

Processes to Compel Appearance under the Criminal Procedure Code, 1973

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Object & Importance

- **To conduct a fair trial in the presence of the accused.**
- **To give the accused a fair chance to defend himself.**
- **To secure presence by various means, especially when the accused's presence cannot be secured peacefully and easily.**
- **Such provisions are aimed at ensuring the presence of the accused at his trial without unreasonably depriving him of his liberty.**

- A – Summons : Sec. 61 –
Form of Summons

- Meaning
- A summon in case of an accused is an authoritative call to the accused to appear in court to answer to a charge of an offence.
- The manner in which a summon is to be prepared is described in Section 61. Form no. 1 - Schedule 2
- Summons is a milder form of process to compel appearance.
- It is either for:
 - Appearance; or
 - Producing a document or thing
- Summons for appearance may be issued to an accused or a witness



Nature/Contents of Summons

- Clear and specific;
- Shall contain the title of the Court;
- The place and the day and the time when the attendance of a person is required.
- It shall be in writing and duplicate signed by the presiding officer of the Court.



Summons to an accused person

- To *(name of the accused)* of *(address)*
- Whereas your attendance is necessary to answer a charge of *(state shortly the offence charged)*, you are hereby required to appear in person *(or by pleader, as the case may be)* before the *(Magistrate)* of _____, on the _____ day of _____. Herein fail not.
- Dated, this _____ day April 2022
- *(Seal of the Court)*

Mode of Service : Section 62 to 67 classify the different modes of effecting the service of the summons in diverse situations and conditions.

Sec. 62 – Summons how served.

Sec. 62 contemplates personal service.

A Summon shall be served by a police officer.

As per the Rules framed by the State Government.

As far as it is practical the summons shall be served personally.

Service of summons through counsel is not permissible.

Sec. 63 – Service
of Summons on
Corporate Bodies
and Societies.

Service of summons on a Corporation
may be effected by serving it on:

Secretary; or

Local manager; or

Other principal officer of the
Corporation; or

Letter sent by registered post addressed
to the Chief officer



Sec. 64 – Service when persons summoned cannot be found.

When personal service as provided u/s. 62 cannot be effected the law allows service on some adult member of the family, but not on a servant.

However, prior to indulging into such service, it must be shown that due diligence and efforts were made to find the actual person before leaving a copy of summon with the adult male member.

- Sec. 65 – Procedure when service cannot be effected as provided u/s. 62, 63 & 64.

The procedure provided in this section cannot be made use of, unless the service in the manner mentioned u/s. 62, 63 & 64 cannot be effected.

Procedure u/s. 65 –

The serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person ordinarily resides;

Thereafter, the Court shall make due inquiries and either declare that the summons have been served or order fresh service in such manner as it considers proper.



- Sec. 66 – Service of Government Servant.

The Court shall send a duplicate of the Summon to the *head of the office* where such Government servant is employed.

Such head of the office receive the summons and cause them to be served as per the procedure required by Section 62.

The signature of the head of the office shall be evidence of due service.



- Sec. 67 – Service of Summons Outside Local Limits.

The jurisdictional limits of the Court shall not restrict it from serving summons upon a person who goes beyond the local jurisdiction of such Court.

S.67 provides that such a Court shall send the summons in duplicate to a Magistrate within whose local jurisdiction the person summoned resides.



- Sec. 68 – Proof of Service in particular cases

Object

To avoid delay in the process of proving the service of summons.

Conditions/Cases where Sec. 68 is applicable:

When the summon is served outside the jurisdiction of Court issuing it; or

Officer who has served the summon is not present at the hearing of the case.

Affidavit

- An affidavit can be filed in the Court declaring that the summons have been served upon the person and it shall be sufficient proof of service in the cases/conditions mentioned above.
- Such affidavit shall be admissible in evidence.
- The statements contained therein shall be deemed true, unless proved contrary.




- Sec. 69 – Service of Summons on witness by Post : Object

- To avoid delay in service of summons on witness, by providing for the service of such summons by post.
- Scope
- Sec. 69 only applies to witnesses.
- Summons by post can be issued simultaneously with personal service.
- Such summons shall be issued by a registered post.
- The summons shall be posted to the address where the witness ordinarily resides or carries on his business or personally works for gain.



Proof of service

- The service of summons by registered post can be proved by two ways:
- Acknowledgment purporting to be signed by the witness; or
- Endorsement purporting to be made by a postal employee that the witness refused to take delivery of the summons.
- In any of the aforementioned two cases, the Court issuing such summons may declare that the summons has been duly served.



