

BNSS 2023

LECTURE 11

Notes - Summons and Warrants

The principal object of criminal law is to protect the society and punish the criminals and do so through a fair trial. To achieve this every person accused of a crime is brought before the court for trial and all evidence appearing against him is made available to the court for deciding his guilt or his innocence and his rights and liberties are still protected. And this is the purpose the provisions regarding summons and warrants are aimed at.

Both the processes are used by a court to compel the appearance of a person at court. Summons are an order to appear before a judge or magistrate and is used to call accused as well as witnesses to the court. A warrant is a legal document by which the court authorises someone to legal action.

Through summons, a person or someone else who can inform that person is formally notified to attend or procure the attendance of a person. A warrant is an official authorization to a law enforcement agency to take a specific action, i.e. arrest someone, search property, etc. Arrests and searches cannot be done through summons. And witnesses cannot be called through warrants. All of it comes under Chapter VI of the BNSS, 2023 called as 'Processes to compel appearance'.

Summons

Section 63 to 71 under the BNSS which were Section 61 to 69 in Cr.P.C. talk about summons and the procedure for it.

Form of Summons

Section 63 of BNSS (previously Section 61 of Cr.P.C.) talked about the forms of summons. In Cr.P.C., summons were served in only one way whereas BNSS provides for two ways to serve summons.

The summons shall be issued in writing and in duplicate. They will be issued by the Court and signed by the presiding officer of the Court and must bear the seal of the court. In the second

way, which has been introduced by the BNSS owing to technological advancements, is to issue it in encrypted or any form of electronic communication. Such communication through electronic form shall also bear the image of the seal of the court or the court's digital signature.

Who can serve summons

Section 64(1) of the BNSS, previously Section 62(1) of Cr.P.C. tells us that three kinds of persons can serve summons. They are :- a police officer, any other officer of the court issuing it or a public servant.

Mode of serving summons

BNSS provides for four modes of service of summons. They are :-

1. Personal service of summons (Section 64(2) BNSS / 62(2) Cr.P.C.)

Section 64(2) and 64(3) of BNSS says that whenever possible, the summons shall be served to the person who is to be summoned personally. The person who is receiving the summons shall also give a receipt for receiving summons personally by signing on the back of one of the other duplicates of the summons.

2. Electronic service of summons

Section 64(2) also talks about the electronic service of summons too. The summons bearing the court's seal served through electronic communication shall be served in such form and manner as the State government through rules may provide.

3. Service when persons summoned cannot be found (Section 66 BNSS / Section 64 Cr.P.C.)

This section has been amended from the previous version in Cr.P.C. to make it more gender neutral. When the person who is to be summoned cannot be found even after due diligence by the person who has to personally hand him summons, the summons are served by handing over the duplicate of it to any adult member residing with him. Such an adult member, like earlier, also has to sign a receipt on the back of a duplicate of the summons. A servant, even though he may be residing at the house of the person to be summoned, is not counted as a family member.

Earlier, in S. 64 of the Cr.P.C. the summons could only be given to adult ‘male’ members who reside there. This need of the person to be male has been removed in BNSS.

4. Substituted service of summons (Section 67 BNSS / Section 65 Cr.P.C.)

This section has been included in BNSS without any change. If service through the above mentioned means cannot be carried out, then the practice of substituted service of summons is adopted.

The serving officer shall affix the duplicate of the summons to such conspicuous, i.e. noticeable to everyone, part of the house where the person ordinarily resides. When this is done it will consider the summons served. It may also happen that on inquiry the court may consider it fit to issue new summons which shall go through the same process again. This happens rarely.

Specific kinds of summons

1. Service of summons on corporate bodies, firms and societies (Section 65 BNSS / Section 63 Cr.P.C.)

This section has been amended with minor changes in BNSS. An inclusion of firms or other associations of individuals has been made here and also directors of companies are also now authorised to be served.

Under Section 65(1), summons can be served to a company or a corporation by serving the summons to the Director, secretary or other officer of the company. It can also be done by a letter sent by registered post to the director, secretary or any other officer of the company or corporation.

Section 65(2) says that summons can be served to the firm or other association of individuals by serving it on any partner of such a firm or association or by sending a letter to any such partner of the firm or association.

In both the above cases when sending a letter by registered post, the summons will be assumed to be served at the time when the letter would arrive in the ordinary course of post.

2. Service on government servant (Section 68 BNSS / Section 66 Cr.P.C.)

When the person to be summoned is a serving government servant, the summons shall be served in duplicate by the court to the head of the office where such servant is employed and that head shall personally serve the summons to that government servant according to Section 64 (personal service of summons).

After the head serves the employee, he shall return the summons with his signature as endorsement and proof of due service to the court which issued it.

3. Service of summons outside local limits (Section 69 BNSS / Section 67 Cr.P.C.)

When the court has to summon a person who resides outside its local jurisdiction, it shall send that summon to a magistrate in whose jurisdiction the person who has to be summoned resides or is to be served.

