



## Study on the trial of warrant cases under CRPC in India

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**Abstract:** Criminal cases can be divided into two types: Summons Case and Warrant Case. A summons case relates to an offence not being in a warrant case. Warrant cases are those that include offences punishable with death penalty, imprisonment for life or imprisonment exceeding more than two years. The criteria that differ a summons case from a warrant case is determined by the duration of punishment in any offence. The case of Public Prosecutor V. Hindustan Motors, Andhra Pradesh, 1970, is a summons case as the convicted is sentenced to pay a fine of Rs. 50. The issue of summons or warrant, in any case, does not change the nature of the case, for instance, a warrant issued in a summons case does not make it a warrant case as observed in the case of Padam Nath V. Ahmad Dobi, 1969. A trial in a warrant case begins by either filing a First Information Report or FIR in a Police Station or filing it directly before the Magistrate. The Criminal Procedure Code of 1973 is, as is clearly indicated by its title, a comprehensive enactment egg laying down the law with reference to criminal procedure. However its value mentioning that the code isn't a pure adjective law of procedure; there square measure some provisions in it that take the character of substantive law. As an example, chapters VIII, X and XI that deals with „prevention of offences“ and chapter IX that deals with maintenance of proceedings“. As per the Code, criminal trials will be divided into 3 classes namely: warrant cases, summons cases and outline trials. The main target of this text shall be summons cases.

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### Introduction:

Warrant cases means the cases which are a more serious offence that is punishable with death, life imprisonment or imprisonment for a term exceeding two years. The trials of warrant cases are conducted by the Court of Session or by Magistrate. If the offence is more serious then it is triable by the Court of Sessions, whereas if the offence is less serious warrant case then it is triable by the Magistrate.

There are two types of criminal cases: Summons cases & Warrants Case. Offences punishable with the death penalty or life imprisonment or imprisonment of more than two years are warrant cases. The only difference between a summon case and a warrant case is the duration of punishment. Trials in warrant cases is triable by a Magistrate.

When a person is charged with life imprisonment, death, or imprisonment for up to two years, then that case will be known as a Warrant Case. It is defined under section 2(x) of the Criminal Procedural Code, 1973. The definition of Trial is not given in any section or sub-section of CrPC, but it can be defined as a procedure in which the accused person is identified as a guilty person or an innocent one. It is a formal examination of evidence by the judges in a court of law. The trial is divided into the following parts on the basis

of the time period of the punishment announced to the accused.

### Trial of Warrant Cases by Magistrates

We have Warrant trials mentioned in Chapter XIX of the CrPC. The sole motive of introducing trials for warrant cases was to ensure speedy trials and decrease the cases where the accused is being prejudiced when the case initiates after the filing of a police report under the concerned officer. It can begin after filing a complaint directly to the Magistrate too. It involves cases with the punishment of more than two years of imprisonment or death. The complete procedure has been mentioned in sections 238 to 250 of the CrPC.

### Sessions Trial

Cases that have a tenure of punishment of more than ten years, in that case, they will have their trial in Session Courts. Section 225 to 239 deals with session trials. According to section 225 of CrPC, a public prosecutor carries on the prosecution. Then as per section 226, the case is opened by the prosecution side. They simply just state the facts of the case and present the evidence he has on behalf of which he is going to prove that the accused is guilty of the offense. The court then hears the case from both sides, if it presumes that the offense is being committed by the accused it will see

whether the case is triable in session court or not. In case of framing of charge in writing, it will be triable, and if not then it will be transferred to the Chief Judicial Magistrate. In order to let the accused plead guilty, the charges and grounds of the case should be well explained to him, section 228(2). In the case law, *Banwari vs State of UP* it was observed that unless and until the non-telling of some facts results in prejudice towards the accused it will not be considered as non-compliance against section 228(2).

### Summons Cases Trial

In summon cases the tenure of the punishment announced by the Magistrate is less than two years. In summon cases it has been observed that there is no framing of charges instead the Court issues a summon. The court will provide the accused with a notice upon his appearance and act as per the summon issued. The sections of CrPC that deal with Summon Cases are sections 251 to 259.

The option of pleading guilty or taking any sort of defence is being given to the accused as per section 251. When he appears, the particulars of the case are being read to him and made sure he understood and then exercise his options. According to section 252, if the accused pleads guilty then the Magistrate will be recording his statements in almost exact same words which are uttered by the accused and will be convicted.

Section 253 lists the situation which can be said to be an exception to the normal case. As per this section, a third person or a messenger can come to court on behalf of the accused, and the Magistrate will sign a Conviction on a plea of guilty for the accused. It is only for the cases where offence is punishable only with a fine, that is, some petty cases.

