

¹[Provided that it shall not be necessary for the accused to deposit any such expenses in Court in case where he is charged with an offence punishable with imprisonment exceeding six months.]

COMMENTARY

Obligation. It is obligatory on the Court to summon the witnesses on the application of the complainant or accused, as the case may be. [PLJ 2011 Sh.C. (AJ&K) 57]

Scope. Section 244(2) cast an obligation on Magistrate to issue summons to any witness on application unless vexatious or opposed to ends of justice. [PLD 1992 Lah. 500]. Such application should not travel beyond witnesses investigated. [PLJ 2005 Cr.C. (Lah.) 563].

²[**244-A. Statement made under Section 164.**--The statement of a witness duly recorded under Section 164, if it was made in the presence of the accused and if he had notice of it and was given an opportunity of cross-examining the witness, may, in the discretion of the Court, if such witness is produced and examined, be treated as evidence in the case for all purposes subject to the provisions of Evidence Act, 1872.]

245. Acquittal.--(1) If the Magistrate upon taking the evidence referred to in Section 244 and such further evidence (if any) as he may, of his own motion, cause to be produced, and (if he thinks fit) examining the accused finds the accused not guilty, he shall record an order of acquittal.

(2) **Sentences.**--Where the Magistrate does not proceed in accordance with the provisions of Section 349 ³[..] he shall, if he finds the accused guilty, pass sentence upon him according to law.

COMMENTARY

Appeal. Sections 245 and 249-A. There is no distinction between the acquittal u/S. 245 or order u/S. 249-A for the purposes of appeal or revision. [2002 PCr.LJ 2072].

⁴[**245-A. Procedure in case of previous convictions.**--In a case where a previous conviction is charged under the provisions of Section 221, sub-section (7), and the accused does not admit that he has been previously convicted as alleged in the charge, the Magistrate may, after he has convicted the accused under Section 243, or under Section 245, sub-section (2), take evidence in respect of the alleged previous conviction, and if he does so shall record a finding thereon.]

246. [Omitted by the Law Reforms Ordinance, XII of 1972, Item 95].

247. Non-appearance of complainant.--If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day:

Provided that, where the complainant is a public servant and his personal attendance, is not required, the Magistrate may dispense with his attendance, and proceed with the case:

1. Added by Law Reforms Ordinance, 1972, Item 91(ii).

2. Subs. by Law Reforms Ordinance, 1972, Item 92, *ibid*.

3. The words "or Section 562" omitted by Ordinance, XXIV of 1975, Item 93.

4. Insrt. by Law Reforms Ordinance, 1972, Item 94.