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Summary Trials in Indian Context: An Effective Tool to Ensure Fair Trials?

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ABSTRACT

Summary trials were introduced with the perspective of having an effective tool to curb long pending criminal trials in the country. A overburdened judiciary has been of concern for the law-makers, judicial officers and executive authorities since long. Justice delayed is justice denied. A criminal trial is often based on the premise of not only ascertaining guilt but also determining the innocence of the parties involved by ensuring that unnecessary hassle and injustice is not done to both of them. Our Criminal Justice system has come up a long way in ensuring a fair mechanism of determining guilt and innocence and also balancing the interest of the accused and victim, but has often been targeted on the ground of on-going battle for justice for decades, which the parties have to undergo causes mental, physical and financial loss in the long run. The Apex Court of the country has read right to speedy and fair trial and accessibility to justice as part and parcel of Article 21 of the Constitution, thereby, creating a strong edifice of justice delivery system in the country. Summary trials were hence, understood as a mechanism to plug-in the loophole of ever continuing criminal trials, but it also raised many questions regarding the friendliness of the adoption of this mechanism with respect to the accused and the victim concerned.

***Key phrases**: Summary trial, criminal justice system, fair trial, justice delivery system, speedy trial, accessibility to justice, overburdening of cases, long pending trials.*

I. INTRODUCTION

Huge number of pending cases in the Indian courts has always been one of the major concerns. It is often said that justice delayed is justice denied. In India, it is very well known that the justice delivery process is very slow and a time consuming affair. There are instances where Indian courts have taken more than a decade to convict the accused which generally creates a harassing situation for the parties as well as undoubtedly is a form of injustice in general. This is a very pertinent and concerning issue in a country like India especially if we

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take the socio economic scenario in focus.

Summary trial generally means the speedy trial. It means a trial in which the procedure is the same as prescribed for summons cases but the formula and elaboration or detail taking down of evidence and writing a full length judgement are not required, and which can be and dispose at once. According to section 264 in every summary trial in which the accused does not plead guilty, the magistrate shall record the substance of the evidence and a judgement containing a brief statement of the reasoning for finding. When the accused pleads guilty, the record is even is even shorter.[3]

A summary trial can be called as an abridged trial to save time and resources. As short-cuts are risky in the criminal cases, therefore, such trial are generally meant only for petty cases. But as the criminal cases are highly sensitive the law has provided three safeguard namely:

i. *by conforming the power to try cases summarily to certain class of judicial officers,(section 260 and section 261)*
ii. *prescribing the offence which may be tried summarily,(section 261) and*
iii. *reducing the maximum limit of punishment awardable in summary trial (section 263).*[4]

A summary trial is therefore summary with respect to the procedure of a summons trial being adopted even in a warrant case in regard to the recording of the proceeding and the brevity of judgment.[5]

The ultimate aim of criminal law is protection of rights and personal liberty from invasion by others, protection of weak against the strong, law abiding against lawless, peaceful against the violent, by ensuring a fair trial. In order to protect the rights of the citizen, the state prescribes the rule of conduct, sanctions for their violations, machinery to enforce those sanctions and procedure to ensure effective working of the machinery.[6] As far as law is concerned, it is expected to be neutral for both victim and accused. The Rule of Law ensures protection of the rights of the victim and accused at the same time. It safeguards non-arbitrariness in applicability. It is a generally accepted principle that an accused is considered innocent until proven guilty. The criminal justice system ensures his protection of rights. In this light Indian Constitution is quiet clear; right to equality,[7] right to life,[8]protection in

[3] R. N. SAXENA, *The Code Of Criminal Procedure, 1973*,(14th ed.) Central Law Agency, Allahabad, at p.290
[4] R. N. SAXENA, *TheCode Of Criminal Procedure, 1973*, (14th ed.) Central Law Agency, Allahabad, at p.290
[5] *Id.*
[6] See generally, *Committee on Reform on Criminal Justice system,* Government of India, Volume 1
[7] Article 14, *The Constitution of India, 1950*
[8] Article 21, *The constitution of India, 1950*

respect of conviction for offences are the foundation[9] which lays down a strong edifice for human rights and liberties.

In Constitutional theory, decisions about what conduct should be criminal should be taken by the legislature and the decision should then be implemented by the executive and applied by the courts. Hence, every criminal code makes a symbolic statement between the relation of constitutional theory and legislations as constitution is the supreme law of the land (*supremalex*) and represents the aspirations of people and thereby ensuring the protection interests.

