

CHAPTER 2

Summary Trials

1. Magistrates competent to try and the procedure to be adopted—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. Only offences specified in these sections may be tried by this procedure. The amendments made by Act 26 of 1955 in Section 260 of the Code to enlarge its scope may be noted. In view of the amended definition of ‘warrant case’ it would not now be true to say that all summons cases can be tried summarily. According to clause (a) of Section 260(1) offences not punishable with death, imprisonment for life or imprisonment for a term exceeding six months can be so tried. In summary trials the procedure to be followed at the hearing is that of summons case in the trial of summons cases and of warrant-cases in the trial of warrant cases (Section 262) subject to the modifications made by Sections 263 and 264 of the Code as to the record required.

2. Sentence, and judgment—No sentence of imprisonment exceeding three months may be passed on a conviction under the summary procedure prescribed in Chapter XXII of the Code [sub-section (2) of Section 262]. Where the sentence passed is not appealable (Section 413) the particulars required under Section 263 of the Code may be recorded. In appealable cases, however, the Court shall record the substance of the evidence and also the particulars mentioned in Section 263 and shall before passing sentence also record judgment in the case (Section 264). No other record is required. Particulars required under Section 263 include full information as to the nature of the offence alleged and proved; the plea of the accused and his examination, if any, the finding and in case of conviction, a brief statement of the reasons thereof and the sentence or other final order.

3. Evidence—In all summary trials in which the order of the Magistrate is final, no evidence need be recorded; but the Magistrate should enter the particulars mentioned in Section 263 of the Code in Register No. XVII. Columns 7 of 14 of this register should be filled in by the Magistrate himself. If, however, a sentence is passed which is appealable, the substance of the evidence, in addition to the particulars mentioned in Section 263, should be recorded.

4. Acquittal of accused in warrants cases—The question has been raised whether an accused person, tried summarily for a warrant offence, under Chapter XXII of the Code of Criminal Procedure, and not convicted, is to be shown in the statement as ‘discharged’ or ‘acquitted’. This question is disposed of by the provisions of Section 262 of the Code, which enacts that in

summary trials the procedure for warrant-cases shall be followed in respect of warrant-cases, with certain exceptions which concern only the manner of record.

5. Oral charge—Accordingly, the distinction between acquittal and a discharge, shown in Sections 253 and 258 of the Code [*see* Sections 245 and 248 of new Code] holds good in all warrant-cases tried summarily, the only difference being that under the ordinary procedure the charge must be prepared in writing; while under the summary procedure it is made verbally. A discharge in a summary trial no more bars the revival of prosecution for the same offence than it does in a case conducted under the rules of ordinary procedure.

6. Final order should show whether accused has been discharge of acquitted—The final order or judgment in warrant-cases tried summarily, when the accused is not convicted, should invariably show whether the accused person has been discharged or acquitted, the test being whether, after hearing the evidence for the prosecution, the Court has called upon the prisoner to plead to a definite charge or not, and the accused in such cases should be shown in the periodical statements as discharged or acquitted, according to the final order of the Magistrate.

7. Summary trial of cases against Government Servants—In the trials of cases against Government servants, summary procedure should not as a rule, be adopted.

8. Registers for summary cases—It has come to the notice of the Honourable Judges that summary cases are entered in the relevant registers only when the accused appears in Court, with the result that a large number of such cases escape notice of Courts. It is of the utmost importance that as soon as a summary case is received in Court, it should be entered in the Register No. 1. When the accused appears the case should then be entered in Register of summary cases (Form No. XVII). Magistrates exercising summary powers should prepare a statement every month showing the actual number of summary cases received in the Court and the progress made in the disposal of such cases. A Summary of this statement should be given in the remarks column of Register No. 1 at the close of each month so as to show at a glance the actual number of summary cases received disposed of and pending in the Court. (High Court Circular Letter No. 3003-Genl/XVIII-D- 20 (C) (1), dated the 9th March, 1954).