

ISSN :2582-6433



# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary  
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 6

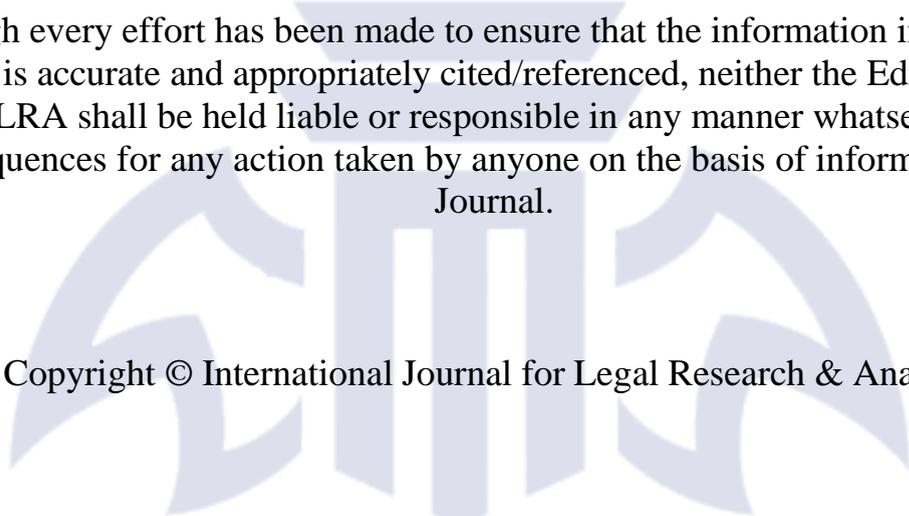
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# **Analysis on difference between Summon and Warrant case**

**Authored By-Yashaswani Parashar**

## **Abstract**

Every legal proceeding is subjected to a fair trial applying the principles of Natural Justice and Liberty. This right of fair trial ensures the protection of an individual's fundamental rights throughout the proceedings subject to reasonableness. It endeavours to retain the faith of the accused and treat him fairly and humanely. If a person cannot be produced before the court by arrest or detention, his presence can be assured by judicial confirmation through summon and warrant during the pendency of the trial. However, the purpose of ensuring such an appearance is to set a seal on the attendance of the accused. The provisions of The Code of Criminal Procedure, 1973 include the issuance of summons, or warrant of arrest and the scope of arrest without warrant. So, if a person is summoned by the court which elucidates the charges against him and asks to appear before the court, there can probably be two contrary situations, where the accused fails to appear and the court will issue a warrant particularly or he might abscond where the court will issue a notice of proclamation.

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## **Introduction**

The spirit of a fair trial is substantially provided under the Code of Criminal Procedure, 1973. The fundamental principles are enumerated therein, helping the accused to introduce the circumstantial incidents and establishing their point of fact, providing an effective right of defence. This objective originates from the principle of natural justice which prestige the other party to give sufficient rebuttal to hostile pieces of evidence in the lieu of charges. Under the code the Magistrate after taking cognizance either issues summons or warrants to ensure the attendance of the accused. However, the code in other scenarios also makes the sure presence of the accused by serving proclamation and attachment of property.

The basic requirements to compel the appearance are postulated and defined under Chapter VI of the Code of Criminal Procedure, 1973. The other requirements are incorporated under provisions like section 238, the magistrate shall before the commencement of trial is supposed to ensure the appearance of the accused along with the production of necessary documents, the record of examination, relevant statements, and all other investigation documents. Further, section 273 of the code enumerates the right of enlightenment of the accused about the evidence acknowledged under the charges. This entitles the evidence to be taken in the course of the trial in the presence of the accused or his pleader. Unless the case comes within the exceptions mentioned in the code, evidence has to be taken in the presence of the accused.<sup>1</sup> The personal attendance of an accused can be dispensed with either section 205 or section 317 of the code. Section 205(1) the discretion has to be exercised by the magistrate at the time of issue of summons whereas, under section 317 of the code, the same has to be exercised while the trial or inquiry is pending. However, these provisions are not generally applicable but only, if necessary, in the interest of justice.

