

Presentation by
Sri P.Srinivas,
Judl. Magistrate of Ist Class,
Tekkali.

FRAMING OF CHARGES IN CRIMINAL CASES

There is some criticism in some trial courts that the important task of framing charge is being entrusted to stenographers by the trial judges. A fortiori, inasmuch as the Supreme Court laid down 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 a trial, it is primary duty of a judicial officer to remove such criticism from the minds of litigant public. This article may be helpful to newly recruited Junior Civil Judges as to this aspect. 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 a trial. (See V.C. Shukla v. State Through C.B.I., 1980 Supplementary SCC 92 at page 150 and paragraph 110 of the report). Either it is a warrant case or a summons case, the point is that a prima facie case must be made out before a charge can be framed. Basically, there are three pairs of sections in the Code of Criminal Procedure, 1973. Those are Sections 227 and 228 which relating to sessions trial; Sections 239 and 240 relating to trial of warrant cases; and Sections 245(1) and (2) qua trial of summons cases. The Hon'ble Supreme Court, in Mohan Singh v. State of Bihar, has examined the law relating to charge while highlighting the purpose of framing a charge against the accused in criminal cases.

CHAPTER XIX - TRIAL OF WARRANT-CASES BY MAGISTRATES

Sec.239. When accused shall be discharged -

If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

Sec.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.

CHAPTER XVIII -TRIAL BEFORE A COURT OF SESSION

Sec.225. Trial to be conducted by Public Prosecutor -

In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor

Sec.226. 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.

Sec.227. Discharge -

If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing

Sec.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 sub-section (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

Strict Comply Of Section 226 Of Cr.P.C: Trial Judge must insist the prosecution to comply with section 226 of Cr.P.C. if this be done, accused can be discharged in case of there is no prima facie case. thus, arrears of cases can be cleared quickly. Before invoking provisions of Sections 227 and 228 dealing with trials before the Court of Session, Courts shall take note of Section 226 which obliges the prosecution to describe the charge brought against the accused and state by what evidence the guilt of the accused would be proved. In *Satish Mehra v. Delhi Administration and Another* [(1996) 9 SCC 766] was overruled in **State of Orissa Vs. Debendra Nath Padhi, 2005(1)ACR71(SC), AIR2005SC359, 2005((1))ALT(Cri)198, 2005(1)ALT(Cri)1198** holding that the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. ***Satish Mehra's case*** holding that the trial court has powers to consider even materials which accused may produce at the stage of Section 227 of the Code has not been correctly decided. In the same ruling, it was observed that **if under Section 227, what is necessary and relevant is only the record produced in terms of Section 173 of the Code, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence. Under Section 91, summons for production of document can be issued by Court and under a written order an officer in charge of police station can also direct production thereof. Section 91 does not confer any right on the accused to produce document in his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof.**

Reasons For Charge: It is seminal to refer the ruling *State of Maharashtra v. Som Nath Thapa*, (1996) 4 SCC 659. In this ruling, it was observed as: ' before advertent to what was stated in *Antulay's case*, let the view expressed in *State of Karnataka vs. L. Muniswamy*, 1977 (3) SCR 113 be noted. Therein, Chandrachud, J. (as he then was) speaking for a three Judge Bench stated at page 119 that at the stage of framing charge the Court has to apply its mind to the question whether or not there is any ground for presuming the commission of the offence by the accused. As framing of charge affects a person's liberty substantially, need

for proper consideration of material warranting such order was emphasised.' In one of the case under TADA, the Hon'ble Apex Court held that the Designated Court should give reasons for framing charges because framing of charges substantially affects the liberty of the person concerned.

The Purpose Of Framing Charge: In the ruling of a four-Judge Bench of The Hon'ble Supreme Court in V.C. Shukla v. State Through C.B.I.,1980 Supplementary SCC 92 at page 150 and paragraph 110 of the report). Justice Desai delivering a concurring opinion, 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 a trial'.

