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How do courts react to the disrepute of summons?

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The Code of Criminal Procedure, 1973¹ and the Civil Procedure Code, 1908² prescribe the methods to compel an appearance in criminal and civil cases respectively. Summons are one of these prescribed methods, but their disrepute often defeats the whole purpose they carry, that is to make whoever and whichever document required by the courts, to be presented in the court. In order to give strict and proper effect to the summons, the courts adopt a certain course of action as prescribed in the statutes mentioned above. Summons play an indispensable part in a case and so are deemed to be respected by everyone they are served upon. This article gives an overview of the court's response to non-appearance on or intentional ignorance of summons.

Keywords: *appearance, summons, court.*

INTRODUCTION

“A Summon” is a method that the courts use in order to notify the defendant about them being sued and order him/her to present themselves in court. The courts “summon” you by issuing ‘a summons’. Here, to summon means to order, and the summons are the notices issued that actually contain that order. The concept of summons emerged from the maxim,

¹ Code of Criminal Procedure, 1973

² Code of Civil Procedure, 1908

“Audi Alteram Partem” which means to listen to the other side, as the defendants would only come to know about them being sued, with the help of these summonses. Summons are to be served within 30 days of the institution of the suit. A ‘summon’ is basically a legal notice or form issued by a court that informs the defendant about him or her being sued. The scope of summons also expands from notifying someone about their appearance in the court as a witness or even the defendant to present a document or anything that the court demands, on their part in an ongoing suit. The summons comes to use in both civil and criminal cases. Summons are such a crucial part of a suit that without a summons, the parties cannot enforce the presence of witnesses and establish or take forward their case. The dispute cannot be resolved in absence of proper witnesses who cannot appear without a summons.

As mentioned previously, a summons is a method to compel an appearance by the court on behalf of the petitioner to the defendant. Every summons issued by the court under this court shall be in writing in duplicate signed by the presiding officer of such court or by such other officer as the High Court may from time to time by rule direct and shall bear the seal of the court. The court demands the presence of either the defendant, any witness of any other person; on top of it, a summons is also used by the court to order the submission of a document or the like in the court for an ongoing suit. There are numerous cases wherein the party summoned does not appear in front of the court on the mentioned date. In such cases, the courts in India provide a little grace to the said party by taking no actions in the initial stages and solely issuing 2-3 summons to the least before moving on to the next stage.

Summons can also be issued to the accused in a cheque bounce case, subject to the condition that the summon should be delivered to the accused and its report is in the file before the date of hearing. The course of action that the court proceeds to adopt, depends on if the case in hand is a civil or a criminal case. Criminal cases are considered to be of grave nature and tend to affect society in its entirety, so, the steps taken in such cases are comparatively strict and not much grace time is provided to the defendant as such.

CRIMINAL CASES

The process of finding the person summoned is carried out first by the serving officer, but even if then the person summoned cannot be found, then a copy of the summon is left with an adult male family member residing with him is left, the member may be required to sign a receipt on the back of the other duplicate. The signature would be considered as proof of the service, if the summoned person does not appear even after that, then the court has the power to issue a warrant. The court firstly makes sure via any sort of proof whether the summons has been duly served, and then decides whether ignorance occurred on the part of the party summoned.

Once the called-up party ignores 2-4 summons issued by the court to him/her, the court proceeds to take either of the below-mentioned paths as it thinks fit. The court firstly may issue aailable warrant to the summoned party, where they provide a bail surety which binds them to present themselves in the court on the date as mentioned in the warrant. Secondly, the courts can also issue a non-ailable warrant, only in the case where it is in the larger interest of the Public and the State it becomes absolutely imperative to curtail the freedom of an individual by issuing the same. Here, the warrant is sent by the court to either the court police or the jurisdictional police station, depending on the distance of the accused residence from the court. The accused is then directly arrested and presented in court by the police on the date mentioned in the warrant. He/she may be let off with a warning after paying the recall fee. Lookout notice may also be issued by the court if the situation demands so. The Court may further declare the accused absconder, publish a notice in the newspaper, declare you a proclaimed offender, and can even attach your property.

CIVIL CASES

The courts are comparatively flexible in the case of taking actions on non-appearance of summons in civil cases. The reasons for the same might be the fact that civil cases revolve around incidents that aren't of grievous nature and aren't considered as dangerous for society as a whole. The effect of such cases remains limited to a particular affected person or to a group of people. The court hears issues around **10-15 summons** to the respondent before taking

any actions against him or her. When a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and may be served in the manner prescribed [on such day and not beyond 30 days of the institution of the suit. If all the summons are ignored the most common course of action that the courts opt for is to start an *ex-parte* proceeding, in which the judgment is one-sided based on the facts and evidence provided by the party appearing in the court on account of continuous ignorance of summons and absence on the part of the opposition.

