OF PROCESSES TO COMPEL APPEARANCE

A -----Summons

68. Form of summons :-(1) Every summons issued by a Court under this Code shall be

in writing in duplicate, signed and sealed by the presiding officer of such Court or by such

other officer as the High Court may, from time to time, by rule, direct.

(2) Summons by whom served: Such summons shall be served by a police officer, or

subject to such rules as the Provincial Government may prescribe in this behalf by an

officer of the Court issuing, it or other public servant:

[provided that the Court may, at the request of the complainant or the accused, allow him

to serve the summons on his own witnesses.]

(3) [Omitted by A.O., 1949, Sch.]

Proviso added by Law Reforms Ordinance. 1972.

69. Summons how served: (1) The summons shall, if practicable, be served personally

on the person summoned, by delivering or tendering to him one of the duplicates of the

summons.

(2) Every person on whom a summon is to be served shall sign a receipt thereof on the

back of the other duplicate.

(3) Signature of receipt for Summons: Service of a summons on an incorporated

company or other body corporate may be effected by serving it on the secretary, local

manager or other, principal officer of the corporation or by registered, post letter

addressed to the chief officer of the corporation in Pakistan, to such case the service shall

be deemed to have been effected when the letter would arrive in ordinary course of post.

70. Service when person summoned cannot be found: Where the person summoned

cannot by the exercise of due diligence be found the summons may be served by

leaving one of the duplicates for him with some adult male member of his family, and the

person with whom the summons is so left shall, if so required by the serving officer, sign a

receipt therefore on the back of the other duplicate.

71. Procedure when service cannot be effected as before provided: If service in the

manner mentioned in Sections 69 and 70 cannot by the exercise of due diligence be

effected, the-serving officer shall affix one of the duplicates of the summons to some

conspicuous part of the house or homestead in which the person summoned ordinarily

resides; and thereupon the summons shall be deemed to have been duly served.

72. Service on servant of, State or of Railway Company : (1) Where the person

summoned is in the active service of the State or of a Railway Company, the Court

issuing the summons shall ordinarily send it in duplicate to the head of the office in which

such person is employed, and such head shall thereupon cause the summons to be

served in manner provided by Section 69, and shall return it to the Court under his

signature with the endorsement required by that section.

(2) Such signature shall be evidence of due service.

73. Service of summons outside local limits: When a Court desires that a summons

issued by it shall be served at any place outside the local limits of its jurisdiction, it shall

ordinarily send such summons in duplicate to a Magistrate within the local limits of whose

jurisdiction the person summoned resides or is to be there served.

74. Proof of service in such cases and when serving officer not present: (l)When a

summons issued by a Court is served outside the local limits of its jurisdiction, and in any

case where the officer who has served a summons is not present at the hearing of the

case, an affidavit, purporting to be made before a Magistrate, that such summons has

been served, and a duplicate of the summons purporting to be endorsed (in manner

provided by section 69 and section 70) by the person to whom it was delivered or

tendered or with whom it was left, shall be admissible in evidence, and the statements

made therein shall be deemed to be correct unless and until the contrary is proved.

(2) The affidavit mentioned in this section may be attached to the duplicate of the

summons and returned to the Court.

B.---Warrant of Arrest

75. Form of warrant of arrest: (1) Every Warrant of arrest Issued by a Court under this

Code, shall be in writing, signed by the presiding officer, or in the case of a Bench of

Magistrates, by any member of such Bench and shall bear the seal of the Court.

(2) Continuance of warrant of arrest: Every such warrant shall remain in force until

cancelled by the Court which issued it, or until it is executed.

76. Court may direct security to be taken: Any Court issuing a warrant for the arrest of

any person may in its discretion direct by endorsement on the warrant that, if such person

execute a a bond with sufficient sureties for his attendance before the court at a specified

time and thereafter, until otherwise directed by the Court, the officer to the

warrant is directed shall take such security and shall release

such person from custody.

(2) The endorsement shall state--

(a) the number of sureties.

(b) the amount in which they and the person for whose arrest the warrant is issued, are to

be respectively bound; and

(c) the time at which he is to attend before the Court.

(3) Recognizance to be forwarded: Whenever security is taken under this section the

officer to whom the warrant is directed shall forward the bond to the Court. -

77. Warrants to whom directed: (1) A warrant of arrest shall ordinarily be directed to one

or more police-officers, but any Court issuing such a warrant may, if its immediate

execution is necessary and, no .police-officer is immediately available, direct it to any

other person or persons, and such person or persons shall execute the same.

(2) Warrants to several persons: When a warrant is directed to more officers or persons

than one, it may be executed by all, or by any one or more, of them.

78. Warrant may be directed to landholders, etc.: (1) A [Magistrate of the First Class]

may direct a warrant to any landholder, farmer or manager of land within the district or

sub-division for the arrest of any escaped convict, proclaimed offender or person who has

been accused of a non-bailable offence, and who has eluded pursuit.