Section 254 of CrPC maintains the balance, herein, the Magistrate hears the prosecution when the accused is not convicted and takes defence. He also hears the accused and takes defence if he feels any exists. This gives rise to two possibilities, one Magistrate finds the accused not guilty, and second, he finds him guilty. In the first case, the accused will be set free and in the second case according to section 255, the Magistrate will pass a sentence.

### Summary Trials

The main objective of these trials is to get done with the trials with speed. It is discussed in Chapter XXI of the CrPC in Sections 260-265. Its objective is to speed up the trial cases.

The procedure which we follow in the Summons cases should be followed here as well, the procedure for Summary trials is laid down in section 262. In summary trials, the sentence of imprisonment should not exceed three months, as per section 262.

As per section 264 of the CrPC, The Magistrate is required to keep up with the record of the evidence he received during the trial and when he passes the judgment it should comprise of a brief summary of the reasons for the same for every case in which the accused pleads himself guilty.

The procedure for trial is not elaborative here, the reason being, that the summary trial deals with petty cases. If a fine of fewer than two hundred rupees has been imposed, there is no right of appeal in such a case. However, an application for modification to the High Court is possible.

### Other offences (summon cases).

Warrant case means a case relating to an offence punishable with death, imprisonment for life, or imprisonment for a term exceeding two years. They are usually the cognizable offences which are serious or grievous in nature and in which the police arrests without warrant. More serious among warrant cases are triable by a court of session while the remaining warrant cases are triable by Magistrates.

Chapter XIX (sec 283-243) of the Code of Criminal Procedure prescribes different procedures by dividing warrant cases triable by Magistrates into two groups:

Warrant cases instituted on a police report (sec 283-243)

Warrant cases instituted otherwise than a police report (sec 244-247).

### Trial Of Warrant Cases By Magistrates [1]

A warrant case is a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years. A warrant case may be instituted on a police report as well as otherwise than on a police report.[2]

### Cases instituted on a police report:

The pre-trial phase Section 190(1)(b) provides that the Magistrate may take cognizance of any offence upon a police report of such facts. The police report must state facts which constitute the offence.[3]

Section 238 says that when in any warrant case is instituted on a police report, the accused appears or is brought before the magistrate at the time of the commencement of the trial, the , magistrate shall comply with the provisions of Section 207[4].

The object of this provision is to enable the accused to have an all round picture of the case against him even at the commencement of the enquiry and in order to enable him to cross examine the witnesses on such defence as he may set up and to avoid delay. Sometimes it may be necessary to discontinue the groundless prosecution half way and discharge the

accused to avoid unwarranted trial process which will ultimately result in acquittal.

### **Section 239:**

If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

The word "discharge" here means a discharge in relation to the specific offence for which the accused has been charged. An order of discharge cannot be said to bad in law on the ground that section 217 [5] was mentioned instead of Section 239 in order of discharge. This section should be read with Section 240. It is the duty of the court to frame charges and the court must consider over the matter judiciously. This Section enjoins upon the Magistrate to record his reasons for discharging the accused.[6]

Section 240 (1) says that upon consideration of the police report and the documents sent with it, the examination of the accused, and hearing the parties, if the magistrate concludes that there are sufficient grounds for presuming that the accused has committed an offence, the magistrate shall frame in writing a charge against the accused. The examination of the accused aforesaid is to afford an opportunity to the accused to explain any circumstance appearing against him.

Section 240 (2) requires that the charge should not only be read out should also be explain to the accused in a manner which ensures that the accused has understood it properly. Under this section based upon the facts as well as the police report submitted to the magistrate the charges are framed. So basically it is all about formally pronouncing the charges.

Section 241 If the accused pleads guilty, the Magistrate shall record the plea and may, in his discretion, convict him thereon.

So this says that on questioning if an accused pleads guilty to the charges framed against him/her under section 240, the magistrate shall record the plea and on his discretion convict him. If the accused is convicted on his plea of guilty the magistrate shall hear the accused on the question of sentence and then pass sentence on him according to law.

### **The actual trial phase Under Section 242:**

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.

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.

On the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution: Provided that the Magistrate may 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. This section says that if the accused refuses to plead guilty or claims to be tried the magistrate shall proceed to take all such evidence as may be produced in support of the prosecution. The magistrate takes all the evidence adduced by the prosecution, and he cannot acquit the accused after taking only part of the prosecution evidence.

