PART D

PROCEDURE IN ENQUIRIES AND TRIALS BY MAGISTRATES

(a) General Remarks

1. Procedure in the trial of cases:- The Code of Criminal Procedure recognizes four distinct methods of procedure in the trial of criminal cases by magistrates, namely:-

(a) the procedure prescribed for the trial of summons- cases;
(b) the procedure prescribed for the trial of warrant- cases instituted on police reports;
(c) the procedure prescribed for the trial of other warrant- cases; and
(d) the procedure prescribed for summary trials.

As to the manner of recording evidence prescribed in regard to each of these forms of procedure reference should be made to Part E of this Chapter. Stated generally, there is, in the summons-case, ordinarily a memorandum of the substance of the evidence and defence and no more. As for other trials before a Court of Sessions or a magistrate and in inquiries under Chapters XII and XVII of the Code, section 356, as amended by Act 26 of l955, enables the presiding officer to have the evidence of each witness taken down in writing, in the court language, from his dictation in open court. In cases where the presiding officer has taken down the evidence with his own hand or has caused it to be taken down in writing from his dictation in open court as laid down in sub-section (I) of section 356 he need not make a memorandum of the substance of what the witnesses depose; if the evidence is recorded in any of the other manners laid down, then in warrant cases and inquiries under Chapters XII and XVII of the Code, it may be necessary to have a double record as before. In a summary trial in which an appeal lies, the Magistrate or Bench shall in addition to the particulars mentioned in Section 263 of the Code record the sub-stance of the evidence and before passing any sentence, record a judgment in the case. The recent amendments of section 264 of the Code deserve attention.

The main differences in the procedure prescribed for conducting trials under each method will now be alluded to briefly.

[1][''Rule1-A: Accused to be permitted to sit during the trial:- The accused in a criminal trial shall be permitted to sit down during the trial, unless it becomes necessary for him to stand up for any specific purpose, such as identification or otherwise. Such facility accorded to the accused shall, however, be subject to the established convention followed in the Courts that everyone concerned should stand when the Presiding Officer enters and leaves the Court.

[1] Inserted vide correction slip No. 35/Rules/II D.4 dated 08.4.2016.

(B) Procedure in the trial of Summon Cases.

2. Summons cases and admission by accused:- (1) In view of the amendment of the definition of 'warrant-case' by Act No. 26 of 1956, a 'summons- case' would now be a case relating to an offence which is punishable otherwise than with death or with imprisonment exceeding one year.

(2) In a summons-case (Chapter XX of the Code), when the accused person is before the Court, particulars of the offence of which he is accused are stated to him and he is asked to show cause why he should not be convicted. No formal charge is prepared. (Section 242 of the Code.) If the accused admits that he has committed the offence, his admission should be recorded as nearly as possible, in his own words; and if he shows no sufficient cause why he should not be convicted, he may be convicted accordingly, (Section 243.)

3. Summons cases and denial by accused:-If the accused denies that he has committed the offence, the complainant and his witnesses must be examined, the accused must be heard, and evidence produced by him taken. The parties are required to have their respective witnesses present at the hearing and it is open to them to apply to the Court, in sufficient time, to issue process to compel the attendance of any witness or the production of any document or other thing required in evidence. The cost of the processes and the reasonable expenses of witnesses should be paid by the parties, respectively. (Section 244.)

4. Conviction for a difference offence:- When the parties and their evidence have been heard, the magistrate will pass an order of acquittal or conviction, as the case may be. (Section245.) An accused person may be convicted of any offence triable as a summons-case of which he may be found guilty; whatever the nature of the offence specified in the complaint or summons. (Section 246).