## **Classification Of Criminal Cases**

### **The Procedure To Compel The Appearance**

#### **Summons:**

The simplest form process of ensuring appearance is “the summon”. The summons is issued by the court with a seal and required to be conveyed by the police officer or any public servant to the person entitled to be involved in the proceedings. The person summoned may include the accused or witness in the legal proceedings. The summons includes details of the case, and place along with the date and time on which person is required to appear before the court. Additionally, brief information about the charges, date of hearing, case, etc is also provided in the summons. The Code of Criminal Procedure lays down the essential details and requirements for the issuance of the summons.

Section 61 of the Code provides the form of summons. It necessitates that a summons:

(i) Must be in writing, (ii) Must be signed every summons issued with the official name of the officer must be signed by the name of his office or the designation in which he acts. (iii) must be sealed. The person who serves this notice has been specified in provisions provided further, it is given to a police officer and he serves it to the person summoned. The format of the form of summon is incorporated under Schedule II. Ideally, this notice of appearance shall be served to the person subject. However, if pragmatically not possible to serve the same person or person summoned is not found, the law allows the service equitably effective against some adult male member of his family. Gender specification in some of the provisions of the legislation undermines the credibility of procedural responsibility to be handled by a woman but they are also been

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<sup>1</sup> Md. Abdul rauf v. shib kumar Khanna (1980) 1 CHN 276.

cautiously used in judicial decisions. As it was said by Calcutta High Court <sup>2</sup>that “Where personal service as provided for section 62 cannot be affected, the law allows service on some adult member of the family, but not on a servant”. Since a servant cannot be considered a member of the family. Further, it was also said that “to justify such services, it should be shown that proper efforts were made to find the person summoned.” Therefore, such practice is exceptional to the circumstance where due diligence person cannot be found. The exercise of due diligence includes the execution of every possible methodology to deliver or exhibit tendered copy. In case, summon subject to be served towards the witness, contemplates registration of post. Exceptionally, a postal summon cannot be provided in the case of maintenance proceeding as ‘*ex parte*’ without following the correct procedure and is liable to be set aside.<sup>3</sup> Additionally, the procedure of issuing a process to the accused by post is not permissible.

Wherein, the service of appearance cannot be secured under sections 62, 63, and 64 of the provisos, the procedure provided under section 65 is executed. Such summon can be executed by affixing the duplicate to the outer door or some conspicuous part of the house in which the summoned person ordinarily resides.

### **Warrant:**

The document was issued by a court to the law enforcer involved in the legal proceedings who was further served by him. Warrant attributes issuance against the enforcer rather than the party to the proceedings. These enforcers include police officers or any other person in immediate necessity of execution. The necessity may arise if the accused is an escaped convict, proclaimed offender, or accused of a non- bailable offense.

Section 71 and 76 of CrPC deal with bailable and non-bailable warrants respectively, where the former is issued by the court with condition that if the person submits sufficient security for his appearance before the court as per the specified date and time, the officer subsequently shall release the person from custody. On the other hand, non-bailable offenses are more serious, the police officer has to produce the arrested person before the court within 24 hours excluding the time of journey. Non-bailable warrants curtail one’s liberty envisaged under Article 21 of the constitution; the concern has been raised in numerous cases.

Inder Mohan Goswami v. the State of Uttarakhand<sup>4</sup>, the Supreme Court held that a non-bailable warrant shall be cautiously issued to ensure the appearance of a person when summons and warrants fail to carry out desired results. “When it is reasonable to believe that person will not voluntarily appear in court or the police authorities are unable to find the person to serve him with a summon or it is considered that person could harm someone if not place into custody immediately.” In another case, Raghuvansh Dewanchand Bhasin v. the State of Maharashtra<sup>5</sup>, Supreme Court appropriated guidelines to be adopted for the issuance of non-bailable offenses which are as follows:

- It shall be ensured by all High Court that Subordinate courts use machine-printed Form no. 2 of Schedule II of the code for issuing a warrant of arrest.
- The judge or officer authorized shall ensure that particulars shall be prominently endorsed along with his signature on the seal.
- To maintain a register for chronological entry of arrest warrants issued.

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<sup>2</sup> Hemendra Nath v. Archana, AIR 1971 Cal 244.

<sup>3</sup> Guthikonda Sri Hari Prasad Rao v. Guthikonda Lakshmi Rajyama, 1992 (2) Andh LT 658.