After the witnesses for the prosecution have been examined and before the accused is called for in his defence. Section 313(1)(b) requires the court to question the accused person for the purpose of enabling him to explain any circumstances appearing in evidence against him.

### **Section 243**

The accused shall then be called upon to enter upon his defence and produce his evidence; and if the accused puts in any written statement, the Magistrate shall file it with the record.

If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross- examination, or the production of any document or other thing, the Magistrate shall issue such. Process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing. Provided that, when the accused has cross- examined or had the opportunity of cross- examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice.[7]

The Magistrate may, before summoning any witness on an application under sub- section (2), require that the reasonable expenses incurred by the witness in attending for the purposes of the trial be deposited in Court.

This section enables the accused to apply to the magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross examination or the production of any document or other thing. Section 243 (1) makes it mandatory for the magistrate to file with the record, any written statement submitted by the accused. Section 315- Enables the accused to present himself as a witness and he has to do so by writing a prayer to the judge

beforehand. After the completion of the defense evidence, the defense can address concise oral arguments and may submit to the court a memorandum in support to the case.

### **Cases Instituted Otherwise Than On A Police Report:**

The pre-trial phase

In warrant cases instituted on other than police report i.e. in case of a complain case, copies and record of the documents are not available to the court and to the accused person, which makes the preliminary hearing of the prosecution desirable. In such warrant cases the magistrate may, on application of the prosecution issue a summon to any of the places directing him to attend or to produce any document or other thing. This is provided in section 244.[8]

Under section 200 it is obligatory on the part of the magistrate to examine the complainant and the witnesses. Section 202 enables the magistrate to postpone the issue of process and to form an opinion as to whether the process should be issued or not. The objective of this section is to prevent abuse of process resulting in wastage of time of the court and harassment to the accused.

Under section 203 a magistrate may dismiss a complaint if after considering a statement or not of the complainant and of the witnesses and the result of enquiry or investigation, there is no sufficient ground of proceeding. Section 204 if after the examination of the complaint there are sufficient grounds for proceedings, in the opinion of the magistrate he may issue process. No summons and warrant can be issued against the accused under section 204(1) until a list of the prosecution witnesses has been filed.[9]

### **The actual trial phase**

Section 242 says that if the accused refuses to plead guilty or claims to be tried the magistrate shall proceed to take all such evidence as may be produced in support of the prosecution. The magistrate is take all the evidence adduced by the prosecution, and he cannot acquit the accused after taking only part of the prosecution evidence.

Section 244 says that since the copies and records are not available to the court and to the accused the evidence for prosecution in such case is collected by the magistrate and the accused is made to appear before the magistrate. Under section 245 if the magistrate after considering all the evidences is of the opinion that there are the no sufficient grounds on which the case against the accused could be held, the magistrate shall discharge him.

Section 246 says that after the examination of the evidences if the magistrate concludes that there are sufficient grounds on the basis of which the accusation

has been made he shall frame a charge against the accused. Section 246 (2) gives the right to the accused to be read and explained the charge and shall be asked whether he pleads guilty or has any defence to make.

Section 246(3) says that on questioning if an accused pleads guilty the magistrate shall record the plea and his discretion convict him. If the accused is convicted on his plea of guilty the magistrate shall hear the accused on the question of sentence and then pass sentence on him according to law.

Section 246(4) provides that the magistrate may give an aid to the accused to state the commencement of the next hearing of the case so as to give time to the accused to decide whether he wishes to cross examine any of the prosecution witnesses after framing of the charge. If the accused, under section 246(5) says that he wishes to cross examine the witnesses, the witnesses named by him shall be called and shall be discharged after the completion of the examination process.

The arguments on behalf of the prosecution and the examination of the accused person had been discussed under sections- 242, 313(1)(b) and 243

Section 247 makes it mandatory for the magistrate to file with the record, any written statement submitted by the accused. After the completion of the defense evidence, the defense can address concise oral arguments and may submit to the court a memorandum in support to the case.

### **The post trial phase**

Under section 248 after the arguments of the defence and reasons of the magistrate shall either convict or acquit the accused. If after the framing of charges the magistrate finds the accused innocent he shall record an order of acquittal but after the proceedings if the accused is found guilty then the magistrate may after hearing the accused on the question of sentence shall pass a sentence upon him according to law.

In a warrant case a magistrate is competent to pass an order after the charge is framed, either acquitting the accused or convicting him for the offence. There is no provision of law which enables the magistrate to dismiss the complaint or pass an order of discharge in a warrant case after framing a charge.

