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SUMMARY TRIALS UNDER CODE OF CRIMINAL PROCEDURE: ANALYSIS OF SUPREME COURT DECISIONS BETWEEN 2010 AND 2020.

AUTHORED BY - NAINA VISWARAJ

INTRODUCTION

The following paper addresses the question of the complexity of the other procedure and how summary trials come to the rescue of it. While it is a universally acknowledged fact that court procedures are cumbersome and difficult if it is conducted in a regular manner, summary trials are the reason why they are to a large extent put at an ease. There are different forms of trials namely- summary trials, summons trial, warrant trial and sessions trial. Summary trial is carried out in case the offences are petty and not very serious.

AIMS AND OBJECTIVES

The following are the aims and objectives of this paper-

- 1) To understand the procedure followed with regard to summary trials under CRPC-
- 2) To analyse the scope of section 263 of CRPC
- 3) To understand what cases are can be tried summarily?
- 4) To go through some of the major decisions undertaken by the Supreme court between the years 2010 and 2020.

HYPOTHESIS

- Summary trials are essentially for the speedy disposal of cases, yet the succeeding magistrate is barred from providing for a judgement that he/she has not tried which is indicative of the fact that there aren't any reasonable grounds for isolating summary trials when other types of offences could be tried so.

- Summary trials cannot be initiated until and unless it is expressly mentioned in the statute. If Negotiable instruments act contain provision of summary trial, it cannot be assumed that other statutes of the similar nature can be tried so until and unless it is expressly mentioned in it.

STATEMENT OF PROBLEM

The purpose of this law is to observe the changing trends in the summary trial methodologies in India. The effective solution to the increasing arbitrariness to the system is to be curbed with the inculcation of proper strategies.

RESEARCH QUESTIONS

- 1) What were the major changes that were brought forth in between the years 2010 and 2020?
- 2) Is the essential purpose of summary trial i.e., speedy disposal of cases followed at the end of the day?

LITERATURE REVIEW

Case laws-

- 1) White Industries Ltd V Republic of India, IIC 529 (2011)
- 2) Purushottam Sabra V State of Orissa, 1992 Cri LJ 1417 (Ori)
- 3) Shivaji Sampat Jagtap V Rajan Hiralal Arora, 2007 CriLJ 122
- 4) Shivaji Sampat Jagtap V Rajan Hiralal Arora, 2007 CriLJ 122.
- 5) Rajesh Agarwal V State & Anr, 171 (2010) DLT 51
- 6) Mangi Lal, (1945) All 131
- 7) Karan Singh, (1878) 1 All 680.
- 8) Balachand v. Madsam Municipality, AIR 1960 MP 20
- 9) Dilip Kulkarni and Ors. V Bahadurmal Chowdary and Sons and Ors, 2005 (2) ALD Cri 171
- 10) Nitinbhai Saevatilal and anr V Manubhai Manjibhai and others, (2011) 9 SCC 638
- 11) J Baharuni and anr V State of Gujarat and anr, 2015 ALL MR (Cri) 357
- 12) SEBI V Classic Credit Ltd, 2017 SCC Online SC 961
- 13) Indian Bank Associations and ors V UOI and ors, (2014) 5 SCC 590
- 14) Meters and instruments pvt ltd V Kanchan Mehta, (2018) 1 SCC 560
- 15) Mandvi Cooperative Bank Ltd V Nimesh B Thakore, AIR 2010 SC 1402
- 16) Sudin Dilip Talaulikar V Polycap Wires pvt ltd, AIR 2019 SC 3380

Important sections pertaining to summary trials

- 1) Section 260 – power of the court to try the summarily
- 2) Section 261- power of the magistrate of second class to try the case summarily
- 3) Section 262-procedure for summary trials
- 4) Section 263-Record in summary trials
- 5) Section 264-Judgement of cases tried summarily
- 6) Section 265-Language of the record and judgement
- 7) Section 251- Provides for the examination of the accused person
- 8) Section 326- if a case is partly heard by one magistrate and partly heard by another.

PURPOSE OF SUMMARY TRIAL

Summary trial is basically done in order to ease the burden on judiciary, it upholds the maxim, and justice delayed is justice denied. Summary trials are only done in case of small offences. It is done to prevent the existing cumbersome regime followed in the criminal trials ordinarily; an important factor to be taken note of is that no convict would be denied of a fair hearing even if the cases are tried summarily. In the case of *White Industries Ltd V Republic of India*¹, unreasonable delays in the justice system was viewed as an infringement to the treaty obligations, this shows that inadvertent delays in the justice system was prevalent in the Indian judicial system since time immemorial. The processes in a normal trial such as examination of witness and production of evidences are still done in order to forgo arbitrariness. Crimes which are heinous and grave are not brought within the ambit of summary trials as those cases are to be tried with extensive proofs and facts which are supposed to be carefully corroborated. These crimes brought within the scope of summary trials are common and happen on an everyday basis, it is high-time that we get rid of this troublesome conduct of the accused and have an effective speedy remedy for the same.