(2) Such landholder farmer or manager shall acknowledge in writing the receipt of the

warrant, and shall execute it if the person for whose arrest it was issued is in, or enters on,

his land or farm of the land under his charge.

(3) When the person against whom such warrant is issued is arrested, he shall be made

over with the warrant to the nearest police-officer, who shall cause him to be taken before

a Magistrate having Jurisdiction in the case, unless security is taken under Section 76.

Subs. by Ordinance, XXXVII of 2001, dt. 13-8-2001

79. Warrant directed to police officer: A warrant directed to any police officer may also

be executed by any other police officer whose name is endorsed upon the warrant by the

officer to whom it is directed or endorsed.

80. Notification of substance of warrant: The police officer or other person executing a

warrant of arrest shall notify the substance thereof to the person to be arrested, and if so

required, shall show him the warrant.

81. Person arrested to be brought before Court without delay: The police officer or

other person executing a warrant of arrest shall (subject to the provisions of Section 76

as to security) without unnecessary, delay bring the person arrested before the Court

before which he is required by law to produce such person. .

82. Where warrant may be executed: A warrant of arrest may be executed at any place

in Pakistan.

[Explanation : In this section, "warrant of arrest" includes a warrant of arrest issued under

this Code as in force in Azad Jammu and Kashmir]

Explan. added by Code of Criminal Procedure (Amendment) Act. Vlll of 1993.

83. Warrant forwarded for execution outside jurisdiction: (1) When a warrant is to be

executed outside the local limits of the jurisdiction of the Court issuing the same such

Court may, instead of directing such warrant to a police-officer, forward the same by post

or otherwise to any Magistrate or District Superintendent of Police within the local limits of

whose jurisdiction it is to be executed.

(2) The Magistrate or District Superintendent to whom such warrant is so forwarded shall

endorse his name thereon and, if practicable, cause it to be executed in manner

hereinbefore provided within the local limits of his jurisdiction.

84. Warrant directed to police-officer for execution outside jurisdiction: (1) When a

warrant directed to a police-officer is to be executed beyond the locate limits of the

jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either

to a Magistrate or to a police-officer not below the rank of an officer-in-charge of a police

station, within the local limits of whose jurisdiction the warrant is to be executed.

(2) Such Magistrate or police officer shall endorse his name thereon, and such

endorsement shall be sufficient authority to the police-Officer to whom the warrant is

directed to execute the same within such limits, and the local police shall, if so required,

assist such officer in executing such warrant.

(3) Whenever there is reason to believe that the delay occasioned by obtaining the

endorsement of the Magistrate or police-officer within the local limits of whose jurisdiction

the warrant is to be executed, will prevent such execution, the police-Officer to whom it is

directed may execute the same without such endorsement ^h any place beyond the local

limits of the jurisdiction of the Court which issued it.

(4) [Omitted by. A.O., 1949].

85. Procedure on arrest of person against whom warrant issued: When a warrant of

arrest is executed outside the district in which it was issued, the person arrested shall,

unless the Court which issued the warrant is within twenty mites of the place of arrest or is

nearer than the Magistrate or District Superintendent of Police within the focal limits of

whose jurisdiction the arrest was made, or unless security is taken under Section 76, be

taken before such Magistrate or District Superintendent.

86. Procedure by Magistrate before whom person arrested is brought: (1) Such

Magistrate or District Superintendent shall, if the person arrested appears to be the person

intended by the Court which issued the warrant, direct his removal in custody to such

Court.

Provided that, if the offence is bailable, and such person is ready and willing to give bail to

the satisfaction of such Magistrate, or District Superintendent or a direction has been

endorsed under Section76 on the warrant and such person is ready and willing to give the

security required by such direction, the Magistrate, or District Superintendent shall take

such bail or security as the case may be, and forward the bond to the Court which issued

the warrant:

[provided further that, if the offence is not bailable or no direction has been: endorsed

under Section 76 on the warrant, the Sessions .Judge of the sessions division in which the

person is arrested may, subject to the provisions of Section 497 and for sufficient reasons,

release, the person on an interim bail on such bond or security, as the Sessions Judge

thinks fit and direct the person to appear by a specified date before the Court which issued

the warrant and forward the bond to that Court]

2nd Proviso added by Law Reforms Ordinance, XII of 1972

(2) Nothing in this section shall be deemed to prevent a police-officer from taking security

under Section 76.

[86-A. Procedure for removal in custody to Tribal Areas: Where a person, arrested

under Section 85 is to be removed in custody to, any place in the Tribal Areas, he shall

be produced before a Magistrate within the local limits of whose jurisdiction the arrest was

made, and such Magistrate in directing the removal shall hear the case in the same

manner and have the same jurisdiction and powers, as nearly as may be, including the

powers to order the production of evidence, as it the person arrested were charged with

an offence committed within the jurisdiction of such Magistrate, and such Magistrate shall

direct the removal of the arrested person in custody if he is satisfied that the evidence

produced before him raises a strong or probable presumption that the person arrested

committed the offence mentioned in the warrant.

