TRIAL OF WARRANT CASES BY MAGISTRATES:

AN ANALYSIS OF THE PROCEDURE FOR TRIAL OF WARRANT CASES BY THE MAGISTRATES

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INTRODUCTION

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. The paper seeks to analyse the procedure followed at the time of the trial of warrant cases by the Magistrates.

I. WARRANT AND SUMMON CASES

Warrant Case

A warrant case relates to offences punishable with death, imprisonment for life or imprisonment for a term exceeding two years. The CrPC provides for two types of procedure for the trial of warrant cases by a magistrate, triable by a magistrate, viz., those instituted upon a police report and those instituted upon complaint. In respect of cases instituted on police report, it provides for the magistrate to discharge the accused upon consideration of the police report and documents sent with it. In respect of the cases instituted otherwise than on police report, the magistrate hears the prosecution and takes the evidence. If there is no case, the accused is discharged. If the accused is not discharged, the magistrate holds regular trial after framing the charge, etc. In respect of offences punishable with death, life imprisonment or imprisonment for a term exceeding seven years, the

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trial is conducted in a sessions court after being committed or forwarded to the court by a magistrate.

Summon Case

A summons case means a case relating to an offence not being a warrant case, implying all cases relating to offences punishable with imprisonment not exceeding two years. In respect of summons cases, there is no need to frame a charge. The court gives substance of the accusation, which is called "notice", to the accused when the person appears in pursuance to the summons. The court has the power to convert a summons case into a warrant case, if the magistrate thinks that it is in the interest of justice.

Trial of Warrant Cases

Section 238 to 250 divide themselves into three groups. The first group consisting of Section 238 to 243 deals with provisions applicable is respect of warrant cases instituted on a police report; the second group consisting of Section 244 to 247 dealing with the provisions exclusively applicable in respect of such warrant cases as are instituted otherwise than on a police report; the third group consist of section 248 to Section 250 which are equally applicable both to cases instituted on a police report and cases instituted otherwise than on a police report; the third report consist of Section 248 to Section 250 which are equally applicable both to cases instituted on a police report and cases otherwise instituted on a police report. The difference in procedure is understandable. In cases instituted on a police report, lot of record made during investigations by the police is made available to the court and to the accused person. Such record cannot obviously be available on police report. Therefore it becomes necessary in such cases to provide special procedures to enable the accused to acquaint himself with the facts of the case on which the prosecution is relying he is called upon to defend himself.

II. CASES INSTITUTED ON A POLICE REPORT

Initial Steps of the Trial

1. **Supply of Copies to the accused:**When in any warrant case instituted on a police report, the accused appears or is brought before the Magistrate at the commencement of the trial, the Magistrate shall satisfy himself that he has complied with the provision of Section 207. [1]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 enquiry and in order to enable him to cross examine the witness on such defence as he may set up and avoid to delay. It has been ruled that a accused person would have the right albeit a non- statutory right to complete disclosure of material at the threshold of trial, even in cases instituted otherwise than o a police report if the proceedings were preceded by police investigation.[2]The section uses the word "shall", but it appears to be directory ad not mandatory. Even if there is a entire omission to carry out the provisions regarding supply of copies in the beginning of the trial to the accused, it will not be fatal so as to vitiate the trial but will be merely an irregularity curable under section 465.[3]

2. **Discharge of accused if all allegations against him are baseless-** If, upon considering the police report and the documents sent to 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. [S. 239].Sometimes it may be necessary to discontinue the groundless persecution half way and discharge the accused to avoid unwarranted trial process which will ultimately result in acquittal. Similar situation may arise in summons cases as well but there is no provisos similar to Sectio239 to cover this. However, the power to recall the summons used to be exercised on the basis of ***K.M. Mathew v. State of Kerala***[4]. This came to be reversed in ***Adalat Prasad v. Rooplal Jindal***[5]. This has necessitated the parties' filing petitions under Section 482 for quashment. I ***SubramaniumSethuraman v. State of Maharashtra***[6], the Supreme Court held that recall of summons is permissible before recording the plea of the accused under Section 252. This section has to be read along with Section 240 according to which, if after considering the documents and the examination of the accused and hearing the accused,