Section 261 to 265 of CRPC deals with the cases that can be tried summarily-

In case, the case is tried by a Chief Magistrate, metropolitan magistrate or first class magistrate, the following are the types of cases that can be tried so by them.

- 1) Offences that cannot be charged with capital punishment or imprisonment exceeding 2 years.

¹ *White Industries Ltd V Republic of India*, IIC 529 (2011)

- 2) Theft as explained in the sections 378, 380 and 381 of IPC provided that the value of the stolen items does not exceed Rs 200.
- 3) Confiscation of any stolen property worth not more than Rs 200.
- 4) Assisting in seclusion of any of the stolen goods.
- 5) Trespassing into an individual's property without due consent of that individual as per section 454 of IPC
- 6) Criminal intimidation as per section 504 of IPC.
- 7) Instigation of any of the offences

In case the case is tried by a magistrate of second class, the following are the category of offences that can be tried by them.

- 1) Offences which have the punishment of less than 6 months with or without fine.
- 2) Any offence with which the penalty of it is just a fine.
- 3) Instigation or attempt to commit any of the following offence.

Difference between summary trials and warrant trials

The following are the major differences between a summary trial case and a warrant trial case,

- 1) Cases which are tried summarily are not as heinous and grave as the cases that are tried otherwise.
- 2) The testimony of the witnesses are not recorded entirely with every little detail pertaining to the statement that they have given to the jury in a summary trial. Whereas in a warrant trial, every each and every testimony of each of the witnesses are detailed meticulously.
- 3) Same goes with the recording of evidence also; there is only a summary of each of the evidences that is being recorded whereas in warrant cases the evidences are recorded extensively.
- 4) A formal charge sheet is not a primary requisite in summary trials but in a warrant case the charge sheet is required to be formulated.² The charges are only read out to the accused in a summary trial whereas in a normal case, the charges are supposed to be in writing. This is given under sections 253-258 of the code.

² Neitsezonou Solo, *Summary trials under Crpc*, (29th August 2020, 11:00 pm)

<https://crlreview.in/summary-trials-under-crpc/#:~:text=Summary%20trial%20is%20the%20name,for%20summons%20or%20warrant%20trials.>

PROCEDURE FOLLOWED IN THE CASE OF A SUMMARY TRIAL

- 1) First and foremost step is registering an FIR, just like any other criminal case formulating an FIR is a primary mandate which has to be followed mandatorily because an FIR is the only document which can set any criminal case in motion.
- 2) Producing the accused before a competent magistrate. It goes without saying because every citizen is entitled to a fair trial and this ensured when he/she is represented by a lawyer of his/her choice and then the fate must be decided by the competent judge in the respective court.
- 3) The charges are read to the accused. All the charges which are against the accused are read to him/her as soon as they are brought for the trial.
- 4) The accused is then supposed to either plead guilty or not guilty. This scenario is accompanied with two possible outcomes-
 - a) In case the accused pleads guilty, if the accused pleads guilty it will up to the discretion of the magistrate to either convict them or not.
However, this discretion is not to be exercised arbitrarily, it should be carefully analysed with adequate evidences backing the conviction. In the case of Purushottam Sabra V State of Orissa³, it was held that no accused should be convicted without proper evidences backing the claims of the prosecution. The report containing all the evidences leading to the conviction of the accused should be fair and genuine.
 - b) In case the accused pleads not guilty, the magistrate proceeds with the trial by hearing both sides of the prosecution and defence.

Particulars which are to be recorded in a summary trial

The following are the particulars that are to be recorded in a summary trial proceeding-

- 1) Serial no of the case
- 2) The date on which the offence was committed
- 3) The date on which the complaint was made
- 4) Name of the guardians of the accused
- 5) Name and address of the accused
- 6) The value of the property stolen in case the offence is of theft

³ Purushottam Sabra V State of Orissa, 1992 Cri LJ 1417 (Ori)

- 7) The plea of the accused and the examination in furtherance to the plea
- 8) Discovery of the magistrate
- 9) Judgment of final order of the magistrate
- 10) The date on which the trial concludes.

