

EXAMINATION OF ACCUSED AND FRAMING OF CHARGES

**Sri B. GAUTAM PRASAD,
1st AddL. District & Sessions Judge,
Srikakulam.**

01. We all know that under Code of Criminal Procedure 1973, four types of trials are prescribed for adjudicating criminal cases. They are:

- (1) Summary trial cases; (Section 260 to 265 Cr.PC)
- (2) Trial of summons cases; (Section 251 to 259 Cr.PC)
- (3) Trial of warrant cases, (Secs. 238 to 243 & 244 to 247 Cr.PC)
- (4) Trial of cases triable by a Court of Session (Secs.205 to 237 Cr.PC)

02. Different trial procedures are adopted in the Code to enable the court to try the cases summarily in minor offences while adopting elaborate procedure in warrant cases and more elaborate procedure in sessions cases

03. EXAMINATION OF ACCUSED-

Before commencing trial of a criminal case, examination of the accused in summary trial cases, summons trial procedure cases and warrant trial procedure cases is prescribed under Sections 251 and 239 Cr.PC. But in trial of Sessions case by Sessions court, no specific procedure for examination of accused before commencing trial is prescribed,.

04. So far as the summary trial cases are concerned, the procedure for trial is laid down in Section 262 Code of Criminal

Procedure. So in summary trial cases and summons procedure cases, the examination of the accused has to be conducted under section 251 Code of Criminal Procedure.

05. Under section 251 Code of Criminal Procedure, when the accused appears or is brought before the Magistrate, particulars of the offence with which he is accused or the accusation leveled against the accused shall be stated to him and he shall be asked whether he pleads guilty or has any defence to make. Either in summary trial cases or in summons procedure cases, it is not at all necessary to frame a charge against the accused person. If the accused pleads not guilty and claims to be tried after his examination under section 251 Cr.PC in a summary trial case, court has to conduct trial by following the procedure for summary trials and pronounce judgment under section 264 Cr.PC.

06. So far as trial of summons cases by the Magistrate is concerned, chapter XX of the Code of Criminal Procedure deals with it. Section 250 to 258 Code of Criminal Procedure deal with the procedure for trial of summons cases by Magistrates. Like, summary trial, in the trial of summons cases also the substance of the accusation levelled against the accused i.e., particulars of the offence levelled against the accused shall be explained to the accused and the court has to ascertain whether the accused pleads guilty or claims to be tried or has any defence to him. In the trial of summons cases also there is no need to frame any charge. During examination under section 251 Code of Criminal Procedure if he pleads guilty the Magistrate shall record admission of the commission of the offence by

the accused as may be as possible in the words used by the accused and may in his discretion convict the accused.

07. The very fact that in a Summons Case there is no specific provision of a discharge, unlike in Warrants Case (S.227/239/245 of the CrPC) speaks volumes as to the legislative intent of not having an elaborate hearing at the time of framing of charge. What also deserves to be borne in mind is the fact that Summons Cases were not envisaged to be as long-drawn out as Warrants Case and the need for a specific discharge hearing was ousted.

FRAMING OF CHARGE

What is charge:

08. Charge is accusation made against person in respect of the offence alleged to have been committed by him.

09. Section 2 (b) of Code of criminal Procedure "Charge" defined as under:

"Charge" includes any head of the charge when the charge contains more head than one.

10. The question of framing charge arises only when the court finds that the accused is not entitled to discharge under Sections 227 and 239 Code of Criminal Procedure in Sessions Cases and Warrant Cases and the provisions relating to discharge of the accused are very important and the Judge must consider first whether there are any sufficient grounds for proceeding against the accused.

11. Section 227 Code of Criminal Procedure empowers the Sessions Judge to discharge the accused in case he finds that there is no sufficient ground for proceeding against the accused. Likewise Section 239 Code of Criminal Procedure empowers the Magistrate to

discharge the accused in case the charge levelled against the accused is groundless. In both the cases reasons for doing so, are to be recorded.

12. Sections 228 and 240 of Code of Criminal Procedure deal with framing of charge in Sessions Case and Warrant Cases respectively.

13. **228. Framing of charge.**

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant- cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of subsection (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

14. **240. Framing of charge.**

(1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.

15. The stage of framing of charge in both Warrant cases and Sessions Cases come only if the accused is not discharged under Section 227 Code of Criminal Procedure by the Sessions Judge in Sessions Cases and under Section 239 Code of Criminal Procedure by the Judicial Magistrate of 1st Class in warrant cases.

16. Charge shall give the accused full notice of the offence charged against him. The primary object of framing of charge to tell the accused person precisely and concisely about what the prosecution intends to prove against him. Framing of charge is vital part in a criminal trial.

17. The Hon'ble Apex Court in **V.C.Shukla Vs. State** reported in **C.B.I.1980 Supplementary SCC 92 at page 150** opined that the purpose of framing a charge is to give intimation to the accused of clear, unambiguous and precise notice of the nature of accusation that the accused is called upon to meet in the course of trial.

18. **What should a charge contain.**

Section 211 of the Code of Criminal Procedure, Contents of charge:=-

- (1) Every charge under this Code shall state the offence with which the accused is charged.
- (2) If the law which creates the offence gives it any specific-name, the offence may be described in the charge by that name only.
- (3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.
- (4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.
- (5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.
- (6) The charge shall be written in the language of the Court.
- (7) If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such

previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge; and if such statement has been omitted, the Court may add it at any time before sentence is passed.

19. Law regarding framing of charges is now well settled.

It is permissible for a trial Judge to sift and weigh the evidence for the limited purpose of finding out whether or not prima facie case against the accused has been made out or not. The material to determine prima facie case would depend upon the facts of each case. However it is not expected to decide the credibility and truthfulness of the available material at the stage of charge. The disputed defence of accused cannot be taken into consideration at this stage. Sufficiency of material or evidence is not required for framing of charges unless court finds that the materials are completely and absolutely absent for the purpose of trial. It is well settled that when there is evidence indicating strong suspicion against accused, the trial court will be justified in framing of charge and granting an opportunity to the prosecution to bring on record the entire evidence for the purposes of trial.

(B. GAUTAM PRASAD)
1st Addl. District & Sessions Judge,
Srikakulam.