In section 249 it has been provided that when the proceedings have been instituted upon a complaint and on the day of hearing the complainant is not present the accused may be discharged if the offence is non cognizable one. Section 250 of the code is designed for the payment of compensation to those accused against whom the complaints are brought in court without any reasonable ground for the accusation.

**Landmark Judgements****State of Mizoram v. K.Lalruata [10]**

The defendant was an officer assistant in the railway out agency, Govt. Of Mizoram he sold 7 numbers of railway tickets for Silchar to Bombay to one K. L. Muana for a certain sum of money which was found to be misappropriate hence a case was filed in the ground of section 409 [11]of Indian Penal Code. The learned special Judge discharged the accused on two grounds. The first ground is that the learned Public Prosecutor was absent in spite of repeated adjournments. The second ground is that the copies of the documents referred to S. 173, Cr.P.C. have not been furnished to the accused in complete violation of the mandatory provisions of S. 207, Cr.P.C.

From a plain reading of the above provision of S. 239, it is a crystal clear that the discharge of the accused under this Section can be made only for reason that the accusation against the accused is groundless.

Before discharging the accused under this section the following preliminaries have to be gone through:

Consideration of police report and the documents referred to in S. 173 and which are furnished to the accused

Examination if any, of the accused as the Magistrate thinks necessary

Giving prosecution and the accused an opportunity of being heard. And then to consider whether the charge is groundless.

Thus the Magistrate before either passing an order of discharge under this section or framing a charge under S. 240 has first to determine whether the material before him furnishes a reasonable basis for foundation of the accusation. In the present case, as stated above, the Magistrate discharged the accused solely on the grounds that the learned Public Prosecutor was absent on that day and that the documents referred to under S. 173 have not been furnished to the accused.

Therefore, the learned Special Judge committed an error of law in discharging the accused without satisfying himself as to whether the material before him furnishes a reasonable basis for foundation of the accusation. After all, when copies of the relevant documents are produced before the Court and have been supplied to the accused, the accused cannot be discharged on the ground of failure of the prosecution to produce the records in original.

**Ajoy Kumar Ghose v. State of Jharkhand[12]**

The application filed by the appellant under section 245(2) was rejected by the trial court, it cannot straightway proceed to frame charge under section 246(1) even without any evidence having been taken under section 244. The right of the accused to cross-examine the witnesses at the stage of section 244(1) Crpc Code would be completely lost, if the view is taken

that even without the evidence a charge can be framed under section 246(1) Crpc code. The right of the cross-examination is a very salutary right and the accused would have to be given an opportunity to cross-examine the witnesses, who have offered at the stage of section 244(1) Crpc Code.[13]

**PROCEDURE OF TRIAL INSTITUTED BY POLICE REPORT Section 207 of CrPC:**

Before the beginning of the trial, the Magistrate makes sure that the accused is supplied with copies of FIR, Police Report, witness statement and all necessary documents that are stated under Section 207 of the Code of Criminal Procedure. Discharge of accused (Section 239 of CrPC): If after examining the accused & witnesses if the Magistrate is of the opinion that the charges framed against the accused are baseless and there is no sufficient ground for convicting the accused or proceeding further with the trial then the Magistrate can discharge the accused. Framing Charges (Section 240 of CrPC): After examination of documents & reading the police report the Magistrate frames charges against the accused and after the Magistrate frames charges, the charges are read and explained to the accused and asks him whether he wants to plead guilty or not. Prosecution Evidence (Section 247 of CrPC): In case the accused does not plead guilty and the Magistrate proceeds with the trial, the Magistrate fixes a date to examine the prosecution's evidence & witnesses and can call witnesses to trial by the issue of summons. Statement of Accused (Section 313 of CrPC): Under Section 313 of the Code of Criminal Procedure, the Magistrate records the statement of the accused and the question answers asked to him are recorded. Defence Evidence: After recording the statement of the accused, the defence is called upon to produce his evidence and if the evidence is in written form then the Magistrate records it. Magistrates should give reasonable time to the accused to produce his evidence. Argument & Judgement: The last two stages of a trial are argument & judgement. During the argument, the defence finalises the evidence and the prosecutor sums up his case to which the defence lawyers reply.

After completion of the argument, the magistrate decides upon the acquittal or conviction of the accused on basis of evidence & arguments. PROCEDURE OF TRIAL IN ABSENCE OF POLICE REPORT A warrant case in absence of a police report is filed straight to the Magistrate. After filing a complaint, the accused is brought before the Magistrate and a trial is initiated. Section 244, 245, 246 & 247 of the Code of Criminal Procedure lays down the procedure for trial instituted in absence of a police report. Prosecution Evidence (Section 244 of CrPC): The trial in warrant cases instituted otherwise than on a police report begin with the prosecution producing their evidences & witnesses.