<sup>4</sup> Inder Mohan Goswami v. State of Uttarakhand, (2007) 12 SCC 1.

<sup>5</sup> Raghuvansh Dewanchand Bhasin v. State of Maharashtra, AIR 2011 SC 3393.

## **What Is Warrant And Summon Case**

Summon cases are those where offenses are not punishable for more than two years. However, warrant cases include punishment of more than two years, or life imprisonment or death sentence. On the completion of the process to ensure the appearance of a person before the magistrate, the procedure in summons and warrant case differs. The warrant cases are procedurally demarcated based on police reports and complaints. The satisfaction of the magistrate to check the existence of grounds for issuance of the process depends on his consideration of the basis of the police report in a particular case. However, in cases instituted other than police report the magistrate hears the prosecution and examines the eligibility of evidence. In the lieu of such examination, the court examines witnesses, evidence, and even issues summon against a witness. Depending upon the grounds found he shall ask the accused whether he pleaded guilty or if no substantial grounds found can discharge the accused under section 245 of the code.

The procedure followed in a summon case is enjoined under section 251 of CrPC, he is briefed with the details of the offense and asked whether he pleaded guilty. An implied indication is made why the accused should not be convicted. If the accused pleads guilty the magistrate has the discretion to convict him. According to section 265 of the code, If the accused admits some charges but not all but pleads not guilty, the court is then bound to proceed according to law by examining the witnesses for prosecution and defence.<sup>6</sup> If the magistrate does not convict him or where the accused has not admitted all the charges, he may then hear the accused and take evidence in his defence or can issue summon to witness or order for reimbursing witnesses.

## **Difference Between Summon And Warrant Case**

The epilogue of the trial is to be decided by the magistrate after the framing of charges, which shall be either acquittal or conviction. Section 248 of CrPC provides that if the magistrate finds the accused not guilty in any case under the warrant case, shall order acquittal as the conclusion of a real trial. On the contrary, if it is found that the accused is guilty, the magistrate should pass the judgment following the law. In case, there is a plea of guilt, the magistrate has to record the same but it is not obligatory on him to convict, he may proceed with the trial. Magistrate also has the power to discharge in the case where the complainant is absent or offense is compoundable and non-cognizable or no charges are framed. However, in summon case if the complainant dies or is absent, the accused can be acquitted thereon.

In summon trial complainant can withdraw the complaint whereas, in a warrant case, remaining charges can be withdrawn if he is convicted for one or more charges of several alleged offenses. In case, there is a conviction, the magistrate is especially empowered to take evidence associated with previous convictions leftover earlier to be admitted by the accused, but there is no such power for the magistrate in a summons case.

Under article 259 of CrPC, the magistrate is empowered to convert a summon case into a warrant case. The power under the provision activates if the punishment for the offense is more than six months and secondly if the magistrates think fit the matter in the interest of justice shall be dragged under warrant case procedure. But a warrant case cannot be reshaped into a summons case.

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<sup>6</sup> Emperor v. Somabhai, (1907) 9 Bom LR 1346.

## **Conclusion**

The Code of Criminal Procedure demarcates all the criminal cases into summons cases and warrant cases. “A warrant case means a case relating to an offense punishable with death.”<sup>7</sup> The analysis of sections 61 to 67 of the Code examines pragmatically wherever a summon should be served personally on the person to be summoned. “A summon case means a case relating to an offense and not being a warrant case”.<sup>8</sup> The grounds of the classification is the gravity of the crime. In a warrant case, the nature of the offense is more serious as compared to summon case. Therefore, less serious offenses are covered under summons trial.

Additionally, there lie discrepancies in the complexity of the procedure in two types of trials. Comparatively, the summon trial procedure is speedy and simple as the warrant trial concerns more serious offenses and cannot be tried in a time-efficient and uncomplicated way as the summon trial. Hence, the lucidity of procedure can be understood by the simple methodology in summon case of pleading guilty by post after issuance of summon. Whereas, in the warrant case no such provision is incorporated noting the basis of the seriousness of the offense.



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<sup>7</sup> The Code of Criminal Procedure, 1973, §2(x), No.2, Act of Parliament, 1974 (India).

<sup>8</sup> The Code of Criminal Procedure, 1973, §2(w), No.2, Act of Parliament, 1974 (India).