

## PART C-(i) ATTENDANCE OF ACCUSED PERSONS

1. When a Magistrate taking cognizance of an offence is of opinion that there is sufficient ground for proceeding, he must decide whether a summons or a warrant should issue in the first instance for the attendance of the accused. The fourth column of the second Schedule of the Code shows, in regard to offences, whether a summons or a warrant should ordinarily issue.

When summons or warrants should issue.

Sub-sections (1-A) and (1-B) of section 204 require that no summons or warrant shall be issued against the accused until a list of prosecution witnesses has been filed and that where a proceeding is instituted upon a complaint in writing the summons or warrant shall be accompanied by a copy of the complaint.

2. <sup>1</sup>[Even where the law provides for the issue of a warrant in the first instance, a magistrate may, in his discretion, issue a summons/e-summons. On the other hand, a magistrate may, after recording his reasons for as doing, issue a warrant instead of a summons in a case in which the law provides for the issue to the first instance of a summons. Sections 90 and 204 of the Code should be referred to on this subject. The former section authorises the issue of a warrant instead of a summons (1) where the Court has reason to believe that the accused has absconded or will not obey the summons, or (2) if, after service of a summons, the accused fails to appear and offers no reasonable excuse for non-attendance. It should also be borne in mind that where process-fees or other fees are payable, a process should not be issued until such fees are paid and that in default of payment of the fees within a reasonable time, the magistrate may dismiss the complaint.]

Discretion of Magistrate to issue summons or warrants.

3. Great care should be taken not to issue a warrant when a summons would be sufficient for the ends of justice. Magistrates should remember that the issue of a warrant involves interference with the personal liberty of a person and should take care to see *that no greater hardship is caused than is necessary*. Under *section 78 of the Code*, a Court has the discretion to make the warrantailable, and this discretion should be exercised with due regard to the nature of the offence, the position of the accused person and the circumstances of *the case*.

Warrant should not issue unless absolutely necessary.

Bail.

4. When the accused person appears before the Court the question of bail arises. In the case of a bail-able offence an accused person must be allowed to re-main at liberty if he can furnish bail for his appearance during the course of the trial. A magistrate has the discretion to allow bail even in the case of non-bailable offences in certain circumstances. (For detailed instructions on the subject,-vide Chapter 10. Bail and Recognizances.)

When attendance of accused may be dispensed with.

5. A criminal trial should be conducted in the presence of the accused. Sections 205 and 540-A (as amended by Act 26 of 1955) of the Code give a discretion to the Court to dispense with the personal attendance of the accused in certain circumstances

Service of processes.

6. Detailed instructions as to the mode of issuing and serving processes of the Criminal Courts are contained in Volume IV, Chapter 8, "Processes". The provisions of the law relating to the service of processes on persons employed in the public service require special attention.