How To Interpret The Words In A Charge? What To Be Done, If There Is Any Error In The Framing Of The Charge? To give appropriate answers for these two important questions, I deem it is apt to see the recent ruling of the Hon'ble Supreme Court (2011) in Mohan Singh vs State Of Bihar, wherein it was observed as infra: 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 a trial. (See decision of a four-Judge Bench of this Court in V.C. Shukla v. State Through C.B.I., reported in 1980 Supplementary SCC 92 at page 150 and paragraph 110 of the report). Justice Desai delivering a concurring opinion, opined as above. 17. But the question is how to interpret the words in a charge? In this connection, we may refer to the provision of Section 214 of the Code. Section 214 of the Code is set out below: 214. Words in charge taken in sense of law under which offence is punishable. In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable." 18.The other relevant provisions relating to charge may be noticed as under:

CHAPTER - XVII

THE CHARGE

A- FORM OF CHARGES

Sec.211. 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.

Sec.212. Particulars as to time, place and person -

(1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money or other moveable property, it shall be sufficient to specify the gross sum or, as the case may be, described the movable property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 219:

Provided that the time included between the first and last of such dates shall not exceed one year

213. When manner of committing offence must be stated -

When the nature of the case is such that the particulars mentioned in sections 211 and 212 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose

Sec.214. Words in charge taken in sense of law under which offence is punishable -

In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

Sec.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

Sec.216. Court may alter charge

- (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

217. Recall of witnesses when charge altered -

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—

- (a) 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;
- (b) also to call any further witness whom the Court may think to be material

B—Joinder of Charges

218. 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.

Sec.219. Three offences of same kind within year may be charged together -

(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

220. Trial for more than one offence -

(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)

Sec.221. Where it is doubtful what offence has been committed -

(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

222. When offence proved included in offence charged

(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 authorise 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

Sec.223. What persons may be charged jointly -

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 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.

224. Withdrawal of remaining charges on conviction on one of several charges-

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

Sec.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; 19. While examining the aforesaid provisions, we may keep in mind the principles laid down by Justice Vivian Bose in Willie (William) Slaney v. State of Madhya Pradesh reported in (1955) 2 SCR 1140. At page 1165 of the report, the learned judge observed:- ;We see no reason for straining at the meaning of these plain and emphatic provisions unless ritual and form are to be regarded as of the essence in criminal trials. We are unable to find any magic or charm in the ritual of a charge. It is the substance of these provisions that count and not their outward form. To hold otherwise is only to provide avenues of escape for the guilty and afford no protection to the innocent.” 20. The aforesaid observation of Justice Vivian Bose in William Slaney (supra) has been expressly approved subsequently by this Court in V.C. Shukla (supra). 21. Reference in this connection may be made to the decision of this Court in the case of Tulsi Ram and others v. State of Uttar Pradesh reported in AIR 1963 SC 666. In that case in paragraph 12 this Court was considering these aspects of the matter and made it clear that a complaint about the charge was never raised at any earlier stage and the learned Judges came to the conclusion that the charge was fully understood by the appellants in that case and they never complained at the appropriate stage that they were confused or bewildered by the charge. The said thing is true here. Therefore, the Court refused to accept any grievance relating to error in the framing of the charge. 22. Subsequently, in the case of State of Andhra Pradesh v. Cheemalapati Ganeswara Rao and another reported in AIR 1963 SC 1850, this Court also had to consider a similar grievance. Both in the case of Tulsi Ram (supra) as also in the case of Cheemalapati (supra) the charges were of conspiracy. The same is also a charge in the instant case. Repelling the said grievance, the learned Judges held that the object in saying what has been set out in the first charge was only to give notice to the accused as to the ambit of the conspiracy to which they will have to answer and nothing more. This Court held that even assuming for a moment that the charge is cumbersome but in the absence of any objection at the proper time and in the absence of any material from which the Court can infer prejudice, such grievances are precluded by reason of provision of Section 225 of the Cr.P.C. Under the present Code it is Section 215 which has been quoted above. 23. Reference in this connection may also be made in the decision of this Court in Rawalpenta Venkalu and another v. The State of Hyderabad reported in AIR 1956 SC 171 at para 10 page 174 of the report. The learned Judges came to the conclusion that although Section 34 is not added to Section 302, the accused had clear notice that they

