

CHAPTER 8

PROCESSES-CRIMINAL COURTS. A---ISSUE AND SERVICE OF SUMMONS.

[1][2] 1. Every summons/e-summons issued by a Court in a Criminal case shall be in writing, in duplicate, signed legibly and in full by the Presiding Officer or Reader of such Court, with the name of his office or the capacity in which he acts/e-signed or digitally signed by Presiding Officer or Officer authorized by him. The practice of signing initials only or of using a stamp is objectionable and should not be adopted.

Signing of summons.

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

Regarding service of summons in non-cognizable cases.

3. Rules under the Court Fees Act, 1870, for the realization of process fee, will be found in Chapter 5, "Process Fees." Rules 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.

Fee of twelve annas to be Paid for such process.

4. (a) Under section 73 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

Service of summons sent by a Court to a place outside its jurisdiction.

[1] Substitute vide C.S.No.48/Rules/XIX.A.3, Dated 22nd August,1974.

[2] Amended vide Correction Slip No. 182 Rules/II.D4 dated 27.11.2018

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, acknowledgement 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.

Affidavits by police officers and process-servers who serve summons.

5. 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 a 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 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 _____ son of _____ 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 his or by affixing duplicate to a conspicuous part of his house or homestead].

(Signed).

Declared before me at _____ by _____ this _____ day of _____ 19.

Magistrate.

6. 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 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).

(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

Instructions reissue of summons for particular class of persons.

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) 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 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, wherever 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 transfers 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 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 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.