

TRIAL OF WARRANT CASES INSTITUTED OTHERWISE THAN ON A POLICE REPORT

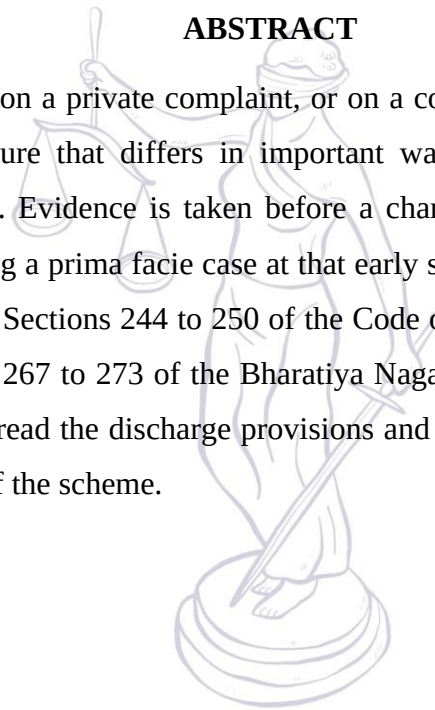
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ABSTRACT

A warrant case that begins on a private complaint, or on a court's own cognizance, is tried by a Magistrate under a procedure that differs in important ways from the procedure for a case founded on a police report. Evidence is taken before a charge is framed, and the complainant carries the burden of proving a prima facie case at that early stage. This paper explains the stages of that trial as laid down in Sections 244 to 250 of the Code of Criminal Procedure, 1973, and in the corresponding Sections 267 to 273 of the Bharatiya Nagarik Suraksha Sanhita, 2023. It then considers how courts have read the discharge provisions and offers observations on the practical strengths and weaknesses of the scheme.



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1. INTRODUCTION

Criminal procedure divides offences into summons cases and warrant cases. A warrant case relates to an offence punishable with death, imprisonment for life or imprisonment exceeding two years. Because the consequences of conviction are serious, the law prescribes a fuller and more cautious procedure for such cases than for summons cases.

Within warrant cases tried by Magistrates, the law then separates two routes. The first is the case instituted on a police report, where the investigating agency has already collected material and filed its final report. The second is the case instituted otherwise than on a police report, which in practice means a private complaint under Section 200 of the Code. In the second route there is no police file, and the Magistrate must therefore test the complainant's case through evidence before framing any charge. This paper is concerned with that second route.

2. MEANING AND SCOPE

The Code does not define a case “instituted otherwise than on a police report”. The expression is understood by contrast with a police report, which Section 173 describes as the report forwarded to the Magistrate on completion of investigation. Any warrant case that the Magistrate takes up on a complaint, or on information received from a source other than the police, therefore falls in this category.

The procedure begins after the Magistrate has taken cognizance, completed the preliminary inquiry under Sections 200 to 203 where required, and issued process under Section 204 so that the accused appears or is brought before the court. From that point the special provisions on warrant trials apply.

3. STATUTORY FRAMEWORK

The Code of Criminal Procedure, 1973 dealt with this procedure in Sections 244 to 247, with the concluding provisions in Sections 248 to 250. The Bharatiya Nagarik Suraksha Sanhita, 2023, which came into force on 1 July 2024, carries the same scheme forward in Sections 267 to 273 of its Chapter XIX. The section numbers have changed but the structure is essentially the same. The table below sets out the correspondence.

Because trials now proceed under the 2023 Sanhita, the BNSS numbers are the ones to be cited for current proceedings, while the CrPC numbers remain important for reading earlier decisions.

4. EVIDENCE FOR THE PROSECUTION

Section 244 CrPC (Section 267 BNSS) provides that when the accused appears or is brought before the Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of it. On the application of the prosecution, the Magistrate shall issue a summons to any of its witnesses directing them to attend or to produce any document or thing.

This stage is the main point of difference from a police-report case. There the Magistrate decides on discharge by looking at the police report and documents. Here the complainant must actually lead evidence, and the accused is entitled to cross-examine the witnesses. The evidence recorded at this stage is distinct from the preliminary statements recorded while the Magistrate was deciding whether to issue process.

5. DISCHARGE OF THE ACCUSED

Section 245 CrPC (Section 268 BNSS) contains two separate powers of discharge. Under sub-section (1), if after taking all the evidence referred to in Section 244 the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant conviction, the Magistrate shall discharge the accused. Under sub-section (2), the Magistrate may discharge the accused at any previous stage of the case if, for reasons to be recorded, the charge is considered groundless.

The two powers operate at different points and on different tests. Sub-section (1) is reached only once the prosecution evidence has been taken and calls for an assessment of what that evidence, taken at its face, would establish. Sub-section (2) is an exception that allows early relief where the accusation is plainly without foundation. In *Ajoy Kumar Ghose v. State of Jharkhand*, reported at (2009) 14 SCC 115, the Supreme Court drew attention to this distinction and to the requirement that, in a complaint case, evidence under Section 244 should ordinarily be taken before a charge is framed.

A discharge is not an acquittal. It does not bar a fresh complaint on the same facts, subject to the limits that apply in law, whereas an acquittal after trial closes the matter on the merits.

6. FRAMING OF CHARGE

Under Section 246 CrPC (Section 269 BNSS), if the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under the Chapter, which the Magistrate is competent to try and can adequately punish, a written charge shall be framed. The charge is read and explained to the accused, who is asked whether he pleads guilty or claims to be tried.