4. Service of summons on witness (Section 71 BNSS / Section 69 Cr.P.C.)

Section 69 of Cr.P.C. has been brought in as Section 71 of BNSS with a slight amendment of inclusion of electronic communication too.

Apart from personal service of summons, summons to a family member or through conspicuous affixation on the house, a witness can also be summoned in the additionally or simultaneously with any of the above modes, by electronic communication or registered post to the residence or place of business or place where the witness is employed.

This summons is considered to be served when the witness has signed or the postal employee makes an endorsement that the witness refused the summons. An electronic communication of summons shall also be considered as duly served and a copy of such summons shall be attested and kept as a proof of such summons.

Proof of service of summons (Section 70 BNSS / Section 68 Cr.P.C.)

This section talks about what can be given as proof of service of summons. This was previously Section 68 of the Cr.P.C. and has been brought in as Section 70 BNSS with an amendment including the proof of summons by electronic means in Section 70(3).

Section 70(1) talks about proof of summons in a case where the serving officer is not present at the hearing of the case or when the summons has been served outside the court's jurisdiction. In both the above cases, an affidavit made before a Magistrate that summons have been served and a duplicate of the summons endorsed in the manner provided in personal service (Sec. 64) or service to family members (Sec. 66) shall serve as a proof to the court. If both of the above are given, they shall be considered to be admissible and proved until the contrary is proved.

For service of summons through electronic means, when sent the summons shall be considered to be duly served and a copy of such summons shall be attested and kept as a proof of such summons.

Warrants

Warrant is the next step after summons to ensure the presence of a person at trial. A warrant of arrest is a written authority given by a competent Magistrate for the arrest of a person. They have been covered under Section 72-83 of the BNSS, 2023. In Cr.P.C., they were contained from Section 70-81. It is different from a warrant for search which shall be covered later.

Form and contents of warrant of arrest

The **form of the warrant** is mentioned in Section 72(1). A warrant is always in writing. It is not issued in an electronic form as it has to be executed by some officer. The warrant of arrest should be signed by the presiding officer of the court and it should also bear the seal of the court issuing it.

Apart from this, the warrant can also contain **other directions** to be given at the court's discretion. They are mentioned under sections 73, 74 and 75 of the BNSS.

Section 73 talks about a warrant of arrest in a bailable case. It says that the court issuing the warrant for arrest, also direct by endorsement on the warrant to the police officer arresting the

person to take security and release that person from custody if the person executes a bail bond with sufficient sureties for his attendance before the court at a specified time and date.

Section 73(2) says that the endorsement shall state the number of sureties, and the amount of money with which each of them shall be bound and the time for the arrested person to attend the court.

When the officer collects such securities, he shall forward that bond to the Court.

Section 72(2) states that a warrant shall **remain in force** until it is executed. Thus there is no time limit for expiry of warrants. A person can be arrested even on a warrant issued years ago. Apart from execution, a warrant can also be cancelled by the court depending on the circumstance. For example, if the court becomes satisfied that the accused is not guilty of the offence it may cancel the warrant.

To whom is a warrant directed

Section 74, 75 and 76 talk about the persons to whom a warrant can be directed.

According to Section 74(1) (Sec. 72 in Cr.P.C.), a warrant of arrest may give the power of arrest to one or more **police officers**. If the arrest is immediate and there is no police officer present, the court may direct it to any person or persons.

Section 74(2) says that when the powers to arrest are given to more persons than one, than either one person, or more than one person or all of them can arrest that person.

Section 75 talks about the procedure to be followed when **any person** is directed to execute a warrant on a person who is an escaped convict, proclaimed offender or a person accused of a non-bailable offence. Sec. 75(1) and (2) say that such warrant shall be issued by the Chief Judicial Magistrate or a Judicial Magistrate of first class, and the person receiving the warrant shall acknowledge the receipt of the warrant in writing and execute it when the person against whom the warrant is comes under his local jurisdiction or under a property under his charge.

Section 75(3) says that when the person against whom the warrant is, is arrested, he will be taken alongwith the warrant to the nearest police officer. The police officer can either release him on security as under Section 73(1) or produce the arrested person before a Magistrate having jurisdiction in the case.

Section 76 says that a police officer to whom the warrant is directed or endorsed can also endorse it to another police officer to execute it.

Section 77 talks about a mandatory duty on the person executing the warrant. That person has to, on arresting the person, notify him of the reason why he is being arrested. If needed, the warrant will be shown to the arrested person too.

Section 78 also talks about the duty on the person executing the warrant. It says that when a person or a police officer arrests a person on a warrant, and they are not released on security, they must be brought before the court issuing the warrant without unnecessary delay and within 24 hours.

Section 79 of the BNSS, ‘**Where warrant may be executed**’ which was Section 77 in the Cr.P.C. says that a warrant of arrest may be executed at any place in India. For example a warrant issued for arrest of a person from a court in Bihar can be executed even in Delhi or Karnataka after following the appropriate procedures.