The trial is to be conducted by a competent magistrate because in case he/she ceases to have jurisdiction, the case cannot be tried. In the case of Shivaji Sampat Jagtap V Rajan Hiralal Arora⁴, the judicial magistrate ceased to have jurisdiction yet the trial was conducted following all the credentials mentioned as per section 263 of CRPC.

The magistrate should give reasons as to why a case should not be tried summarily. In the case of Rajesh Agarwal V State & Anr⁵, several important particulars of a summary case were addressed. According to section 143 of the Negotiable instruments Act, it is evidently mentioned that all the offences mentioned in this chapter are to be tried summarily but in case there is any reason that this case should not be tried summarily, the magistrate shall give adequate reasons for the same. In such a scenario, the magistrate can re-hear and re-examine any witness who have provided testimony before.

48th Law commission report

The accused persons are heard on the question of sentence in both summons and warrant trial. The law commission has rightfully pointed out that there shouldn't be any distinction between the natures of the trials. The accused should be heard as and when they are sentenced regardless of the nature of their trial. Crime in a sense is a product of distortion of mind and any trial and the impact on the accused is the same regardless of the crimes that they are convicted for.

SOME OF THE EARLIER DECISIONS THAT ESTABLISHED THE CONCEPT OF SUMMARY TRIAL⁶

- 1) Any deformity in the trial conducted summarily would be deemed as illegality and not as an irregularity.⁷

⁴ Shivaji Sampat Jagtap V Rajan Hiralal Arora, 2007 CriLJ 122.

⁵ Rajesh Agarwal V State & Anr, 171 (2010) DLT 51

⁶ Parul Soni, *Summary trials*, (29th August 2020, 12:00 pm)

<https://lawtimesjournal.in/summary-trials/>

⁷ Mangi Lal, (1945) All 131

- 2) If the evidences are not satisfactory, the magistrate can examine the witnesses extensively and can even order to a re-trial.⁸
- 3) Section 260 confers the power to the magistrate to try a case summarily for the cases that he can already try but in a specified procedure.⁹
- 4) If in the middle of the trial, the magistrate comes to a conclusion that this trial should not be conducted summarily then the case should be tried as a summons case immediately.¹⁰
- 5) Dilip Kulkarni and Ors. V Bahadurmal Chowdary and Sons and Ors¹¹ the power of the court to convert a summary case into a summons case and a warrant case was described here. Section 260 impliedly empowers a magistrate to re-call the witnesses and re-hear the case. This can be considered as the power of conducting criminal trial in the form of a summons trial. As per section 259, the magistrate can convert a summons case into a warrant case.

SOME OF THE MAJOR DECISIONS OF THE SUPREME COURT BETWEEN THE YEARS 2010 AND 2020.

- 1) Nitinbhai Saevatilal and anr V Manubhai Manjibhai and others¹², this case primarily based on the issue of whether a magistrate can give the judgement of a case that he/she has not tried? The pre-recorded evidences were the only the source of information available in order to determine the fate of the accused.

Analysis- To provide an answer for this question, it is essential for us to look at section 326 of CRPC.

Section 326 deals with the scenario in which a conviction is based on evidences partly recorded by one magistrate and partly by another. This section is accompanied with three possibilities.

- a) In case a judicial ceases to exercise jurisdiction in the case or if he/she is transferred, then the succeeding magistrate can act up on the pre-recorded evidence and base determine the decision. If the evidences are partly recorded he/she can record the rest of the evidences and conclude the trial with a reasonable decision.

⁸ Karan Singh, (1878) 1 All 680.

⁹ Balachand v. Madsam Municipality, AIR 1960 MP 20.

¹⁰ D.N. Patel, 1971 Cr LJ 1244.

¹¹ Dilip Kulkarni and Ors. V Bahadurmal Chowdary and Sons and Ors, 2005 (2) ALD Cri 171

¹² Nitinbhai Saevatilal and anr V Manubhai Manjibhai and others, (2011) 9 SCC 638

- b) Sub clause (1) essentially reads as follows- the transfer of a magistrate even after all the recording of the evidences it refrains him/her from dealing with the case and the succeeding magistrate will take over the case.
- c) This sub clause reads as nothing mentioned in the above sub clauses are applicable to summary trials or any other cases stayed under section 322 of CRPC.