5. In a summons-case instituted on complaint, if the complainant fails to attend on any day fixed for hearing, the accused should be acquitted unless the magistrate thinks proper to adjourn the hearing to some other day. In view of the proviso to Section 247, as amended by Act 26 of 1955, the magistrate can also dispense with the complainant's attendance and proceed with the case. A summons-case may, with the permission of the Magistrate, and for sufficient grounds, be withdrawn at any stage before the order is passed and the accused acquitted (Section 248). Section 345 of the Code permits certain offences, some of which are summons-cases, to be compounded without the permission of the Court, and should be read with section 248. Other offences, including that of causing grievous hurt, punishable under section 325, Indian Penal Code, are compoundable with the

permission of the Court. Offences may, with the permission of the Appellate Court, be compounded after conviction, and, with the permission of the Court to which the case has been committed, after commitment. In a summons-case instituted otherwise than on complaint, the magistrate may for sufficient reasons to be recorded by him, stop proceedings at any stage without pronouncing any judgment either of acquittal or conviction and may thereupon release the accused; but a magistrate of the second or third class can act in this manner only with the previous sanction of the District Magistrate. (Section 249.).

Adjournment for production of evidence:- It frequently happens that applicants for revision urge that no proper opportunity was given to them to call witnesses to rebut the evidence for the prosecution, and there is often nothing on the record to show that this allegation is not well founded. Under section 244 of the Code of Criminal Procedure, the accused, in a summons- case, is primarily responsible for the production of his evidence on the day of hearing; but even in these cases the Court should, as a matter of precaution, at the conclusion of the case for the prosecutions ascertain from the accused whether he has any witnesses, and should not refuse to give him a further opportunity of bringing or summoning witnesses who may not be present in Court unless it appears that their evidence is not material or that the accused has been wilfully negligent in the matter. In every summons-case in which no witnesses are produced for the defence, the Court should record either that the accused does not wish to call witnesses, or that for reasons stated he has been refused a further opportunity of doing so. In order that persons accused in summons-cases may have a better opportunity of knowing what the law expects of them, a clause has been added to the form of summons warning the person addressed that, unless he is prepared to admit the offence with which he is charged, he must bring his witnesses with him on the day fixed for hearing.

(c) Procedure in the trial of warrant cases instituted on Police Report.

6. [1]Warrant case on Police report – Police to furnish copies to accused before the trial commences:-In a warrant-case (Chapter XIX of the Code of Criminal Procedure, 1973) the procedure would now depend on whether the case has been instituted on a police report or otherwise. Section 238 to 243 of Code of Criminal Procedure, 1973 govern the procedure in warrant cases instituted on police reports. When the accused appears or is brought before the magistrate, the magistrate should, at the commencement of the trial, satisfy himself that he has complied with the provisions of Section 207 Cr.P.C. Further, every accused should be supplied with statements of witness recorded under Sections 161 and 164 Cr.P.C and a list of documents, material objects and exhibits seized during investigation and relied upon by the Investigating

Officer in accordance with Sections 207 and 208 Cr.P.C.

Explanation: The list of statements, documents, material objects and exhibits shall specify statements, documents, material objects and exhibits that are not relied upon by the Investigating Officer."

[1] Rule 6 substituted vide C.S. no. 40 Rules/II.D4 dated 10.12.2021.

7. Discharge of accused:- The magistrate shall then consider all these documents and make such examination of the accused as he thinks necessary and after giving the prosecution and the accused an opportunity of being heard, make up, his mind whether he should frame a charge. It is not now necessary that any prosecution witnesses be examined before the charge is framed. If the Magistrate considers the charge against the accused to be groundless he shall discharge the accused. If the magistrate is of the opinion that there is ground for presuming that the accused has committed an offence which the magistrate is competent to try and can adequately punish, he shall frame in writing a charge against the accused. [2] The order framing charge shall be accompanied by a formal charge in Form 32, Schedule II, Code of Criminal Procedure, 1973 to be prepared personally by the Presiding Officer after complete and total application of mind.

[2] Rule 7 amended vide C.S. no. 40 Rules/II.D4 dated 10.12.2021.

8. Course to be adopted when Magistrate is not competent to try case or is not able to adequately punish:- If the magistrate is not competent to try the case as made out by the prosecution, or sees reason to think that he could not adequately punish the accused in case of conviction, he should, at this stage, take the orders of the magistrate to whom he is subordinate, or proceed under Chapter XVIII, if so empowered. The power of reference conferred by section 349 of the Code is limited to cases in which, after the trial is complete, a magistrate of the second or third class considers that he cannot adequately deal with the case. Sections 254 or 251-A (3) are of general application and require the magistrate to form an opinion before the charge is framed as to his being able to adequately punish the accused in case of conviction. Where it is clear at this stage that he cannot, in the event of conviction, adequately punish the accused, he should stay proceedings and refer the case to the District Magistrate for orders or, if competent, proceed to hold an inquiry with a view to committing the accused for trial.

