**Procedure for Summary Trials**

The provisions of section 262 of the Code are imperative and a breach thereof amounts an illegality and not an irregularity. Section 262 (1) strictly provides that the procedure for summary trials shall be conducted as per the procedure established for conducting the trials of summons-case, except otherwise provided. Adherence to this provision has to be done irrespective of the nature of the case, that is, whether it is a warrant-case or summons-case. Further, it prohibited by section 262 (2) of the Code to pass any sentence of imprisonment for a term exceeding 3 months for any conviction in respect of summary trials. A sentence exceeding the period fixed by this section is illegal. In the case of ***Asghar Ali,*** it was held that the limit of imprisonment refers only to the substantive sentence, not to an alternative sentence of imprisonment in default of payment of a fine. A magistrate can impose a sentence of imprisonment in default of payment of fine in addition to the maximum sentence of three months imprisonment which he has imposed for the offence.

This sub-section only imposes a limit as to imprisonment and not as to the amount of fine to be imposed.

**Records and Judgment in Summary Trials**

Section 263 of the Code states the following particulars to be recorded by the Magistrate:

1. the serial number of the case;
2. the date of the commission of the offence;
3. the date of the report or complaint;
4. the name of the complainant (if any);
5. the name, parentage and address of the accused;
6. the offence complained of and the offence (if any) proved, and in cases coming under clause (ii), clause(iii) or clause (iv) of sub-section (1) of section 260, the value of the property in respect of which the offence has been committed;
7. the plea of accused and his examination (if any);
8. the finding;
9. the sentence or other final order;
10. the date on which proceedings terminated.

All these particulars have to be recorded in the form as may be prescribed by the State Government. It is the duty of the Magistrate to record the particulars himself. He cannot depute that duty to his clerk, nor is he authorized to affix his signature to the record or judgment by a stamp.

Section 264 requires the Magistrate, where the accused had not pleaded guilty, to record the substance of evidence and judgment and its reasons thereof in brief. The substance of evidence is to be recorded at the time when such evidence is produced before the Court. The Allahabad High Court in the case of ***Karan Singh***(1878) 1 All 680.***,*** held that if the evidence is not so set forth, the Magistrate may be required to do so even after examining the witness, or a re-trial may be ordered.

Moreover, all the records and judgment has to be written in the language if the Court. The Magistrate must write his full name and the mere putting in of the initials is not sufficient.

**Difference between Summary and Regular trials:**

A summary trial is very much dissimilar to any regular trials as follows:

1. A summary trial can be conducted only for specified offences which are minor in nature whereas more complicated and serious nature of offences is tried in regular trials.
2. In summary trials, only the substance of evidence and the disposition is briefly recorded but in regular trials, the evidence is recorded carefully and in full.
3. No formal charge is required to be framed by Magistrate in summary trials but in regular trials, a formal charge sheet is required to be drawn up.

**Distinction between summons-cases trial and warrant -cases trial**

**As we have completed the trial of warrant case and trial of summons cases it is very important to know the difference between the two.**

1. In a summons case when the accused appears or is brought before a Magistrate, the particulars of the offence of which he is accused shall be stated to him and he shall be asked whether he pleads guilty or has any defence to make (Section 251).

In a warrant case when the accused appears or is brought before a Magistrate, the Magistrate shall satisfy himself that he has complied with the provisions of Section 207, i.e., a copy of the Police report, first information report, statements recorded under Section 161 (3), the confession and statements recorded under Section 164 and any other document or relevant extracts forwarded to the Magistrate with Police report under Section 173(5) shall be furnished to the accused (Section 238).

1. In a summons-case if the accused pleads guilty the Magistrate shall record the plea and may convict him on that basis (Section 252).

In warrant-case if on considering the police report and the document sent u/s 173 and making examination of the accused if thought 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 (Section 239).

1. In a summons-case if the Magistrate does not convict the accused on his plea of guilty, he shall proceed to hear the prosecution and take all evidence. He shall also hear the accused and take all the evidence produced by the accused (Section 254(1)).

In a warrant case if on considering the report and documents etc. Under Section 239 the Magistrate is of the opinion that the accused has committed an offence, the charge shall be framed against the accused. The charges so framed shall be read and explained to the accused and he shall be asked whether he pleads guilty or claims to be tried (Section 240).

1. In a summons case if the Magistrate upon taking the evidence produced by the prosecution as well as the accused and such other evidence as he may think necessary, finds the accused not guilty, he shall record an order of acquittal. A magistrate may u/s 252 on his plea of guilty or under section 255 convict the accused of any offence which the accused has committed in the opinion of the Magistrate provided that he is satisfied that the accused would not be prejudice thereby (Section 255).

In a warrant case if after charges framed are read and explained to the accused, he pleads guilty, his plea may, be recorded by the Magistrate, and the accused may be convicted (Section 241). If the accused does not plead guilty, the magistrate shall fix a date for the examination of witnesses. On the date so fixed the magistrate shall take all evidences in support of the prosecution (Section 242). If the Magistrate finds the accused guilty he shall after hearing the accused on question of sentence, convict him (Section 248).

1. In summons case, when summons has been issued on complaint and the complainant does not appear on any day fixed for the hearing of the case, the Magistrate may acquit the accused unless for some reasons he thinks it proper to adjourn the hearing of the case to some other day. However the Magistrate may in certain circumstances dispense with the attendance of the complainant and proceed with the case (Section 256).

In a warrant case when the proceeding has been instituted, upon the complaint and the complainant does not appear on any day fixed for the hearing of the case, The Magistrate may at the time before charges have been framed discharge the accused provided the offence is compoundable and is not a cognizable offence (Section 240). It means in a warrant case the accused cannot be discharged if the offence is either non-compoundable or is cognizable one or when charges have already framed.

1. In a summons case, if adequate grounds are shown to the satisfaction of the Magistrate, he may permit the complainant to withdraw his complaint and thereupon the accused shall be acquitted (Section 257).

In a warrant case, there is no provision for withdrawal of complaint by the complainant.

1. In a summons case no formal framing of charge is necessary. In warrant case framing of charges is always necessary.
2. In a summons case there are no provisions authorising the Magistrate to permit the cross-examination of any prosecution witness to be deferred.

In a warrant case the magistrate may permit the cross-examination of any prosecution witness to be deferred or recall of any witness for further cross-examination.