

IV WORKSHOP OF THE JUDICIAL OFFICERS
ON
Criminal Law - Practice and Procedure

Paper Presentation on Topics of

- 1) FRAMING OF CHARGES, IMPACT OF NON FRAMING OF CHARGES IN
CRIMINAL TRIAL
- 2) ALTERATION- AMENDMENT OF CHARGES, PRACTICE AND
PROCEDURE
- 3) DISCHARGE

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Framing of charges

Introduction :

The bitter truth in this aspect is most of us assigning this task to stenographers for various reasons. Under the guise of pressure of work we are not supposed to assign this task. In fact for framing charge we are supposed to glean entire record which will throw some light on the actual issue. Apart from that when trial begins, since we already gone through record while framing charge it will facilitate us while recording evidence and we can have restrict the irrelevant questions in cross examination. Thus charge have its own importance in the quest of truth.

Purpose of framing charge :

Framing of charges in a criminal case is the formal accusation of an individual committing a specific offence or crime. During this process, the court reviews the evidence and the allegations presented by the prosecution and if it finds sufficient grounds to believe that the accused has committed the offence, it formulates and formally presents the charges against the accused. The process of framing charges involves the court's determination that the accused individual is likely to have committed a specific offence. This determination is made after a careful examination of the police report, along with other pertinent documents and after hearing arguments from both parties. Framing of charges serves as the initial step in commencing a trial against the accused.

It is essential to note that although framing charges under CrPC is a vital step that informs the accused of the allegations against them, it is not mandatory in all legal proceedings.

The framing of charges under CrPC is a crucial step in criminal proceedings because it serves several important purposes:

- It informs the accused of the specific offence they are being charged with, along with the details of the allegations against them. This ensures that the accused is aware of the nature of the accusation.
- It establishes the legal foundation for the trial to proceed. Once charges are framed, the trial can move forward and the accused can prepare their defence.
- It promotes transparency in the legal process by clearly defining the scope of the case and the charges brought against the accused.
- It safeguards the rights of the accused by ensuring that they are aware of the charges and can exercise their right to defend themselves in court.
- It marks the beginning of the trial phase, where evidence is presented, witnesses are called and legal arguments are made.

The object of framing charge against an accused person in a criminal trial is to make him aware of what he is to be tried for by the court by clearly

explaining to him the main facts sought to be established against him by the prosecution or the complainant so that he may have a full and fair chance to defend himself at the trial.

In simple terms, charge means informing the accused person of the grounds on which the accused is charged. A charge is defined under Section 2(b) of the Criminal Procedure Code, 1973 and Section 2[f] of BNSS, which states, the charge includes any head of the charge when the charge contains more than one head. A charge represents a formal accusation made by the court against an individual accused of committing an offence. In essence, a charge is a legal term used to describe an allegation. Similarly, when an allegation against an individual encompasses multiple elements, it is referred to as 'charges.' The case of ***V. C. Shukla vs. State Through C.B.I [1980 AIR 962]*** explains the purpose of framing charge is to give intimation to the accused, which is drawn up according to the specific language of the law, and giving clear and unambiguous or precise notice of the nature of the accusation that the accused is called upon to meet in the course of a trial.

Relevant provisions deal with Charge :

Chapter XVII of the Code of Criminal Procedure, 1973 and Chapter XVIII of Bharatiya Nagarik Suraksha Sanhitha – 2023 deals with the Charge. Sections 211 to 224 of the Cr.P.C., fall under this chapter. Section 234 to Section 247 fall under Chapter XVIII of BNSS.

Chapter XVIII of the Cr.P.C., (Corresponding to chapter XIX of BNSS) deals with Trial before a court of session. Section 227 of the Cr.P.C., (Corresponding to Sec.250 of BNSS) deals with Discharge. Chapter XIX of the Cr.P.C., (Corresponding to Chapter XX of BNSS) deals with Trial of warrant cases by Magistrates. -A- deals with cases instituted on a police report. Section 240 Cr.P.C. (Corresponding to Sec.263 of BNSS), deals with Framing of charge. B deals with cases instituted otherwise than on police report. Section 245 Cr.P.C., (Corresponding to Sec.268 of BNSS) deals with when accused shall be discharged.

Law regarding charges in criminal trials are as under:

Provisions under Cr.P.C	Provisions under BNSS	Deals With
Section 211 to 214	Sections 234 to 237	Contents of Charge
Section 216 to 217	Sections 239 to 240	Add or alter the Charge
Section 218	Section 241	Basic Rule.
Section 219, 220, 221 & 223	Section 242, 243, 244, 246	Exceptions
Section 222	Section 245	When Minor Offence proved.
Section 224	Section 247	Effects of Withdrawal.
Section 215 & 464	Section 238, 510	Effects of errors.
Sections 226, 227, 228	Sections 249, 250, 251	discharge or charge by Sessions Judge.
Sections 239, 240	Sections 262, 263	discharge or charge by Magistrate in Police cases.
Sections 245, 246	Sections 268, 269	discharge or charge by Magistrate in complaint cases

Contents of charges (Sections 211, 212, 213 CrPC),

Section 211 Cr.P.C. (Corresponding to Sec.234 of BNSS) deals with Form and content of a charge. Section 211 of Cr.PC (Section 234 of BNSS) constitutes essentials elements of the contents of the Charge:

1. The charge form shall state the offence for which the accused is charged.
2. The charge form shall specify the exact offence name for which the accused is charged.
3. In case there is no specific name given under any law for the offence which the accused is charged with, then the definition of the offence must be clearly stated in the charged form and informed to the accused.
4. The law and provisions of the law to be mentioned in the charge form.
5. The charge shall be written in the language of the court.
6. The accused shall be informed about his previous allegations which would expose him to enhanced punishments if found guilty for the offence charged.

in **Sohan Lal v. State of Punjab, 2003 Cr.LJ 4569 (SC)** it is held that Section 211 Cr.P.C., 1973 requires the charge against the accused be precisely stated.

In the case of **Court in its motion Vs. Shankroo (1982)**, it is held that mere mentioning of the Section under which the Accused is charged, without mentioning the substance of the Charge amounts to a serious breach of procedure.

Section 212 of Cr.PC (Corresponding to Sec.235 of BNSS) asserts the Charge form shall contain:

1. The offence for which the accused is charged and the particulars like the time, place and the person against whom the offence is committed and giving to the accused the precise and clear notice of matter for which he is charged.

2. The exact time need not be mentioned in the charge form when the accused is charged with criminal breach of trust or dishonest misappropriation of money.

In **Ranchhod Lal v. State of Madhya Pradesh (1964)**, it was held that failure to mention the particulars precisely due to the nature of the information may not invalidate the proceedings.

Section 213 of Cr.P.C., (Corresponding to Section 236 of BNSS) asserts When the nature of the case is such that the particulars mentioned in Section 211 and 212 do not give the accused sufficient notice of the matter with which he is charged, the charge shall contain such particulars of how the alleged offence is committed as will be sufficient for that purpose. This is necessary when the particulars in Sections 211 and 212 of the Cr.P.C do not give the accused enough notice of the charges. Here are some examples of when the charge must include details about the manner of the offence.

- **Cheating:** The charge must include details about how the cheating occurred.
- **Giving false evidence:** The manner of commission of the offense is mentioned along with Sections 211 and 212.
- **Obstructions caused to the public/public servants:** The manner of commission of the offense is mentioned along with Sections 211 and 212

In this context profitable reference can be made to a case between **Naresh Jamatia v. State of Tripura, 2019 SCC OnLine Tri 75**, Tripura High Court observed that

“An accused must know the substance of the charge in as much as Section 211 obligates the trial court to frame the charge by providing the distinct content in terms of Section 211 as well as the particulars of time and place of the alleged offence and the every statement regarding the manner of committing the offence under Sections 212 and 213, so that the accused does notice the substance and he can

sufficiently have his opportunity to defend.” The Court observed that compliance of Sections 211, 212 and 213 CrPC is mandatory”.

So also in a case between **Banamali Tripathy vs. King Emperor (1942)**, the Patna High Court held that “if the exact date of the offense is not possible to state, a period between two dates can be mentioned in the charge. The time between the first and last dates should not exceed one year”.

Alteration of charge and the procedure to follow such alteration

Section 216 of Cr.PC (Corresponding to Section 239 BNSS) explains that courts shall have the power to alter or add to charge at any time before the judgment is pronounced, which reads

1. Any Court may alter or add to any charge at any time before judgment is pronounced.
2. Every such alteration or addition shall be read and explained to the accused.
3. If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court to prejudice the accused in his defence or the prosecutor in the conduct of the case the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.
4. If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.
5. If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction had been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.

The trial court or the appellate court may either alter or add to the charge provided the only condition is

- Accused has not faced charges for a new offence.
- Accused must have been given the opportunity of meeting and defending the charge against him.

After such alteration or any addition made to the charge, the charge shall be explained to the accused as to enable him to prepare to meet the fresh challenges. If the court concludes that the alteration or addition of the charge is likely to be prejudiced to the accused or the prosecutor then the court may proceed with the original trial or adjourn it. The case shall not move forward unless the sanction is obtained in respect of the facts constituting the offence.

The alteration of charges at any stage subsequent to the framing of charges had been dealt with in **Naresh Guri v. State of M.P. 2008 (1) SCC 791**.

In **Surindar Kumar Vs State 2003 Cr.L.J. 2900 (HP)**, it was held that Court has the power to add or alter charge at any time before the pronouncement of Judgment.

In **Rallabandi Muthaiah in re 1967 MLJ (Cri) 551**, it was held that under Section 226 of Cr.P.C., 1898, the court has got wide powers not only to frame a charge, when there was none framed by the committal court but also to amend or alter the charge framed by that court if it is defective in form or erroneous.

There cannot be alteration of charge while considering application for condonation of delay, observed in **Sridhar Pani u. State of Orissa, 2003 Cr.L.J. 3952 (Ori.)**.

The words "add to" mean addition of a new charge and not addition of a few words or corrections and that an erroneous or improper charge may be corrected by reframing it properly or by adding to it or altering it for an offence provable by the evidence taken by the trial court. **Rockey Benedick Versus State of Sikkim, 2003 Cr.L.J. 3309**.

In a recent judgment, in **K. Ravi V. State Of Tamil Nadu & Anr., 2024 LiveLaw (SC) 624**, the Hon'ble Supreme Court deplored the practice of accused persons filing applications under Section 216 of the Code of Criminal

Procedure seeking alteration of charge after their applications seeking discharge.

