

DISTINCTION BETWEEN SUMMARY AND REGULAR TRIAL Under Code of Criminal Procedure, 1898

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<http://ssrn.com/author=1697634>

Introduction:

The words “try” and “trial” have no fixed or universal meaning, but they are words which must be construed with regard to the particular context in which they are used and with regard to the scheme and purpose of the measure concerned.¹

¹ Jibon v. Emperor 34 Cr. L.J. 684; 144 IC 90; 37 CWN 906; AIR 1933 Cal 551; 1933 Cr. C. 911.

The word “trial” is not defined in the Code of Criminal Procedure, 1898.

When a term is not defined in the law, and there is also no definition in the General Clauses Act, 1897, the only course left is to go back to the ordinary dictionary meaning. The word trial is of English language and the context is law hence the best course is to see law dictionaries to know the exact meaning which the master of the language have given to it.

According to Wharton’s Law Lexicon, a trial is the examination of a case, civil or criminal, before a judge who has jurisdiction over it, according to the law of the land.²

According to the Oxford Dictionary a trial is the examination and determination of a cause by a judicial

² In Re; RamSawami, 27 Madras 510.

tribunal; determination of the guilt or innocence of an accused by a Court.

When some competent authority directs that an accused person shall be tried, the trial that is to take place can end only in one or other of the recognized forms in which the trial can terminate under the Code of Criminal Procedure, 1898 such forms are,--

- conviction,
- acquittal,
- discharge,

that is, finding him guilty or not guilty or finding that there is no case against him or that the charge is groundless.³

Trial means the proceeding which commences when the case is called on with the Magistrate on the Bench and the accused on the dock, and the

³ Harihar Sinha v. Emperor AIR 1936 Cal. 356 (363); 40 CWN 876; 163 IC 9; 1936 Criminal Cases 583; 37 Criminal Law Journal 758; 63 CLJ 307.

representative for the prosecution and the accused are present in Court for the hearing of the case.⁴

Trial means adjudication of a matter by a Court after hearing both sides and giving them full opportunity to examine and cross examine the witnesses produced by them in accordance with law in force. The soul of the trial is its fairness throughout the process. A fair trial is impartial and just by all prudent standards. There is no abuse, misuse or non use of the lawful power. A court where a trial is conducted is called a trial court. A court where complaints of trial court's errors of law and facts are made and adjudged is an appellate court. A court where legality, propriety and

⁴ Gamer Sidra 23 Cal. 863 (865); 2 CWN 465.

correctness of orders passed by the trial court are examined, whether *suo moto*⁵ or on an application is called a Revisional Court⁶.

Where a court is empowered to correct its own clerical mistakes which do not change the nature of the relief sought is called a power of Review to be exercised by such court itself.

Trials are civil as well as criminal. Those are summary as well as regular.

In this paper distinctive features of summary and regular trial of criminal cases will be discussed. Similarities and dissimilarities between the two will be highlighted.

Trial is neither an investigation nor an inquiry. Investigation is the power vested in the police and inquiry is the power

⁵ *Suo moto* means “on its own motion”.

⁶ Or Court of Revision.

vested in a Magistrate. It is a stage prior to trial. Trial begins when the charge is framed, read out and explained to the accused and his plea is recorded under section 242 of the Code of Criminal Procedure, 1898.⁷ It ends when the judgment is pronounced whether in acquittal or in conviction.

Investigation begins when an FIR is lodged with the Police of the commission of a cognizable offence. A Police officer conducts the Investigation and is called the Investigating Officer. His function is to collect all pieces of evidence that connect the accused with the allegations levelled against him in the FIR. Thus

⁷ Section 42 of the Code of Criminal Procedure, 1898 provides that when the accused appears or is brought before the Magistrate, a formal charge shall be framed relating to the offence of which he is accused and he shall be asked whether he admits that he has committed the offence with which he is charged. This section applies to cases tried summarily under Ch. XXII of the Code of Criminal Procedure, 1898 by reason of S. 262 of the said Code. The authority is available on the subject in the case cited as AIR 1952 Allahabad 212. The Magistrate, while conducting summary trial should not act hastily so as to disregard the salutary provisions of law which are meant to safeguard the interests of the accused, such as those contained in section 242. The judicial precedent is available on this view in the case cited as AIR 1960 AJ&K 108.

