

## Important Salient Feature of Summons Trial

### Classification of cases into Summons and Warrants Cases.

Offences are divided into cognizable and non-cognizable, but when the code deals with procedure relating to trials it speaks of summons cases and warrant cases. This division is based on the nature and measure of punishment attached to the offence but this distinction has no bearing on the question whether a summons or a warrant shall be issued in the first instance and whether the police may or may not arrest without warrant or whether the offence is Cognizable or non-cognizable.

A warrant case means a case relating to an offence punishable with death imprisonment or imprisonment for life or *imprisonment for a term exceeding two years* whereas a summons case to the contrary is a case relating to offence which are punishable *for imprisonment for a term of two years maximum*.

**There is marked *distinction* between a warrant case and summons case. This can be summarized as under:**

- a. A summons case is a case relating to an offence punishable with imprisonment of *less than two years*, whereas a warrant case is a case relating to an offence punishable with imprisonment for a period of *more than two years*.
- b. In a trial of summons case it shall not be necessary to frame a charge. It is sufficient to state the substance of accusation to the accused; whereas framing of charge against the accused in a warrant trial is mandatory. No trial can proceed without framing of charge against the accused facing trial under section 240, code of criminal procedure. Further in a warrant case, if the charge is not framed, the accused has to be discharged. Though in a summons case the requirement to state the particulars of the offence is akin to framing a charge, but the concept of discharge is not applicable in relation to section 251, of Crpc.
- c. In summons case a complainant can withdraw a complaint with the permission of the court against the accused, or if there be more than one accused against all or any of them; (Please read & refer Sec. 257 of Crpc.) whereas there is no such provision in the warrant case either institution on police report or otherwise. If the order says, it discharges the accused, in law it means acquittal. Further, in a summons case a Magistrate is bound to proceed u/s 255 of Crpc. There is no provision of discharge in a summons case.
- d. A summons case can be converted into a warrant case. Please read & refer sec. 259 of Crpc. Provide that when in a course of the trial of summons case relating to an offence punishable with imprisonment for a term exceeding six months, it appears to the magistrate that in the interest of justice, the offence should be tried in accordance with the procedure for the trial of warrant case. Such Magistrate may proceed to re-hear the case in the manner provided by the Crpc for the trial of warrant cases. But the Court has no such power to convert a warrant case into a summons case.
- e. In a summons case the Magistrate can acquit the accused for non appearance of or the death of the complainant (*Please read & refer Sec. 256 of Crpc) (As per N.I. Act concern please rely and read the following citation (1)1998 (1) GCD Page 625 (2) 1994 (4) Crimes Page 209 and (3) 1999 (4) Crimes Page 69 etc.*) whereas in warrant case when the proceedings have been instituted upon a complaint and on any date fixed for hearing of the case, the complainant is absent, the accused can be acquitted only when the offence is compoundable and cognizable, otherwise not.

### Some Important Salient Feature of Summons Trial

Though it is not physically possible to lay down a complete and exhaustive list of all the salient features of summons trial, however an attempt is made here to enumerate some of such important features of summons trial.

1. In a summons trial, it shall not be necessary to frame a formal charge against the accused (Section 251 Crpc.)

2. Instead of framing charge it shall be sufficient in summons case to state the particulars of the offence to the accused when he appears or is brought before magistrate (Section 251 Crpc)
3. In petty summons cases the accused can plead guilty even by post or by messenger. He need not appear in the court for getting his case decided. (Section 206 Crpc)
4. The acquittal of the accused in case of non-appearance of or death of the complainant is possible in summons case (Section 256 Crpc)
5. In a summons case the withdrawal of complaint against all or any one of the accused is permissible under Section 257 Crpc.
6. A First Class Magistrate or a second class magistrate with the permission of the chief Judicial Magistrate has power to stop the proceedings in any summons case instituted otherwise than upon a complaint. (Section 258)
7. Sec. 259, code of criminal Procedure provides that when in the course of the trial of a summons case relating to an offence punishable with imprisonment for a term exceeding six months, it appears to the magistrate that in the interest of justice, the offence should be tried as a warrant case, such Magistrate may proceed to re-hear the case in the manner provided by the code of Criminal Procedure for the trial of warrant cases and may recall any witness who may have been examined earlier.
8. In a summons case the magistrate shall have to hear the accused on the question of sentence unless he (Magistrate)proceeds in accordance with the provisions of section 360 or section 325, code of Criminal Procedure [Section 255(2), Code of Criminal Procedure].
9. In a summons trial the Magistrate is only obliged to make a memorandum of the evidence of a witness. ***He need not record the full deposition of a witness*** (Section 274 Of Crpc.)
10. In a Summons trial the statement of the accused under Section 313, Code of Criminal Procedure Code can be recorded through his counsel if the court has dispensed with the personal attendance of the accused (Proviso to section 313(1)) ***1988 Cri. L. J. Page 51 etc.***
11. When on a complaint a summons case was tried as a warrant case and the prosecution failed to produce evidence in support of the allegation of the Complaint and when the accused was discharged it was held that such order could be said to be an order of acquittal passed under Section 255, Of Crpc.
12. If an offence is punishable only with fine it would be a summons or summons triable case.

***Please Read & Refer of Following Citation About Feature of Summons Trial etc.***

2004 Cri. L. J. Page 4175 Gujarat High Court

1997 GLR Page 1516 Gujarat High Court

1986 GLH Page 166 Gujarat High Court

2003 Cri. L. J. Page 2500 Madras High Court

AIR 2001 SC Page 3625

AIR 1988 SC Page 2163

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