

CHAPTER 8

Processes—Criminal Courts

Part A

ISSUE AND SERVICE OF SUMMONS

1. Signing of summons—Every summons in a Criminal case should be signed legibly and in full by the Magistrate by whom it is issued, with the name of his office or the capacity in which he acts. The practice of signing initials only or of using a stamp is objectionable and should not be adopted.

2. Regarding service of summons in non-cognizable cases—In Criminal cases which are not cognizable by the Police, within the meaning of Section 4, clause (f) (*see* Section 2 of New Code) of the Code of Criminal Procedure, summonses are to be served through the civil process-serving establishment attached to the Courts. District Magistrate shall see that the prescribed fee, if any, is duly paid in such cases.

¹[2A **Regarding service of summons in criminal cases** – (a) In addition to the other modes of service, as provided under the Code of Criminal Procedure, 1973, the summons to the accused and to the witnesses in non-cognizable cases may also be served through approved courier.

(b) In cognizable cases, summons to the witnesses may also be served by the police, through approved courier, in addition to other modes of services provided under the Code of Criminal Procedure, 1973.

(c) The rules governing the service of process through courier agencies, as approved by the High Court of Delhi, qua civil courts, shall also govern the service of process in the criminal cases also.]

3. Fee of twelve annas to be paid for such process—Rules under the Court-fees Act, 1870, for the realization of process fee, will be found in Chapter 5, “Process Fees.” Rule 5 of the rules in Part B of that Chapter prescribes a fee of twelve annas for every summons issued by a Criminal Court in a non-cognizable case unless it falls within one of the exceptions set out therein. By the notification of the Punjab Government No. 314 of the 21st March, 1883, issued under Section 68 of the Code, every Criminal summons for the service of which a fee is levied under rules made by the High Court under the Court-fees Act, shall be served by the process serving establishment of the Court issuing the summons.

4. Service of summons sent by a Court to a place outside its jurisdiction—(a) Under Section

¹. Rule 2A inserted vide Notification No. 182/Rules/DHC dated 10.03.2014

73 (*see* Section 67 of New Code) of the Code of Criminal Procedure, a summons issued by a Court for service at any place outside the local limits of its jurisdiction, should ordinarily be sent in duplicate to a magistrate Within the local limits of whose jurisdiction the person summoned resides or is to be there served. In special cases, however, *e.g.*, when particular urgency in service is required the Courts may, subject to the general control of the District Magistrate and to any general or special orders issued by him, permit the prosecuting agency to send summonses direct by registered post, acknowledgment due, to the police station concerned.

(b) When the summons has to be sent for service from a Court to any district, the vernacular of which differs from that in which the process is written, it should be accompanied by a translation in English.

(c) All reports made on summons received for service from any district or State the vernacular of which differs from that of the district in which the report is written shall be translated into English which translation shall accompany the summons when returned to the Court issuing it.

5. Affidavits by Police officers and process-servers who serve summons—Attention is invited to the provisions of Section 74 of the Code of Criminal Procedure, which makes an affidavit of service admissible in evidence in certain cases. When the Police serve a summons outside the local limits of the jurisdiction of the Court from which it issued, and in all cases in which it is probable that the police officer who serves summons will not be present at the hearing of the case, the police officer, who has served such summons should make an affidavit in the form given below before the nearest Magistrate. The affidavit, and a duplicate of the summons endorsed in the manner provided by Section 69 or Section 70 (*see* Sections 62, 63, 64 of new Code) of the Code, should then be forwarded to the Court, which issued the summons.

(ii) The same procedure will be observed by process-servers in regard to criminal processes in similar circumstances.

(iii) Printed forms of the affidavits mentioned above will be provided. These should be supplied to all officers in charge of police stations.

(iv) Magistrates must not detain police officers and process-servers who attend their Courts merely to make affidavits, longer than is necessary for that purpose.