In the following case, the accused was found guilty by the succeeding magistrate after evaluating the evidences that his predecessor has already recorded and aggrieved by the said decision the accused sent in the case for an appeal wherein the conviction of the accused was upheld. Finally, the case was brought before the apex court wherein, the issue of lack of authority of the second magistrate to provide for a conviction or acquittal in this case was pointed out. Section 326 is only for the offences mentioned in chapter 24 of the code. It is expressly mentioned in section 326(3) of the code of criminal procedure that these provisions are not applicable for a summary trial proceeding. This is indicative of the fact in a summarily tried case, only the magistrate who records the evidence can provide for a verdict resulting in the conviction and acquittal of the case. In a situation wherein the new magistrate takes charge on the stipulated date the verdict is supposed to be given, he/she is required re-record all the evidences and carry out the proceed in the way that deems fit and then reach a verdict. This principle is enshrined under section 461(1) of the code which reads as follows-

In case of any irregularities in the trial because of any factors, the verdict reached by the magistrate shall be deemed void and hence the trial is to be re conducted.

- 2) In the case of J Baharuni and anr V State of Gujarat and anr¹³, the matter of the nature of a case i.e, whether a case can be tried by as a summons case even when it is to be tried summarily?

Analysis- Section 143 of the Negotiable Instruments act dealing with dishonour of the cheque is always triable summarily. However, in this case the accused were tried with the record of elaborate evidences and the examination of the witnesses were conducted in an extensive manner which are the indeed the characteristics of a regular trial. So, following the conventional pattern of a trial, the judicial magistrate recorded the evidences and testimonies following which he was transferred. He was succeeded by a new judicial magistrate. The

¹³ J Baharuni and anr V State of Gujarat and anr, 2015 ALL MR (Cri) 357

situation here is that when section 326(3) is read carefully, we can conclude that the principle of barring a judicial magistrate from acting upon the previously recorded evidence is applied only when the case is tried summarily. So keeping this contention in mind, the magistrate passed a verdict resulting in the acquittal of the accused. This was however challenged before the appellate wherein it was stated that the present judicial magistrate is not competent enough to give the verdict since he was succeeded by a judge who already recorded all the evidences and according to section 326(3), the judicial magistrate succeeded is not empowered to act upon the evidence if the case is of summary nature.

The appellate court dismissed this contention stating that though the above mentioned case was tried summarily, this case was never tried as one and therefore, the magistrate who succeeded the previous one applied his judicial mind effectively and gave the verdict based on the evidences already recorded which is permissible in a regular summons case. The case was appealed further, and was requested by the appellants to be tried as a de novo case (a trial wherein the higher asks the lower court re conduct the trial because the court has based its decision on misread facts and unreasonable application of evidence. Thus, a case can be tried by way of summons case even though it is triable summarily provided the judicial application of mind is exercised effectively.

Part 2 of the same case- in the same another important question regarding failure to record reasons as to why a case is not tried summarily was raised?

The answer to the question is that no magistrate is required to show reasons as to why a case is tried as per the requirements of a regular trial and not tried summarily.

3) SEBI V Classic Credit Ltd¹⁴, an important question that was dealt with in this case was that whether a statute or legislation can presume that it can try the cases summarily even when it is not specified in the statute?

Analysis- unlike the Negotiable Instrument act, it is not specifically mentioned in the SEBI regulations act as to whether the cases under this act can be tried summarily neither was it provided in any of the amended provisions of the act. The accused alleged that he was

¹⁴ SEBI V Classic Credit Ltd, 2017 SCC Online SC 961

deprived of a summary trial which was followed in most of the cases governed by similar statutes. The case when observed by the Supreme Court was primarily baseless as in order to the conduction of a case by way of a summary trial, the first and foremost thing to be considered whether the High Court has expressly provided that this particular case can be tried summarily. So in a nut shell, it can be concluded that a case is triable summarily only if it is mentioned in the statute otherwise it cannot assume the provisions that it does not have. Even before the amendment of 2002, the SEBI cases were both triable by the magistrate and sessions judge but after the amendment, SEBI withdrew such jurisdiction conferred on the magistrate court and now the cases are tried only in the sessions court which indeed proves that there was no intention by the statute to conduct the trials summarily. Hence, none of the accused is entitled to summary trial until and unless it is expressly mentioned in the statute.

- 4) In the case of Indian Bank Associations and ors V UOI and ors¹⁵, the question of whether admissibility of evidences as per section 145(1) in the form of affidavits was brought before the apex court.

Analysis- It is to be noted that the main purpose of summary trial is the speedy disposal of cases. Since the cases under the negotiable instruments are prevalent today, it is important that these cases are tried summarily but effectively. In order to analyse this concept completely it is essential to look at section 145(1) which reads as follows-

Notwithstanding anything contained in the CRPC, the evidences must be submitted by way of an affidavit by the complainant.

However, the question before the honourable court was with respect to the elaborate procedures which were conducted usually, whether they stand cancelled depriving a right to fair trial of the accused. The court answered this question stating that if any case is decided to be tried summarily then the court will not neglect the procedure of examination-in-chief, the difference is that all the witnesses may be called in for their testimonies as and when it deems fit, it is up to the discretion of the court.

