



KERALA

Judicial Services Exam

CIVIL JUDGE

High Court of Kerala

Paper - 3

Volume - 1



KERALA JUDICIAL SERVICES

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**2. The Criminal Rules of Practice and Circular Orders, (Pg. 165)
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The Criminal Rules of Practice and Circular Orders

THE CRIMINAL RULES OF PRACTICE AND CIRCULAR ORDERS, 1990

Rules and Orders for the Guidance of the Criminal Courts in the State:

Roc. No. 13/SO/88: - Whereas it is expedient to amend, consolidate and bring up to date the Criminal Rules of Practice and Orders, 1966, in accordance with the new code of Criminal Procedure, 1973 and incorporate therein the Orders, Notifications and Administrative Instructions issued from time to time by the Government and the High Court.

Now, therefore, in exercise of the powers conferred by Article 227 of

1. Short title

These rules may be called the Criminal Rules of Practice and Circular Orders, 1990

2. Definitions

In these Rules, unless the context otherwise requires; the Constitution of India and Sec. 477 of the Code of Criminal Procedure, 1973 and of all other powers hereunto enabling and with the previous approval of the Governor of Andhra Pradesh, the High Court of Andhra Pradesh hereby makes the following Rules and Orders for the guidance of the Criminal Courts in the State

CHAPTER - 1

PRELIMINARY

(a) "Code" means the Code of Criminal Procedure, 1973

(b) "Government" means the Government of Andhra Pradesh

(c) "High Court" means the High Court of Andhra Pradesh'

(a) "Sessions Judge" includes the Metropolitan Sessions Judge, "Chief Judicial Magistrate" includes the Chief Metropolitan Magistrate, "Magistrate" includes the Metropolitan Magistrate and "Special Magistrate" includes Special Metropolitan Magistrate.

3. Hours of Sitting

Courts shall ordinarily sit from 10.30 A.M to 5.00 P.M Sessions Judge and Magistrates shall ordinarily commence their sitting not later than 10.30 A.M

each day, and unless the work for the day is disposed of earlier, shall not rise before 5-00.P.M except for launch on between 2.00 P.M. to 2.30 P.M.

4. Judicial Work to be done in Court Houses: -

No case shall be tried or heard and no judicial work formally announced or done on holidays declared by the High Court, except in exceptional circumstances and with the consent of both the parties.

5. Judicial work to be done in Court Houses: -

(1) Judicial work, in so far as it relates to inquiries and trials, shall be done in the Court Houses.

(2) Magistrates appointed to Mobile Courts may hold their sittings at any place within their territorial jurisdiction.

(3) Cases relating to Juvenile Offenders and Women may be tried in camera.

(4) Urgent bail applications presented out of Court hours may be disposed of at the residence of the Magistrate, but no order shall be passed in the case of Non-Bail Able Offences without notice to the prosecution.

6. Working days and hours of Special Judicial Magistrates: -

Special Judicial Magistrates shall hold Court for three days in a week on every alternate working day commencing from Monday. They shall hold Court between 7.30 A.M. and 10.30 A.M. Special Judicial Railway Magistrates may hold Court at any time between 7.30 A.M., and 10.00 P.M after giving advance intimation of holding Courts to the Chief Judicial Magistrate concerned.

CHAPTER -II

PROCESS SUMMONS AND WARRANTS

7. Witness summons may be signed by Ministerial officer: -

Summons issued to witnesses shall ordinarily be signed by the Chief Ministerial Officer of the Court. The words "By order of the Court" shall invariably be prefixed to the signature of the Chief Ministerial Officer in such cases.

8. Accused summons to be signed by Magistrate: -

Magistrates shall themselves sign summonses to accused persons.

In a proceedings instituted upon a complaint made in writing, the accused shall

be furnished with a copy of such complaint as early as practicable and in any case not later than the first occasion when he appears in Court.

Note: - The Copy of the complaint may be sent with summons or warrant issued to the accused under sub-section (1) of Sec. 204 of the Code.

9. Place of Hearing to be stated

Every summons and every order of adjournment shall state the place in which the case to which it relates will be heard.

10. Plural to be used in respect of person summoned

In all summonses issued by the Criminal courts in the regional languages, the plural form of the pronoun shall be used in addressing the person summoned.

11. Warrant to bear sign manual of the Judge or the Magistrate

Facsimile stamps shall not be used for signing warrants or summonses. All warrants should receive the sign manual of the Judge or Magistrate from whose Court they are issued.

