. Along with that, the magistrate may issue summons to any witness directing him to attend or produce such documents as may be required.

This can be considered to be a line of difference between the cases instituted upon a police report and otherwise. In former cases, the accused is examined and given a chance to plead guilty before the evidence for the prosecution is produced. While it is not such in the cases instituted otherwise than on police report.

The power of magistrate should not be fettered either under section 244 or 246(6) and full latitude should be given to the magistrate to exercise the discretion to entertain a supplementary list of witnesses. But while accepting the supplementary list, the magistrate shall exercise his discretion judiciously for the advancement of the cause of justice and not give a handle to the complainant to harass the accused and discretion on magistrate should be used in appropriate cases for reasons to be recorded.

Grounds for Discharge.

After taking all the evidence referred in section 244, the magistrate considers that no case against the accused has been made out which if unrebutted, would warrant his conviction, the magistrate shall discharge him

Even if magistrate considers that no case is made out, then also there should be a rebuttal from prosecution. It may imply that even if the final authority lies in the magistrate, the prosecution has a say in this matter. But at the same time, it also does not implies that without the approval of prosecution, the accused can not be discharged. The prosecution should prove beyond a reasonable doubt, that a case is made against the accused and is worth trying.

The magistrate has unfettered power to discharge the accused even at a stage before this stage, but the condition is that he should consider the charges to be groundless.

Procedure when accused not discharged

When the magistrate is satisfied that the accused may have committed an offense triable as a warrant case and such magistrate is competent to try and which in his opinion could be adequately punished by him, then he shall frame a charge against the accused. The determining factor for the prosecution of the accused at this stage is the magistrate's test. He is the one who has to make up his mind whether to try him or not.

The charge shall then be read and explained to the accused and he shall be asked whether he pleads or has any defense to make. If the accused pleads guilty, the magistrate shall record the plea and may convict him thereon. If the accused refuses to plead or does not plead or claims to be tried or if the accused is not convicted under subsection (3), he shall be required at

the commencement of the next hearing of the case, or, if the magistrate for reasons to be recorded in writing so thinks fit, forthwith, whether he wishes to cross-examine any, and if so, which, of the witness for the prosecution whose evidence has been taken.

If the accused says that he does so wish, the witness named by him shall be recalled, and, after cross-examination and re-examination, they shall be discharged. Evidence of any remaining witness for the prosecution shall next be taken and after cross-examination and re-examination, they shall also be charged.

Evidence for defense

After the evidence of the prosecution is recorded, the accused is afforded an opportunity to enter upon his defense and produce his evidence, and provisions of section 243 shall apply to the case.

Conclusion of Trial

If a charge has been framed in a warrant case and the magistrate finds the accused not guilty, he shall record an order of acquittal. Technically acquittal and discharge have the same implication in practical sense i.e, both of them result in the release of the accused and set him free from the prosecution against which he has been held liable earlier. The difference lies in the fact that there is a difference in procedural formalities in both instances. In discharge, the accused is released on prima facie realization of the magistrate that the charges against the accused are not leveled on sufficient grounds and he has not done any wrong for which he may be punished while in Acquittal, the magistrates proceed all the pieces of evidence and witnesses and then reach to the conclusion that the accused has not done any offense based on the facts and shreds of evidence produced before him.

Where the magistrate finds that the accused is guilty and provisions of section 325 and 360 of the code do not apply, he shall, after hearing the accused on the question of the sentence, pass a sentence upon him according to law.

The accused at this stage, before passing the sentence against him, is given a final opportunity to say on the question of sentence. This provision ensures that a just and reasonable sentence is passed against the accused. This provision may be entered because sometimes such a situation arises which results in the commission of the crime by the accused inevitable. So the court in order to deliver an apt sentence has to look upon such mitigating factors while delivering a sentence.

Also, at this stage, if the accused is liable to enhanced punishment or punishment of different kind owing to previous conviction as envisaged under section 211(7) of the code, then the court shall adjudicate upon such matter also and provide punishment accordingly.

When proceedings have been instituted upon complaint and the complainant is not present at the time of hearing of the case and the offense in question is non-cognizable and lawfully compoundable offense, the magistrate may at any time before the charge has been framed, discharge the accused. So this provision is the embodiment of the rule that law does not protect those who are not serious. So if the complainant is not much serious about the complaint he has filed then the law will also not grant him protection.

If during any proceeding before a magistrate, the magistrate discharges or acquits all or any of the accused, and is of the opinion that there was no reasonable ground for making the accusation against them or any one of them, the magistrate along with the order for discharge or acquittal, call upon the complainant to show cause why he should not pay compensation to such accused. Then the magistrate may impose fine or simple imprisonment if the complainant fails to prove that he has prosecuted the accused reasonably.

It may be noted that this remedy is not mandatory but discretionary in nature. It implies that even if the magistrate has the opinion that the accusation has been unreasonably imposed on the accused, then also he may choose not to proceed against the complainant.

Conclusion

The Court decides if there is ground against the accusations of the complainant and the proceedings are initiated under the Magistrate's discretion. Furthermore, we discussed that the evidence and witnesses presented by both the prosecution and defence are essential in determining the facts of the case and declare judgement. The judgement is taken by the Magistrate after both sides have presented their arguments. And if the accused is acquitted of the charges, the case is dismissed but the prosecution can file an appeal to challenge the decision of the court. But if the accused is convicted, both sides are allowed to present their arguments as to the extent of punishment which shall be inflicted on the convict. But the final decision as to the punishment lies with the Magistrate.

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