



## CHARGE UNDER CRIMINAL PROCEDURE CODE, 1973 AND EFFECT OF DEFECT IN FRAMING OF CHARGE

**Dr. Vandana  
Thakur\***

Assistant Professor (Law) APG University, Shimla H.P. \*Corresponding Author

### KEYWORDS :

#### INTRODUCTION

The Criminal Procedure Code, 1973 provides complete mechanism right from setting in motion the criminal machinery either by way of complaint, FIR and suo motu cognizance by Magistrate, till the culmination of criminal trial by way of judgement. There are various stages in the journey of a criminal trial and one of the most important stage of a trial is framing of charge by the court. It is incumbent upon the court trying an offender in a warrant case to give notice of the accusation explaining with precision that what are the allegations which the accused is facing in the trial. The purpose of framing of charge is to make the accused aware of the allegations against him before the trial of the case begins. In a criminal trial it is considered necessary that an accused must know that what has been alleged by the victim against him and what is the charge which prosecution is supposed to prove against him during the course of trial. It is a cardinal principle while administering justice in criminal cases that an accused must know at the very beginning of the trial the exact nature of the accusation against him. The court while dealing with the issue of charge consider the allegations and the material on record submitted their with and after hearing the prosecution and affording an opportunity to the accused person, proceeds to frame the charge on the accused person of the offence and further fix the date for recording of evidence. But if there is no sufficient material for proceeding against the accused, court may exonerate the accused at the initial stage without any further proceedings by discharging him on assigning the reasons for doing so.

#### What is Charge?

The word 'charge' has not been defined under the Criminal Procedure Code, 1973 however section 2(b) of it simply provides that 'charge includes any head of the charge when the charge contains more heads than one.'

The dictionary meaning of charge in criminal context is defined as:

1. "A formal accusation by the authorities that the accused has committed a specified offence"
2. "In a criminal case the specific statement of what crime the party is accused (charged with) contained in the indictment or criminal complaint."

#### Charge under Criminal Procedure Code, 1973

Chapter XVII of the Criminal Procedure Code deals with the aspect of framing of charge. After having perusal of these provisions the key features of a charge can be stated as under:

#### Offence its name, section and ingredients must be stated in the charge

It is incumbent upon the court that the charge must contain the offence so as to enable the accused to defend himself properly. It is also important that the charge shall contain the necessary ingredients of the offence alleged to have been committed by the accused. The accused should not suffer any prejudice for want of any requisite information of offence and its details as held by the court in *Shamnsaheb M. Multtani vs. State of Karnataka* (2001) 2 SCC 577. In the matter of *Sate of*

*West Bengal versus Ajit Kumar Saha* it was held by the court that it is not sufficient to mention a section in which a person is accused of without mentioning the complete substance of the charge and failing to do so would amount to a serious breach of the procedure therefore it is necessary to mention not only the section of the offence but its complete ingredients so as to enable the accused to know the case against him.

In *V.C. Shukla vs. State* through CBI reported in 1980 AIR 962 it was held that the object behind framing of charge is to inform the accused in clear terms without any ambiguity about the nature of allegations, the accused is supposed to meet during the course of trial.

In one another matter the Calcutta High Court in *Bimal Kr. vs. State of West Bengal* has held that mere inclusion of section 149 IPC in the charge without any substance of it in the charge and thereafter alteration of the charge to this effect after the completion of evidence and just before the pronouncement of judgement will not render the charge as defective one as neither the accused has been misled by inclusion of section 149 nor it has resulted in any failure of Justice.

#### Cases in which it is mandatory to frame formal charge.

The Criminal Procedure Code, 1973 provides four types of trials Categorised considering the nature of offence and the punishment provided under the substantive law which is as under:-

1. Warrant Cases to be tried by Court of Session- (Section 225-237)-The only those cases would be tried by the Court of Session where the punishment provided is death, life imprisonment and the imprisonment exceeding seven years.
2. Warrant cases to be tried by magistrate -(Section 238-250)-the cases where the punishment is exceeding two years upto 7 years.
3. Summon cases to be tried by the magistrate - (Section 251-259)- the cases where punishment does not exceed two years.
4. Summary trials- (260-265) - the trials for small offences for which simplified procedure is adopted for speedy disposal and wherein the punishment does not exceed two years when tried by Judicial Magistrate 1st class and when tried by Judicial Magistrate 2nd class, the punishment does not exceed six months.