12. Medical witnesses and Chemical Examiner how to be summoned

(1) Summonses of the following classes of Medical Officers in the District should be issued in the manner specified below: -

- (a) Government Medical Officer in Government Medical Institution
- (b) Government Medical Officers in Zilla Parishad and Municipal Taluk Headquarters Medical Institutions.
- (c) Government Medical Officer lent for service in Zilla Parishad and Municipal Medical Institutions.
- (d) Zilla Parishad and Municipal Medical Officers.
- (e) Rural Medical Practitioners in-charge of Zilla Parishad Rural Dispensaries (who are neither Zilla Parishad servants nor government Servants); and
- (f) Honorary Medical Officers.

In the case of all these classes of Officers, summonses should be served direct on the Medical Officers when their absence from the station is not involved, and the fact intimated to the District Medical Officer concerned for information.

- (2) In case involving absence from the station, summons should be served through the district Medical Officer in respect of all classes of Medical Officers referred to the above except. Honorary Medical Officers. The District Medical Officer while forwarding the summons to Medical Officers employed in Zilla Parishad and Municipal Medical Institutions whether they are Government servants lent to local bodies or are servants of local bodies should simultaneously send intimation to the Chairman of the Zilla Parishad or the Execution Authority of the Municipal Council through the chairman concerned. The same procedure shall be adopted in the case of Rural Medical Practitioners also. The arrangement for the running of the Medical Institutions will be made by the District Medical officer, wherever he has to do so and in other cases by the Chairman of the Zilla Parishad or the Execution Authority of the Municipal Council through the Chairman concerned.
 - (3) In the case of Honorary Medical Officers, the summons should be served through the Superintendent or Medical Officer in- charge of the Medical Institutions so that he may make necessary arrangements for the relief of the Honorary Medical Officer.
 - (4) In all cases where the time available is short or the Medical Institution is distant, a telegram may be sent.
 - (5) In cases where Superintendents of Hospitals and Civil Surgeons are required to attend Criminal Courts to give evidence on professional Matters, the summonses shall be served on them direct, when their absence from station is not involved. But the fact should be intimated simultaneously to the Director of Medical Services, Andhra Pradesh. In the case of summonses intended for District Medical Officers to attend Criminal Courts to give evidence on professional matters, the summonses need not be sent through the Director of Medical Services, Andhra Pradesh, except in cases in which their absence from their jurisdiction is involved.
 - (6) The Presiding Officer of a Court should see that their special orders are taken before a summons is issued to a Medical witness and that a convenient date is fixed for his examination if there is more than one Medical Officer in a Hospital, only one Officer should, as far as possible, be summoned at a time. If possible, it may be previously ascertained from
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the Medical Officer as to the time that would best be suitable for him with reference to his professional duties. A medical witness should be summoned only when the presence of the accused is certain and when there is no likelihood of the case being adjourned for any other reason. The Presiding Officer from his duties is abrief as possible.

- (7) Summons for attendance of the Chemical Examiner as a witness in a criminal case shall invariably be sent through the chief Judicial Magistrate who will then be able to satisfy himself whether Chemical Examiner's personal attendance to give evidence is essential,

13. Mode of Service

When the serving officer delivers or tenders a copy of the summons to the person sought to be served personally or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered as on acknowledgement of service endorsed on the original summons.

[13-A (1) In all proceedings under section 125 of the Code of Criminal Procedure, 1973 {Central Act No. 2/1984} and under Section 138-A of the Negotiable Instruments Act, 1881 (Central Act No. 26 of 1881) and in any other case where the summons may be ordered to be served through the post office by registered post with acknowledgment due, sent to the address of the respondent or the accused therein as the case may be, in the manner provided under Rule 13 of the Criminal rules of Practice and Circular Orders, 1990 and in such cases the postal employee tendering the notice shall be deemed to the "Serving Officer" within the meaning of rule 13 of the said Rules.

(2) Before directing the service of notice by post, the complainants shall be required to bring to the Court sufficient number of copies of the summons, the complaint and envelopes duly typed with the name and address of the person on whom the summons sought to be served and bearing adequate postage for sending the article by registered post with acknowledgement due".]

14. Translations of Summons

When a summon is written in a language different from that of the Court within whose jurisdiction it is to be served, the Court transmitting it for service shall also send a translation thereof in English, and in cases where the summons has to be returned by any Court outside the State and the return is not in English or the language of that Court, the endorsement and the affidavit, if any, mentioned in Section 68 of the Code with which it is sent back to that Court shall be accompanied by a translation of the return into English.