The Bench of Justices Bela M Trivedi and Satish Chandra Sharma elaborated that this provision does not give any right to the accused to file a fresh application seeking his discharge after the framing of charges. Especially, when a discharge application filed by accused has already been dismissed under Section 227 of CrPC.

The Bench highlighted that once these applications are filed, Trial Court have no option but to decide them. Following this, the same are challenged before the High Court and this leads to derailment of the whole criminal trial. Terming such practice as “highly deplorable,” the Court said that it should be dealt with sternly by the courts.

“Section 216 does not give any right to the accused to file a fresh application seeking his discharge after the charge is framed by the court, more particularly when his application seeking discharge under Section 227 has already been dismissed. Unfortunately, such applications are being filed in the trial courts sometimes in ignorance of law and sometimes deliberately to delay the proceedings. Once such applications though untenable are filed, the trial courts have no alternative but to decide them, and then again such orders would be challenged before the higher courts, and the whole criminal trial would get derailed. Suffice it to say that such practice is highly deplorable, and if followed, should be dealt with sternly by the courts.”

The Hon’ble Supreme Court in **P.Kartikalakshmi v. Sri Ganesh & Anr** reported in **(2017) 3 SCC 347** held that

“It is now well settled that the power vested in the Court is exclusive to the Court and there is no right in any party to seek for such addition or alteration by filing any application as a matter of right. It may be that if there was an omission in the framing of the charge

and if it comes to the knowledge of the Court trying the offence, the power is always vested in the Court, as provided under Section 216 Cr.P.C to either alter or add the charge and that such power is available with the Court at any time before the judgment is pronounced. It is an enabling provision for the court to exercise its power under certain contingencies which comes to its notice or brought to its notice. In such a situation, if it comes to the knowledge of the Court that a necessity has arisen for the charge to be altered or added, it may do so on its own and no order need to be passed for that purpose. After such alteration or addition, when the final decision is rendered, it will be open for the parties to work out their remedies in accordance with law.”

In **Dr.Nallapareddy Sridhar Reddy v. State of Andhra Pradesh** reported in **2020 (12) SCC 467**, on the scope of Section 216 of Cr.P.C, the Hon’ble Supreme Court held that,

“Section 216 provides the court an exclusive and wide – ranging power to change or alter any charge. The use of the words “at any time before judgment is pronounced” in sub-section (1) empowers the court to exercise its powers of altering or adding charges even after the completion of evidence, arguments and reserving of the judgment. The alteration or addition of a charge may be done if in the opinion of the court there was an omission in the framing of charge or if upon prima facie examination of the material brought on record, it leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the alleged offence. The test to be adopted by the court while deciding upon an addition or alteration of a charge is that the material brought on record needs to have a direct link or nexus with the ingredients of the alleged offence. Addition of a charge merely commences the trial for the additional charges, based on the evidence, it is to be determined

whether the accused may be convicted for the additional charges. The court must exercise its powers under Section 216 judiciously and ensure that no prejudice is caused to the accused and that he is allowed to have a fair trial. The only constraint on the court's power is the prejudice likely to be caused to the accused by the addition or alteration of charges. Sub-section (4) accordingly prescribes the approach to be adopted by the courts where prejudice may be caused”

In Dev Narain vs. State of U.P. and Another; 2023 LiveLaw (AB) 294, The Allahabad High Court has recently observed that a charge, once framed, must lead to either acquittal or conviction at the conclusion of the trial as Section 216 of CrPC does not permit the deletion of the charge.

In **Mallesu v. State of A.P.**, reported in **AIR 2006 SC 2747** the Apex Court held that court has power to alter the charges but however it is also obligatory to bring the same to the notice of the accused by explaining the same to the accused.

In **Shiv Nandan v. State**, reported in **2005 CrI.L.J 3047 (ALL)** it was observed that the charge can be amended at any stage during trial or an alternative charge can be framed in the light of the evidence, by affording opportunity to the accused.

In **Shreedharan v. State**, reported in **2005 (3) Crimes 5 (KER)** the suo motu alteration of charge after hearing prosecution and defence at Section 313 Cr.P.C., examination was upheld.

In **Sohan Lal v. State of Rajasthan** reported in **AIR 1990 SC 2158**, the Hon'ble Supreme court held that Since Section 216 Cr.P.C. enables the Court to alter or add to the charge, But it is not permissible for the Court to allow an application under Section 216 Cr.P.C. in respect of an accused who has already been discharged.

DENOVO TRIAL

Sec.217 Cr.PC :Recall of Witnesses when Charge altered

Section 217 Cr.P.C corresponding to Sec.240 BNSS, states that when charge is altered an opportunity must be given to both parties to reexamine the witnesses.

Sec.217 CrPC reads :

Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed-

1. to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, unless the Court, for reasons to be recorded in writing, considers that the prosecutor or the accused, as the case may be, desires to recall or re-examine such witness for the purpose of vexation or delay or for defeating the ends of justice;
2. also to call any further witness whom the Court may think to be material.

In a recent judgment in **Madhusudan & Ors. Versus The State Of Madhya Pradesh** reported in **2024 LiveLaw (SC) 418**, the Hon'ble Supreme Court, held that

“A Court may alter or add to any charge before judgment is pronounced but when charges are altered, opportunity must be given under Section 217 of the Cr.P.C., both to the Prosecution and the defence, to recall or re-examine witnesses in reference to such altered charges. More importantly, in case, charges are altered by the Court, reasons for the same must be recorded in the judgment.”,

The Hon'ble Supreme Court in **Ranbir Yadav. v. State of Bihar** reported in **AIR 1995 SC 1219** held that

“Court has discretion to direct a new trial after the addition or alteration of charge. But, unless there is a specific order to that effect it cannot be presumed that a new trial has commenced. No direction for new trial can be given unless proceeding with the trial is likely to prejudice the accused or the prosecution. Even if there was any irregularity in continuation of the trial after framing of additional

charges, judgment not open to be set aside in the absence of failure or justice in view of Sec. 465 Cr.P.C.

Sec.218 Cr.PC Separate charges for distinct offences

Sec.218 Cr.PC dealing with separate charges for distinct offences.

1. For every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately:

Provided that where the accused person, by an application in writing, so desires and the Magistrate is of opinion that such person is not likely to be prejudiced thereby the Magistrate may try together all or any number of the charges framed against such person.

2. Nothing in Sub-Section (1) shall affect the operation of the provisions of sections 219, 220, 221 and 223.

Illustration: A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and causing grievous hurt.

The general principle regarding charges as purported by Section 218 of the Code Of Criminal Procedure, 1973 is that every offence of which a particular has been accused shall come under a separate charge and each such charge shall be tried separately and distinctly. This means that each offence has to be treated as a separate entity and should be tried distinctively.

In the case of **K. Satwant Singh v. State Of Punjab** reported in **AIR 1960 SC 266**, it is held that

the sections of joinder of charges are not compelling in nature. They only permit the joint trial of charges under certain circumstances, and the courts may consider the same in the interest of the administration of justice after thoroughly studying the facts and circumstances of each case.

In the case of **State of Punjab and another Vs Rajesh Syal** reported in **2002 SCC (CRI) 1867**, the Hon'ble Supreme Court held that

“In our opinion, proviso to Section 218 would apply only in such a case where the distinct offences for which the accused is charged are being tried before the same Magistrate. In the instant case, offences

were being tried before different Magistrates and proviso to Section 218 cannot give any single Magistrate the power to order transfer of cases to him from different Magistrates or Courts. Even Section 220 does not help the respondent as that applies where any one series of acts are so connected together as to form the same transaction and where more than one offence is committed, there can be a joint trial.

In the present case, different people have alleged to have been defrauded by the respondent and the Company and therefore each offence is a distinct one and cannot be regarded as constituting a single series of facts/transaction”.

The Kerala High Court in **Santhosh @ Chandu v State** reported in **2024 LiveLaw (Ker) 182** held that “no prejudice was caused to the accused and separate evidence was brought before the Court to prove separate charges. It stated that the accused was given ample opportunity to challenge the evidence presented before the Court and there was no failure of justice, despite misjoinder of charges”.

Three offences of the same kind within year may be charged together

Sec.219 Cr.PC deals with three offences of the same kind within year may be charged together and reads

1. When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three.
2. Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code (45 of 1860) or of any special or local laws:

Provided that, for the purposes of this section, an offence punishable under section 379 of the Indian Penal Code (45 of 1860) shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code, and that an offence punishable under any section of the said Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.

Section 219 of the CrPC states that if a person commits more than one offense of the same kind within a year, they can be charged with and tried for up to three of those offenses in one trial. Offenses are considered to be the same kind if they are punishable with the same am sections of joinder of

charges are not compelling in nature. They only permit the joint trial of charges under certain circumstances, and the courts may consider the same in the interest of the administration of justice after thoroughly studying the facts and circumstances of each case.

In the case of **State of Punjab and another Vs Rajesh Syal** reported in **2002 SCC (CRI) 1867**, the Hon'ble Supreme Court held that

“In our opinion, proviso to Section 218 would apply only in such a case where the distinct offences for which the accused is charged are being tried before the same Magistrate. In the instant case, offences were being tried before different Magistrates and proviso to Section 218 cannot give any single Magistrate the power to order transfer of cases to him from different Magistrates or Courts. Even Section 220 does not help the respondent as that applies where any one series of out of punishment under the same section of the Indian Penal Code or of any special or local laws.

The Kerala High Court in **X v. State of Kerala** reported in **2022 SCC OnLine Ker 5550** held that when that the victims are different, and the offences are not of the same kind, and Section 219 of the Code of Criminal Procedure ('CrPC') is only directory in nature, thus, there was no illegality or impropriety in the said order.

In the said case, the offences alleged against the petitioner are punishable under Sections 354(A)(1)(i) and 506 of the Penal Code, 1860 ('IPC'), Section 8 read with Section 7 and Section 10 read with Section 9(n) of the Protection of Children from Sexual Offences Act ('POCSO Act') and Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2000 ('JJ Act'). Further, he is also accused in another case for offences under Sections 354-A(1) IPC, Section 12 read with Section 9(n) and (m) of the POCSO Act and Section 75 of the JJ Act. The petitioner filed an application for joint trial invoking Section 219 CrPC on the grounds that the incident in these two cases took place within a period of 12 months.