9. Framing and joinder of charges:- The provisions of Chapter XIX of the Code as to the framing of the charge should be carefully consulted. Sections 221 to 223 show the form in which a charge must be drawn up and the particulars which must be entered therein; and sections 233 to 239 show how charges may be joined, when they should be in alternative form, and what persons may be charged jointly. Special care is needed in the matter

of joinder of charges. It has been held by the Privy Council that misjoinder of charges against the express provision of law vitiates a trial (See 25 I.L.R. Madras, 61 P.C.). Section 235 is also important and should be read with Section 71 of the Indian Penal Code.

In all cases in which it is intended to prove previous convictions for the purpose of affecting the punishment which the Court is competent to award, the fact, date, and place of the previous conviction should be set out in the charge.

10. Pleading of accused to charge:- The charge shall then be read and explained to the accused and he shall be asked whether he is guilty or claims to be tried. If the accused pleads guilty, the magistrate shall record the plea and may in his discretion convict him thereon; but it is to be remembered that a plea of guilty can only be recorded when the accused person raises no defence at all. If, for example, he admits material facts, but denies guilty knowledge or intention, the plea cannot be regarded as one of 'guilty'. If the accused refuses to plead or pleads 'not guilty' he should be called upon to enter upon his defence after the prosecution case is closed.

Statement of accused about previous conviction:- When previous convictions are included in the charge, the accused should also be asked whether he admits the convictions and his reply should be recorded. If he denies then the convictions must be proved in the manner prescribed in section 511 of the Code, after the accused is convicted of the offence with which he is charged (Section 255-A).

Completion of prosecution evidence:- If the accused does not plead as above or claims to be fried the magistrate shall fix a day for the examination of the witnesses for the prosecution. The magistrate may permit the cross-examination of any prosecution witness to be deferred until any other witness or witnesses have been examined and may recall any witness for further cross- examination.

11. Day to day hearings:- After the charge has been framed the magistrates should insist on day-to-day hearings until the prosecution evidence is concluded. In this connection the instructions with regard to speedy disposal of cases contained in tiara 6 of Chapter 1-A and the recent amendments of the Code mentioned therein may be carefully studied. The recently inserted section 510-A now permits evidence of a formal nature to be given on affidavits; but the court may and if so required by the prosecution or the accused, shall summon and examine the person making the affidavit as to the facts contained therein. The remarks in this para apply also to defence evidence.

12. Examination of accused and his entering upon his defence:- After all the

witnesses for the prosecution have been examined and before the accused is called on for his defence, the court must examine the accused and question him generally on the case as required by Section 342 of the Code, for the purpose of enabling the accused to explain any circumstances appearing in the evidence against the accused. An examination of the accused for that purpose can also be made at any earlier stage of the case but such examination at the conclusion of the prosecution evidence is mandatory. High Courts have on appeal set aside, as materially irregular, conviction in cases where such examination was not made at this stage in the trial of the case. In this connection see 1953 Supreme Court Reports 418. An examination of the accused under sub-section (1) of Section 342 shall be without oath.

If the accused puts in any written statement it shall be filed with the record. (Section 251-A (8) of 1898).

As regards the manner in which statements of accused persons should be recorded, detailed instructions will be found in Chapter 13.

13. Court to assist accused in conduct of the case:-In a very large number of criminal appeals and in numerous petitions for revision, one of the principal grounds taken is the alleged existence of some special hostility to the accused on the part of the prosecution witnesses, or of some tie (whether of relationship or friendship)between them and the complainant in the case. Such points should doubtless be elicited by the accused in the Court of first instance in cross-examination; but few, except told offenders, understand the object of cross- examination. If, in addition to asking an accused person to cross-examine the witness, magistrates would, where the accused is not represented by counsel at the conclusion of each witness statement call on the accused to state what objection he has to make to the evidence given by him, such matters would be cleared up.