Declaration of service of summons

I son of do hereby solemnly declare that I did on
the day of serve of son of
.. with the summons now shown to me and marked A, by delivering (or tendering) a duplicate to
him [or, by leaving a duplicate for him with an adult male member
of his family residing with him or by affixing duplicate to a conspicuous part of his house or
homestead]. (Signed). Declared before me at by this day of

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Magistrate.

6. Instructions reissue of summons for particular class of persons—The following instructions are issued with regard to the issue of summons for particular classes of persons—

(i) *Government servants generally*—When the person summoned is in the active service of the

Government, the Court or Magistrate issuing the summons should, in accordance with the provisions of Section 72 (*see* Section 66 of New Code) of the Code of Criminal Procedure, ordinarily send it in duplicate, to the head of the office in which the person summoned is employed, who will cause the summons to be served on the person named therein. This rule applies to every summons issued under the Code (Section 93) (*see* Section 90 of new Code).

(ii) *Bodies corporate*—When the summons has to be served on an Incorporated Company or other body corporate, such as a Municipal Committee, service may be effected by serving the summons on the Secretary, Local Manager or other principal officer of the Corporation, or by registered post letter addressed to the chief officer of the Corporation in India. In such cases the service should be deemed to have been effected when the letter would arrive in ordinary course of post [*vide* Section 69(3) (Sections 62 and 63 of new Code) of the Code of Criminal Procedure].

(iii) *Soldiers in Military Employ*—When a Criminal Court issues a summons for the appearance of a soldier in military employ, the summons should be sent for service to the Officer Commanding the Regiment in which such soldier is serving. The provisions of Section 72 (Section, 66 of new Code) of the Code of Criminal Procedure, are wide enough to include persons in military employ; and whenever it is necessary to summon an officer or soldier or other person in military employ, the summons should always be sent for service to the head of the Office or Head of Department or Officer Commanding the Regiment in which such officer, soldier or other person is serving, unless there are special reasons, which should be recorded, for proceeding otherwise.

(iv) *Railway officials*—(a) Persons in the active service of any Railway Company or Administration are subject to the same rules regarding the issue of summons as Government servants [*see* (i) above].

(b) Considerable inconvenience results from the indiscriminate summoning of the superior officers of the Railway to give evidence on points of railway practice, customs, orders etc., which could equally well be done by subordinate Railway officials at or near the place where the trial is being held, and subordinate Courts should, in the exercise of their discretion, abstain from requiring the attendance of the Manager or other high officials of the Railway, except in special cases in which their evidence is absolutely necessary.

(c) To assist the Courts in summoning the subordinate officials who would most probably be able to give the evidence required with the smallest inconvenience to the Railway a list of the superior officers under whose immediate orders the Railway subordinates are, is given in the Appendix to this chapter, and, except where a strict adherence to this rule would cause delay or inconvenience, all processes for the attendance of any subordinate official should ordinarily be served through his immediate superior.

(v) *Police*—Whenever a summons is issued to an officer of Police to appear as a witness it should be served upon such officer through the Superintendent of Police, or, in the case of an outpost, the Assistant or Deputy Superintendent in charge of the outpost to which the individual summoned may belong.

(vi) *Medical Officers*—The following instructions regarding the summoning of Medical Officers and their subordinates to give evidence in Criminal cases should be observed—

(i) On all summonses intended for service on officials of the Medical Department it should be

stated whether the Official concerned is being called to give evidence as an expert, or to give evidence in a case with which he has had to deal in the ordinary course of his duties as a Medical Officer.

(ii) Summonses for Medical Officers and subordinates in cases in which their evidence as experts is not required, whether the Court is in their own district or not, should be forwarded to the Civil Surgeon concerned for service.

(iii) Notice should be given to the Director of Health Services whenever a summons has been issued to a medical man in civil employ under the Punjab Government to give evidence as an expert outside his district.