- B. – Warrant of Arrest : Arrest (*with or without Warrant*)

- Meaning
 - *Arrest* means apprehension of a person by legal authority resulting in deprivation of his liberty.
 - *A warrant of arrest* is a written order issued and signed by a Magistrate and addressed to a police officer or some other person specially named, commanding him to arrest the body of the accused person named in it.
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Need for Arrest

- Arrest is the most effective method of securing attendance of an accused at his trial.
 - Although it is not quite desirable to use the provisions of arrest if other alternatives can be used.
 - Arrest may become necessary to obtain the correct name and address of a person committing a non-cognizable offence.
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Two types of Arrest

In pursuance of
warrant issued by a
Magistrate; and

Without such warrant,
but in accordance with
other provisions of the
Cr.P.C.



- Factors affecting decision to issue a warrant or not

- It involves balancing of social interests.
 - If a person is likely to abscond or disobey the summons, the social interests would demand that such person must be arrested.
 - The judge has the discretion in this regard and the same shall be exercised impartially and judiciously.
 - Preventing action such as arrest may be necessary in order to avert the danger of sudden outbreak of crime, and immediate arrest of the accused may be an important step in such prevention of the crime.
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- Sec. 70 – Form of Warrant of arrest and duration.

- Form of *Warrant of Arrest*
- It shall be issued by the Court in writing;
- Signed by the presiding officer;
- It shall bear the seal of the Court.
- Sec. 70 neither speaks of a bailable warrant or a non – bailable warrant, it merely speaks of a warrant of arrest.



Duration

- Every warrant of arrest shall remain in force until one of the following situation occurs:
- It is cancelled by the Court; or
- It is executed.





Requisites of a valid warrant

- The requisites of a valid warrant can be analysed from Sec. 70 and Form 2 of the IInd Schedule. The same are mentioned as follows:
 1. The warrant must be writing;
 2. Name and description of the person to be arrested;
 3. Name and designation of the person who is to execute it;
 4. Offences charged;
 5. Signature of the Presiding Officer;
 6. Sealed with the seal of the Court.



Other factors to be considered

- The Court shall not issue non – bailable warrant without ascertaining the cause of non – appearance, like traffic problems.
- Mere issuance of non bailable warrant without considering all the aspects would not be judicious exercise of such powers.
- When the accused is on bail, he cannot be directed to appear before the Court by issuance of a warrant, such warrant of arrest would be illegal.

- Sec. 71 – Power to direct security to be taken.

- Scope
- Sec. 71 provides for the discretionary power of the Court to specify about the security to be taken in case the person is to be released on his arrest pursuant to execution of a warrant of arrest issued u/s. 70.
- The amount of security shall be subject to the discretion of the Court.
- The officer to whom the warrant is directed shall take such security and release the person from custody

Endorsement

The direction to release the person arrested in furtherance of execution of warrant of arrest by taking security shall be contained in the endorsement on such warrant.

Such endorsement shall be issued by the Court.

It shall contain the following details:

The number of securities;

The amount in which the sureties and the person arrested are bound, respectively;

The time at which he is to attend before the Court.

After the accused has been taken into custody, the liabilities of the surety come to an end. If subsequently he absconds from the custody of the Court the sureties cannot be held liable.

Sec. 72 – Warrant to whom directed.

- The warrant of arrest can be directed to:
- One or more Police Officer; or
- Any other person.
- The warrant of arrest can be directed to any other person than a police officer only when:
- Its immediate execution is necessary; and
- No police officer is immediately available.
- When a warrant of arrest is directed to more officers or persons than one, it may be executed by all, or by any one or more of them.