were being charged with the offence of committing murder in pursuance of their common intention. Therefore, the omission to mention Section 34 in the charge has only an academic significance and has not in any way misled the accused. In the instant case the omission of charge of Section 302 has not in any way misled the accused inasmuch as it is made very clear that in the charge that he agreed with the others to commit the murder of Anil Jha. Following the aforesaid ratio there is no doubt that in the instant case from the evidence led by the prosecution the charge of murder has been brought home against the appellant. 24. In *K. Prema S. Rao and another v. Yadla Srinivasa Rao and others* reported in (2003) 1 SCC 217 this Court held that though the charge specifically under Section 306 IPC was not framed but all the ingredients constituting the offence were mentioned in the statement of charges and in paragraph 22 at page 226 of the report, a three-Judge Bench of this Court held that mere omission or defect in framing of charge does not disable the criminal court from convicting the accused for the offence which is found to have been proved on the evidence on record. The learned Judges held that provisions of Section 221 Cr.P.C. takes care of such a situation and safeguards the powers of the criminal court to convict an accused for an offence with which he is not charged although on facts found in evidence he could have been charged with such offence. The learned Judges have also referred to Section 215 of the Cr.P.C., set out above, in support of their contention.

To know more, the following rulings are useful as to framing of Charge in Criminal Cases.

1) *Sanichar Sahni vs State Of Bihar* on 26 May, 2009 2) *Santokh Singh vs Izhar Hussain And Anr* on 25 April, 1973 3) *Tilak Nagar vs The State Of Maharashtra* on 20 October, 2011 4) *Mahesh And Ors. vs State Of M.P.* : 1988 CriLJ 1565 5) *Kenaram Alias Kinuram Majhi vs The State*: 1995 CriLJ 3026 6) *In Re: Saroja vs ...*; Madras High Court Judgment. 7) *K. Dhanasekaran vs State By Inspector Of Police*: 2003 (1) CTC 223 8) *Sureshbhai Jayantilal Shah vs State Of Gujara* : (2005) 3 GLR 1918 9) *Tatikayala, Ayyappa Naidu And ... vs State on; Andhra Pradesh HIGH Court Judgment.*: 1956 CriLJ 580 10) *Public Prosecutor vs K. Jalayya And Anr* : AIR 1954 Mad 303 11) *State of Uttar Pradesh v. Paras Nath Singh* ; (2009) 6 SCC 372
Conclusion: To understand the scope of section 226, 227, 228 and 239 of Cr.P.C, it is better to go through the observations in *State of OrissaVs.Debendra Nath Padhi,2005(1)ACR71(SC)*,and *Century Spg. & Mfg. Co. Ltd. v. State of Maharashtra ((1972) 3 SCC 282)*, *State of Karnataka v. L. Muniswamy ((1977) 2 SCC 699*. Further more, after considering the entire law on the point of section 120 IPC, the Hon'ble Apex Court in *Rajiv Gandhi murder case (State v. Nalini, (1999) 5 SCC 253)* laid down broad principles to be observed in framing a charge of conspiracy.

A fortiori, besides the above listed 11 important judgments, it is important to go through the observations of the Hon'ble Supreme Court in Dalbir Singh v. State of U.P.; Rawalpenta Venkalu and another v. The State of Hyderabad reported in AIR 1956 SC 171; Sambasiva Reddy and others v. State of Andhra Pradesh; (2009) 12 SCC 546; K. Prema S. Rao and another v. Yadla Srinivasa Rao and others reported in (2003) 1 SCC 217; State of Andhra Pradesh v. Cheemalapati Ganeswara Rao and another reported in AIR 1963 SC 1850; Willie (William) Slaney v. State of Madhya Pradesh; V.C. Shukla v. State Through C.B.I.; State of Karnataka vs. L. Muniswamy), Satish Mehra v. Delhi Administration and Another [(1996) 9 SCC 766], and 2011 ruling in Mohan Singh vs State Of Bihar.

**P.Srinivas,
Judl. Magistrate of Ist Class,
Tekkali.**