JUSTICE - social, economic and political is a preambular concept of the Constitution. The guarantee of equality of law and equal protection of law lies at the heart of the legal system. It has been universally recognised even by international human rights instruments and re-iterated by the Apex Court that timely justice, speedy and fair trial are facets of the right to life under the Constitution.

Ensuring equal access to justice is a constitutional mandate not just in terms of a fundamental right under Part III, but also a good governance directive under Part IV of the Constitution. Article 39-A directs the State to ensure that the operation of the legal system promotes justice on the basis of equal opportunity and, in particular, provide free legal aid by suitable legislation or schemes. Right to free legal aid is an essential fundamental right guaranteed by the Constitution. The right to speedy trial is also present in form of Magna Carta and the laws of UK, the US, Canada, and New Zealand.

In ***Maneka Gandhi v Union of India***,[10] the Court held that Article 21 of the Constitution confers a fundamental right on every individual not to be deprived of his life or personal liberty, except according to procedure established by law. Such procedure as required under Article 21 has to be "fair, just and reasonable" and not "arbitrary, fanciful or oppressive".

In ***Hussainara Khatoon v Home Secretary, State of Bihar***[11] the court highlighted the importance of speedy trial. A constitution bench of the Supreme Court in ***Anita Kushwaha v Pushap Sudan***[12] identified four aspects that constitute the essence of access to justice—the State must provide an effective adjudicatory mechanism; the mechanism so provided must be reasonably accessible in terms of distance; the process of adjudication must be speedy; and access to the process must be affordable for the litigants.

[9] Article 20, *The constitution of India, 1950*
[10] (1978) 1 SCC 248
[11] AIR 1979 SC 1369.
[12] Transfer petition 1343 of 2008 decided in 2016

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Fair trial is also a mechanism to be provided with requisite opportunities to prove innocence and that the guilt shall be proved beyond reasonable doubt.

In ***K.Veeraswamy v. Union of India and others***[13]it was stated that, "No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is a part of the common law of England and no attempt to whittle it down can be entertained."

Therefore, the Constitutional edifice provides not only for speedy and fair trial but also ensures that the trials should be free from arbitrariness, capriciousness and non-effectiveness. On a *prima facie* footing, Criminal law is also a mechanism to ensure justice grounded on the principles of non-biasness. No doubt it is the victim who is perceived to have suffered a lot and hence, entitled to justice but at the same time the interest of the accused is also not to be ignored. A person no doubt has committed an offence but that does not waive his legitimate right to face fair trial. Therefore, summary trial though a solution to the problem of overburdening of cases is not a substitute to the greater protected right of fair trial.

II. JUDICIAL PROCESS AND THE RATIONALE BEHIND SUMMARY TRIALS

Criminal cases are divided into two categories namely warrant cases and summons cases. A warrant case is a case relating to an offence punishable with death, imprisonment for life, or imprisonment for a term exceeding two years. Other offences come under the category of summons cases. By definition, a summons case is one where the upper limit of imprisonment that can be awarded is two years and/or fine. Cases punishable with death or imprisonment for life or imprisonment for 10 years and fine, are exclusively tried by the Court of Session. Other cases are tried by Magistrates.[14]

In cases of conviction, the sentence that may be passed is limited by (a) the procedure adopted for purposes of trial: and (b) the limits placed by S.29 Cr.P.C. on different classes of Magistrates. If the case is tried by the Chief Judicial Magistrate (or the Chief Metropolitan Magistrate), the upper limit of sentencing would be any sentence authorized by law, "except a sentence of imprisonment for life or of imprisonment for a term exceeding seven years". A Magistrate of the First Class (or a Metropolitan Magistrate) may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding Rs.5000 or of both.[15]

[13](1991)3 SCC 655
[14]*Committee on Reform on Criminal Justice system,* Government of India, Volume 1
[15]*Committee on Reform on Criminal Justice system,* Government of India, Volume 1

All summons cases and a few enumerated warrant-cases are triable summarily, by all classes of Magistrates including Metropolitan Magistrates, (but not Magistrates of the First Class, unless they are duly empowered) as provided under Section 260[16]Cr.P.C. But the sentencing power is restricted under S.262[17]Cr.P.C to a term of imprisonment, not exceeding three months. Section 355[18] which speaks of "Metropolitan Magistrate's Judgment" substitutes almost the same performance of the judgment prescribed under S.263[19] for summary trials, with the difference, that while under S.264[20], in cases tried summarily, the Magistrate is enjoined with the duty to "record the substance of the evidence and a judgment containing a brief statement of the reasons for the finding," whereas, S.355 (i) relating to regular trials by Metropolitan Magistrates provides that in all cases in which an appeal lies from the final order under S.373 or 374(3)[21], "a brief statement of the reasons for the decision" shall also be recorded. The procedure that Metropolitan Magistrates can follow under S.355 is akin to summary procedure.[22]

Sub-Section (2) of S.260[23], provides that if in the course of the summary trial, it appears to the Magistrate that the nature of the case is such that it is undesirable to try it summarily, he shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the Code.