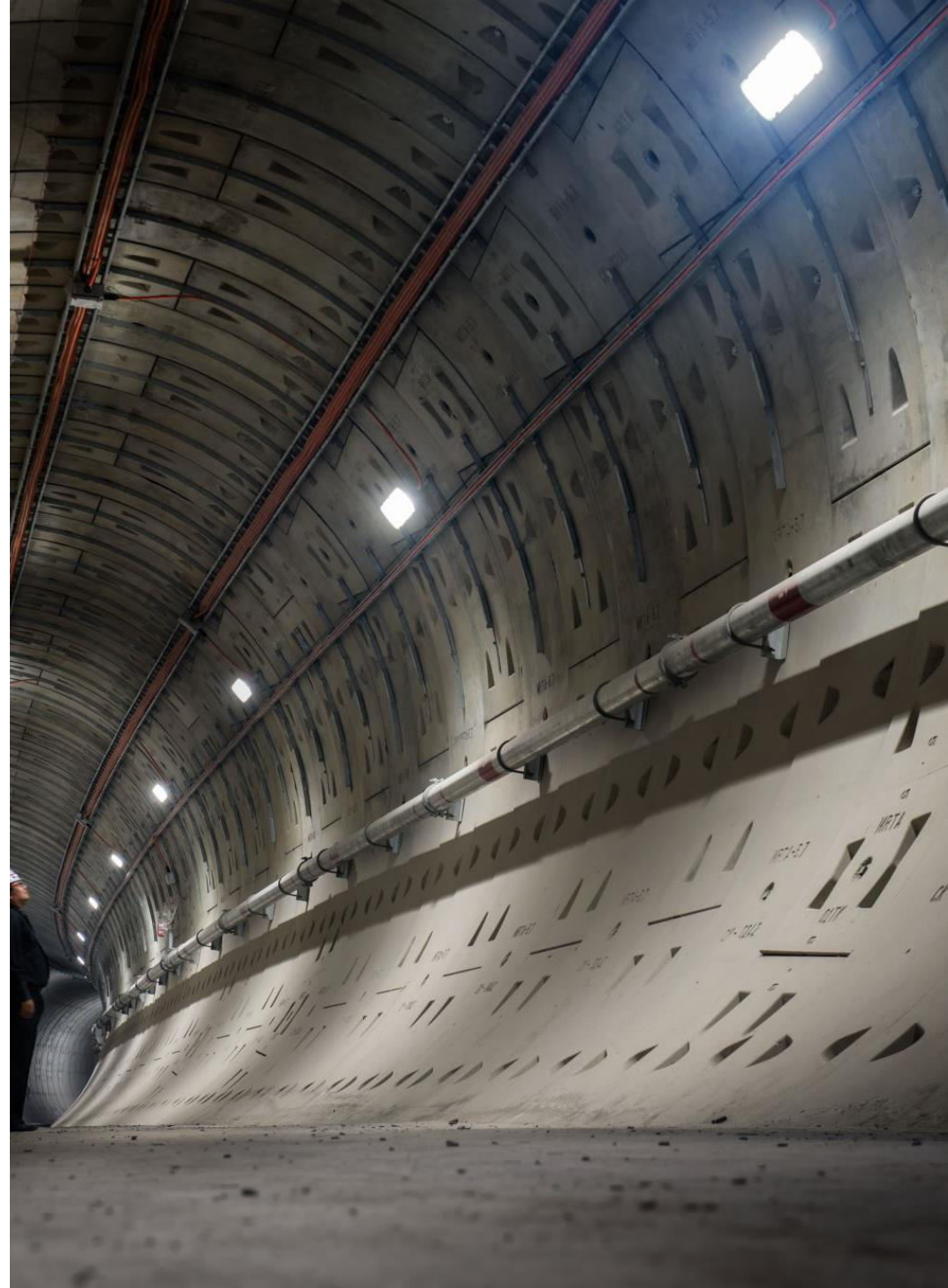
- Sec. 73 – Warrant may be directed to any person.

- The power u/s. 73 can be exercised by the following:
- Chief Judicial Magistrate; or
- Judicial Magistrate of First Class



Scope of powers u/s. 73

- Such power can be used to direct any person within his local jurisdiction for arrest of any of the following person:
- Escaped convict; or
- Proclaimed offender; or
- Person accused of non – bailable offence; or
- Person evading arrest.



- Factors to be considered by the Court while issuing non – bailable warrants.
- The Magistrate should satisfy himself about the fact that issuing non-bailable warrant instead of summons is of utmost necessity in light of the facts and circumstances of the case.
- The Court is required to carry out proper scrutiny of facts before issuing such warrant of arrest.
- Where there was nothing on record to prove that the accused was evading arrest, issuance of a non-bailable warrant against him without assigning any reasons was found not sustainable.





- Sec. 74 – Warrant directed to Police Officer.

- As per Sec. 74 only a Police Officer is competent to execute a warrant of arrest.
 - It expressly provides that it may also be executed by another police officer under an endorsement from the former police officer.
 - In case there is no endorsement and another Police Officer arrests the accused, such arrest is not a legal arrest.
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Sec. 75 – Notification of substance of warrant.