Another frequent ground taken in appeal is that the accused did not understand what he was required to prove or disprove or was not asked what evidence he could give to rebut the case for the prosecution. These points should be as clearly explained to persons accused of criminal offences as are the issues to the parties in a civil suit, and all magistrates should devote particular attention to this matter.

14. Defence witnesses and cost of summoning them:- The magistrate is bound to cause the production of and hear all witnesses whom the accused desires to call, and to consider any documentary evidence relied on by him. The only exception to this rule is where the magistrate considers that in naming any witnesses the object of the accused is to cause vexation or delay or to defeat the ends of justice. In case the magistrate refuses to receive any evidence required by the accused, he should record his reasons for such refusal in writing. In view of the proviso to sub-section (9) of Section

251-A the attendance of a witness should not be compelled at the request of the accused where he has cross-examined or has had the opportunity of cross-examining the witness after the framing of the charge, unless the magistrate is satisfied that it is necessary for the ends of justice.

Accused as a defence witness:-In view of Section 342-A of the Code, as inserted by Act 26 of 1955, an accused may now appear as a witness for the defence and may give evidence on oath in disproof of the charges made against him or a co-accused. He cannot, however, be so examined except on his own request in writing and his failure to do so cannot be made the subject of any comment by the parties or the court or raise any presumption against him or a co-accused.

The Magistrate may, before summoning any witness applied for by the accused, require the accused to deposit reasonable expenses for his attendance. In ordinary warrant-cases, however, the cost of causing the attendance of accused's necessary witnesses is usually borne by Government.

15. Cost of Adjournment:- The attention of Criminal Courts is drawn to 20 P.R. 1904 (Cr.) in which it was held that the expression 'on such terms as it thinks fit' in section 344 (1A) of the Code gives the court power to award costs for an adjournment to the party to whom loss is caused by such adjournment. In exceptional circumstances when the accused is clearly at fault he may be ordered to pay costs (1953 Cr. L. J. 1479 and I.L.R. (1945) 1-Cal. 481), but generally when proceedings can be taken against him for the forfeiture of his bail bond for non-attendance on any hearing it would be improper to expose him also to a different penalty for payment of complainant's costs (A.I.R. 1948 Cal. 194).

The provisions of section 344 enabling a trial court to order costs for an adjournment are not applicable to courts of appeal or revision (1952 A.L.J. 614).

16. Finding an sentence:- At the conclusion of the trial the magistrate must record his finding and, in case of conviction, pass a legal sentence.

(d) Procedure in the trial of other warrant cases.

17. Other warrant cases:- In warrant cases instituted otherwise than on a police report, when the accused appears or is brought before the Court, the magistrate must at once proceed to hear the complainant and take all such evidence as may be produced in support of the prosecution. The magistrate is further required to ascertain from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and must summon such persons and take their evidence. The absence of the complainant, where there is one, does not

affect the proceedings except in a case instituted upon complaint which may be lawfully compounded, and the Court can compel his attendance, if necessary. Thus, in a warrant case it is the duty of the magistrate to cause the production before him of all material evidence for the prosecution, and to hear it. In the exception above alluded to, the magistrate has power to discharge the accused on the complainant making default.

18. Discharge of accused:- After taking the evidence and making such examination of the accused as he may think necessary, if no case is made out which, if unrebutted would warrant a conviction, the magistrate should discharge the accused, and record his reasons for doing so.

If, however, at any previous stage of the case the magistrate considers the charge to be groundless, he may record his reasons for that opinion, and discharge the accused.

19. Framing of charge:- If a prima facie case is made out which the magistrate is competent to try and which he considers could be adequately punished by him, he should frame a charge. The instructions with regard to the framing of a charge in paragraph 9 above would apply in this case also. If the magistrate is not competent to try the case made out or considers that he cannot adequately punish the accused if convicted he should proceed as already indicated in paragraph 8 above.

20. Pleadings to charge:-The charge should be read out, and explained to the accused, and he should be asked to plead to it. If the accused refuses to plead or pleads not guilty he should be required to state at the commencement of the next hearing of the case, or if the Magistrate for reasons to be recorded in writing so thinks fit, forth-with whether he wishes to cross- examine any of the witnesses for the prosecution whose evidence has been taken before the framing of the charge. If he says that he does so wish, the magistrate should proceed as directed by section 256 of the Code.