The Court referred to section 219 CrPC, that provides when a person is accused of more offences than one of the same kinds committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three.

The Court said that it is true that the accused in both cases is one and the same, but the victims are different, and the only similarity is that they are sisters. Further, the incidents are different and Section 219 CrPC is only directory.

Thus, the Court found no illegality impropriety in the impugned order, that if the cases are tried together, that will cause inconvenience and will create obstruction in the smooth trial of the two cases, and that fair trial demands that the two cases are tried separately and not jointly as claimed by the accused.

In the case of **Ranchhod Lal v. State of Madhya Pradesh, AIR 1965 SC 1248**, it was held that -

it is at the discretion of the court whether to apply Section 219, Section 220 and section 223 of the Code Of Criminal Procedure, 1973 or resort to Section 218. The accused has not been given this right to resort to joinder of charges.

In **Seshappa Vs. State of Karnataka 1994[2] ALT (Cri.)541 (Kar)**, it was held that Section 218 of the Cr.P.C., 1973 lays down that for every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately. Section 219 states that when a person is accused of more offences than one of the same kind committed within a year, he may be charged with and tried at one trial for any number of them not exceeding three. Section 220 however provides that if in one series of acts so connected together as to form the same transaction,

more offences than one are committed by the same person, he may be charged with and tried at one trial for every such offence.

The question regarding the misjoinder of charges and joint trial for distinct offences was answered by the Supreme Court in the case of **Union Of India v. Ajeet Singh (2013) 4 SCC 186**. It was held by the court that the principles underlying the provisions in the Code of Criminal Procedure, 1973 only act as a guiding principle.

In **Manoj Reddy Vs. Commissioner of Police, Cyberabad, 2007 (2) ALD (Cri) 242** it was held that -

under Section 219 Cr.P.C., when a person is Accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences whether in respect of the same person or not, he may be charged with and tried at one trial for, any number of them, not exceeding three.

It is not necessary in the summons cases to frame a formal charge. Mere stating to the accused the particulars of the offences which he has been charged with would suffice. In such cases, the question related to the applicability of provisions of joinder of charges arises. Such a question has not been expressly dealt with by the Code of Criminal Procedure, 1973. But, it has been established via a number of precedents like in the case of **Upendra Nath Biswas v. Emperor ILR (1913) 41 Cal 694**, **Indramani v. Chanda Bewa 1956 Cri L 1218** that the provisions of joinder of cases are equally applicable to the summons case also.

Trial for more than one offence

Sec.220 Cr.PC deals with the trial for more than one offence which reads:

1. If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.
2. When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in Sub-Section (2) of section 212 or in Sub-Section (1) of section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.

3. If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.
4. If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, or such acts.
5. Nothing contained in this section shall affect section 71 of the Indian Penal Code (45 of 1860).

Illustrations

Illustrations to Sub-Section (1)

- (a) A rescues B a person in lawful custody, and in so doing causes grievous hurt to C, a constable, in whose custody B was, A may be charged with, and convicted of, offences under sections 225 and 333 of the Indian Penal Code (45 of 1860).
- (b) A commits house-breaking by day with intent to commit adultery, and commits in the house so entered, adultery with B's wife. A may be separately charged with, and convicted of, offences under sections 454 and 497 of the Indian Penal Code (45 of 1860).
- (c) A entices B, the wife of C, away from C, with intent to commit adultery with B, and then commits adultery with her. A may be separately charged with, and convicted of, offences under sections 498 and 497 of the Indian Penal Code (45 of 1860).
- (d) A has in his possession several seals, knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under section 466 of the Indian Penal Code (45 of 1860). A may be separately charged with, and convicted of, the possession of each seal under section 473 of the Indian Penal Code (45 of 1860).
- (e) With intent to cause injury to B, A institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding, and also falsely accuses B of having committed an offence, knowing that there is no just or lawful ground for such charge. A may be separately charged with, and convicted of, two offences under section 211 of the Indian Penal Code (45 of 1860).
- (f) A with intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with and convicted of, offences under sections 211 and 194 of the Indian Penal Code (45 of 1860).
- (g) A with six others, commits the offences, of rioting, grievous hurt and assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. A may be separately charged with, and convicted of, offences under sections 147, 325 and 152 of the Indian Penal Code (45 of 1860).
- (h) A threatens B, C and D at the same time with injury to their persons with intent to cause alarm to them. A may be separately charged with, and convicted of, each of the three offences under section 506 of the Indian Penal Code (45 of 1860).
- (i) The separate charges referred to in illustrations (a) to (h) respectively, may be tried at the same time.

Illustrations to Sub-Section (3)

- (a) A wrongfully strikes B with a cane. A may be separately charged with and convicted of, offences under sections 352 and 323 of the Indian Penal Code (45 of 1860).
- (b) Several stolen sacks of corn are made over to A and B, who knew they are stolen property, for the purpose of concealing them. A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain-pit. A and B may be separately charged with and convicted of, offences under sections 411 and 414 of the Indian Penal Code (45 of 1860).
- (c) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with and convicted of, offences under sections 317 and 304 of the Indian Penal Code (45 of 1860).
- (d) A dishonestly uses a forged document as genuine evidence, in order to convict B, a public servant of an offence under section 167 of the Indian Penal Code. A may be separately charged with and convicted of, offences under sections 471 (read with section 466) and 196 of that Code (45 of 1860).

Illustrations to Sub-Section (4)

- (a) A commits robbery on B, and in doing so voluntarily causes hurt to him. A may be separately charged, with and convicted of offences under sections 323, 392 and 394 of the Indian Penal Code (45 of 1860).

Section 220 of the CrPC states that Offences which are committed in the course of the same transaction and tried together. It consists of the following:

1. If a person has committed a series of acts, which are so intrinsically connected together that they form a single transaction, such series of offences shall be charged and tried together. The word 'transaction' has not been defined under the Code.

2. In case of offences of Criminal breach of trust or dishonest misappropriation of property and their companion offences of falsification of accounts. Many a time, the offences of criminal breach of trust or dishonest misappropriation of property are committed along with the offence such as falsification of accounts etc., the latter offence committed in order to fulfill the objective of the former offence. In such cases, Section 220(2) enables the Courts to try such offences together.

3. If a single act falls under within different and separate definitions of offences, such different offences shall be tried together as mentioned under Section 220(3). For e.g.: If a person wrongfully strikes another person with a cane, then he can either be charged with and tried separately of offences under Sections 352 and Sections 323 of the Indian Penal Code or may be tried and convicted together.

4. If the acts which form an offence, also constitute different offences when separately taken and tried or taken in groups, such offences shall be tried to

be one in a single trial. For e.g.: If A commits the offence of robbery on B, and while doing so he voluntarily causes hurt to B, then A may be separately charged with, and convicted of the offences mentioned under Sections 323, 392 and 394 of the Indian Penal Code.

In the case of **Mohan Baitha and Ors. v. State of Bihar and Anr.**, reported in **(2001) 4 SCC 350**, the Hon'ble Supreme Court observed that the expression 'same transaction', from its very nature, was incapable of an exact definition and it was not possible to enunciate any comprehensive formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. However, this Court indicated a few factors, which would be relevant to decide this question in a given set of facts. In that case, on the complaint of the father of deceased, FIR was lodged for offences under Sections 304-B/34/406 IPC at Police Station Nath Nagar in the District of Bhagalpur, Bihar. Police report was filed on 03.04.1999 after completion of investigation. However, the accused approached the High Court, seeking direction to the Magistrate not to proceed with the matter on the grounds of lack of territorial jurisdiction, as the offence under Section 304-B IPC had taken place at Jahanaganj in the State of Uttar Pradesh and the Court at Bhagalpur was lacking in territorial jurisdiction to try the same. The High Court dismissed the petition of the accused. In further appeal, this Court also observed that the acts formed parts of the same transaction, which came under the ambit of Section 220 CrPC; and directed the Magistrate at Bhagalpur to proceed with the matter expeditiously. The Hon'ble Supreme

Court, while expounding on Sections 177 and 220 CrPC, observed and laid down as under: -

“4.....Section 177 of the Code of Criminal Procedure on which Mr Mishra relies, uses the expression “ordinarily”. The use of the word “ordinarily” indicates that the provision is a general one and must be read subject to the special provisions contained in the Criminal Procedure Code. That apart, this Court has taken the view that the exceptions implied by the word “ordinarily” need not be limited to those specially provided for by the law and exceptions may be provided by law on considerations of convenience or may be implied from other provisions of law permitting joint trial of offences by the same court..... It may be noticed that under Section 220 of the Code of Criminal Procedure, offences more than one committed by the same persons could be tried at one trial, if they can be held to be in one series of acts, so as to form the same transaction. The expression “same transaction” from its very nature is incapable of an exact definition. It is not intended to be interpreted in any artificial or technical sense. Common sense and the ordinary use of language must decide whether on the facts of a particular case, it can be held to be in one transaction. It is not possible to enunciate any comprehensive formula of universal application for the purpose of determining whether two or more acts constitute

the same transaction. But the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action and community of purpose or design are the factors for deciding whether certain acts form parts of the same transaction or not. Therefore a series of acts whether are so connected together as to form the same transaction is purely a question of fact to be decided on the aforesaid criteria.”

The said decision in Mohan Baitha (supra) has further been referred to and relied upon by the Hon’ble Supreme Court in the case of **Anju Chaudhary v. State of Uttar Pradesh and Anr** reported in **(2013) 6 SCC 384** while indicating the tests to be applied for determining the question as to whether two or more acts constitute the same transaction. The Hon’ble Supreme Court observed and explained as under: -

“43. It is true that law recognizes common trial or a common FIR being registered for one series of acts so connected together as to form the same transaction as contemplated under Section 220 of the Code. There cannot be any straitjacket formula, but this question has to be answered on the facts of each case. This Court in Mohan Baitha v. State of Bihar (SCC pp. 354-55, para 4) held that the expression “same transaction” from its very nature is incapable of exact definition. It is not intended to be interpreted in any artificial or technical sense. Common sense in

the ordinary use of language must decide whether or not in the very facts of a case, it can be held to be one transaction.

44. It is not possible to enunciate any formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. Such things are to be gathered from the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action, commonality of purpose or design. Where two incidents are of different times with involvement of different persons, there is no commonality and the purpose thereof different and they emerge from different circumstances, it will not be possible for the court to take a view that they form part of the same transaction and therefore, there could be a common FIR or subsequent FIR could not be permitted to be registered or there could be common trial.