The procedure to be followed is present in Section 80 and 81 of the BNSS, previously Section 78 and 79 of the Cr.P.C.. Both of them are options in front of the court on how to execute a warrant outside the jurisdiction of the court issuing it. In the first case, the court itself initiates the process of seeking authorisation whereas in Section 81, it is the officer who has to execute the warrant who has to seek permission or authorisation for executing the warrant.

Section 80 (important for the prelims), talks about when the **forwarding of a warrant which is to be executed outside jurisdiction**. Section 80(1) says that when the warrant is to be executed outside the jurisdiction of the court, the court can forward the warrant by post or other means to either the executive magistrate, or the superintendent or commissioner of police of the area where the warrant is to be executed.

Apart from the warrant, according to Sec 80(2), the substance of the warrant, and any other documents that would help the court having jurisdiction to decide on releasing him on security, shall be sent to such executive magistrate, superintendent or commissioner of police.

Upon receiving such a warrant and documents, the person who receives it shall initiate the execution of the warrant by endorsing and directing for it to be executed.

Section 81 of BNSS, previously Section 79 of Cr.P.C., ‘Warrant directed to police officer for execution outside jurisdiction’ talks about when a police officer has to execute his warrant in a

place that is outside his local jurisdiction. In such a case, the police officer has to get his warrant endorsed by either the Executive magistrate or an officer in charge of a police station or another police officer who holds a higher post than him. This endorsement is a shall provision, i.e. such executive magistrate or police officer should mandatorily endorse the warrant of arrest. After such endorsement, the endorsing officer can also send help from the local police, if needed.

Section 81(3) talks about the exception to this case, i.e. when the endorsement is not needed. If the police officer to whom the warrant is directed feels like the delay caused in seeking endorsement will prevent the execution of the warrant, he can execute it without permission.

After the person is arrested on warrant of arrest

Section 82 (Procedure of arrest of person against whom warrant issued) and Section 83 (Procedure by magistrate before whom such person arrested is brought) discuss what is the duty of the police and the court post the arrest of a person by warrant.

Usually when a person is arrested on a warrant of arrest, either he is released on security as under Section 73 BNSS or he shall be taken to the court issuing such warrant.

But when arrest is done outside of the jurisdiction of the court issuing the warrant :-

- i. if the court issuing the warrant is within 30 kilometres from the place of arrest; or
- ii. if the court issuing the warrant is nearer than the executive magistrate of that area; or
- iii. if the court issuing the warrant is nearer than the SP or commissioner of that area;

the person shall be taken back to the court issuing the warrant.

In all other cases, the arrested person shall be taken to the executive magistrate or SP or commissioner of that area who will conduct the procedure as laid down in Section 83.

Section 82(2) is one of the duties of the police officer arresting the person. The police officer shall (mandatory) give the information as to the arrest and the place of holding the arrested person to the designated police officer (S. 37 BNSS) of the place of arrest and of the place where the arrested person normally resides.

When the person who is arrested outside the jurisdiction of the court issuing the warrant and is presented at the executive magistrate or SP or commissioner having jurisdiction where the

person was arrested, they shall direct the removal of the person to the court which issued the warrant.

But this direction is subject to the exceptions provided in the proviso to Section 83(1) and 83(2). If the person is arrested on an offence which is bailable and is ready and willing to give bail bond, he shall be released and the bail bond will be forwarded to the court issuing the warrant.

If the person is arrested on an offence which is bailable and the warrant has a direction to release the person on security, he shall be released and the security will be forwarded to the warrant issuing court.

If a person is arrested on a non-bailable offence but is eligible for bail to be taken under Section 480 (When bail may be taken in case of a non-bailable offence), he will be released on such payment by the CJM.

Similarly, when the person accused of a non-bailable offence when presented at the court of the CJM or Sessions judge of the district where the offence happens, the judge shall look at the warrant and other documents submitted under Section 80(2) to decide whether bail should be granted or not. Then, if needed, they can also release the arrested person on bail.

But before all that, if there is a direction to release the person on bail bond under Section 73, the person can be released even before his coming to court.

Difference between form of summons and warrant

Summons can be issued for both accused and witnesses whereas a warrant of arrest is only issued to be executed against the accused.

Summons are issued in duplicate as well as electronic format whereas a warrant is not issued in duplicate and does not need to have a receipt. This is because summons simply calls the person to the court and thus an acknowledgment of confirmation is there whereas in warrant, an officer gets the power to physically bring the person in front of the court, thus eliminating the need for any acknowledgment.

Through a summon, the officer serving it simply calls the person whereas in a warrant, the court may give additional powers such as taking of security and releasing the person too through its directions.

Difference in summons between CPC and BNSS

Summons under the CPC are covered under Order V Rule 9 whereas issuance of summons under BNSS is covered under Section 61 of the BNSS.

Summons under the Civil Procedure Code are issued to inform the defendant of legal proceedings and to allow them to prepare their defense. Summons under the BNSS are used to ensure an accused's or a witness's presence in the Court for trial or for a hearing.

CPC summons are issued by a civil court and on failure to comply, an ex-parte judgement may be delivered whereas on refusal to comply with summons under BNSS, a warrant for arrest may be issued.