21. Procedure in later stages:- After this stage the procedure for the trial would be very much the same as in a warrant case instituted on police report. In this connection please see Sections 252 to 259 of the Code.

(e) Summary trials

22. Summary trials:- Summary trials can be held only by a District Magistrate or a magistrate of the first class empowered in that behalf, or a Bench of Magistrates empowered under either section 260 or section 261 of the Code. For detailed instructions on the subject see Chapter 2 relating to summary trials.

(f) Inquiries by agistrates in cases triable by the Court of Sessions or High Court, when instituted on police report.

23. Procedure in inquiries by committing Magistrate in Sessions cases:- The procedure in inquiries preparatory to commitment of a case instituted on

police report, when the case is triable by a Court of Sessions, is given in section 207-A of the Code. At the commencement of the inquiry when the accused appears or is brought before the Magistrate, he shall satisfy himself that the accused has been furnished the documents mentioned in section 173. If this has not been done he shall, subject to the provisions of sub-section (5) of section 173, cause these documents to be furnished to the accused. The Magistrate shall then proceed to record the evidence of persons produced by the prosecution as witnesses to the actual commission of the offence alleged and if of opinion that it is in the interest of justice, may record the evidence of any other prosecution witnesses also. After examining the accused, the evidence recorded and the documents and after hearing the parties as provided in sub-section (6), if the Magistrate finds that a prima facie case triable by a Sessions Court is made out he shall frame a charge, copy of which shall be supplied, free of cost, to the accused. The accused is not asked to plead to the charge but is merely required to give a list of persons, if any, whom he wishes to be summoned to give evidence in his defence. (Sub-sections (8) and (9) of section 207-A.)

For detailed instructions on the subject see Part A of Chapter 24, relating to Sessions trials.

(g) Inquiries in Sessions cases instituted otherwise than on police report.

24. Procedure in inquiries by Committing Magistrates in Sessions cases:- The procedure in inquiries by Magistrates into cases triable by Sessions Court, when the case is instituted otherwise than on a police report, is practically the same as in warrant cases similarly instituted - (Vide sections 208 to 220), but when a prima fade case is made out, a charge is framed and the case committed. The accused is not asked to plead to the charge but is merely required to give a list 1- D of persons, if any, whom he wishes to summon to give evidence in his defence. (Sections 210 and 211.)

For further instructions on the subject see Part A of Chapter 24 relating to Sessions trials.

(h) Miscellaneous matters.

25. Insane persons:- Directions for the conduct of cases when-

(a) the magistrate has reason to believe that an accused person is incapable of making his defence by reason of unsoundness of mind; or

(b) when the accused appears to be of sound mind at the time of inquiry or trial, but the magistrate finds reason to believe that he committed an act while he was of unsound mind, which, but for such unsoundness, would be an offence, will be found in Chapter 17, "Lunatics".

26. Procedure when the accused cannot be made to under the proceedings:-

(i) If the accused, though not insane, cannot be made to understand the

proceedings, as in the case of persons who are deaf and dumb, the magistrate should proceed with the inquiry, and, in cases triable by the Court of Sessions or High Court, if a prima fade case is made out, should commit the accused for trial. In cases, triable by the magistrate himself, the trial should be proceeded with and a finding come to as to the guilt or innocence of the accused person. If the accused is committed or convicted, the proceedings should be forwarded to the High Court with a report of the circumstances of the case, for such orders as such Court may deem fit to pass (section 341 of the Code).

(ii) The magistrate is not authorised to stay proceedings until he has heard the whole of the evidence for the prosecution, and has come to a conclusion as to the innocence or guilt of the accused person. If a prima facie case is not established the accused will be discharged. If a prima facie case is established the magistrate will make an order of commitment or conviction (as the case may be) and then report the case.

27. Stating the case:- In all cases in which the public prosecutor or a member of the police prosecuting staff appears on behalf of the State in the magisterial courts, the presiding officer should call on him, at the beginning of the trial to state briefly the facts of the prosecution case.