The procedure for recording evidence varies according to the form of trial. Section 274[24] Cr.P.C., prescribes that in summons cases and inquiries, "the Magistrate shall, as the examination of each witness proceeds, make a memorandum of the substance of the evidence in the language of the Court". The proviso enables the Magistrate to cause such memorandum to be made in writing or from his dictation in open Court" where the Magistrate is unable to make such memorandum himself and records reasons for his inability.

III. THE PROVISION OF SUMMARY TRIALS UNDER CODE OF CRIMINAL PROCEDURE

Summary trial implies speedy disposal. By summary case is meant a case which can be tried and disposed of at once. Summary trial is not intended for a contentious and complicated case

[16]Sec. 260, *Code of Criminal Procedure*, 1973 (2 of 1974)
[17]Sec.262, *Code of Criminal Procedure*, 1973 (2 of 1974)
[18]Section 355, *Code of Criminal Procedure*, 1973 (2 of 1974)
[19]Section.263, *Code of Criminal Procedure*, 1973 (2 of 1974)
[20]Section.373,*Code of Criminal Procedure*, 1973 (2 of 1974),
[21]Section.355, *Code of Criminal Procedure*, 1973 (2 of 1974)
[22]Section.260, *Code of Criminal Procedure*, 1973 (2 of 1974)
[23]Section 274, *Code of Criminal Procedure*, 1973 (2 of 1974)
[24]Section 274, *Code of Criminal Procedure*, 1973 (2 of 1974)

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which necessitates a lengthy inquiry.

The object of summary trial is to have a record sufficient for the purpose of justice but not so long as to impose speedy disposal of cases. Procedure prescribed for trial of summons-cases should be followed (s.262).At the conclusion of the trial of the Magistrate enters the accused's plea and finding in a form prescribed by Government. No formal charge is framed. There is no appeal in such a trial if a sentence of fine only not exceeding two hundred rupees has been awarded. There can be an application for revision to the High Court.

SCOPE- In general will it apply to offences not punishable with imprisonment for a term exceeding two years. It will also apply in cases of specific offences mentioned in cls.(ii) to (ix) of sub-s. (1).

The Magistrate empowered to try cases summarily are : (a) Chief Judicial Magistrate, (b) Metropolitian Magistrate, (c) Magistrate of first class (specially empowered by the High Court) and (d) Magistrate of second class (specially empowered by the High Court in a limited number of cases –see the next section).

There is a provision for summary trial under the Drugs and Cosmetics Act,1940.It was held in one of the cases that it was open to the Magistrate to try the case as warrant case also further, the trial of the case by First Class Judicial Magistrate was held to be not illegal.[25]

1. **"IF HE THINKS FIT":**

   It is in the discretion of a Magistrate to try any of the offences specified in the section in a summary way. Whether a case can be tried summarily or not must be determined by the offence involved[26] and the testimony of the complainant.[27]If a case is a complicated one, it should not be tried summarily.[28]If the accused is deaf and dumb it is convenient to try him summarily.[29]

   When an accused is charged with two offences, one of which can be tried summarily, and the other cannot, it is not open to a Magistrate too discard the latter charge , and to proceed to try the case summarily.[30]

2. **"TRY IN A SUMMARY WAY":**

   This does not enable the Magistrate to tryany case or class of cases which he is not otherwise competent to try. It only empowers him to try the cases that he is already

[25]*Rashpal Singh v. State of Haryana,*2003 Cr LJ 3407 (P & H).
[26]*Jagjivan v. Dayaram,*(1887) 10 All 55 ; *BishuShaik v. SaberMollah,* (1902) 29 Cal 409.
[27]*FanidraNathChatterjeev. Emperor,* (1908) 26 Cal 67
[28]*HariGopalCase , (1895)* Unrep Cr C 778 ,Cr R No. 42 of 1895 ; *Emperor v.Dina Nath,* (1913) 35 All 173;*Emperor v. Rustomji,* (1921) 23 Bom LR 984.
[29]*In reDeaf and Dumb Man,*(1906) 8 Bom LR 849.
[30]*RamanundMahton v. KoylashMahton* ,(1885) 11 Cal 236 ; *SheoBhajan Singh v. Mosawi,* (1906) 27 Cal 983.

competent to try by a particular procedure.[31] To illustrate, for a trial of offences u/s.14A and 14AA of the Employees Provident Funds Act (19 of 1952), it was held that the trial Courts ought not to have tried summarily even if the accused desired to plead guilty.[32] In a summary trial the procedure laid down should be strictly observed. A summary trial is summary only in respect of the record of its proceedings and not in respect of the proceedings themselves which should be completely and carefully conducted.