¹⁵ Indian Bank Associations and ors V UOI and ors, (2014) 5 SCC 590

- 5) *Meters and instruments pvt ltd V Kanchan Mehta*¹⁶, the question before the court was the validity of a trial after the compensation was deposited by the accused person. Hence the question of whether the provisions of summary trial are predominantly criminal or civil arose.

Analysis- In this case, the court has regarded the cases under negotiable instrument act as predominantly civil and nature of it is mainly compensatory. As soon as the compensation is deposited by the accused, the damage control was done and hence, the case ceases to exist. However, it is important to take note of the fact that the remaining proceedings leading to the conclusion of the trial will be conducted online.

This claim is substantiated with section 143(2) of the Negotiable Instrument Act as follows- The trial could be continued by the judge as and when he deems it fit. However, if there are essential reasons as to why the case should be adjourned, it can be done provided the reasons are recorded in writing.

- 6) In the case of *Mandvi Cooperative Bank ltd V Nimesh B Thakore*¹⁷, the question of the validity of section 143, 145 and 146 of the Negotiable instrument act arose; these provisions were overriding the criminal procedure code which is the apex statute of all the criminal law statutes. Also, section 146 is also contrary to the provisions mentioned in the evidence act. The accused cannot depose any evidences after the witnesses have provided their testimonies.
- 7) In the case of *Sudin Dilip Talaulikar V Polycap Wires pvt ltd*¹⁸, the question of admissibility of a 'moonshine' defence was questioned.

Analysis- Moonshine defences are false and baseless defences raised by the defence in case of a trial. However in case of a summary trial, if the defence produces ample reasons as to just and fair conduction of trial then the question of a moonshine defence does not arise, it can grant leave on a conditional basis if there is a slight doubt, but it is based on the subjective satisfaction of the judge. When there is a bigger possibility of doubt in the mind of the judge that the defence is producing an unreasonable or a fabricated evidence and then the court can

¹⁶*Meters and instruments pvt ltd V Kanchan Mehta*, (2018) 1 SCC 560

¹⁷*Mandvi Cooperative Bank ltd V Nimesh B Thakore*, AIR 2010 SC 1402

¹⁸*Sudin Dilip Talaulikar V Polycap Wires pvt ltd*, AIR 2019 SC 3380

impose conditions as to both or mode of the trial, with the condition precedent that the object of the summary trial that is speedy and expeditious disposal of cases is not hindered with.

The following are the major developments brought forth during the years 2010 and 2020.

- 1) A magistrate cannot act upon the evidence already recorded by another magistrate.
- 2) A case can be tried by way of summons nature even when the case is triable summarily.
- 3) No statute can presume the powers that have not been conferred upon it.
- 4) Evidences in the form of an affidavit by the complainant are admissible in the case of negotiable instruments act.
- 5) Nature of summary trial is mainly compensatory in nature.
- 6) Provisions of sections 143-146 are sometimes overriding to the provisions under CRPC.
- 7) The court can conditionally grant leave when the court has a mild suspicion as to the nature of the defence as moonshine.

CONCLUSIONS AND SUGGESTIONS

The norm that exists now is liberal and is effectively permitting the magistrates to take decisions according to their whims and fancies. As mentioned earlier magistrates are conferred with the power of changing the nature of the cases from summary to summons, summons to warrant. This can alter the whole purview of the trial; the trial is not going to be conducted in a simplified manner neither is going to be serving the purpose of summary trial that is speedy disposal of cases. Such cases occur time and again on an everyday basis, therefore, it is not be given much importance than it is supposed to be given. The factors barring the succeeding magistrate from providing for the judgement in cases already tried by his/her predecessor is also rather unreasonable and unsatisfactory, if other offences which are not summary in nature is granted with this privilege then so should be the case with summary trials as well. Speedy remedy does not mean remedies which are rushed through without careful consideration of the evidence. Therefore, an accused is not entitled to summary trial until and unless the statute expressly provides for one. Hence, a summary trial is not a right that an accused can claim in order to ease the nature of his/her sentencing.

Some of the suggestions could be with respect to providing for an effective strategy with respect to ease the judicial burden by not barring a transferred judge in making a decision based on the evidences that he/she has recorded. Also another important factor could be with respect to the alteration of nature of cases to an entirely new scheme which can be cumbersome and long.

Therefore, re-recording of any evidence and subsequent change in the nature of the case should be recorded by the magistrate in writing.

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- 3) www.scconline.com
- 4) The criminal procedure code, 1973
- 5) Negotiable Instrument Act, 1881