(iv) The evidence of medical officers under orders of transfer should, whenever possible, be taken before they hand over charge. With this object in view, the Director of Health Services has been requested to communicate to the District Magistrates information about impending transfer of medical officers as soon as orders are received in his office. When the orders are so communicated, the Magistrates of the district, the Superintendent of Police, and the medical officer concerned should be consulted and the evidence of the medical officer in pending cases should be recorded, so far as it may be practicable, before he hands over charge. For the remaining cases, in which it would be necessary for the medical officer to return in order to give his evidence, effort should be made to fix one or two suitable days for the evidence being recorded by all the Courts concerned, so as to avoid the necessity of frequent trips to the district for that purpose.

(High Court Circular Letter No. 1417-R/XXV-5, dated the 18th February, 1942.)

(vii) *Consuls-General*—When it is necessary to summon certain Consuls-General residing in or visiting the Punjab to give evidence in a criminal case, the summons should issue in the form of a letter. The form of summons given in Form XXXI of Schedule V (Schedule II of new Code) attached to the Code of Criminal Procedure, will be used, except that it will begin and end as a letter, and the body of the letter need not be so abrupt as the form itself is.

Before summoning a Consular Officer whose office is at a distance from the Court, the Magistrate should consider the possibility of taking evidence on commission as provided by Section 503 (Section 284 of New Code) of the Code of Criminal Procedure.

This privilege should be confined to the Consuls-General of Afghanistan, Persia, America, Holland, Germany, Japan and Italy. Other consular officers may continue to be summoned in the ordinary way.

Part B PREPARATION AND ISSUE OF WARRANTS OF ARREST AND OTHER PROCESSES

1. General warrants—General warrants for arrest should never be issued by a Court of Justice.

2. Prescribed form of warrants which should state the special cause on which it is granted—Every warrant should state as shortly as possible the special matter on which it proceeds, and should be in the Form II given in Schedule V (Schedule II of New Code) of the Code of Criminal Procedure. This form expresses on the face of it the special cause on which it

is granted, viz., that the party 'stands charged with the offence of (*Stating the offence*)'. A warrant issued under Section 90 (Section 87 of New Code), should in like manner to made out in Form VII. A strict adherence to the form of warrants of arrest prescribed by the Code will tend to prevent their being granted irregularly and without inquiry as to whether the circumstances justify their issue.

3. What a warrant or process should contain—In all warrants and processes of every description, whether under the Code of Criminal Procedure or any other law in force, the father's name, caste, tribe or nationality, and residence of the person to be arrested, summoned, etc., should be entered, so as to place his identity beyond all doubt. The warrant should also set forth the Court from which it issues, and the name of the district.

4. Care to be exercised in distinguishing forms of warrants and summons—(i) Great care should be exercised in distinguishing forms of warrants from forms of summons, and in making the Police and the public acquainted with the difference, different tinted paper and lithographed or printed forms should always be used. The people of the country will gradually become familiar with the appearance of each sort of process and know how to act.

(ii) All vernacular warrants of commitment to jail should be drawn up in the Roman character, except in the case of Indian Magistrates who are unable to read this character, and ordinary country ink should never to be used in filling up the blanks in the printed form of warrant, or in warrants drawn up upon English paper.

²**[5. A warrant should not be issued where a summons can serve the purpose**—Great care should also be taken that a warrant, which always implies personal arrest and restraint, in never issued when a summons to attend would be sufficient for the ends of justice; and any attempt to coerce or restrain a party called upon to appear in obedience to a *summons* should be checked and punished. It must be understood that the Police will carry out to the letter the instructions issued in the writ handed over to them, but the Magistrate is responsible for the consequences of an informal or illegal process bearing his official seal and signature.

The Hon'ble Judges wish to impress upon the Subordinate Courts the desirability of caution in issuing warrant of arrest against a person in public service unless and until the Court is fully satisfied that he is wilfully omitting to obey the summons. In most cases it will produce the desired effect if the attention of the superior officer is drawn to the conduct of his subordinate, and the witness is warned that his wilfull non-attendance might entail coercive and penal action against him. Of course, in cases of pronounced refractoriness, the Courts can set the law in motion in any one or all of the forms available to them].