[1]*Salig Ram Vs. State,*1973 CrLJ 1030
[2]*Viniyoga International v. State*, 1985 CrLJ 761 (Del.)
[3]*Nageshwar Singh Vs. State of Assam,* 1974 CrLJ 193.
[4] (1992) I SCC 217
[5] (2004)7 SCC 338
[6] (2004) 13 SCC 324

the Magistrate thinks that there is ground for presuming that he accused has committed an offense triable under Chapter XIX of the Code (i.e. dealing with trials of warrants cases by Magistrates) within the Magistrate's competence and for which he can punish adequately, he has to frame in writing a charge against the accused. [7]Reading the two sections together, it clearly means that if there is no ground for presuming that the accused has committed an offence, the charges must be considered to be groundless, which is the same thing as saying that there is no ground for framing the charges.[8] This necessarily depends on the facts and circumstances of each and the Magistrate is entitled and indeed has a duty to consider the entire material referred to in the above Section239.[9]

3. **Framing of charge**- If upon such consideration of the police report and the documents sent with it under Section 173, the examination of the accused if any, and hearing the parties, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this chapter, which such Magistrate is competent to try and which in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused. [S.240(I)]. The stage at which Magistrate is required to consider whether to discharge or to frame a charge is of vital importance both to the prosecution and the accused. In view of this Sections239 and 240 prescribe some definite guideline which the Magistrate must observe and comply with before arriving at his conclusion of discharging the accused or of framing a charge against him.[10] These sections demand that the Magistrate must consider the police report and all the documents furnished by the police along with such report and if need be, to examine the accused, hear the arguments of both the sides and then arrive at his conclusion, independent of ad uninfluenced by the police opinion, whether the material placed before him accepted at its face value, would furnish a reasonable basis or foundation for the accusation.[11]

4. **Explaining the charge to the accused**- After the framing of the charge, it shall the be read ad explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried. [S.24(2). The section requires that the charge should not only be read out but should also be explained to be accused in a manner which

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[7]*Vinodkumar Vs. State of Haryana*, 1987 CriLJ 1335
[8]*State Vs. C.K.Gulati*, 1982 CriLJ 1923
[9]*Century Spg. And Mfg. Co. Vs. State of Maharashtra*, (1972) 3 SCC 282
[10]*RadheyShyam Vs. State of Uttar Pradesh*,1992 CriLJ 202 (All)
[11]*RaghavendraRao Vs. State of Andhra Pradesh*, 1973 CriLJ 789

ensures that the accused has understood it properly.[12] If he has been made aware of the offences, a mistake in charges while taking cognizance may not prejudice the accused.

5. **Conviction on plea of guilty**- If the accused pleads guilty, the Magistrate shall record the plea and may, in his discretion, convict him thereon. [S.241]If the facts alleged against the accused do not constitute a crime, a plea of guilty under such circumstances is only admission of facts and not admission of guilt. If the accused is convicted on his plea of guilty, the Magistrate shall, unless he proceeds in accordance with the provisions of Section 325 or Section360, hear the accused on the question of sentence and then pass sentence on him according to law.[13]

6. **Fixing date for examination of witnesses**- 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 above, the Magistrate shall fix a date for the examination of witness. [S.242(1)] Recording of the evidence on the very day on which the charge is framed would render the proceedings illegal. 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 thing.[S.242(2)]The word "any" suggests that the Magistrate has discretion in the matter of issuing summons to a prosecution witness. If the prosecution had made an application for issue of summons to its witnesses either under Section242(2) or 254(2), it is the duty of the court to issue summon to the prosecution witness and to secure the witnesses by exercising all the powers given to it under the code.[14]

EVIDENCE FOR PROSECUTION

Examination of Witness: The provision permitting the cross-examination of ay witness to be deferred until any other witness or witnesses have been examined is based on sound principle. But in practice the provision might be resorted to without sufficient justification and might lead to delay, expense ad inconvenience to witnesses. [15]In order to minimise this risk of abuse or misuse of the provision, permission of the court has been made imperative. It may be noted that while section

[12] *Jodha Singh Vs. Emperor,* AIR 1923 ALL 285.
[13] Gannon Dunkley , AIR 1950 Mad 837
[14] *State of U.P Vs. Babu,* 1991 CrLJ 991
[15] *Easin Ali vs. Abdul Obdud*, 1982 CriLJ 1052 (Cal).