- The visiting of the Investigating Officer (called the I.O.) of the place of occurrence;
- Preparing Inquest Report;
- Getting post mortem examination report from the Medical Officer.
- Sending the injured to the hospital for treatment and Medico Legal Examination and getting its report.
- Sending the firearm and the used cartridges found from the spot to the Ballistic and Fire Arm Expert for examination and Report.
- Getting Chemical Examiner's Report in cases of Poisoning etc.
- Getting Serologists Report as to bloodstained earth and clothes.
- Getting Finger Print Bureau's Report in cases of forgery etc.

- Recoding statement of the witnesses under section 161 of the Code of Criminal Procedure, 1898.
- Arresting the accused and also recording his statement under section 161 and if he wants to make a confession during such investigation then getting it recorded by the Competent Magistrate under section 164 and 364 of the Code of Criminal Procedure, 1898.
- Making recoveries of the weapon of offence at the pointing of the accused and preparing of the Memorandum of its such recovery to be attested by the two marginal witnesses.
- Preparing and sending the report under section 173 of the Code of Criminal Procedure, 1898 to the trial Court which is called challaning the

accused to the Court to face his trial
their.

Where a case is non-cognizable and the matter is reported by the police officer of its being so to the Magistrate, the Magistrate may take cognizance of the case and either conduct a preliminary inquiry himself or direct some other Magistrate who is subordinate to him to do so and report and on report if he is satisfied that a non cognizable offence has been committed, he may issue the process to summon the accused and proceed further to conduct the trial.

Where a Complainant makes a direct complaint of an offence the same process is conducted before entering on the trial. If the complaint is proved false the accused is acquitted. If the complaint is

proved true on fair trial in accordance with law the accused is convicted and sentenced to a certain punishment prescribed by law.

The inquiry is always by a Magistrate.

Investigation is always by a Police Officer.

Trial is always by a Competent Court (Magistrate or a Judge). Generally, all trials are held at the Magistrate level. But where the law in force so prescribes the trials are held by the Sessions Judge. In such a situation the Magistrate is to record such circumstance and send the case to the Sessions Court for trial. In the Province all courts are subordinate to the High Court of the Province concerned. In the Sessions Division all criminal court are under the Sessions Judge of the concerned District. Within the District the Sessions Judge and with the Province

the High Court of the Province has the power to withdraw or transfer a case from one court of competent jurisdiction to another court of competent jurisdiction.

WHAT IS THE NATURE OF A TRIAL?

A trial is a judicial proceeding.

TRIAL WHEN BEGINS?

A trial begins in a case triable exclusively by a Court of Session, only after the charge is framed. So also in a warrant case, the trial commences when the accused is called upon to plead to a charge, and until a charge has been framed, there is no trial but only an inquiry.⁸

⁸ Manna 9 NLR 42; 14 Criminal Law Journal 230 (231); Sreeramullu v. Veerasalingam 38 Madras 585; 15 Criminal Law journal 673; Narayansawami 32 Madras 220 (224, 234) (FB); haridas v. Sritulla 15 Calcutta 608 (FB); Painsa v. Gulab Kahtun 40 Criminal Law journal 515; 181 IC 49; ILR 1938 Lahore 619; 41 PLR 221; AIR 1939 Lahore 122.

In a summons case, however, as it is not necessary to frame a formal charge, the trial may be said to commence when the accused is brought or appears before the Magistrate.

HOW TO DETERMINE WHETHER AN OFFENCE IS TO BE TRIED SUMMARILY OR NOT?

Such determination is to be made by the facts stated in the complaint as well as the sworn testimony of the Complainant.⁹

WHAT SHOULD BE DONE BY A MAGISTRATE WHERE SECTION OF PAKISTAN PENAL CODE, 1860 IS MENTIONED RELATING TO

⁹ Fanindra, 36 Calcutta 67, 12 Cawnpure Weekly Notes 1041, 8 Cr. L. J. 227, 1 I.C. 519.