6. Service of warrants on Railway servant—Warrants issued against Railway servants should be entrusted for execution to some Police officer of superior grade, who shall, if he finds on proceeding to execute the warrant, that the immediate arrest of the Railway servant would occasion risk or inconvenience, make all arrangements necessary to prevent escape, and apply to the proper quarter to have the accused relieved, deferring arrest until he is relieved.

7. Execution of a warrant outside jurisdiction of the Court—Under Section 83(1) (*see* Section 78 of the New Code) of the Code a warrant to be executed outside the local limits of the jurisdiction of the Court issuing it, may be forwarded by post or otherwise to the Superintendent

2. Substituted by C.S. No. 18, dated 11th May, 1966.

of Police of the district in which it is to be executed. Similarly, by Section 85 (Section 80 of the New Code) an offender when arrested may be taken before the Superintendent of Police instead of a Magistrate, and by Section 86, the Superintendent of Police may send the offender to the Court issuing the warrant.

8. Warrants under the Gambling Act—Every warrant issued under the Public Gambling Act, 1867, if not executed, shall be returned to the Magistrate or Superintendent of Police, who issued it, within a period of not more than fifteen days from the date of issue. The Magistrate or Superintendent of Police will then cancel the warrant, but a fresh warrant can immediately be applied for or issued, if necessary. (*Chief Court Circular Memo. No. 9-1970-G, dated the 4th June, 1896.*)

9. Some rules from the Punjab Rules, 1934, dealing with handcuffing of prisoners are reproduced below for the information of the Courts :—

“26.22 (1) Every male person falling within the following category, who has to be escorted in police custody and whether under police arrest, remand or trial, shall provided that he appears to be in health and not incapable of offering effective resistance by reason of age be carefully handcuffed on arrest and before removal from any building from which he may be taken after arrest :—

(a) Persons accused of a non-bailable offence punishable with any sentence exceeding in severity a term of three years’ imprisonment.

(b) Persons accused of an offence punishable under Section 148 or 226, Indian Penal Code.

(c) Persons accused of, and previously convicted of, such an offence as to bring the case under Section 75, Indian Penal Code.

(d) Desperate Characters.

(e) Persons who are violent, disorderly or obstructive or acting in a manner calculated to provoke popular demonstration.

(f) Persons who are likely to attempt to escape or to commit suicide or to be the object of an attempt at rescue. This rule shall apply whether the prisoners are escorted by road or in a vehicle.

(2) Better class under trial prisoners must only be handcuffed when this is regarded as necessary for safe custody. When a better class prisoner is handcuffed for reasons other than those contained in (a), (b) and (c) of sub-rule (1) the officer responsible shall enter in the station Daily Diary or other appropriate record his reasons for considering the use of handcuffs necessary.

27.12 * * * *

If, in accordance with Rule 26.23 prisoners have been brought to the Court in handcuffs, the handcuffs shall not removed in Court unless this is specially ordered by the presiding officer.”

Note—In this connection Rule 26.21-A of Punjab Police Rule, 1934 is as follows:—

“26.21-A—Undertrial prisoners are divided into two classes based on previous standard of living. The classifying authority is the trying Court subject to the approval of the District Magistrate, but during the period before a prisoner is brought before a competent Court, discretion shall be exercised by the officer incharge of the Police Station concerned to classify him as either ‘better class’ or ‘ordinary’. Only those prisoners should be classified provisionally

as 'better class' who by social status, education or habit of life have been accustomed to a superior mode of living. The fact that prisoner is to be tried for the commission of any particular class of offence is not to be considered. The possession of a certain degree of literacy is in itself not sufficient for 'better class' classification and no under-trial prisoner shall be so classified whose mode of living does not appear to the Police Officer concerned to have been definitely superior to that of the ordinary run of the population, whether urban or rural.