242(2) gives a discretion to the Magistrate to issue summons to the prosecution witnesses o the application of the prosecution, Section242(3) casts a duty on the Magistrate to take all such evidence as may be produced by the prosecution on the date fixed."The prosecution is not required to produce all the witnesses mentioned in the first information report. Material witnesses considered necessary by the prosecution for unfolding the prosecution story alone need be produced without unnecessary ad redundant multiplication of witnesses.[16]

Steps to follow the prosecution evidence

After the completion of the prosecution evidence two important steps are taken:

1) Oral arguments ad memorandum of arguments on behalf of the prosecution; [S.314]
2) Examination of the accused under Section 313(1) (b).

EVIDENCE FOR THE DEFENCE

1. **Examination of witnesses for the defence**- After the completion of the prosecution evidence, the submission of the prosecution arguments, and the examination of the accused person under Section 313 (1) (b), the accused shall then be called upon be called to enter his defence and produce his evidence. [S.243(1)][17]If the accused, after he has entered upon his defence, applies to the Magistrate to issue ay process for compelling the attendance of ay 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 purpose of vexations or delay or for defeating the ends of justice and such ground shall be recorded by him in writing.[18]Moreover it has been held that the words "may require" Section 243(3) means that the court has discretion and power to exonerate the accused from paying the reasonable expenses to be incurred by the witnesses in attending for the purpose of trial, if court is satisfied that the accused has no means or capacity to pay such expenses.

[16]*State of Rajasthan Vs. Bhera*, 1997 CriLJ 1237.
[17]*VenkateshRaoVs. State*, 1979 CriLJ 255.
[18]*Surinder Kumar Vs. State*, (1949) CrLJ 294.

[19]This is what it should be in order to secure the ends of justice.Section 243(2) requires the Magistrate to summon at the instance of the accused, witness "for examination or cross-examination", but under the provisio, the attendance of a witness is not compellable where the accused has had an opportunity of cross-examining that witness. This is however, subject to the counter-exception expressed by the words "unless the Magistrate is satisfied that it is necessary for the purposes of justice". To compel the attendance of any witness cited by the accused after he has entered upon hi defence, unless it records a finding that the application for summoning the witness had been made merely for the purpose of vexation or delay or for defeating the ends of justice.[45]The Supreme Court held that a Magistrate holding a inquiry under Criminal Procedure Code in respect of a offence triable by him .If the accused, after entering upon his defence, applies to the court to issue process for compelling the attendance of any witness for the purpose of examination or cross-examination, an adjournment will have to be granted necessarily.

2. **Written statement of the accused**- If the accused puts in ay written statement, the Magistrate shall file it with the record. [S.243(3)]The provision regarding the written statement might be of some use to an accused person who (or whose pleader) feels that his examination under Section 313(1) (b) has not given him a full opportunity to explain all aspects of the case.

Steps to follow the defence evidence

(1) Court witness- The court can, at any stage, summon ad examine any person as a court witness if his evidence appears to it be essential to the just decision of the case. [S.311]

(2) Arguments submitted on behalf of defence- After the close of the defence evidence, the defence can address concise oral arguments and may submit to the court a memorandum in support of its case. This has been provided by Section 314

[19]*Manni Vs. State*, 1975 CriLJ 161 (All)

III. CASES INSTITUTED OTHERWISE THAN ON POLICE REPORT

Initial steps in the trial

1. **Preliminary hearing of the prosecution case-** In cases instituted on a police report the accused has the advantage of getting copies of the documents referred to in Section 173, and thereby he is enabled to make adequate preparations for his defence. The availability of the police report ad other documents sent to the court along with such report help the court in deciding whether to frame a charge against the accused person, or to discharge him if there is "no evidence". [20]As such copies and record are not available to the court and to the accused person in cases instituted otherwise trhan a police report, a sort of preliminary hearing of the prosecution case becomes desirable.It may be pertinent to note that there is difference between material collected during the process of taking cognizance and the material collected during trial. Explaining this in***Sunil Mehta v. State of Gujrat***[21], the Supreme Court observed thus:

   "*There is, however, a qualitative difference between the approach that the court adopts ad the evidence adduced at the stage of taking cognizance and summoning the accused and that record at the trial. The difference lies in the fact that while the former is a process that is conducted in the absence of the accused, the latter is undertake in his presence with an opportunity to him to cross-examine the witnesses produced by the prosecution*."