**OFFENCE NOT TRIABLE
SUMMARILY WHILE FACTS
STATED DISCLOSE THE
OFFENCE TRIABLE
SUMMARILY?**

The magistrate is competent to dispose of a case summarily where the facts which are alleged to have taken place disclose an offence triable summarily, and the mere fact that the complainant enumerates sections of Pakistan penal Code 1860 relating to offences not triable summarily, does not affect the jurisdiction of the magistrate, unless the facts of which he really complains disclose such offences.¹⁰

Similarly when the Magistrate ascertains from the evidence that the facts alleged to have taken place disclose an offence

¹⁰ Golap Pandey v. Buddam, 16 Calcutta 715.

triable summarily, and the aggravating circumstances which render the offence not so triable are mere exaggerations, he can dispose of the case summarily.¹¹

WHAT IS THE LAW OF PROCEDURE CONCERNING SUMMARY TRIALS AND WHERE IT IS TO BE FOUND?

Chapter XXII (comprising sections 260 to 265 is Of Summary Trials in the Code of Criminal Procedure, 1898.

Section 260 states the power of the Magistrates to try in a summary way any of the offences mentioned in that section. Section 260 of the Code of Criminal Procedure, 1898 reads as under:

¹¹ Vallabh, 1 Bombay L.R. 683.

260. Power to try summarily. (1) Notwithstanding anything contained in this Code,-

(a) ***

(b) any Magistrate of the First class specially empowered in this behalf by the Provincial Government, and

(c) any Bench of Magistrates invested with the powers of a Magistrate of the first class and especially empowered in this behalf by the Provincial Government

,
may if he thinks fit, try in a summary way all or any of the following offences:

(a) offences not punishable with death, transportation or imprisonment for a term exceeding six months;

(b) offences relating to weights and measures under sections 264, 265 and 266 of the Pakistan Penal Code;

- (c) hurt under clause (a) of section 377A of the same Code;
- (d) theft under section 379, 380 and 381 of the same Code, where the value of the property stolen does not exceed ten thousand rupees;
- (e) dishonest misappropriation of property under section 403 of the same Code, where the value of the property misappropriated does not exceed ten thousand rupees;
- (f) receiving or retaining stolen property under section 411 of the same Code, where the value of such property does not exceed ten thousand rupees;
- (g) assisting in the concealment or disposal of stolen property under section 414 of the same Code, where the value of such property does not exceed ten thousand rupees;

- (h) mischief, under section 427 of the same Code;
- (i) house trespass, under section 448 and offences under section 451, 453, 454, 456 and 457 of the same Code;
- (j) insult with intent to provoke a breach of the peace under section 504, and criminal intimidation, under section 506 of the same Code;
- (jj) offence of personation at an election under section 171-F of the same Code;
- (k) abetment of any of the foregoing offences;
- (l) an attempt to commit any of the foregoing offences, when such attempt is an offence;
- (m) offences under section 20 of the Cattle Trespass Act, 1871;

(2) When in the course of a summary trial it appears to the Magistrate or Bench that the case is one which is of a character which renders undesirable that if it should be tried summarily, the Magistrate or Bench shall recall any witness who may have been examined and proceed to re-hear the case in a manner provided by this Code.

Section 261 of the Code of Criminal Procedure, 1898 empowers the Provincial Government on the recommendation of the High Court to confer on any Bench of Magistrates invested with the power of a Magistrate of the second or third class, power to try summarily all or any of the following offences,-

(a) offences against the PPC section 277, 278, 279, 285, 286, 289, 290,

- 292, 293, 294, 337A(i) , 337L(2),
337H (2), 341, 352, 426, 447 and
504;
- (b) offences against municipal Acts,
and the conservancy clauses of
Police Acts which are punishable
only with fine or with imprisonment
for a term not exceeding one month
with or without fine;
 - (c) abetment of any of the foregoing
offences;
 - (d) an attempt to commit any of the
foregoing offences when such
attempt is an offence.

Section 262 gives the procedure prescribed in chapter XX. It has two sub-sections. Subsection (1) says: In trials under this chapter, the procedure prescribed in chapter XX shall be

followed except as hereinafter mentioned.

Sub-section (2) prescribes the limit of punishment and says that no sentence of imprisonment for term exceeding three months shall be passed in the case of any conviction under this Chapter.

Section 263 lays down the minimum requirement of law as to record in cases where there is no appeal. It states:

In cases where no appeal lies, the Magistrate or Bench of Magistrates need not record the evidence of the witnesses or frame a formal charge; but he or they shall enter in such form as the Provincial Government may direct the following particulars:

- (a) the serial number;
- (b) the date of the commission of offence;

- (c) the date of the report or complaint;
 - (d) the name of the complainant (if any);
 - (e) the name parentage and residence of the accused;
 - (f) the offence complained of and the offence if any proved, and in cases coming under clause (d), clause (e), clause (f) or clause (g) of subsection (1) of section 260, the value of the property in respect of which the offence has been committed;
 - (g) the plea of the accused and his examination (if any);
 - (h) the finding, and in the case of a conviction, a brief statement of the reasons therefore;
 - (i) the sentence or other final order;
- and

- (j) the date on which the proceedings terminated.

