

III<sup>rd</sup> Part

Paper - 3

Name of Subject: Code of Criminal - Procedure.

Chapter: XVI

Topic: Commencement of Proceedings before Magistrates

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Section 204

This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case upon a consideration of the materials before him thinks that there is a prima facie materials for proceeding, further in respect of an offence, he shall issue process against the accused. It will be a summons in a summons case or a warrant in a warrant case. But even in a warrant case the Magistrate can in the exercise of discretion issue summons if he thinks that it will serve the purpose.

The Magistrate has been given a wide discretion to grant or refuse process and it <sup>must be</sup> ~~may~~ exercised judicially. Section 204 of the Cr.P.C says:

Issue of process 1. If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceedings, and the case appears to be -

- (a) a Summons-case, he shall issue his summons for the attendance of the accused, or
- (b) a Warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate having jurisdiction.
- (2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed
- (3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.
- (4) when by any law for the time being in force any process fees are paid and, if such fees are not paid within a reasonable time, the magistrate may dismiss the complaint.
- (5) Nothing in this section shall be deemed to affect the provisions of section 87.

so, issue of process is to be used with caution. The test is not whether there will be a conviction but whether a prima facie case has been made out?

Related question:

How the proceedings for trial of a  
case are commenced?