- Sec. 75 applies on both, a police officer or any other person who is directed to execute a warrant of arrest.
 - It requires that such person must have the copy of warrant in his possession.
 - Such person shall also explain the contents of the warrants to the person against whom it is supposed to be executed.
 - He shall also be given an opportunity to read the contents of such warrant of arrest.
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- Sec. 76 – Persons arrested to be brought before Court without delay.

- A person arrested in execution of warrant of arrest shall be brought before the Court within 24 hours of arrest.
 - However, the 24 hours' time limit does not include the time necessary for the journey from the place of arrest to the Magistrate's Court.
 - There should not be any unreasonable or unnecessary delay in the production of such arrested person before the Magistrate's Court.
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- Sec. 77 – where a warrant of arrest may be executed.

A warrant of arrest can be executed at any place within India.

Execution of warrant is not restricted to the local limits of the jurisdiction of the Magistrate issuing the warrant

- Sec. 78 – Warrant forwarded for execution outside jurisdiction.

- Instead of directing the warrant to a police officer, such warrant must be forwarded to the authorities within the local limits of whose jurisdiction it is to be executed.
- The following authorities can be forwarded the warrant by post:
 - Executive Magistrate; or
 - Deputy Superintendent of Police; or
 - Commissioner of Police.
- The Court forwarding the warrant to be executed outside the local jurisdiction shall also forward the following:
 - Substance of information justifying the arrest; and
 - Other relevant documents.

- Sec. 79 – Warrant directed to Police Officer for execution outside jurisdiction.

- When the warrant is directed to a Police Officer for execution, outside the local limits of jurisdiction, such Police Officer shall take it for endorsement to:
 - *Executive Magistrate; or*
 - *Police Officer* (not below the rank of an officer in charge of the Police station within the local limits of whose jurisdiction the warrant is to be executed.)
- Endorsement – Sec .79(2) contemplates obtaining of endorsement by the Police Officer from the Magistrate or the Police Officer mentioned in Sec .79(1).
- Sec. 79(3) authorises the Police Officer to give a go by to the procedure contemplated under section 79(1) in the following conditions:
 - Obtaining such endorsement would prevent the execution of the warrant by virtue of delay which is likely to occur while obtaining such endorsement.

- Sec. 80 – Procedure on arrest of person against whom warrant is issued.

- The person arrested in execution of the warrant of arrest outside the local jurisdiction shall be taken before:
 - Executive Magistrate; or
 - District Superintendent; or
 - Commissioner.
- Exceptions – i.e., cases where the person arrested can be produced before the Court who has issued the warrant of arrest:
 - Such Court is within 30 kms of the place of arrest; or
 - Such Court is nearer than the Executive Magistrate or Deputy Commissioner or Commissioner; or
 - Security is taken u/s. 71.

Sec. 81 – Procedure by Magistrate before whom such person arrested is brought.

- General Procedure
- If the Executive Magistrate or the District Superintendent or the Commissioner is prima facie satisfied that the person arrested is the person mentioned in the warrant;
- He must direct his removal in custody of such Court, who has issued the warrant of arrest in the first place.

- Procedure in case of Bailable Offence.

- The following conditions shall be met in order to grant bail under proviso to S.81:
 - *The arrested person is willing to give bail to the satisfaction of such Magistrate etc.; or*
 - *Or he is willing to give security as contemplated u/s. 71.*
- The Magistrate, etc. shall take his bail or security and forward the bond to the Court which has issued the warrant.



- C. – Proclamation: Sec. 82 – Proclamation for person absconding

- Scope & Application
- The Code has provided ample powers to execute a warrant.
- But if the warrant also remains unexecuted, there are the following two remedies:
- *Issuing a proclamation; (Sec.82)*
- *Attachment and Sale of property; (Sec.83)*
- The Court issuing the proclamation must have a reason to believe that the person has absconded or concealing himself.
- Such proclamation shall provide that the accused shall appear before the Court at the specified time, within 30 days of issue of such proclamation.

• Procedure in case of Non-Bailable Offence.

- The Chief Judicial Magistrate or the Session Judge of the District in which the arrest is made may release such an arrested person on bail subject to the consideration of relevant documents referred u/s. 78.
- The object of this provision is to save time and the hardship caused in taking the person to the Court which issued the warrant of arrest against him.
- The provisions under Sec.81 to post-arrest bail and not pre-arrest. This power is not available before the Judge while considering the pre-arrest bail under Sec.438.

Simultaneous issue of both i.e., warrant of arrest & proclamation.