45. Similarly, for several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principal and subsidiary, so as to result in one continuous action. Thus, where there is a commonality of purpose or design, where there is a continuity of action, then all those persons involved can be accused of the same or different offences "committed in the course of the same transaction".

The Hon'ble Supreme Court in **Ms. P XXX v. State of Uttarakhand And Anr.** Reported in **2022 LiveLaw (SC) 554** observed that in the facts of the present case, the complaint raised allegations of different offences, of different nature and at different places of occurrence, but committed by the same person and against the same person. One set of allegation is that of the offence of rape at Delhi and the other is of hurling abuses and threatening the appellant over phone when she was in her village in Chamoli. The issue before the Court was whether the offences complained of could form *one series of acts so connected together as to form the same transaction* so that they can be tried together. In order to determine what would constitute 'same transaction' the Hon'ble Supreme Court referred to its judgment in *Mohan Baitha And Ors. v. State of Bihar And Anr.* which was subsequently relied upon in *Anju Chaudhary v. State of UP And Anr.*, noted that there is no formula of universal application to determine when two or more acts could be considered to constitute the 'same transaction'. It opined -

"However, even while pointing out that the question as to whether a series of acts are so connected together as to form the same transaction is purely a question of fact, this Court has indicated the core elements like proximity of time, unity or proximity of place, continuity of action and community of purpose or design, which are of relevant considerations and when these factors are applied to common sense and ordinary use of language, the vexed question of 'same transaction' could be reasonably determined."

Applying the same to the facts of the present case, the Hon'ble Court noted that the sexual offence took place at Delhi in February/March, 2016 whereas the other offences took place around November, 2016 at Chamoli. Therefore, they cannot be said to be proximate in time or place. Moreover the alleged act of rape was completed in Delhi, as there was no allegation of continuance of such activity at Chamoli and there was also no further threat to submit to such activity when the appellant was in Chamoli. Therefore, the Hon'ble Supreme Court held that the two sets of offences are *just like chalk and cheese* and do not form the same transaction.

Where it is doubtful what offence has been committed

Sec.221 Cr.PC deals with, where it is doubtful what offence has been committed, which reads:

1. If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.
2. If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of Sub-Section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.
Illustrations
 - (a) A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property or criminal breach of trust or cheating.
 - (b) In the case mentioned, A is only charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be) though he was not charged with such offence.
 - (c) A states on oath before the Magistrate that he saw B hit C with a club. Before the Sessions Court A states on oath that B never hit C. A may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot to be proved which of these contradictory statements was false.

Section 221 provides for the cases wherein there is some doubt related to the circumstances and incidents which took place during the commission of the offence.

According to this section, if the accused has committed a series of acts which lead to confusion regarding the facts should be proved, the accused might be charged with any or all of such offences or charged for alternative offences. In such cases, the accused is charged for one offence and during the stage of evidence, if it is proved that he has committed a different offence, he may be convicted for the same even though he was not charged with the same.

In **ShamnSaheb M.Multtani Vs State of Karnataka** reported in **AIR 2001 SC 921**, the Hon'ble Supreme Court held that

“Sections 221 and 222 of the Code are the two provisions dealing with the power of a criminal court to convict the accused of an offence which is not included in the charge. The primary condition for application of section 221 of the Code is that the court should have felt doubt, at the time of framing the charge, as to which of the several acts (which may be proved) will constitute the offence on account of the nature of the acts or series of acts alleged against the accused. In such a case the section permits to convict the accused of the offence of which he is shown to have committed though he was not charged with it. But in the nature of the acts alleged by the prosecution in this case there was absolutely no scope for any doubt regarding the offence under Section 302 IPC, at least at the time of framing the charge.

What Persons may be charged jointly

Section 223 Cr.PC deals with what persons may be charged jointly, which reads:

The following persons may be charged and tried together, namely:-

- (a) persons accused of the same offence committed in the course of the same transaction;
- (b) persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence;
- (c) persons accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months;
- (d) persons accused of different offences committed in the course of the same transaction;
- (e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such last-named offence;
- (f) persons accused of offences under sections 411 and 414 of the Indian Penal Code (45 of 1860) or either of those sections in respect of stolen property the possession of which has been transferred by one offence;
- (g) persons accused of any offence under Chapter XII of the Indian Penal Code (45 of 1860) relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges:
Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the Magistrate or Court of Sessions may, if such persons by an application in writing, so desire, and if he is satisfied that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together.

Section 223 talks about the class of persons who can be tried jointly.

This section permits a joint trial of several persons under the specified circumstances as there exists some nexus among the various offences committed. The various classes shall not be treated as mutually exclusive and could be combined together if necessary. According to this section, the following classes of persons may be tried and charged together:

- ✓ The accused persons who have committed the same offence in the course of the same transaction.

- ✓ The persons who have committed a particular offence and those who have abetted the commission.
- ✓ The persons who are covered under the ambit of Section 219.
- ✓ The persons who in the same course of the transaction have committed different offences.
- ✓ The persons who have committed offences such as theft, extortion, cheating, or criminal misappropriation of the property along with the persons who have received, retained, assisted in the disposal or concealment of property, possession of which is illegal and has been alleged to be illegal.
- ✓ The persons who have been accused of commission of offences under Section 411 and section 414 of the Indian Penal Code or under those sections in respect of stolen property, possession of which has already been transferred by another offence.
- ✓ The persons who have been accused of any offence under Chapter XII of the Indian Penal Code related to the counterfeit coins.

The accused persons whose cases have not been covered under any of the classes of Section 223, cannot himself claim a joint trial. The proviso to this Section puts a check on the discretionary power of the court.

The rules contained from Section 218 to Section 223 have been made for the benefit of the accused. It is not required to treat the various classes of

sections as mutually exclusive. The Courts have been given the authority to combine the provisions of more than two clauses. The joint trial of several persons partly by applying one clause and by partly applying another clause has also been authorised. Power of court to order separate trial in cases wherein joinder of charges or of offenders is permissible

The general rule in case of charges is that there shall be a separate charge for every distinct offence, which shall be tried separately. But, Sections 219, 220, 221 and Section 223 carve out the exceptions to this basic rule. In simpler words, a separate trial is a rule while a joint trial is its exception.

When offence proved included in offence charged

Sec.222 Cr.PC deals with when offence proved included in the offence charged, which reads

1. When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.
2. When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.
3. When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.
4. Nothing in this section shall be deemed to authorize a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied.

Illustrations

1. A is charged under section 407 of the Indian Penal Code (45 of 1860) with criminal breach of trust in respect of property entrusted to him as a carrier. It appears, that he did commit criminal breach of trust under section 406 of that Code in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under the said section 406.
2. A is charged under section 325 of the Indian Penal Code (45 of 1860), with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of that Code.

According to Section 222, if the accused is charged with an offence consisting of several particulars, some of which if combined and proved to form a minor offence, then he may be convicted of such minor offence.

Although the meaning of the term 'minor offence' is not defined under the code, it means an offence which has lesser punishment than the other offence of which the accused has been charged.

In **Tarakeswar Sahu Vs State of Bihar** reported in **2007(2) ALT (Crl) 25 (SC)** the Hon'ble Supreme Court held that-

“When an accused with a major offence and the ingredients of the major offence are missing, the ingredients of minor offence are proved. The accused may be convicted for the minor offence, though the accused was not charged with it”.

A three-Judge Bench of the Hon'ble Supreme Court in the case of **Shamnsaheb M. Multtani v. State of Karnataka** reported **AIR 2001 SC 921**, had an occasion to deal with Section 222 of the Code of Criminal Procedure. The Court came to the conclusion that when an accused is charged with a major offence and if the ingredients of major offence are not proved, the accused can be convicted for minor offence, if ingredients of minor offence are available. The relevant discussion is in paragraphs 16 of the judgment, which read as under:-

16. What is meant by "a minor offence" for the purpose of Section 222 of the Code? Although the said expression is not defined in the Code it can be discerned from the context that the test of minor offence is not merely that the prescribed punishment is less than the major offence. The two illustrations provided in the section would

bring the above point home well. Only if the two offences are cognate offences, wherein the main ingredients are common, the one punishable among them with a lesser sentence can be regarded as a minor offence vis-à-vis the other offence.

Further, In a case between **Sangaraboina Sreenu Vs. State of Andhra Pradesh**, reported in **(1997) 5 SCC 348** the Hon'ble Supreme Court acquitted the accused holding that section 306 of IPC is not a minor offence in relation to section 302 of IPC. The Hon'ble Supreme court held that -

It is true that Section 222 Cr.PC entitles a Court to convict a person of an offence which is minor in comparison to the one for which he is tried but section 306 IPC cannot be said to be a minor offence in relation to an offence under section 302 IPC within the meaning of section 222 Cr.PC for the two offences are of distinct and different categories. While the basic constituent of an offence under section 302 IPC is homicidal death those of section 306 IPC are suicidal death and abetment thereof.

The Hon'ble Karnataka High Court in **Junaid B Vs State of Karnataka** reported in **2024 LiveLaw (Kar) 100**, distinguished that the term "minor offence" has to be interpreted in its ordinary sense and not technical sense.

"The test is not the gravity of punishment. When a person is charged with an offence, consisting of several particulars and if all the particulars are proved then it will constitute the major offence, while if some of those

particulars are proved and their combination constitutes a minor offence, the accused can be convicted for the minor offence though he was not charged with it.”

The bench on going through the evidence of witnesses noted that the trial Court, considering the evidence on record, held that ingredients of Section 307 of IPC are not attracted as intention or knowledge that death will be caused cannot be inferred. The trial Court convicted appellant for causing grievous injury with deadly weapon for offence under Section 326 of IPC.

Referring to a Madras High Court judgment in **Suramani and others vs. State (2011)**, the court held,

“In the case on hand also punishment provided for offence under Sections 307 and 326 IPC is same and therefore, the offence under Section 326 IPC is not a minor offence to offence under Section 307 of IPC so as to invoke Section 222(2) of Cr.P.C.”

It added “An accused cannot be convicted for a minor offence if it is distinct and different and having different ingredients.”