In certain cases, if the person is not appearing in front of the court, then his/her property can be proclaimed as per the set of rules relating to the proclamation in order to be just and fair. As per Rule 12³, the courts can also impose a fine of not more than 500 rupees for non-appearance, before moving ahead to the proclamation of property. When the courts believe the presence of a document or person very crucial for a particular case, and the said person is not complying with or is intentionally avoiding the summons without any legal justification, a proclamation may be issued to the said person to appear on the date and time mentioned therein. It may even be affixed to the door of his/her premises or any other conspicuous part.

A list of witnesses, clearly mentioning the fact whether they are being called up to present a document or evidence, should be presented to the court within 15 days when the issues are framed. The whole process of summons has not been made a compulsory step under the Civil Procedure Code, as witnesses over the ones mentioned in the concerned list can in some cases be presented in the court under Rule 1A of order 16⁴. Only in the case where the parties themselves are not able to bring the witnesses to the court are summons involved. The scope of summons goes beyond ordering appearing to the parties of the case, they cover the witnesses too. The witnesses ordinarily are not directly concerned with the case and hence, the probability of them ignoring the summon could be more; to avoid the same, the courts firstly, get the sound served to the witness personally or to an authorised agent on their part or even an adult family member, by a court officer or by registered post; in the event of ignorance of the same the summons are affixed on either the door Or any other conspicuous part of their

³ Code of Civil Procedure, 1908, or. 16 r. 12

⁴ Code of Civil Procedure, 1908, or. 16 r. 1A

house or workplace, once no response is received from all the above methods, the courts then levy criminal sanctions i.e., serious punishments, Severe fines, etc. are adopted as a method of enforcement. This is because the presence of witnesses is crucial in a case and the judgement cannot be passed in their absence.

"An invitation to a wedding invokes more trouble than a summons to a police court."

- William Feather

Summons is a document that commands a person to appear before the Court and answer the Magistrate on the complaint made against him. Summons is issued by the Magistrate if in his opinion after taking cognizance of an offence there is sufficient ground for proceeding and the case appears to be a summons case. Summons cases are those in which punishment will not exceed imprisonment for two years. It can be said that summons cases are not of serious nature, so it needs to be decided speedily, without dispensing the requisites of a fair trial. Summons are also served to Witnesses. A summons of witness is issued by the court to a person so that he may testify as a witness or to produce documents that he has in his possession before the court on a particular date. This document is called the summons of a witness. Witnesses may be summoned for two reasons: either for giving his oral evidence or for the final production of documents.

ANALYSIS

The courts in India hold one of the highest statures in the country and so, they should be respected by each and every person in the sense of obeying each and every order or notice the courts send. They must give proper importance to their legal system and must respect the authority by obeying rules and orders solely made for their gain and the country's betterment. Summons come under one of the notices sent by the court ordering or demanding your presence in the court or the like. Ignorance of the summons equates to disrespect of the court which should not be tolerable without a proper notice stating the reason of non-appearance on the part of the summoned party, they should either be penalised or charged in some manner if not the importance of the summons may diminish in the eyes of the

people. The courts tend to send multiple summonses as many as 14-15 summons in civil cases to the same person in the event of ignorance or no response on their part, and lack of rules and regulations relating to details in the issuance of summons, like lack of clear mandate in mentioning the date of appearance on the part of the court leads to delay in the decision making, the multiple other cases may suffer as well.

As per a report published by *The Print*,⁵ the Indian courts roughly spent around **273 days** serving summons, more than half of a year is evidently spent on the same. Additionally, the rigorous process of issuing summons by courts also contributes to delays in orders. Lack of proper records like incomplete contact details, foreign summons, where parties ignore or refuse acceptance, inadequate training, duplication, etc. adds to inefficiency of summons. The summons is still sent using the conventional methods which are time-consuming. The petitioner may go through financial losses mental pain and immense pressure in these events as appearing on each date and on the sole reason of ignorance of another party, the date may get shifted ahead. It is rightly said that "*Justice delayed is justice denied*" hence delaying justice because any such events should not be acceptable and serious actions should be taken against the party.

CONCLUDING REMARKS

To conclude the paper, we would sum up by mentioning that summons is one the most important tools available to the courts in any particular case, a case might go incomplete or continue forever without the issuance and appearance on the summons. But the courts can adopt some methods like using electronic mail or other media for the delivery of summons as though the society has elevated its methods, many courts still use the conventional methods for the delivery of summons; on top of it, measures to compel appearance should be tightened up a bit so that the summons might be taken seriously and appearance should be made as and when required in order to avoid any kind of delays. Non-appearance on the summons is still a

⁵ Vaidehi Misra, Aditya Ranjan, & Deepika Kinhal, 'Indian courts spend 273 days serving summons. Tech can speed it up' (*The Print*, 3 December 2020) <<https://theprint.in/opinion/indian-courts-spend-273-days-serving-summons-tech-can-speed-it-up/556415/>> accessed 17 January 2022

common phenomenon, but with some work from the side of the courts and the people, gradually things would fall into place.