3. **NATURE OF PUNISHMENT [CLAUSE (1)]:**

   Offences to be tried summarily need not be punishable under the Penal Code. Offences under special or local Acts can also be tried summarily if they fulfil the condition of punishment laid down in this clause, e.g., Bengal Abkari Act.[33] The imprisonment may be simple or rigorous.

4. **WHERE SUMMARY TRIAL NOT DESIRABLE [SUB-SECTION (2)]:**

   If the mode of trial is sought to be altered in the midstream on the ground that the offence is such which cannot be tried in a summary way, the trial must from its inception be conducted in the regular manner.[34]

Sec.261 The High Court may confer on any Magistrate invested with the powers of a Magistrate of the second class power to try summarily any offence which is punishable only with or with imprisonment for a term not exceeding six months with or without fine, and any abetment of or attempt to commit any such offence.

This section empowers the Magistrate of the second class who has been invested with the powers by the High Court to try summarily any offence which is punishable only with fine or with imprisonment for a term not exceeding six months with or without fine. The power thus invested is a limited one.

Sec.262.(1) In trials under this Chapter, the procedure specified in this Code for the trial of summons- case shall be followed except as hereinafter mentioned.

(2) No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this Chapter.

The provisions of this section are imperative and a breach thereof amounts to an illegality and

[31] *Balachand v. MadsamMunicipality* ,AIR 1960 MP 20.
[32] *State of Maharashtra v. Shiva PrakashSeth* ,AIR 1960 MP 20.
[33] *Baidnath Das v. Emperor*,(1873) 3 Cal (FB).
[34] *State of Gujarat v.D.N. Patel* ,1971 Cr LJ 1244.

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not an irregularity.[35]Sub-s.(1) lays down that in all summary trials the summons-case procedure should be followed irrespective of the nature of the case, that is, whether it is a summons-case or a warrant-case. Term of imprisonment in terms of Sub-section (2), the sub-section lays down the limit of the term of sentence of imprisonment in summary trials. If the Magistrate considers that a longer sentence of imprisonment is necessary in the interests of justice, the trial should be held as in a warrant –case or a summons-case according to the nature of the offence. A sentence exceeding the period fixed by this section is illegal.[36]

In a summary trial an accused person convicted of more than one offence cannot be sentenced to imprisonment for a term exceeding three months in the aggregate under this sub section. A sentence of three months' imprisonment may be inflicted on each charge to run concurrently but not consecutively.[37]

The limit of imprisonment refers only to the substantive sentence, not to an alternative sentence of imprisonment in default of payment of fine. A Magistrate can impose a sentence of imprisonment in default of payment of fine in addition to the maximum sentence of three months' imprisonment which he has imposed for the offence.[38]

There is no limit as to the amount of fine which may be imposed in a summary trial.[39]

Sec.263. In every case tried summarily, the Magistrate shall enter, in such form as the State Government may direct , the following particulars, namely :-

- ***a.*** *the serial number of the case;*
- ***b.*** *the date of the commission of the offence;*
- ***c.*** *the date of the report or complaint;*
- ***d.*** *the name of the complainant (if any);*
- ***e.*** *thename, parentage and residence of the accused;*
- ***f.*** *the offence complained of and the offence (if any) proved, and in cases coming under clause (ii) , clause (iii) or clause (iv) of sub-section (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;*
- ***i.*** *the sentence or final order;*
- **j.** *the date on which proceedings terminated*

[35]*MangiLal v. Emperor,* AIR1945 ALL 98.
[36]*NandlalHarishanker v. State of Gujarat,* 1969 Cr LJ 389 : AIR 1969 Guj 62.
[37]Also see,*TripatiVyas v. State of Rajasthan*, Criminal Misc. Petition No. 2551/2012
[38]*AsgharAli* ,(1883) 6 ALL 61 ; *Po Htwa* ,(1940) Ran 223.
[39]*Dina Nath,* (1913) 35 ALL 173.

The register containing the particulars mentioned in this section forms the record in a summary trial. The evidence of witnesses need not be recorded nor a formal charge framed. In every case where the accused does not plead guilty, a judgement containing the substance of evidence is necessary.