Court explained that the ingredient of an offence under Section 324 of IPC is voluntarily causing hurt by means of dangerous weapons. Ingredients of an offence under Section 325 of IPC is voluntarily causing grievous hurt. Therefore, offences under Sections 324 and 325 of IPC are not distinct and different than offences under Section 307 of IPC as the ingredient of hurt is common in the two offences. Offence under Sections 324 and 325 of

IPC can be considered to be minor offences to offence under Section 307 of IPC.

"Therefore, appellant - accused No. 1 can be convicted for offence under Section 325 of IPC as it is cognate and minor offence to offence under Section 307 of IPC even in the absence of charge in view of Section 222(2) of Cr.P.C. The trial Court erred in convicting appellant - accused No. 1 for offence under Section 326 of IPC instead of convicting under Section 325 of IPC in the absence of charge for the said offence as it is a minor offence, under Section 307 of IPC," it held.

Withdrawal of remaining charges on conviction on one of several charges

Section 224 Cr.PC deals with withdraw of the remaining charges on conviction on one of several charges, which reads

When a charge containing more heads than one is framed against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent, of the Court, withdraw the remaining charge or charges, or the Court of its own accord may stay the inquiry into, or trial of, such charge or charges and such withdrawal shall have the effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into, or trial of, the charge or charges so withdrawn.

Section 224 of the Code Of Criminal Procedure, 1973 talks about the withdrawal of remaining charges. It is applicable only in cases where the accused has been convicted of A one of several distinct charges before the other charges have been tried.

In Allahabad High Court in **Vibhuti Narayan Chaubey Alias Lala vs State Of U.P.** reported in **2003 Cri.L.J 196** held

“What is alteration of charge can be explained by one example. If the charge is framed with the help of Section 34, I.P.C. the charge may be altered as simpliciter. The word alteration has not been used in the above Section and therefore, the charge once framed cannot be deleted. This will also appear from the perusal of the provisions of section 224, Cr.P.C. which provides for withdrawal of the remaining charges on conviction on some of the charges where the charges are for more than one heads. Therefore, once the charge is framed the case will result, other in acquittal or in conviction in accordance with the provisions of trials prescribed under the Chapters 18, 19 and 20 of the Cr.P.C. The charge can be withdrawn under Section 224, Cr.P.C. only after judgment and it cannot be deleted.



TRIAL BEFORE A COURT OF SESSION

Chapter XVIII of Cr.PC (Corresponding to chapter XIX of BNSS) deals with the trial before a court of session. It consists of Sections 225 to 237.

Sec.226 Cr.PC reads **Opening case for prosecution:** When the accused appears or is brought before the court in pursuance of a commitment of the case under section 209, the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused.

In this context, I would like to refer Judgment rendered by Hon'ble Supreme Court in **Ghulam Hassan Beigh vs Mohammad Maqbool Magrey** reported in **2022 LiveLaw (SC) 631** observed thus

"The present Section 226 deals with opening case for prosecution: When the accused appears or is brought before the Court in pursuance of a commitment of the case under section 209, the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused.

"Section 226 of the CrPC permits the prosecution to make the first impression regards a case, one which might be difficult to dispel. In not insisting upon its right under Section 226 of the CrPC, the prosecution would be doing itself a disfavoured. If the accused is to contend that the case against him has not been explained owing to the non compliance with Section 226 of the CrPC, the answer would be that the Section 173(2) of the CrPC report in the case would give a fair idea thereof, and that the stage of framing of charges under Section 228 of the CrPC is reached after crossing the stage of Section 227 of the CrPC, which affords both the prosecution and accused a fair opportunity to put forward their rival contentions.', the bench said.

The court further noted that Section 226 CrPC, 'over a period of time has gone, in oblivion'.

"Our understanding of the provision of Section 226 of the CrPC is that before the Court proceeds to frame the charge against the accused, the Public Prosecutor owes a duty to give a fair idea to the Court as regards the case of the prosecution".

Section 227 deal with discharge :

When there are no grounds to frame charge , the the accused may be discharged. What are the parameters has to consider while dealing section 227 CrPc petition can be understood with the aid of the Judgment given below. In a recent judgment of Hon'ble Apex court in a case between **Ram Prakash Chadda vs State of Uttar Pradesh** reported in **2024 SCC online SC 1709** in para 22 held that

"In cases, where it appears that the said offence(s) is one triable exclusively by the Court of Session, the Magistrate shall have to commit the case to the Court of Session concerned following the prescribed procedures under Cr.PC. In such cases, though it carries an accusation as aforementioned still legislature Criminal Appeal No. 2395 of 2023 thought it appropriate to provide an inviolable right as a precious safeguard for the accused, a pre-battle protection under Section 227, Cr.PC. Though, this provision is couched in negative it obligated the court concerned to unfailingly consider the record of the case and document submitted therewith and also to hear the submissions of the accused and the prosecution in that behalf to arrive at a conclusion as to whether or not sufficient ground for proceeding against the accused is available thereunder. Certainly, if the answer of such consideration is in the negative, the court is bound to discharge the accused and to record reasons therefor. The corollary is that the question of framing the charge

would arise only in a case where the court upon such exercise satisfies itself about the prima facie case revealing from “the record of the case and the documents submitted therewith” against the accused concerned. In short, it can be said in that view of the matter that the intention embedded is to ensure that an accused will be made to stand the ordeal of trial only if ‘the record of the case and the documents submitted therewith’ discloses ground for proceeding against him. When that be so, in a case where an application is filed for discharge under Section 227, Cr.PC, it is an Criminal Appeal No. 2395 of 2023 irrecusable duty and obligation of the Court to apply its mind and answer to it regarding the existence of or otherwise, of ground for proceeding against the accused, by confining such consideration based only on the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution in that behalf. To wit, such conclusion on existence or otherwise of ground to proceed against the accused concerned should not be and could not be based on mere suppositions or suspicions or conjectures, especially not founded upon material available before the Court. We are not oblivious of the fact that normally, the Court is to record his reasons only for discharging an accused at the stage of Section 227, Cr.PC. However, when an application for discharge is filed under Section 227, Cr.PC, the Court concerned is bound to disclose the reason(s), though, not in detail, for finding sufficient ground for rejecting the application or in other words, for finding prima facie case, as it will enable the superior Court to examine the challenge against the order of rejection.

Section 228 CrPC deals with framing of charge by the Sessions Court:

At the time of framing of charges, the court can consider only the material placed before it by the investigating agency. While considering the question of discharge of the accused by the Sessions Judge u/s 227 CrPC or framing of charge u/s 228 CrPC and the Magistrate u/s 239 and 240 CrPC, the court of sessions can consider only the material submitted to it by the Magistrate at the time of commitment of the case u/s 209 CrPC. Scope of Sections 227 and 228 CrPC for court of sessions and that of the magisterial court u/s 239 and 240 CrPC is the same. At the stage of charge, trial court can consider only the police report referred to in Section 173(2) CrPC and the documents sent therewith. The only right the accused has at that stage is of being heard and nothing beyond that. Material produced by the accused cannot be considered by the sessions court u/s 227 or 228 CrPC and by the Magistrate u/s 239 or 240 CrPC.

The Hon'ble High Court of Himachal Pradesh in **Sh.Manohar Lal Vs State of H.P** reported in **2017 Cr.L.J 4105 (HP)** held that

“Court is not concerned with the proof at the stage of framing charges, court needs to consider whether evidentiary material on record if accepted would reasonably connect the accused with the crime or not”

In **State Anti-Corruption Bureau, Hyderabad Vs. Suryaprakasan**, reported in **(1999) SCC (Criminal) 373** the Hon'ble Supreme Court held that

“Duty of court at the stage of framing of charges is to see whether the ingredients of offences are available in the material produced before the court. Contradictions in the statements of witnesses or sufficiency or truthfulness of the material placed before the court cannot be examined at the stage of framing of the charge. For this limited purpose, the court may sift

the evidence. Court has to consider material only with a view to find out if there is ground for presuming that the accused has committed an offense and not for the purpose of arriving at a definite conclusion. 'Presume' means if on the basis of materials on record, court can come to the conclusion that commission of the offense is a probable consequence, then a case for framing of charge exists".

In **Anant Prakash Sinha @ Anant Sinha Vs. State of Haryana**, reported in **2016 (93) ACC 951 (SC)**. Charge must be founded on the material available on record. It can be framed on the basis of the complaint or the FIR or accompanying documents or the material brought on record during the course of trial.

Duty of court at the stage of framing of charges is to see whether the ingredients of offences are available in the material produced before the court. Contradictions in the statements of witnesses or sufficiency or truthfulness of the material placed before the court cannot be examined at the stage of framing of the charge. For this limited purpose, the court may sift the evidence. Court has to consider material only with a view to find out if there is ground for presuming that the accused has committed an offense and not for the purpose of arriving at a definite conclusion. 'Presume' means if on the basis of materials on record, court can come to the conclusion that commission of the offense is a probable consequence, then a case for framing of charge exists.

In **State of Maharashtra Vs Som Nath Thapa, AIR 1996 SC 1744**, it was held that if on the basis of materials on records, Court could come to the conclusion that the Commission of offence is a probable consequence, a Case for framing of Charge exists.

Production of documents/material by the accused at the time of framing of charges or discharge not permissible :

The Hon'ble Supreme Court in **State of Gujarat v. Dilipsingh Kishorsinh Rao** reported in **2023 LiveLaw (SC) 874** held that "At the time of framing of charge and taking cognizance, the accused has no right to produce any material and call upon the court to examine the same. No provision in the code grants any right to the accused to file any material or document at the stage of framing of charge. The trial court has to apply its judicial mind to the facts of the case as may be necessary to determine whether a case has been made by the prosecution for trial on the basis of chargesheet material only. It is a settled principle of law that at the stage of considering the application for discharge, the court must proceed on the assumption that the material that has been brought on record by the prosecution is true and evaluate the material to determine the facts emerging from the material taken on its face disclose the existence of ingredients necessary of the offense alleged."