If the accused pleads guilty, the Magistrate records the plea and may, in discretion, convict on it. If the accused refuses to plead, does not plead, or claims trial, a date is fixed for the examination of witnesses. At the next hearing the accused must state whether he wishes to cross-examine any prosecution witness whose evidence has already been taken. If he does, those witnesses are recalled for cross-examination and re-examination. The remaining prosecution witnesses are then examined. For this reason, in a complaint case the trial is treated as beginning when the charge is framed, and not earlier.

7. EVIDENCE FOR THE DEFENCE

Section 247 CrPC (Section 270 BNSS) requires the accused, after the prosecution evidence is complete, to enter on his defence and produce his evidence. If the accused applies for the issue of any process to compel the attendance of a witness or the production of a document, the Magistrate must issue it unless, for reasons to be recorded, he considers that the application is made for the purpose of vexation or delay or for defeating the ends of justice. The Magistrate may require the accused to deposit the reasonable expenses of the witness before the process is issued.

8. ACQUITTAL OR CONVICTION

Section 248 CrPC (Section 271 BNSS) governs the conclusion of the trial. If, after taking the evidence on both sides, the Magistrate finds the accused not guilty, an order of acquittal is recorded. If the Magistrate finds the accused guilty and does not proceed under the provisions that allow release on probation or proceedings under Section 325, the Magistrate hears the accused on the question of sentence and then passes sentence according to law. Where a previous conviction is alleged and the accused does not admit it, the Magistrate may take evidence on it and record a finding.

9. ABSENCE OF THE COMPLAINANT

Section 249 CrPC (Section 272 BNSS) deals with the case in which the proceedings were begun on a complaint and the complainant is absent on the day fixed for hearing. The power is narrow. It applies only where the offence may lawfully be compounded or is not a cognizable offence, and it permits the Magistrate, at any time before a charge is framed, to discharge the accused in the exercise of discretion. The provision applies in place of the general rule on the absence of a complainant in summons cases.

The limits matter. The power is available only before charge, only for compoundable or non-cognizable offences, and the result is a discharge rather than an acquittal. A Magistrate who uses it should record reasons showing that the absence is not explained and that the discharge is just in the circumstances.

10. COMPENSATION FOR ACCUSATION WITHOUT REASONABLE CAUSE

Section 250 CrPC (Section 273 BNSS) deals with false accusations. Where a case has been instituted upon a complaint or upon information given to a police officer or a Magistrate, and the Magistrate discharges or acquits the accused and is of opinion that the accusation was false and either frivolous or vexatious, the Magistrate may direct the complainant or informant to show cause why he should not pay compensation to the accused. After recording and considering any cause shown, the Magistrate may, for reasons recorded, order the payment of compensation. The amount is capped by the fine the Magistrate is empowered to impose, and non-payment can be enforced by a short term of simple imprisonment. An order under this section is open to appeal.

Courts have taken care to confine the section to real cases of abuse. It is not enough that the complainant failed to prove the case, because an acquittal can follow from gaps in proof even when the complaint was made honestly. The Magistrate must be able to say that the accusation was false and also frivolous or vexatious. Read in this way, the section serves two purposes: it gives a wrongly accused person a summary remedy within the same proceeding, and it discourages the use of criminal courts for harassment.

11. CRITICAL OBSERVATIONS

The procedure has clear merits. Requiring evidence before charge protects an accused person from being put to a full trial on bare allegations, and it places on the complainant the

responsibility that the police would carry in a police-report case. The two-stage discharge power gives the Magistrate a way to end an unfounded case early.

There are also weaknesses that are well known in practice. Taking pre-charge evidence, followed by recall of witnesses for cross-examination after the charge, can lengthen the proceedings and burden an already crowded Magistrate's docket. Complainants who are not supported by an investigating agency may find it hard to secure witnesses and documents. The compensation provision is used sparingly, so false complaints often carry no consequence for the complainant. Measures such as strict scheduling of the pre-charge stage, firm limits on adjournments and greater use of recorded evidence, where the law allows, would address some of these difficulties without changing the basic scheme.

12. CONCLUSION

The trial of warrant cases instituted otherwise than on a police report is built on a simple idea: where no investigating agency has tested the accusation, the court must test it before putting the accused on trial. Sections 267 to 273 of the Bharatiya Nagarik Suraksha Sanhita, 2023, which correspond to Sections 244 to 250 of the earlier Code, give effect to that idea through pre-charge evidence, a staged power of discharge, a structured trial after charge and safeguards against abuse. The reform of 2023 changed the numbering but not the substance, so the body of decisions under the earlier Code continues to guide interpretation. Efficient application of these provisions depends on the diligence of Magistrates and the cooperation of the parties.

REFERENCES

1. The Code of Criminal Procedure, 1973 (Act 2 of 1974), Sections 173, 200–204, 244–250.
2. The Bharatiya Nagarik Suraksha Sanhita, 2023 (Act 46 of 2023), Chapter XIX, Sections 261–273.
3. Ajoy Kumar Ghose v. State of Jharkhand, (2009) 14 SCC 115.
4. Section correspondence between the CrPC and the BNSS was cross-checked against the published comparison tables available at vakeel360.com and the commentary on Section 267 BNSS at lexibal.com.