15. Service of notice issued by the High Court

All notices issued by the High Court under Sections 385 and 422 and clause (2) of Section 401 of the Code shall be in duplicate the shall be served as expeditiously as possible and duplicate copy with the endorsement of service, if effected, be transmitted to the High Court without delay.

16. Summons to be served on members of Parliament or State Legislature

All summonses intended to be served on Members of Parliament or State Legislature shall be sent through Court or Police or by Registered Post. Under no circumstances should they be sent to Presiding Officer of the House for service on the Members.

17. Intimation of arrest of M.P's and M.L.As

All arrests, Surrenders and releases of Members of Parliament or State Legislature shall be intimated to the President Officer of the House, Intimation shall also be given to the Home Ministry, Government of India, in the case of M.P.s and Chief Secretary to the Government, G.A.D in the Case of members of State Legislature.

18. Summons to Government Analyst

Summons to Government analyst in food Adulteration case shall be sent through the Chief Judicial Magistrate.

19. Case in which accused has absconded

When process has been issued for the attendance of the accused but the case has remained pending for a long time owing to his now- appearance , and

the Magistrate is satisfied that the presence of the accused cannot be secured within a reasonable time to when an accused person found to be of unsound mind is released under Sub- section(I) of Section 330 or detained in safe-custody under Sub- section (2) of Section 330 of the Code, the Magistrate shall report the case for the orders of the Sessions Judge, who may, if he thinks fit, order that the case shall be removed from the register of cases received and omitted from the quarterly returns. The case shall, however then be entered in a separate Register of long pending cases which shall be maintained by all Magistrates in Administration Form No.26.

Provided that if the charge is withdrawn, or if the accused is reported dead, whether before after the entry of the case in the Register of Long Pending Cases, the case should be closed.

Provided further that if the Sessions Judge is of the opinion that the case against the absent accused is wholly false, he may direct that the case be omitted from the Registers and the returns altogether and he may at any subsequent time order the case to be entered in the Register of Long Pending Cases.

20. Cases in which some of the accused have absconded

When there are several accused persons in a case, and only some of the them have appeared or been produced, before the Court, if the Magistrate is satisfied that the presence of other accused cannot be secured within a reasonable time, having due regard to the right of such of the accused as have appeared to have the case against them enquired into without delay, he shall proceed with the case as against such of the accused as have appeared and disposed it of according to law. As regards the accused who have not appeared, he shall give the case a new number and enter it in the Register of cases received, and if it remains pending for a long time, and efforts to secure the presence of the accused have failed and the case against the accused who have appeared has been disposed of , the Magistrate shall report the whole matter as regards all the accused to the Sessions Judge, who may direct that the case against the absent accused be removed to the Register of Long Pending Cases, or if he is of the opinion that the case against the absent accused is wholly false, he may direct that the case be omitted from

the Registers and the returns altogether, provided that he may at any subsequent time order the case to be entered in the Register of Long pending Cases. Similarly, the case may be split up against the accused who have been obstructing or persistently disturbing the proceedings of the Court.

21. Procedure to be observed before transfer of a case to the Register of long pending cases

Before directing transfer of a case, other than a case dealt with under subsection (1) or Sub-Section (2) of Section 330 of the Code to the Register of Long Pending Cases, the Sessions Judge shall satisfy himself that all reasonable steps have been taken to follow the procedure prescribed in Sections 82 & 83, and also, when practicable, that the provisions of Section 299 of the Code have been complied with.

22. Procedure on the appearance or the production of accused

If subsequently the absent accused or any of them are produced, or appear before the Magistrate, or the accused who was insane cases to be insane, or those who have been obstructing or persistently disturbing the proceedings undertake to co-operative with the Court the case against them shall be registered under the new number.

23. Cases where an accused has absconded after appearance

Rule 19, 20, 21 and 22 shall apply as far as may be to cases where an accused person has appeared but has subsequently absconded.

If he accused has absconded after committal of the case, the Sessions Judge shall follow the above procedure, and also record the evidence of the witnesses under subsection (1) of Section 299 of the Code.

CHAPTER -III

Investigation

24. Receipts of F.I.R

Magistrates and Judges receiving F.I. R s shall initial each page and put the date stamp and time of receipt. The name or number of the messenger shall also be noted. If the F.I.R is received by the post, the envelope shall also be initialed and preserved.

The same Rule applies to Inquest Reports and other documents received from the Police or other Prosecuting agencies.

