

## **TRIAL OF WARRANT CASES BY MAGISTRATE**

Warrant trial can be divided into:

1. Case instituted on police report [S. 238-243] + [S. 244-250]
2. Case instituted otherwise than on a police report [S. 248-250]

### **Case instituted on a police report:**

The procedure can briefly be understood as the following:

1. S. 238: compliance with section 207
2. After that either a) discharge under section 239 (trial will stop) or b) framing of charge under section 240.
3. Next step would be either a) conviction on plea of guilty (section 241) (trial will stop) or b) evidence for prosecution (section 242)
4. If evidence for prosecution is followed then next step would be call for evidence of defense (section 243)
5. Next step would be either a) acquittal or b) conviction

### **Detailed procedure:**

1. Section 238: when in any warrant case instituted on a police report, the accused appears or is brought before a magistrate, the magistrate shall satisfy himself that he has complied with the provisions of section 207.  
According to section 207, copies of: a) FIR, b) Statements under section 161 & 164, c) Police report, d) documents-----are given to the accused.
2. Section 239: when accused shall be discharged: If upon considering the----Police report+ document sent under section 173 and making such examination of accused as magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard---the magistrate considers the charge to be groundless, he shall discharge the accused and record his reasons for doing so.
3. Section 240: Framing of charge
  - If upon consideration, examination and hearing---the magistrate is of opinion that there is ground for presuming that accused committed an offence---triable under

this chapter+ magistrate is competent to try+ which in his opinion can be adequately punished by him shall frame in writing a charge against the accused.

- Charges shall be read and explained to the accused and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.
4. Section 241: Conviction on plea of guilty
  5. Section 242: Evidence for prosecution
    - if accused doesn't plead guilty and if not convicted under section 241----magistrate shall fix a date for the examination of witness. Provided, magistrate shall supply in advance---the statements of witnesses recorded during investigation by the police.
    - Magistrate may on application of prosecution—issue process
    - On date fixed, magistrate shall proceed to take evidence in support of prosecution case. Provided: magistrate may permit cross-examination as well.
  6. Section 243: evidence for defense: After evidence for prosecution---accused shall be called to enter upon his defense and produce his evidence.
  7. Section 248: acquittal or conviction: if magistrate finds the accused not guilty, he shall record an order of acquittal.

If the magistrate finds the accused guilty but does not proceed in accordance with the provisions of section 325 (Procedure when magistrate cannot pass sentence sufficiently severe---the magistrate may record the opinion and submit his proceeding and forward the accused to the CJM to whom he is subordinate) or section 360, he shall after hearing the accused on the question of sentence, pass sentence upon him according to law.

### **Case instituted otherwise than on police report**

1. Evidence for prosecution (section 244)
2. Section 245: when accused shall be discharged (trial will stop)
3. Section 246: when accused shall be charged-----next step would be section 247 (evidence for defense)-----next step would be acquittal or conviction (section 248)

### **Detailed procedure**

1. Section 244: in warrant case instituted otherwise than on police report----the magistrate shall hear the prosecution and take all such evidence of it. Magistrate may also issue process on prosecution's application
2. Section 245: when accused shall be discharged: if magistrate considers that no case can be made out, he can discharge the accused. He may also discharge him at any previous stage of the case if he considers charges as groundless.
3. Section 246: when such evidence has been taken or at any previous stage of the case, the magistrate is of the opinion that accused has committed the offence—he shall frame in writing a charge. Charge shall be read and explained and accused will be asked if he pleads guilty or has defense to make.
4. If accused pleads guilty then magistrate may convict him else shall fix a date for examination of witness.
5. Section 247: evidence for defense---accused shall be called upon to enter his defense and produce his own evidence and provisions of section 243 shall apply.
6. Section 248: Acquittal or conviction: if in any case under this chapter in which a charge has been framed, the magistrate finds the accused not guilty, he shall record an order of acquittal. If accused found guilty but magistrate does not proceed under section 325 or 360---magistrate shall, after hearing the accused on question of sentence, pass sentence according to law.