In **State Anti-Corruption Bureau, Hyderabad Vs. Suryaprakasan**, reported in **(1999) SCC (Criminal) 373** the Hon'ble Supreme Court held that

"At the time of framing of charges, the court can consider only the material placed before it by the investigating agency. While considering the question of discharge of accused u/s 227 CrPC or framing of charge u/s 228 CrPC, the court can consider only the material submitted to it by the Magistrate at the time of commitment of the case to sessions u/s 209 CrPC. Scope of Section 227, & 228 CrPC for court of sessions or Section 239 & 240 CrPC for magisterial courts is the same. At the stage of charge, trial court

can consider only the police report referred to in Section 173 (2) CrPC and the documents sent therewith. The only right the accused has at that stage is of being heard and nothing beyond that. *Material produced by the accused cannot be considered by the Sessions Judge u/s 227 / 228 CrPC and the Magistrate u/s 239/240 CrPC for purposes of discharging the accused or framing of charges against him*”

Roving and fishing enquiry at the stage of charges u/s 228 CrPC or discharge of the accused u/s 227 CrPC by the Sessions Judge and by the Magistrate u/s 239 or 240 CrPC is not permissible as it would amount to a mini-trial at the stage of framing of charges or discharging the accused and against all settled principles of criminal jurisprudence.

The Hon'ble Supreme Court in the case of **Union of India v. Prafulla Kumar Samal and another, (1979) 3 SCC 4**, considered the scope of enquiry a judge is required to make while considering the question of framing of charges. After an exhaustive survey of the case law on the point, in paragraph 10 of the judgment, laid down the following principles :

13 “(1) *That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.*

(2) *Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly*

explained the Court will be, fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

In **State of Orissa Vs. Debendra Nath Padhi**, reported in **AIR 2005 SC 359** (Three- Judge Bench) held that

“In so far as section 91 is concerned, it was rightly held that the width of the powers of that section was unlimited but there were inbuilt inherent limitations as to the stage or point of time of its exercise, commensurately with the nature of proceedings as also the compulsions of necessity and desirability, to fulfill the task or achieve the object. Before the trial court the stage was to find out whether there was sufficient ground for proceeding to the next stage against the accused. The application filed by the accused under section 91 of the Code for summoning and production of document was dismissed and order was upheld by High Court and this Court. But observations were made

in para 6 to the effect that if the accused could produce any reliable material even at that stage which might totally affect even the very sustainability of the case, a refusal to look into the material so produced may result in injustice, apart from averting an exercise in futility at the expense of valuable judicial/public time, these observations are clearly obiter dicta and in any case Duty of court at the stage of framing of charges is to see whether the ingredients of offences are available in the material produced before the court. Contradictions in the statements of witnesses or sufficiency or truthfulness of the material placed before the court cannot be examined at the stage of framing of the charge. For this limited purpose, the court may sift the evidence. Court has to consider material only with a view to find out if there is ground for presuming that the accused has committed an offense and not for the purpose of arriving at a definite conclusion. 'Presume' means if on the basis of materials on record, court can come to the conclusion that commission of the offense is a probable consequence, then a case for framing of charge exist no consequence in view of conclusion reached by us hereinbefore. Further, the observations cannot be understood to mean that the accused has a right to produce any document at stage of framing of charge having regard to the clear mandate of sections 227 and 228 in Chapter 18 and sections 239 and 240 in Chapter 19".

Power of court to summon documents u/s 91 CrPC at the stage of framing of charges not permissible :

In **State of Orissa Vs. Debendra Nath Padhi**, reported in AIR 2005 SC 359 (Three- Judge Bench) held that Section 91 CrPC has no application at the stage of Sections 227 or 228 CrPC. Court of sessions cannot summon any document for the purpose of framing charge u/s 228 CrPC or discharging the accused u/s 227 CrPC. Same is the position of law for the court of Magistrate u/s 239 and 240 CrPC.

Charge to be framed even on confession of co-accused : It cannot be said that for purposes of framing charges, the evidence of the co-accused in the form of confession is insufficient. No further corroborative evidence is required for framing charges. Charge can be framed even on strong suspicion regarding involvement of the accused in the commission of the offence.

The Hon'ble High Court of Allahabad in **Subhash Sharma Vs. State of UP**, reported in **2007 (57) ACC 1039 (Allahabad)**; at Para.5 held that "For framing the charge, even a strong suspicion is sufficient as held by the Supreme Court in the case of Ramesh Singh v. State of Bihar and Rajbir Singh v. State of U.P. and Anr. It cannot, therefore, be said that for purposes of framing a charge, the evidence of co-accused is insufficient.

Contradictions etc in the statements of witnesses at the stage of charge not to be seen : The Hon'ble Supreme Court in **Sajjan Kumar Vs. CBI**, reported in **(2010)9 SCC 368** held that "Where the victim in her statement u/s.161 CrPC had named the accused but in her statement recorded by the Magistrate u/s 164 CrPC she had not named the accused, it has been held that the contradictions, embellishments and discrepancies in evidence collected by the Investigating Officer will be of no help to the accused at the stage of charge or discharge u/s 227 or 228 CrPC and u/s 239 or 240 CrPC.

Passing of preliminary order before framing of charges not mandatory: The Hon'ble Supreme Court in **Kanti Bhadra Shah and another Vs. State of West Bengal** reported in **AIR 2000 SUPREME COURT 522**, held that "Sections 226 and 227 CrPC require hearing of the prosecution and the accused before the Sessions

Judge before charging or discharging the accused. Passing of preliminary order before framing of charges u/s 228 CrPC by the Sessions Judge or by the Magistrate u/s 240 CrPC is not mandatory. It has been the settled practice in the trial courts that recording of preliminary order prior to framing of charges is not imperative or absolute because outright framing of charge itself amounts to a prima- facie or preliminary order and recording of reasons for framing charges separately is not required. Court is required to record reasons only if it is to discharge the accused”.

A charge framed by trial court cannot be quashed for want of preliminary order:

The Hon'ble High Court of Allahabad in **Kalpana Nath Vs. State of Uttar Pradesh** reported in **2011 (2) ALJ (NOC) 227 (All)** held that “ It is well settled that the courts are not required to record reasons for framing charges. Reasons are required only when the court decides to discharge the accused, therefore, the charges cannot be quashed on the ground that the learned trial judge has not assigned any reason as to how a prima facie case for framing the charges was made out”.

The Hon'ble Supreme court in **State Vs Gyan Devi** reported in **(2000) 8 SCC 239**, held that “Charge should not be quashed unless there are strong reasons to hold that in the interest of justice and to avoid abuse process of the court, the charge needs to be so quashed. Once the trial court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court. Any attempt by the accused for quashing of a charge before the entire

prosecution evidence has come on record, should not be entertained except in exceptional cases”.

Framing of charge where charge sheet is under section 304-B IPC.

The Hon’ble Supreme court in **Rajbir Vs State of Haryana** reported in **AIR 2011 SC 568** gave the following direction.,

“... All the trial courts in India to ordinarily add Section 302 IPC to the charge of Section 304B IPC, so that death sentences can be imposed to in such heinous and barbaric crimes against women”.

The Hon’ble Supreme court in **Supdt of police, CBI vs Tapan Kumar Singh** reported in **2003 (6) SCC 175** it was held that “the mentioning of a particular section in the FIR is not by itself conclusive as it is for the court to frame charges having regard to the material on record and even if wrong section is mentioned in the FIR, it does not prevent the court from framing appropriate charges”.



Trial of Warrant cases by Magistrates

Chapter XIX of Cr.PC (Corresponding to chapter XX of BNSS) deals with the trial before a Magistrate.

Sec.240 CrPC deals with framing of charge by the Magistrate. In Session case, the charge is framed under Section 228 while in warrant cases, the charge is framed under section 240. But there is no material difference between these two sections.

The Hon'ble Supreme Court in **State of Goa Vs Jose Maira Albert Vales** reported in **(2018) 11 SCC 659** explained the distinction between procedures for trial of cases instituted on police report and those instituted otherwise than on police report.

The Hon'ble Supreme Court held that Chapter XIX is devoted to trial of warrant cases by the Magistrate and enfolds two categories i.e. A- cases instituted on police report and B-cases instituted otherwise than on a police report. The strikingly distinguishable feature in the procedures to be adopted for the cases instituted on a police report and those instituted otherwise than police report, lies in the fact that where as in the former, there is no scope for prosecution to examine any witnesses at the stage, where the magistrate is to consider whether a charge is to be framed or not. In cases instituted otherwise than on a police report, after the accused appears or is brought before the Magistrate, the prosecution is required to adduce all such evidence in support of his case, whereupon the magistrate may discharge the accused, if he is of the view, for reasons to be recorded on the basis on such evidence, that no case had been made out against him, which if

unrebutted, would warrant his conviction. However if the magistrate is of the opinion, in view of such evidence, or also at any previous stage of the case, that there is ground for presuming that the accused has committed an offence triable under the chapter and which he is competent to try and adequately punish, he shall frame a charge against the accused. Subsequent thereto, if the accused refused to plead guilty or does not plead so or claims to be tried, vis-a vis the charge he would be offered an opportunity to cross examine any of the witnesses of the prosecution, whose evidence had been taken on which the charge is founded and if the accused elects to avail this opportunity, the witnesses named by him would be recalled and after cross examination and re-examination they shall be discharged. Thus not only the prosecution, in the cases instituted otherwise than on police report, would have an opportunity to adduce all such evidence in support of its cases on which, on a consideration whereof, the accused may be charged or discharged, as the case may be, the latter can avail the opportunity of cross examining the witnesses only after the charge is framed. As per Section 246(6) would authenticate, the prosecution would thereafter have another chance of examining the remaining witnesses, who understandably, if examined, would be subjected to cross examination and re-examination before their discharge.

The Hon'ble Supreme court in **State by Inspector of police, Chennai Vs S.Selvi** reported in **AIR 2018 SC 81** held that "It would be difficult to lay down the rule of universal application as to how the prima facie case should be determined. Though the judge has got the power to sift and weigh the evidence, such sifting and weighing evidence is for the limited purpose of finding out whether or not a prima facie case against the accused has been made out for framing of charge. The test to determine a prima facie case would naturally depend upon the facts of the each

case. If on the basis of the material on record, the court would form prima facie opinion that the accused might have committed offence, it can frame charge, though for conviction it is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of charges, the probative value of the material on record has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant conviction. The court is not required to evaluate the material on record at the stage of Sec.227 or 239 of the Code, as the case may be, only with a view to find out if the facts emerging therefrom taken at the face value discloses the existence of all the ingredients constituting the alleged offence. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with the presumption that materials brought on record by the prosecution are true and evaluate such materials with a view to find out whether the facts emerging therefrom taken at their face value disclose existence of the ingredients of the offence.