The evidences must be those included in Section 138 of Indian Evidence Act. Hearing Prosecution's case: This is the initial step for beginning the trial. After the accused is produced before the Magistrate, the Magistrate examines the accusations made against the accused and decides whether a case can be made out or not. Discharge (Section 245 of Code of Criminal Procedure): In case the Magistrate decides that a case cannot be instituted against the accused, he can order discharge of the accused. If the prosecutor does not file an appeal after discharge of the accused then the accusation will be warranted. Framing charge (Section 246 of CrPC): If after examining evidence, the magistrate is of the opinion that there exists a sufficient ground for accusations, then the Magistrate frames charge against the accused and a fair trial is conducted thereon. It is a right of accused to defend himself.

Explaining charge to accused (Section 246(2) of CrPC): According to this section accused must have full information about the accusations filed against him and he shall be supplied with copies of the same. The accused should also be asked that whether or not he wants to plead guilty Conviction on plea of guilty (Section 246(3) of CrPC): If the accused pleads mercy in front of court and admits his crime then it is the authority of Magistrate to convict the accused and decide his punishment. In case the accused does not plead guilty, trial will commence. Recalling Prosecution's witness (Section 246(5) of CrPC): Under this section, the accused has right to recall prosecution's witness for examination or cross examination Defence Evidence (Section 247 of CrPC): After the prosecution presents his evidence, it is the chance of defendant to prove his innocence. In case of any written statement filed by defendant the Magistrate records it in his file. Conclusion of trial: Based on the evidence provided & witnesses presented, the magistrate can order acquittal or conviction of the accused. This is a fair trial that ensures that justice is delivered.

### Conclusion

The Code of Criminal Procedure, 1973 (the CrPC) is the procedural law providing the machinery for punishment of offenders under the substantive criminal law, be it the Indian Penal Code, 1860 or any other penal statute.

The CrPC contains elaborate details about the procedure to be followed in every investigation, inquiry and trial, for every offence under the Indian Penal Code or under any other law. It divides the procedure to be followed for administration of criminal justice into three stages: namely investigation, inquiry and trial.

Investigation is a preliminary stage conducted by the police and usually starts after the recording of a First Information Report (FIR) in the police station. If the officer-in-charge of a police station suspects the

commission of an offence, from statement of FIR or when the magistrate directs or otherwise, the officer or any subordinate officer is duty-bound to proceed to the spot to investigate facts and circumstances of the case and if necessary, takes measures for the discovery and arrest of the offender. Inquiry consists of a magistrate, either on receiving a police report or upon a complaint by any other person, being satisfied of the facts.

Trial is the judicial adjudication of a persons guilt or innocence. Under the CrPC, criminal trials have been categorized into three divisions having different procedures, called warrant, summons and summary trials. Our project deals with trials on warrant cases where the offences are cognizable in nature. Now warrant cases filed on a police report is very much different from warrant cases filed on a complaint. In the latter, there is no supply of copies to the magistrate and the issue of process can be postponed while in the former there is supply of copies and the issue of process takes place after cognizance by the magistrate.

### References:

1. The post- trial phase of both types of warrant cases are inter-related. Thus, it has been dealt with together.
2. R.V. KELKAR, CRIMINAL PROEDURE, Chapter- 20, Trial Procedures: Trial of Warrant Cases by Magistrates.
3. S.N. MISHRA, The Code Of Criminal Procedure, 1973, Chapter-14, Conditions requisite for initiation of proceedings.
4. Section 207- this section provides that the accused should be given relevant documents or extract from them, in cases where proceeding has been instituted on a police report , so that the accused is able to know the charged brought against him and the materials with the aid of which the charge is going to be substantiated by the prosecution.
5. Section 217- Court may alter charge.
6. S.N. MISHRA, The Code Of Criminal Procedure, 1973, Chapter-19, pg 387
7. Takwani, 3rd edition, p 185, p 2-4. Supra, note-7.
8. S.N. MISHRA, The Code Of Criminal Procedure, 1973, Chapter-15, Complaints to Magistrates. 1992 Cr. L.J. 970 (Gau)
9. SECTION 409 of IPC- Criminal breach of trust by public servant, or by banker, merchant or agent.-- Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with 1[ imprisonment for life], or with imprisonment of either description for a term which may extend to

- ten years, and shall also be liable to fine. (2009) 3  
Cr. L.J. 2824 (S.C).
10. S.N. MISHRA, The Code Of Criminal Procedure,  
1973, Chapter 19, pg 393.

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