Section 264 speaks of the record in appealable cases and states that,-

- (1) In every case tried summarily by a Magistrate or Bench in which an appeal lies, such Magistrate or bench shall record the substance of the evidence and also the particulars mentioned in section 263, and shall before passing any sentence record a judgment in the case.

Section 265 has four sub-sections. Sub-section (1) states that records made under section 263 and judgments recorded under section 264 shall be written by the Presiding Officer, either in English or in the language of the Court, or if the Court

to which such presiding officer is immediately subordinate so direct, in such officer's mother-tongue.

Sub-Section (2) empowers the Provincial Government to authorize any Bench of magistrates empowered to try offences summarily to prepare the aforesaid record or Judgment by means of an officer appointed in this behalf by the Court to which such bench is immediately subordinate, and the record or judgment so prepared shall be signed by each member of such Bench present taking part in the proceedings.

Sub-section (3) states that if no such authorization be given the record prepared by a member of the Bench and signed as aforesaid shall be the proper record.

Sub-section (4) states that if the Bench differs in opinion, any dissentient member may write a separate judgment.

For Regular trial the procedure is given in Chapter XXI of the Code of Criminal Procedure, 1898.

SIMILARITIES BETWEEN SUMMARY AND REGULAR TRIALS:

- In both the charge is framed.
- In both the accused is examined.
- In both the evidence is taken.
- In both the record is maintained.
- In both the order is announced.
- In both the Competent Magistrate conducts the proceedings.
- In both kinds of trial the reasons for the findings are to be given.

- Provisions of sections 191, 243, 342 and 250 apply to summary trials equally with ordinary trials.
- In both trials illegality vitiates the whole trial but irregularity does not.

DISSIMILARITIES BETWEEN SUMMARY AND REGULAR TRIALS:

- Summary trial is simple while Regular trial is complex.
- In summary trial procedure is short while in regular trial it is full-fledged.
- In summary trial under section 263 of the Code of Criminal Procedure, 1898 in cases where no appeal lies, the Magistrate or Bench of Magistrate need not record the evidence of the witnesses or frame a formal charge; while in regular trial recording of evidence of the

- witnesses and framing of formal charge is must.
- In summary cases recording evidence is not necessary only gist suffices while in Regular trial it is compulsory to record the evidence at full.
 - In summary trial where appeal lies the Magistrate must preserve the original notes of evidence so that the Appellate or Revisional Court may see the error while in Regular trial the whole evidence is to be recorded with full opportunity to cross examines and thereafter even the arguments on both sides are to be heard by the Magistrate.
 - In summary trial only substance of the witnesses evidence is to be stated generally and not a separate record of each witness is to be kept but in the

regular trial each witnesses deposition's separate record is to be made. The expression substance of the evidence implies a judicious selection of précis of that part of the evidence which is really material. The question whether the substance of the evidence has been sufficiently recorded in a particular case depends upon a consideration of the nature and relevance of the various pieces of evidence given in the case having regard to the issues raised or involved in the case.¹²

- In summary trial reasons for the sentence are not to be given while in regular trial reasons both for finding and sentencing are to be given by the Magistrate.

¹² AIR 1948 Sind 59.

**WHETHER JURISDICTION OF
HIGH COURT TO PUNISH
SUMMARILY CONTEMPTS OF ITS
AUTHORITY IS AFFECTED BY
THE PROVISIONS OF THE CODE
OF CRIMINAL PROCEDURE, 1898
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The answer is in the negative. The authority is available in AIR 1926 Lahore 1 (F.B.); AIR 1927 Lahore 610 (SB) which says that “the High Court as a superior Court of Record has a special jurisdiction to punish summarily contempt of its authority, and this jurisdiction is independent of, and unaffected by, the provisions of the Code.”.

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3. Wharton's Law Lexicon, Universal Law Company, New Delhi.
4. AIR
5. PLD
6. Cr. Law Journal.