Part C

ATTENDANCE AS WITNESSES AND EVIDENCE OF PERSONS RESIDING BEYOND THE LIMITS OF INDIA

1. Warrant for the arrest of a witness outside India—The issue of warrants for the arrest beyond the limits of India of persons whose attendance is required to give evidence but who are at the time resident beyond the limits of India is illegal and should not be resorted to as warrants for the arrest of a witness can under Section 82 (Section 77 of the new Code) of the Code of Criminal Procedure, only be executed at some place in India.

2. If the witness does not comply, commission may be issued to the Political Officer to record evidence—If the person whose attendance is required does not comply with the directions contained in the letter no further steps to compel him to appear can be taken. But if his evidence is shown to be necessary for the ends of justice a Commission to take it may be issued under Section 503 (Section 284 of the New Code) of the Code of Criminal Procedure. The commission should be directed to a Court or officer as laid down in Section 504 (Section 285 of the New Code) of the Code. In this connection *see* Chapter 9-C of Volume III. If there is no arrangement for the issue and execution of such a commission the case must be decided without the testimony of such person.

3. Commission to issue only when evidence is indispensable—Officers presiding over Criminal Court are reminded that Criminal proceedings ought not to be unduly prolonged for the attendance as witnesses of person whose attendance the Courts are not competent to compel if they fail to attend voluntarily and that the discretionary power to issue a Commission for the examination of an absent witness should be exercised only when the evidence appears to be necessary for the ends of justice. When a Commission is refused the grounds for refusal should be briefly recorded to anticipate subsequent objections on the ground of such refusal.

APPENDIX

LIST OF NORTHERN RAILWAY OFFICIALS TO WHOM SUMMONS SHOULD ORDINARILY BE ADDRESSED

Statement showing designation of Heads of Offices of Operating, Locomotive and Engineering Departments through whom summonses are to be served

Head of Office	Officers through whom summons should be served	Staff employed under each
Ferozepore Division		

1.	Sub-Divisional Officer of—Ferozepore, Kanpur, Ludhiana, Jullundur	Sub-Divisional Officer of these places	Permanent way inspectors, sub-way inspectors of works, sub-inspectors of works, overseers, works clerks, mistris, carpenters, keymen, gangmen, mates, surveyors and sanitary inspectors.
2.	Assistant Signal Engineer, Ferozepore	Assistant Signal Engineer	Block inspectors, sub-assistant block inspectors, assistant signal and Interlocking inspectors, sub-assistant interlocking inspectors, time-keepers, mistris, carpenters, painters, blacksmiths, hammermen, fitters, coolies, cleaners, batterymen, linemen, trolymen, khalasis.
3.	Loco. Foreman of—Ludhiana, Ferozepore, Jullundur.	Loco. Foreman at these places.	Drivers shunters, firemen, shedmen, fuel munshis, school masters, fitter and fitter coolies, store munshis, shed menial staff.
4.	Head Train Examiner of—Ferozepore, Jullundur, Hissar.	Head train examiners at these places.	Train examiners, number takers, storemen, wheelmen, cleaners, wrenchmen, greasers, hammermen, carpenters, blacksmiths and bhishtis and box porters.
5.	Divisional Inspector, Power—(Fuel) “S”, (Fuel) “N”, Pumps, Rolling stock	Divisional Inspector—Loco. Ferozepore pumps, Ferozepore, Rolling stock, Ferozepore.	Box porters.
6.	Traffic Inspector of—Ferozepore, Jullundur, Ludhiana.	Traffic Inspector at these places	Shunting jamadars, pointsmen, cabinmen, shunting porters
7.	Train lighting Electrician, Ferozepore.	Train Lighting Electrician, Ferozepore.	Electricians, electric examiners, assistant electric coolies and number takers.