25. Magistrate to insist on production of the accused and copies of Documents

No order under Section 167 of the code for remand of the accused should be made unless the accused is produced before the Magistrate and he has been heard. Magistrates shall also insist on the production of copies of the entries in the Case Diary, peruse and initial those documents before passing orders and also indicate in the order, that the documents are perused.

26. Remand to police custody

A Magistrate shall not grant remand to police custody, unless he is satisfied that there is good ground for doing so and shall not accept a general statement made by the investigating or other Police Officer to the effect that the accused may be able to give further information. In all cases, where the Magistrate authorizes the detention of the accused in the custody of the Police, he shall record his reasons for so doing.

27. Order of remand by a Magistrate to be forwarded to sessions Judge

Whenever a Magistrate remands an accused person to the custody of police under Section 167 of the Code, a copy of the order of remand with the reasons recorded therefore, shall be forwarded within 24 hours to the Sessions Judge.

27. Computing Period of Remand

Whenever a Magistrate remands an accused person to the custody of police under Section 167 of the Code, a copy of the order of remand with the reasons recorded therefore, shall be forwarded within 24 hours to the Sessions Judge.

28. Computing Period of Remand

In computing the period of fifteen days mentioned in Sub-section (2) of Section 167, or the proviso to Sec. 309 of the code, both the day on which the remand order was made and the day on which the accused is ordered to be produced before the Court shall be included.

The period of detention as prescribed in the proviso to sub-section (2) of Section 167 of the Code or any period of detention prescribed by any other Law shall be computed from the date of actual production of the accused before the Magistrate or the Judge, as the case may be.

29. Remand under Section 390 of the Code

When an accused person is brought before a Subordinate Court under Section 390 of the Code, the Court shall explain fully to him his right to the assistance of an Advocate at State Cost and the procedure of hearing of appeals by the High Court. If the accused is remanded to custody, the Court shall forthwith report the action taken to the High Court and if the Warrant issued by the High Court is a Boilable Warrant, also state its reasons for remand and shall forward a copy of the said Report to the Collector who will communicate with the PublicProsecutor, Andhra Pradesh.

30. Bail during investigation

When an accused is released on bail during investigation, he shall be bound over to appear in Court after the charge sheet is filed and summons served on him. It is not necessary to bind him to appear on any earlier date or dates.

31. Requisitions for confession etc

- (1) All requisitions for recording of confession of the accused or statements of witnesses or for holding identification parades shall be made to such Magistrate as is nominated by the Sessions Judge for particular police station.
- (2) On receipt of such requisition, the Magistrate shall immediately fix a date for the purpose and issue summons to the witnesses.
- (3) Statement of witnesses and confession of accused shall be recorded in open court and during Court hours except for reasons to be recorded in writing. No police Officer should be allowed to be present in the Court Hall or in visible distance from the witnesses or the accused, while the statement of confession is being recorded.

32. Confessions

- i. No confession shall be recorded unless;
 - (a) The Magistrate has explained to the accused that he is under no
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obligation at all to answer any question and that he is free to speak or refrain from speaking as he pleases; and

(b) The Magistrate has warned the accused person that it is not intended to make him an approver and that anything said by him will be taken down and thereafter be used against him.

ii. Before recording a statement, the Magistrate shall question the accused in order to ascertain the exact circumstances in which his confession is made and the extent to which the Police have has relations with the accused before the confession is made.

The Magistrate may usefully put the following questions to the accused: -

(a) When did the police first question you?

(b) How often were you questioned by the Police?

(c) Were you detained anywhere by the Police before you were taken formally into custody, and if so, in what circumstances?

(d) Were you urged by the police to make a confession?

(e) Have the statement you are going to make been induced by any ill-treatment? And if so, by Whom?

(f) Do you understand that the statement which you are about to make may be used against you at your trial?

These questions and any others which may suggest themselves and the answers to them shall be recorded by the Magistrate before the records the accused's statement and shall be appended to the Memorandum prescribed by Sec. 164(3) of the Code of Criminal Procedure. The Magistrate shall add to the Memorandum a statement in his own hand of the grounds on which he believes that the confession is voluntary and shall note the precautions which he took to remove the accused from the influence of the police and the time given to the accused for reflection.

iii. If the Magistrate has any doubt whether the accused is going to speak voluntarily, he may, if he thinks fit, remand him to a sub- Jail, before recording the statement; and ordinarily the accused shall be withdrawn

from the custody of the Police for 24 hour before his statement is recorded. When it is no possible or expedient to allow so long a time as 24 hours, the Magistrate shall allow the accused atleast a few hours for reflection.