Such practise of issuing both warrant of arrest & proclamation simultaneously is contradictory in the eyes of law.

It is only after the warrant has been issued that the Court can if it has reason to believe that the person has absconded or is hiding, issue proclamation.

The *sine qua non* for an action under section 82 is the prior issuance of warrant of arrest by the Court

Factors to be considered by the Court before declaring issuing a proclamation u/s. 82.

That the accused has left his permanent residence;

He is avoiding service;

No chance of arrest in near future;

The Court must apply its judicial mind before issuing a proclamation u/s. 82.

Proof of absconding

The Court must apply a subjective analysis of the fact and circumstances before declaring an accused as a PO.

Absconding means to hide or conceal oneself.

If a person conceals himself before the process issues, continues to do so, after it has issued, he absconds.

Absconding does not mean absence of one day, but it means remaining out for at least some days.

In order to prove that a person is absconding, it is required that he had known that he was wanted and was avoiding arrest.

Publication of the proclamation

- In some conspicuous part of the town or village where such person ordinarily resides.
- In some conspicuous part of the house or homestead in the which the person ordinarily resides.
- In some conspicuous part of the Court house.

Declaration of Proclaimed Offender



If a proclamation is issued under section 82, and the accused person fails to appear before the Court as specified in the proclamation;



The Court may after making an inquiry declare such person as a *proclaimed offender* and make a declaration to that effect.

- D. – Attachment of property of person absconding:
- Sec. 83 – Attachment of property of person absconding

- Object of attachment of property
- To penalize a person who tries to avoid his arrest.
- To put additional pressure upon the absconder by depriving him of his property.
- To compel the appearance of the absconder.



Scope & Application

- An order of attachment shall be made post the expiry of 30 days as provided in issuing of a proclamation.
- An order of attachment in the absence of the material to show that the accused was absconding was illegal.
- The order of attachment should not be passed in haste and without the proper application of mind.



Simultaneous Attachment with Proclamation:

- The normal rule is that the Court has to wait until the expiry of 30 days, to enable the accused to appear in terms of the proclamation.
- However, the Court may order simultaneous attachment with proclamation in the following two cases:
- When the person is about dispose of the whole or any part of his property; or
- When the person is about to remove the whole or any part of his property from the local jurisdiction of the Court.

Attachment without Proclamation.

When there is no material to show that the accused was absconding, order of attachment without issuing proclamation under section 82 is illegal.

Proclamation u/s. 82 is the *sine qua non* for issuing an order for attachment u/s. 83.

Procedure of Attachment in case of Debt or Movable Property.

In case of movable property or a debt the attachment shall be made by:

- Seizure; or
- Appointment of a receiver; or
- Order in writing prohibiting delivery of such property; or
- Procedure of Attachment in case of Immovable Property.

In case of immovable property or a debt the attachment shall be made by:

- Taking possession; or
- Appointment of receiver; or
- Order in writing prohibiting the payment of rent or delivery of property.

Procedure in case of Live-Stock or goods of perishable nature.

- The Court may order immediate sale;
- The proceeds of such sale shall abide the order of the Court.

Sec. 84 – Claim & Objections to attachment.

- Scope & Application
- It deals with the rights of persons other than the proclaimed person in the property attached.
- It gives a right to such person to raise claim and objections qua the property which is attached pursuant to the order of the Court.
- The claimant or the objector must prove his interest in the property so attached.



Locus standi

- The following persons can raise a claim or an objection:
 - Person having interest in the property attached; or
 - His legal representative.
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Jurisdiction

- Such claim or objection can be made in the same Court which has passed the order regarding attachment.
- The Chief Judicial Magistrate may pass it over to any Magistrate subordinate to him.

Sec. 85 – Release sale and restoration of attached property.

When the proclaimed person appears within time.

The Court shall make an order releasing the property from attachment.

When the proclaimed person does not appear within time.

The property under attachment shall be at the disposal of the State Government.

It shall not be sold until the expiry of 6 months from the date of such attachment.

If the Court considers that the sale would benefit the owner, it may cause it to be sold whenever it thinks fit

Delivery of net proceeds of sale/ property/ part of property.

If the proclaimed offender whose property has been attached appears within two years time of attachment; *and*

He justifies the Court that he was not absconding or concealing for the purpose of avoiding arrest; *then*

The Court may deliver:

Property; or

Net proceeds of the sale (if the property has been sold)

If a part of the property is sold then net proceeds of the sale and remaining part of the property.



Thank You