   It was a case where the Magistrate despite the police report under Section 156(3) to the effect that it was essentially a civil dispute, proceeded to take cognizance and issued summons. The Magistrate went ahead with charging overturning objections o the basis of non-compliance of Section 244. [22]The Sessions Court remanded the case to Magistrate but the High Court upheld the Magistrate's order. The Supreme Court reversed the High Court emphasising the views quoted above.

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[20]*PrithviNath Vs. R.C.Kaul*, 1975 CriLJ 216
[21] (2013) 9 SCC 209
[22]*Yashodabai Vs. B.M.Kamat*, 1973 CriLJ 1007

2. **Discharge of Accused:**At this stage of the proceedings Section 245 (1) requires the Magistrates to only consider the evidence prima facie with the pointed view as to whether the evidence if unrebutted would result in conviction.[23] He is not required to consider the entire pros and cons of the evidence at this stage.Under Section 245(1), the Magistrate can discharge the accused, if upon taking all the evidence referred to in Section 244, he finds that no case against the accused has been made out which, if unrebutted, would warrant his conviction. For the applicability of Section 245(1) what is required is that all the evidence that may be produced is taken and not that all the evidence that the complainant intends to produce I the case has been taken.[24] If I case the court directs the complainant to produce all his witnesses and on the evidence he adduces, there is not even the ghost of a chance of conviction of the accused, the Magistrate has the discretion under Section 2245(1) to discharge the accused without affording a further opportunity to the complainant to summon witness he is yet to produce. Sections 245 and 246 are supplemental to each other and a harmonious construction must be placed on them. According to Section 245(1) if the evidence produced, as it stands is not sufficient for a conviction, the Magistrate is duty-bound to discharge the accused. I this context, the word "presuming" in Section 246(1) clearly envisage the framing of a charge against the accused only if the evidence before the Magistrate is sufficient to warrant a conviction.

3. **Framing of Charge**- If, when such evidence as mentioned in Section 244 has been take or at any previous stage of the case the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this chapter, which such Magistrate is competent to try ad which, in his opinion, would be adequately punished by him, he shall frame I writing a charge against the accused. [S.246(1(] [25]Under this section the Magistrate is supposed to frame charge against the accused but it does not lay down that the charge shall be framed only after evidence is taken in terms of Section 244.[26] For the purposes of framing a charge the evidence already led must be of such a nature that if that remains unrebutted by the defence, the accused may be convicted for it.The section also empowers a Magistrate to frame a

[23]*HukamichandDevkisenSarda Vs. RatanlalRupchandHeda*, 1977 CriLJ 1370
[24]*Marutha Vs. Rajagopal*, 1972 CriLJ 1210
[25]*Verendra Kumar Vs. Aashrya Makers*,1991 CriLJ 880
[26]*Premswati Das Vs. Thakur Das*, 1975 CriLJ 880

charge at any previous stage of the case, that may be even after the examination of one witness. What is necessary for the Magistrate is that he must be opinion that there is ground for presuming that the accused has committed an offence.[27] The Magistrate cannot decide to frame a charge before any evidence has been led by the prosecution. In other words, he cannot jump over Section 245 and frame charge in as much as in that case the accused's right to be discharged under Section 245 In the absence of prima facie case, may be infringed[28]. The phrase "at any previous stage of the case" contained in Section 246(1) has to be read in the context of the provisions of Section 244. It only means that if the Magistrate in the process of taking evidence feels at any particular stage that the evidence so far recorded was enough for the purpose of framing the charge, he can at that stage frame that charge without further taking the remaining evidence.[29]

4. **Explaining the charge to the accused**- The Charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty or has ay defence to make. [S.246(2)]. This Section 246(2) is analogous to Section 24(2).