- iv. The statement of the accused shall not be recorded, nor shall the warning prescribed in paragraph 1 of this Rule be given nor shall the questions prescribed in paragraph (2) of the Rule be asked in the presence of a co-accused or of the police officers who have arrested him or produced him before the Magistrate or who have investigated the case.

33. Dying declaration

- i. While recording a Dying Declaration, the Magistrate shall keep in view the fact that the object of such declaration is to get from the declarant the cause of death or the circumstances of the transaction which resulted in death.
- ii. Before taking down the declaration, the Magistrate shall disclose his identify and also ask the declarant whether he is mentally capable of making a declaration. He should also put simple questions to elicit answer from the declarant with a view to knowing his state of mind and should record the questions and answers signs and gestures together with his own conclusion in the matter. He should also obtain whenever possible a certificate from the Medical Officer as to the mental condition of the declarant.
- iii. The declaration should be taken down in the words of the declarant as far as possible. The Magistrate should try to obtain from the declarant particulars necessary for identification of the accused. Every question put to the declarant and every answer or sign or gesture made by him in reply shall be recorded.
- iv. After the statement is recorded, it shall be read over to the declarant and his signature obtained thereon, if possible, and then the Magistrate shall sign the statement.

34. Identification Parades

In conducting identification parades of suspects, the Magistrate shall observe the following Rules.

- (1) (a) Wherever possible privacy shall be secured for the parade away from Public View, and all unauthorized persons should be strictly excluded from the place;
 - (b) If Jail Officials are presented at Parade, they shall be Kept in the view of the Magistrate all the time and they shall not be allowed access either to the witnesses who have to be summoned for identification or to the persons assembled at the parade.
 - (2) (a) As far as possible, non-suspects selected for the parades shall be of the same age, height, general appearance and position in life as that of the accused. Where a suspect wears any conspicuous garment, the Magistrate conducting the parade shall, if possible, either arrange for similar wear to other or induce the suspected person to remove suspected person to remove such granted.
 - (b) The accused shall be allowed to select his own position and should be expressly asked if he has any objection to the persons present with him or the arrangements made. It is desirable to change the order in which the suspects have been placed at the parade during the interval between the departure of one witness and the arrival of another.
 - (3) (a) The witnesses who have been summoned for the parade shall be kept out of the view of the parade shall be kept out of the view of the parade and shall be prevented from seeing the prisoner before he is paraded with others.
 - (b) Before a witness is called upon to identify the suspect, he should be asked whether he admits prior acquaintance with any suspect whom he proposes to identify. He shall be also asked to state the marks of identification by which he can identify the suspects.
 - (c) Each witness shall be fetched by separately. The witness shall be introduced one by one and on leaving shall not be allowed to communicate with witness still waiting see the persons paraded.
 - (4) Every circumstance connected with the identification including the act if any attributes to the persons who is identified shall be carefully recorded by the officer conducting it, whether the accused or any other person is identified or not, particularly any objection by any suspect to any in the proceeding shall be recorded.
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35. Identification of property

- i. Identification parades of properties shall be held in the Court the Magistrate where the properties are lodged;
- ii. Each item of property shall be put up separately for the parade. It shall be mixed up with four or similar objects.
- iii. Before calling upon the witnesses to identify the property, he shall be asked to state the identification marks of his property. Witnesses shall be called in one after the other and on leaving shall not allowed to communicate with the witness not yet called.

CHAPTER IV

GENERAL RULES APPLICABLE TO TRIALS

36. Defence at state expense: - Sessions Judges and Magistrates shall inform every accused person who appears before them and who is not represented by an Advocate on account of his property and indigence, that he is entitled to free legal service at the cost of the State, unless he is not willing to take advantage of it. It is not necessary that the accused should apply for legal aid. If the Court is satisfied that the accused has no sufficient means to engage an Advocate, it shall assign an advocate for his defence at the expense of the State.

2. (a) The Sessions Judge shall prepare a panel of Advocates to defend the accused, who has no sufficient means to engage an Advocate in a trial before the Court of Session from among the Advocates practicing in the court of sessions

(b) The panel of Advocates shall be know as "STATE BRIEF PANEL" and consists of the following two categories, viz.,

Category No. 1:- Advocates of not less than 5 years standing in the Bar to defend an accused, who is charged with an offence punishable with death or life imprisonment or any complicated or sensational case.

Category No. 2:- Advocates with not less than 2 years standing in the Bar to defend the accused person, who has been charged with an offence punishable with a sentence other than death or imprisonment for life.