Section 86-A added by Law Reforms Ordinance, XII of 1972.

C.—Proclamation and Attachment

87. Proclamation for person absconding: (1) If any Court is satisfied after taking

evidence that any person against whom a warrant has been issued by it has absconded or

is concealing himself so that such warrant cannot be executed, such Court may publish a

written proclamation requiring him to appear at a specified place and at a specified time

not less than thirty days from the date of publishing such proclamation.

(2) The proclamation shall be published as follows:

(a) it shall be publicly read in some conspicuous place of the town or village in which such

person ordinarily resides ;

(b) it shall be affixed to some conspicuous part of the house or homestead in which such

person ordinarily resides or to some conspicuous place of such town or village; and

(c) a copy thereof shall be affixed, to some conspicuous part of the Court-house.

(3) A statement in writing by the Court issuing the proclamation to the "effect that the

proclamation was duly published on a specified day shall be conclusive evidence that

the requirements of this section have been complied with and that the proclamation was

published on such day.

88. Attachment of property of person absconding: (1) The Court issuing a

proclamation under Section 87 may at any time order the attachment of any property,

movable or immovable or both, belonging to the proclaimed person.

(2) Such order shall authorize the attachment of any property belonging to such person

within the district in which it is made and it shall authorise the attachment of any property

belonging to such person without such district when endorsed by the [Sessions Judge]

within whose district such property is situated.

(3) If the property ordered to be attached is a debt or other movable property, the

attachment under this section shall be made—

(a) by seizure; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the delivery of such property to the proclaimed person

or to any one on his behalf; or

(a) by all or any two of such methods, as the Court thinks fit.

(4) if the property ordered to be attached is immovable, the attachment under this section

shall, in the case of land-paying revenue to the Provincial Government, be made through

the [District Officer (Revenue)] in which the land is situated, and in all other cases--

(e) by taking possession ; or

(f) by the appointment of a receiver; or

(g) by an order in writing prohibiting the payment of rent or delivery of property to the

proclaimed person or to any one on his behalf; or

(h) by all or any two of such methods, as the Court thinks fit.

(5) If the property ordered to be attached consists of livestock or is of a perishable nature,

the Court may, if it thinks it expedient, order immediate sale thereof, and in such case

the proceeds of the sale shall abide, the order of the Court.

(6) The powers, duties and liabilities of a receiver appointed under this section shall be the

same as those of a receiver appointed under Order XL of the Code of Civil Procedure

1908.

(6-A) If any claim is preferred to or objection made, to the attachment of any property

attached under this section within six months from the date of such attachment, by any

person other than the proclaimed person, on the ground that the claimant or objector has

an interest in such property, and that such interest is not liable to attachment under this

section, the claim or objection shall be inquired into, and may be allowed or disallowed in

whole or in part :

Provided that any claim preferred or objection made within the period allowed by this subsection may, in the event of the death of the claimant or objector, be continued by his legal

representative.

(6-B) Claims or objections under sub-section (6-A) may be preferred, or made in the Court

by which the order of attachment is issued or, if the claim or objection is in respect of

property attached under an order endorsed by a [Sessions Judge] in accordance with the

provisions of sub-section (2) in the Court of such Magistrate.

(6-C) Every such claim or objection shall be inquired into by the Court [or Magistrate] in

which it is preferred or made.

Proviso: [Omitted by Ordinance, XXXVII of 2001, dt. 13-8-2001.]

(6-D) Any person whose claim or objection has been disallowed in whole or in part by an

order under sub-section (6-A) may within a period of one year from the date of such order,

institute a suit to establish the right which he claims in respect of the property in dispute;

but subject to the result of such suit, if any, the order shall be conclusive.

(6-E) If the proclaimed person appears within the time specified in the proclamation, the

Court shall make an order releasing the property from the attachment.

(7) If the proclaimed person does not appear within the time specified in the proclamation,

the property under attachment shall be at the disposal of the Provincial Government but it

shall not be sold until the expiration of Six months from the date of the attachment and

until any claim preferred or objection made under sub-section (6-A) has been disposed of

under that sub-section, unless if is subject to speedy and natural decay, or the Court

considers that the sale would be for the benefit of the owner, in either of which cases the

Court may cause it to be sold whenever it thinks fit.

Subs./ins. by Ordinance, XXXVII of 2001, dt. 13-8-2001.

89. Restoration of attached property: If within two years from the date of the

attachment, any person, whose property is or has been at the disposal of Provincial

Government, under sub-section (7) of Section 88 appears voluntarily or is apprehended

and brought before the Court by whose order the property was attached; or the Court to

which such Court is subordinate, and proves to the satisfaction of such Court that he did

not abscond or conceal himself for the purpose of avoiding, execution of the warrant and

that he had not such notice of the proclamation as to enable him to attend within the time

specified therein, such property or, if the same has been sold, the net proceeds of the

sale, or, if part only thereof has been sold, the net proceeds of the sale and the residue of

the property, shall after satisfying thereout all costs incurred in consequence of the

attachment, be delivered to him.