5. **Conviction of plea of guilty**- If the accused pleads, guilty, the Magistrate shall record the plea, and may, in his discretion, convict him thereon.[S.246(34)].When the facts alleged do not themselves constitute an offence, the plea of guilty cannot be made the basis for conviction. A person can be convicted on a plea of guilty only if the ingredients of the offence are made out.[30]

6. **Choice of the accused to recall prosecution witnesses**.- If the accused refuses to plead guilty, or does not plead guilty or claims to be tried or if the accused is ot convicted under Section 246(3) above, he shall be required to state at the commencement of the next hearing of the case, or, if the Magistrate for reasons to be [31]recorded in writing so thinks fit, forthwith, whether he wishes to cross-examine any, and if so, which of the witnesses for the prosecution whose evidence has been take

[27] *State Vs. Publish Ghosh*, 1973 CriLJ 51
[28] *Verendra Kumar Vs. Aashraya Makers*, 1991 CriLJ 4206(AP)
[29] *PurushottamKadodkar Vs. Dayanand*, 1973 CriLJ 939
[30] *AslamIkbalWali Mohammed Vs. State of Karnataka*, 1976 CriLJ 390
[31] *K.M.Nambbodiri Vs. Unni Nair*, 1975 CriLJ 751

.[S.246(4)] of he says he does is wish, the witnesses named by him shall be recalled. [S.246(5)].[32]The purpose of this section is to secure the accused a opportunity to cross-examine the prosecution witnesses after he has been give notice of the specific charge which he has to answer. It is clear from the express words used in this section that the duty of recalling the witnesses when an accused wants to cross-examine them in cast on the Magistrate.[73] The fact that the accused had cross-examined the prosecution witnesses before the charge had been framed is no reason to deny the right of cross-examination of the said witnesses after the charge. The words "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" suggest that reasonable time should be given to the accused person to state whether he wishes to cross-examine any of the prosecution witnesses after the framing of the charge, ad it is only in special cases that the Magistrate after recording reasons can ask him to state forthwith if he so wishes.[75]

Evidence for prosecution

1. **Examination of witnesses** – All prosecution evidence produced in support of the prosecution is already take under section 244 before the charge is framed the accused. But when he charge is framed the accused becomes aware of the exact nature of the charge or allegations against him. [33]Therefore, in all fairness to him the accused person is asked by the Magistrate under Section 246(4) as to whether he wishes to cross-examine any of the witnesses for the prosecution whose evidence has already been taken under Section 244. [34]If the accused says he does to wish , the witnesses named by him shall be recalled and , after the cross-examination and re-examination (if any) they shall be discharged. [S. 246(5)] The evidence of ay remaining witnesses for the prosecution shall next be take ad after cross-examination and re-examination (if any), they shall also be discharged. According to Section 246(6) the prosecution is entitled to examine witnesses, who have not been examined or whose names have ot been mentioned in the list of witnesses before the charge is framed. [35]If such a case the accused wants time to cross-examine the witnesses whose name were not

[32]*Prabati Devi Vs. State of Uttar Pradesh*
[33]*Bhajja Vs. Emperor*, (1939) 40CriLJ 549
[34]*Phuman Singh Vs.Emperor*, (1925) CriLJ 26
[35]*State of Bombay VS. Janaradhan*,1960CriLJ 1569

disclosed before the charge was framed, the Magistrate may grant time to the accused person.

2. **Record of evidence**- The evidence in warrant cases shall be recorded according to the provisions contained in Sections 275,277 to 280.

IV. CONCLUSION

The researcher through this paper brings in light the complete time taken in the process is so much that the witness and the accused feels insecure for a very long time. However, the time period is absolutely justified as each and every step is very essential and crucial in the interest of justice. Every Indian citizen has the right to speedy trial under Article 21 of the Constitution of India. Therefore, the researcher would like to suggest that the all those unnecessary delays can be avoided as far as possible so that the process of trial can be speedy.