The Hon'ble Supreme Court in **Common Cause Vs Union of India** reported in **AIR 1997 SC 1539** while dealing with when trials before the Sessions court, trials of warrant cases and trials of summons cases by Magistrates can be said to commence; held that

1. In cases of trials before the Sessions court, the trials shall be treated to have commenced when charges are framed under section 228 of Code of Criminal Procedure in the cases concerned.
2. In cases of trials of warrant cases by Magistrates, if the cases are instituted upon police report, the trials shall be treated to have commenced when charges are framed under section 240 of the code of Criminal Procedure.

While in the trials of warrant cases by Magistrates when cases are instituted otherwise than on police report such trials shall be treated to have commenced when charges are framed against the accused concerned under section 246 of the Code of Criminal Procedure.

3. In cases of trials of summons cases by Magistrates, the trials would be considered to have commenced when the accused who appear or are brought before the Magistrate are asked under Section 251 whether they plead guilty or have any defence to make.

The Hon'ble Supreme Court in **Arun Vyas v. Anita Vyas** reported in **AIR 1999 SC 2071** held that Section 239 to be read along with Section 240 of Cr.P.C., 1973 and if the Magistrate finds that there is prima facie evidence or material against the accused in support of the charge, he may frame charge in accordance with Section 240 of Cr.P.C., 1973, but if he finds that the charge made against accused does not make out a prima facie case and does not furnish basis for framing charge, it will be a case of charge being groundless, so he has no option but to discharge the accused.



IMPACT OF NON FRAMING OF CHARGES IN CRIMINAL TRIAL

Section 215 Cr.PC (Corresponding to Section 238 of BNSS) deals with effect of errors.

This section states that even if there are errors or omissions in stating either the offence or the particulars in the charge form of the alleged offence, they would not be considered material or relevant at any stage of the case until it is proved that such an error or omission has completely misled the accused and has reached such an extent of failure of justice. The object of this section is to prevent the failure of justice on account of a mere technical breach of rules. Section 215 Cr.PC reads

215. Effect of errors. - No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

Illustrations

(a) A is charged under section 242 of the Indian Penal Code (45 of 1860), with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit", the word "fraudulently" being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material.

(b) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(c) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was, in the case, a material error.

(d) A is charged with the murder of Khoda Baksh on the 21st January, 1882. In fact, the murdered person's name was Haider Baksh, and the date of the murder was the 20th January, 1882. A was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haider Baksh. The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial.

(e) A was charged with murdering Haider Baksh on 20th January, 1882, and Khoda Baksh (who tried to arrest him for that murder) on the 21st January, 1882. When charged for the murder of Haider Baksh he was tried for the murder of Khoda Baksh. The witnesses present in his defence were witnesses in the case of Haider Baksh. The Court may infer from this that A was misled, and that the error was material.

Section 464 Cr.PC (Corresponding to Section 510 of BNSS) deals with Effect of omission to frame, absence of, or error in charge.

This section states that no order or decision given by the competent jurisdiction shall be held invalid merely on the grounds that no charge was framed or that the charge framed was based on errors, omissions, irregularity or other sorts, unless the competent jurisdiction is of the opinion that such a mistake would lead to failure of justice. However if the court is of the opinion that any such mistake were made, then the court would order framing of a new charge and would order the trial to be recommenced from that point immediately after the framing of charges or direct for a new trial based on the new charge framed. Provided that if the court is of the opinion that the facts of the case are such that no valid charge would be preferred against the accused, the conviction shall be quashed. Section 464 CrPC reads

464. Effect of omission to frame, or absence of, or error in, charge.

(1) No finding, sentence or order by a court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may

(a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommenced from the point immediately after the framing of the charge;

(b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit : Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

In **Eshwaraiah And Anr. vs State Of Karnataka** reported in **1994 (1) CRIMES 997 (SC)** two accused were charged separately for the offence of murder in furtherance of common intention. However in the charge form of one the accused, the name of the other accused was not mentioned, but the charges were read over to each of the accused in the presence of each of the accused and their advocates. The Hon'ble Supreme court held that the irregularity made in the case is

only a mere one and does not provide any ground for misunderstanding or failure of justice.

In **Bharwad Mepa Dana & Another vs State Of Bombay** reported in **AIR 1960 SC 289**, the Hon'ble Supreme court held that any mere error, omission or irregularity in the charge will not invalidate the finding as a matter of law in the absence of prejudice to the convicted person.

In case of the **Tulsi Ram Vs State of UP** reported in **AIR 1963 SC 666**, the Hon'ble Supreme Court held that the charges framed against the accused will be considered proper if the accused fails to bring to the notice of the court that they were misled regarding the materials of the charge at the appropriate stage.

In **Bhupesh Deb Vs State of Tripura** reported in **AIR 1978 SC 1672**, the Hon'ble Supreme Court observed that Section 215 must be read with Section 464. The combined reading of these provisions require that when any error, omission or irregularity has occurred in framing of a charge, the only question to consider is whether it has occasioned a failure of justice by prejudicing the accused in defence. Where the prosecution tried to make a case different from that stated in the charge, it clearly causes prejudice to accused.

In **Kammari Brahmiah And Ors vs Public Prosecutor, High Court Of A.P.**, reported in **AIR 1999 SC 775**, the Hon'ble Supreme Court held that non-framing of a charge would not vitiate the conviction if no prejudice is caused thereby to the accused. As observed in the aforesaid case, the trial should be fair to the accused, fair to the State and fair to the vast mass of the people for whose protection penal laws are made and administered. The Criminal Procedure Code is a procedural law and is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities.

The Hon'ble Supreme Court in **Bhimanna v. State of Karnataka** reported in **(2012) 9 SCC 650** it is held that

“25. Further, the defect must be so serious that it cannot be covered under Sections 464/465 CrPC, which provide that, an order of sentence or conviction shall not be deemed to be invalid only on the ground that no charge was framed, or that there was some irregularity or omission or misjoinder of charges, unless the court comes to the conclusion that there was also, as a consequence, a failure of justice. In determining whether any error, omission or irregularity in framing the charges has led to a failure of justice, this Court must have regard to whether an objection could have been raised at an earlier stage during the proceedings or not. While judging the question of prejudice or guilt, the court must bear in mind that every accused has a right to a fair trial, where he is aware of what he is being tried for and where the facts sought to be established against him, are explained to him fairly and clearly, and further, where he is given a full and fair chance to defend himself against the said charge(s).

The Hon'ble Supreme Court in **K.Prema S. Rao and Anr. vs. Yadla Srinivasa Rao and Ors.**, reported in **(2003) 1 SCC 217** held that

The ingredients to constitute an offence under Section 306 of the IPC were already found in the charge and as such no prejudice was caused to the accused therein, though no separate charge was framed under Section 306 of the IPC. Apart from that, the evidence on record established that when the letters concealed by the husband were discovered by the wife and handed over to the father and she was driven out of the house, this cruel conduct of the husband led the wife to commit suicide. It could thus be seen, that in the facts of the said case, the Court found that the conviction under

Section 306 of the IPC could be recorded. It was found that, apart from the earlier acts of harassment for parting with the land which she had received in marriage as stridhana, there was an act of driving the deceased out of the house which had direct nexus with the deceased committing suicide.

In **State of Maharashtra Vs. Salman Salim Khan**, reported in **2004 (48) ACC 606 (SC)** it is held that Section 215 and Section 464 CrPC provide that the proceedings of a criminal trial do not get vitiated because of some error, omission or irregularity in the charge unless

- (i) the omission is vital
- (ii) substance of accusation is totally different from what was sought to be established by the prosecution
- (iii) accused was misled in defending himself and prejudice was caused to him for that reason and
- (iv) there was no material to frame charge of particular penal section.

In **Anna Reddy Sambasiva Reddy & ors. Vs. State of Andhra Pradesh** reported in **AIR 2009 SC 2661** the Hon'ble Supreme Court held that "In unmistakable terms, Section-464 specifies that a finding or sentence of a Court shall not be set aside merely on the ground that a charge was not framed or that charge was defective unless it has occasioned in prejudice. Because of a mere defect in language or in the narration or in form of the charge, the conviction would not be rendered bad if accused has not been adversely affected thereby. If the

ingredients of the section are obvious or implicit, conviction in regard thereto can be sustained irrespective of the fact that the said section has not been mentioned. A fair trial to the accused is a sine qua non in criminal justice system but at the same time procedural law contained in the Code of Criminal Procedure is designed to further the ends of justice and not to frustrate them by introduction of hyper-technicalities. Every case must depend on its own merits and no straight-jacket formula can be applied; the essential and important aspect to be kept in mind is has omission to frame a specific charge resulted in prejudice to the accused.

In **Bhoor Singh v. State of Punjab** reported in **AIR 1974 SC 1256**, the Hon'ble Supreme Court held that "An irregularity in the charge as contemplated by Section 464 Cr.P.C. (Section 535 of old Code) becomes an incurable illegality when failure of justice has happened. Where the accused persons charged under Sections 448 and 302 read with Section 149 IPC have been convicted under Section 302 read with Section 34 IPC, such an irregularity will not vitiate the trial.

DISCHARGE

The term 'discharge' appears under various sections of the Code of Criminal Procedure, 1973 [CrPC] such as Sections 227, 239, 245, 249 and 398.

'Discharge' is not defined under the Code of Criminal Procedure, 1973 and therefore reference is made to Black's Law Dictionary, which defines discharge as "*to release, liberate, annul, unburden, disencumber.*" In layman's language, the provision of discharge comes into picture after an investigation into a crime is completed by the prosecuting agency and chargesheet under Section 173 of the CrPC or a complaint under Section 190 of the CrPC, as the case may be, is filed against the accused persons.

Discharge is a stage that comes after the chargesheet is filed, but before the charge is framed by the concerned court against the accused persons. It is a remedy that is granted to the accused person who has been maliciously charge sheeted or against whom there is insufficient evidence to make out the offence as alleged.

In order to avail this remedy, the accused needs to prefer an application before the Magistrate Court or a Court of Sessions, depending upon the nature of offence. After filing of the application, if the court is of the view that on the basis of the prima facie perusal of the documents and evidence on record, the necessary ingredients of the offence against the accused are not made out, the court shall pass an order discharging the accused person and does not proceed to the next stage of Criminal Trial, that is, framing of charge against such accused person who has been discharged.

In case there are multiple accused persons and one or more of such accused persons are discharged, the court shall proceed to frame charge against such other accused person(s) who have not been discharged, and the case shall then proceed only against such accused person(s).