8. Station Master of— Ferozepore Cantonment, Ferozepore City, Macleod Ganj Road, Abohar, Lohian Khas, Nawanshahr, Doaba, Hoshiarpur, Taran Taran, Pati, Moga Tahsil, Jagraon City, Jullundur, Ludhiana, Amritsar.	Station Masters at these place	Station master, assistant station masters, signallers, goods clerks, parcel clerks, transit clerks, clerks booking correspondence clerks, yard foremen, shunting jamadars, shunting porters, cabinmen, signal and pointsmen, luggage porters, gatemen, sweepers.
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Controller of Stores

Foreman, Kalka	Foreman, Kalka	Clerk, motor fitters, carpenters, riveters, painters, shop jamadar, lifters, re- packers, machineman blacksmiths, hammermen, copper and tin smiths, millwright, moulders, cranemen
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Delhi Division

Sub-Divisional Officer—Saharanpur, Ambala, Bhatinda, Jind, Dharampur.	Sub- Divisional Officer of these places	Permanent-way inspectors, sub-ways inspectors, sub- inspectors, of works, overseers, time-keepers, mistris, carpenters, keymen, gangmen, gatemen, mates, sub- engineers surveyors and sanitary inspectors.
Loco Foremen, Delhi, Ghaziabad, Saharanpur, Ambala, Bhatinda, Jind, Shakur Basti, Kalka.	Loco Foreman at these places	Drivers, shunters, firemen, shedmen fuel munshis, school masters, fitters and fitter coolies, store munshis, and shed menial staff.

<p>Station Master – Meerut Cantonment, Meerut City, Saharanpur, Ambala Cantonment, Rajpura, Ludhiana, Bhatinda, Jind, Shakur Basti, Kalka, Simla, Ghaziabad, N.W. Rly., Delhi and Goods Supervisor, Delhi, Sadar Station, Superintendent, Delhi.</p>	<p>Station Master at these places</p>	<p>Station master, assistant station master, signallers, goods clerks, transit clerks, train clerks booking clerks, parcel clerks, ticket collector, phone clerks, correspondence clerk, yard foremen, chaukidars, shunting jamadars, shunting porters, cabinmen, signal and points men, luggage porters, gatemen, sweepers, watermen, waiting room staff, running room staff, guards and second guards, gunners, markers, telegraph peons and station peons.</p>
<p>4. Head Train Examiner – Delhi, Ghaziabad, Saharanpur, Ludhiana, Bhatinda, Kalka</p>	<p>Head Train Examiners at these places</p>	<p>Train examiners, number takers, store men, wheel men, cleaners, wrenchmen, greasers, hammer men, carpenters, blacksmiths and bhishits.</p>
<p>5. Divisional Electrician Delhi</p>	<p>Divisional Electrician</p>	<p>Electricians, electric examiners, assistant electric examiners, electric coolies, and number takers.</p>

³[Part D

FILLING UP OF FORMS OF PROCESS IN NON COGNIZABLE CASES

1. Option of a party to fill up forms - With their applications for the issue of process, parties may, if they so desire, file printed forms of the same duly filled up in accordance with the rules of the High Court regarding the issue of the process. The date of appearance and the date of the process will be left blank.

³ New Part D inserted vide Notification No. 183/Rules/DHC dated 10.03.2014.

2. Responsibility for accuracy of contents - The parties or their pleaders shall sign the forms thus filled in the left bottom corner, and will be held responsible for the accuracy of the information entered in the forms.

3. Legible handwriting - The forms must be filled up in a bold, clear and easily legible handwriting.

4. Dates to be filled in by office - When orders for the issue of process are passed by the Court, the date fixed for appearance will be inserted in the form and the process will be dated by an official of the Court before the processes are signed.

5. Free supply of forms - The necessary number of printed forms of process will be supplied to the parties or their pleaders, free of cost, on application to such official of the Court as the Presiding Judge shall direct.]