Where a Magistrate, in a case tried summarily, simply initialled the judgement without affixing his full signature thereto, the omission was held to be a mere irregularity not affecting the legality of the conviction.[40]

When in a summary trial , the evidence has been recorded partly by one Magistrate who has taken notes of evidence and made them part of the record of the case and that Magistrate is succeeded by another Magistrate, the successor can decide the case on the evidence partly recorded by his predecessor and partly recorded by himself.[41]It is not required that in every case where the case is sent to another Magistrate, the evidence must be reheard. It depends upon the particular case and the manner in which the evidence has been recorded.[42]

The Magistrate shall enter and write the particulars himself. He cannot depute that duty to his clerk, nor is he authorised to affix his signature to the record or judgement by a stamp.[43]Section 265(2), however, permits the preparation of record or judgement or both by means of an officer appointed by the Chief Judicial Magistrate in this behalf. The record should be made at the time of the trial and not afterwards. Where a Magistrate without issuing process or making record of proceedings or dismounting from a pony on which he was riding convicted the accused of a municipal offence, it was held that as the record must have been prepared after the close of the trial from memory or rough notes, the procedure was illegal.[44]

264. In every case tried summarily in which the accused does not plead guilty, the Magistrate shall record the substance of the evidence and a judgement containing a brief statement of the reasons for the finding.

This section lays down that in every case tried summarily in which the accused does not plead guilty, the Magistrate must record the substance of the evidence and the judgement that is delivered must also contain a brief statement of the reasons for coming to a particular finding.

[40]*SeshagiriRao* ,(1954) Mys 147 ; contra *VelivalliBrahmaiah* ,(1930) 54 Mad 252.
[41]*Surat Bor. Mun v. Nagindas* , (1951) 54 Bom LR 800.
[42]*Reserve Bank emp. Assoc.* (1968) 71 Bom LR 99.
[43]*SubramanyaAyyar,* (1883) 6 Mad 396.
[44]*Erugad*,(1891) 15 Mad 83.

'SUBSTANCE OF THE EVIDENCE'- The substance of the evidence is to be recorded at a time when the evidence is given in the Court. Therefore, where the substance of the evidence is embodied in a judgement from memory or from short notes made at the time when evidence was given it does not amount to compliance with this section. The important or substantial part of the deposition of each witness should be recorded by the presiding authority.[45]The evidence must be sufficient to justify the Magistrate's order .[46]It must be so set forth in the judgement as to enable the appellate Court to perform its function.

The Allahabad High Court has held that if the evidence is not so set forth the Magistrate may be required to do so even after re-examining the witnesses, or a re-trial may be ordered.[47]The Bombay[48] and the Calcutta[49] High Courts have held that the omission to comply with the provisions of this section vitiates the trial.

265. (1) Every such record and judgement shall be written in the language of the Court.

(2) The High Court may authorise any Magistrate empowered to try offences summarily to prepare the aforesaid record or judgement or both by means of an officer appointed in this behalf by the Chief Judicial Magistrate, and the record or judgement so prepared shall be signed by such Magistrate.

This section emphasises that every such record i.e. the particulars mentioned in s. 263 and the substance of evidence and judgement must be recorded in the language of the Court. It also lays down that the Magistrate concerned must himself sign such record and judgement. The Magistrate must write his full name and mere putting in of the initials is not sufficient.[50]

IV. CONCLUSION

The summary trial is very much successful in reducing the burden of the case load in the normal court. As the Indian judiciary is flooded with the cases, summary trials have proven instrumental for ensuring speedy justice, along with that it also protects the rights of the accused. As summary trial is upon the discretionary power of the judge, so if he feels it will be unfair to trial a case on summary basis then he may call the case back to normal trial. This proves that the summary trial is quite accused friendly as well. As justice is a key factor to ensure the protection of rights. Justice should be given to both accused and victim, it can be

[45]*Krishna Nayar v. State*,(1958) 61 Bom LR 684.
[46]*Ainuddi Sheikh*,(1900) 27 Cal 450.
[47]*Karan Singh*,(1878) 1 ALL 680.
[48]*Nurudin* ,(1928) 30 Bom LR 954.
[49]*Kheraj Mullah*, (1873) 11 Beng LR 33: 20 WR (Cr) 13.
[50]*VellivalliBrahmaiah*, (1930) 54 Mad 252 ; see contra *Veerathaich v. Ramaswami*,,AIR 1964 Mys 11; *SeshagiriRao*, (1954) Mys 147.

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validly stated, hence, that summary trials aim at protecting both the causes.

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