Section 227 of the CrPC deals with the power of the Court of Sessions to discharge an accused person, and section 239 of the CrPC deals with the power of the Magistrate to discharge the accused person. In either of the case, the Magistrate/ Sessions Court is bound to record reasons for passing an order or discharge or otherwise. An unreasoned order or a mechanical order rejecting a discharge application is liable to be set aside at a higher court by way of revision. The power of revision is available only with the Sessions Court and the High Court.

There is no straitjacket formula for deciding whether the accused is to be discharged. The facts of each case differ, and it is in that backdrop the Court has to apply its judicious mind and then decide whether a case is made out for discharging the accused. In the event the judge is convinced that the evidence on record gives rise to 'mere suspicion' and precepts that the accused is entitled to an absolute exoneration from the alleged crime, it is well within the law and the powers of the court to discharge the accused person not 'grave suspicion', then the court would be entitled to exercise the power to discharge the accused person.

It is important to note that at the stage of discharge, the court cannot go into a roving enquiry and conduct a mini trial to arrive at a decision whether the accused, at the end of the trial, shall be acquitted or not. There is a thin line between considering the entire piece of evidence (sifting through evidence) to arrive at a prima facie finding as against conducting a roving enquiry and meticulously considering the entire evidence, which amounts to a mini-trial.

Discharge not acquittal

- ✓ An important point to be borne in mind is that *discharge does not amount to acquittal*.
- ✓ It simply means that an accused is discharged due to non-availability of the materials against them for proceeding ahead with the trial, and that in such a case, trial would be a futile exercise.
- ✓ However, an order of acquittal can be obtained only after conducting a full-fledged trial.
- ✓ Further, if the court is of the view that there is prima facie evidence against the accused to prosecute them, the court may reject the discharge application filed by the accused and proceed with the framing of the charge, and thereafter conduct the entire trial, which ultimately leads to acquittal or conviction of the accused.
- ✓ Thus, discharge is an important provision, which is provided to the accused person in order to avoid subjecting the accused to judicial scrutiny without any cogent evidence to do so, and to save the accused and the court of the trouble to conduct a lengthy process of trial.
- ✓ In the present judicial system, the scope of discharge is very limited. At the stage of framing of charge, the prosecution merely needs to display a prima facie case the accused from the material available on record and trial may thereafter commence. However, at the stage of deciding a discharge application, the accused may opt to refer to and rely upon sterling quality evidence to seek his discharge, and if, on the basis of such unimpeachable record, the judge is satisfied on the aforesaid legal precepts that the accused

is entitled to an absolute exoneration from the alleged crime, it is well within the law and the powers of the court to discharge the accused person.

Differences between Acquittal and Discharge

Acquittal

- It means legally freeing the accused after considering all facts and evidence on record i.e. after completion of full fledged trial
- It is the final Judgment
- Stage of acquittal is the last stage of criminal trial
- Once, a person is acquitted, a succeeding trial based on the same facts for the same offence is forbidden.

Discharge

- It is the order of the court, when the accused is released merely because prima facie no evidence available against the accused person.
- It is an order wherein there is no sufficient grounds for proceeding with the trial
- Stage of the discharge is actually the first step of criminal trial
- A Person once discharged, can be arrested on the same grounds if cogent evidence is available against him.

The Hon'ble Supreme Court in **Ram Prakash Chadha Versus The State of Uttar Pradesh** reported in **2024 LiveLaw (SC) 475** held that *"An accused will be made to stand the ordeal of trial only if 'the record of the case and the documents submitted therewith' discloses ground for proceeding against him. When that be so,*

in a case where an application is filed for discharge under Section 227, Cr.PC, it is an irrecusable duty and obligation of the Court to apply its mind and answer to it regarding the existence of or otherwise, of ground for proceeding against the accused, by confining such consideration based only on the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution in that behalf. To wit, such conclusion on existence or otherwise of ground to proceed against the accused concerned should not be and could not be based on mere suppositions or suspicions or conjectures, especially not founded upon material available before the Court,"

The Hon'ble supreme Court in the above decision further held that *"In short, though it is permissible to sift and weigh the materials for the limited purpose of finding out whether or not a prima facie case is made out against the accused, on appreciation of the admissibility and the evidentiary value such materials brought on record by the prosecution is impermissible as it would amount to denial of opportunity to the prosecution to prove them appropriately at the appropriate stage besides amounting to exercise of the power coupled with obligation under Section 232, Cr.P.C., available only after taking the evidence for the prosecution and examining the accused."*

The Hon'ble Supreme Court in **Om Wati Vs State** reported in **(2001) 4 SCC 333** it is held that

"At the stage of passing the orders in terms of the Section 227, the court has merely to peruse the evidence in order to find out whether or not there is sufficient ground to proceed against the accused. If prima facie case is made out, charge is to be framed in terms of section 228. if not, an order of

discharge shall follow. At this stage the court is not required to enter into meticulous consideration of evidence and other materials placed before him”.

The Hon'ble Supreme Court in P.Vijayan Vs State of Kerala reported in (2010) 2 SCC 398 in regard to an application seeking discharge the following principles were discerned.

1. If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the trial judge would be empowered to discharge the accused.
2. The trial is not a mere post office to frame the charge at the instance of the prosecutions.
3. The judge has merely sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the police or the documents produced before the court.
4. If the evidence, when the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged to cross examination or rebutted by the defence evidence, if any, cannot show that the accused committed offence, then, there will be no sufficient ground for proceeding with the trial.
5. It is open to the accused to explain away the materials giving rise to the grave suspicion.
6. The court has to consider the broad probabilities, the total effect of the evidence and the documents produced before the court, any basic infirmities

appearing in the case and so on. This however, would not entitle the court to make a roving inquiry into the pros and cons.

7. At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution, has to be accepted as true.
8. There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused.

The Hon'ble supreme Court in **Jogendra Yadav Vs State of Bihar** reported in **(2015) 9 SCC 244** held that a person who is arrayed as an accused under Section 319 Cr.P.C cannot be discharged.

The Hon'ble Supreme Court in **Stree Atyachar Virodhi Parishad Vs Dilip Nathumal Chordia** reported in **(1989) 1 SCC 715** held that

“Section 227 itself contains enough guidelines as to the scope of enquiry for the purpose of discharging an accused. It provides that the judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused. The ground in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of the framing of charge. The court, therefore, need not undertake an elaborate enquiry if sifting and weighing the material. Not it is necessary to delve deep into various aspects. All that the court has to consider is whether the evidentiary material on record if generally accepted, would reasonably connect the accused with the crime. No more need be enquired into”.

Where the nature of dispute is of civil nature and the aspect of discharge had been dealt with in **Jagadish Chandra Nijhawan Versus S.K.Saraf, (1999) 1 SCC 119**.

The Hon'ble Delhi High Court in **Rani Vs Rakesh (Indian Kanoon Doc.No:29215113)** held that

The inclusion of the term "absent" in section 249 Cr.P.C suggests that the complainant's non-appearance is a deliberate act, displaying a culpable negligence to attend the court proceedings. The court should not automatically discharge the accused whenever the complainant fails to appear. Not every minor instance of the complainant's absence should lead to the dismissal of the complaint and the discharge of the accused. A fair criterion for the court to consider in favour of the complainant is whether they have actively pursued the case with dedication or if they have been casually attending the proceedings. It is evident that the discretion granted to the Magistrate under section 249 Cr.P.C. is a judicious discretion. The Magistrate must exercise this discretion with wisdom and not arbitrarily. The decision to discharge the accused should not be made automatically. Instead, before pursuing with the discharge, the Magistrate must thoroughly examine the facts of the case.

The Hon'ble Supreme Court in **A.S. Gauraya v. S.N. Thakur** reported in **(1986) 2 SCC 709** it was held:

"...8. The first question to be considered is whether the Magistrate could have re-called his order. It cannot be disputed that the Magistrate has powers to dismiss a complaint and discharge the accused when the complainant is absent....

9..Section 249 of the Criminal Procedure Code enables a Magistrate to discharge the accused when the complainant is absent and when the conditions laid down in the said section are satisfied. section 256(1) of the Criminal Procedure Code enables a Magistrate to acquit the accused if the complainant does not appear. Thus, the order of dismissal of a complaint by a criminal court due to the absence of a complainant is a proper order. But the question remains whether a magistrate can restore a complaint to his file by revoking his earlier order dismissing it for thea non- appearance of the complainant and proceed with it when an application is made by the complainant to revive it. A second complaint is permissible in law if it could be brought within the limitations imposed by this Court in ***Pramatha Nath Taluqdar v. Saroj Ranjan Sarkar, 1962 AIR 876***. Filing of a second complaint is not the A same thing as reviving a dismissed complaint after recalling the earlier order of dismissal. The Criminal Procedure Code does not contain any provision enabling the criminal court to exercise such an inherent power.

The Hon'ble Supreme Court in **Meters and Instruments Private Ltd., and another vs. Kanchan Mehta** reported in **(2018) 1 SCC 560** held that

“Offence under section 138 of the Act is primarily a civil wrong. Burden of proof is on the accused in view of presumption under Section139 but the standard of such proof is “preponderance of probabilities”. The same has to be normally tried summarily as per provisions of summary trial under Cr.P.C. but with such variation as may be appropriate to proceedings under Chapter XVII of the Act. Thus read, principle of Section 258 Cr.P.C. will apply and the court can close the proceedings and discharge the accused on satisfaction that the cheque amount with assessed costs and interest is paid and if there is no reason to

proceed with the punitive aspect. The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the court. Though compounding requires consent of both parties, even in absence of such consent, the court, in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused.

::Conclusion::

Framing of charges is a critical step in the criminal justice system. It involves the formal process by which a court formally accuses an individual (the accused) of committing a specific offence based on evidence and allegations presented by the prosecution. Framing of charges in CrPC serves to inform the accused of the charges against them, establish the legal foundation for a trial, ensure transparency in the legal process, protect the accused's rights and set the stage for the trial itself.

It's important to understand that the framing of charges does not equate to a determination of guilt; it is simply the formal accusation. The accused is considered innocent until proven guilty in a court of law and the trial is the venue where evidence is presented, witnesses are examined and the ultimate determination of guilt or innocence is made.

Overall, framing of charges is a fundamental component of the criminal justice system, ensuring due process, fairness and the protection of the rights of both the accused and the prosecution.