It is mandatory in warrant cases to put formal charge of the offences alleged to have been committed by the accused in writing both in cases triable by Court of Session and Magistrate. Section 240 of the Criminal Procedure Code 1973 empowers the Magistrate to frame charge if he is of the opinion that accused has committed the alleged offence. Similarly section 228 of the Code of Criminal procedure 1973 empowers Session Judge to frame a formal charge against the accused if he is of the opinion that there are grounds for presuming that the accused has committed the offence.

#### Error in the framing of charge

Section 215 of The Criminal Procedure Code 1973 states that

error and omission with respect to the mentioning of offence and its necessary particulars in the charge will not be considered as material lapse until and unless accused is actually misled by such error or omission in the framing of charge which has ultimately resulted into failure of Justice.

Section 464 of The Criminal Procedure Code 1973 provides for the Courts exercising appellate and revisional jurisdiction that finding of sentence cannot be rendered invalid merely on the ground that there is error /omission or irregularity in the charge framed by the court below until the appellate and revisional court is of the opinion that due to such error or omission in framing of charge has resulted into failure of Justice.

The import of the above provisions demonstrates that any error, omission irregularity in the contents of charge while mentioning the offence its particulars will not be considered fatal until and unless it has caused any serious prejudice to the accused resulting into miscarriage of Justice.

The Constitution Bench of the Supreme Court in case reported as Willie (William) Slaney vs. State of Madhya Pradesh AIR 1956 SC 116 while holding the validity of charge upheld the conviction of the accused. In this case the accused was charged with an offence punishable under Section 302 IPC however he was ultimately convicted under section 304 Part -II IPC. The court held that the Criminal Procedure Code is a procedural law and has been made to advance the ends of justice and not to frustrate them by the introduction of endless technicalities. If the accused is clearly informed of and understands the nature of offence for which he is being tried and the case is fully and fairly explained to him so as to afford full opportunity to defend himself, any mistake, error or omission would be inconsequential unless the accused demonstrates any serious prejudice on account of such error or omission.

This issue was further considered and examined by the three Judges bench in Gurucharan Singh vs State of Punjab AIR1957 Supreme Court 623 in which the Hon'ble Apex Court while deliberating on the issue please to hold as under:

"In judging a question of prejudice, as of guilt, courts must act with a broad vision and look to the substance and not to technicalities and their main concern should be to see whether the accused had a fair trial whether he knew what he was being tried for whether the main facts sought to be established against him were explained to him, fairly and clearly and whether he was given a full and fair chance to defend himself"

In a view expressed by the division bench of the Supreme Court in the case of Sanagaraboina Sreenu vs. State of A.P. (1997) 5 SCC 348 while accepting appeal held that the accused was charged only under Section 302 IPC and therefore High Court could not have convicted him under section 306 IPC. It was further observed by the court that all the Section 222 Cr.P.C. empowers a Court to convict a person for an offence which is minor in comparison to the offence he is charged and tried but section 306 IPC cannot be said to be a minor offence in relation to offence under Section 302 IPC as these offences are of distinct and different categories. The basic constituent of an offence under Section 302 IPC is homicidal death and that of section 306 IPC is suicidal death and abetment thereof.

The Supreme Court of India while interpreting the issue of any error or omission in the charge and its effect has passed a very important verdict in the case of Rafiq Ahmad versus state of UP (2011) 8 SCC 300 held as under:

"For the reasons afore-recorded, we are of the considered view that no prejudice has been caused to the appellant by his conviction for an offence under section 302 IPC though he was

initially charged with an offence punishable under section 396 IPC read with section 201 IPC. Further, the nature of injuries namely three incised wounds, three abrasions and severing of the trachea, caused by a sharp-edged weapon as noticed by the High Court in para 34 of its judgment, indicate that the accused knew that the injury inflicted would be sufficient in the ordinary course of nature to cause death. The 'prejudice' has to be examined with reference to the rights and/or protections available to the accused. The incriminating evidence had been clearly put to the accused in his statement under section 313 Cr.P.C. The circumstances which constitute an offence under section 302 were literally put to him, as section 302 IPC itself is an integral part of an offence punishable under section 396 IPC. The learned counsel appearing for the appellant has not been able to demonstrate any prejudice which the appellant has suffered in his right to defence, fair trial and in relation to the case of the prosecution. Once the appellant has not suffered any prejudice, much less a serious prejudice, then the conviction of the appellant under section 302 IPC cannot be set aside merely for want of framing of a specific/alternate charge for an offence punishable under section 302 IPC. It is more so because the dimensions and facets of an offence under section 302 are incorporated by specific language and are inbuilt in the offence punishable under section 396 IPC. Thus, on the application of principle of 'cognate offences', there is no prejudice caused to the rights of the appellant."

#### DISCHARGE OF THE ACCUSED

As per the scheme of Criminal Procedure Code 1973, the following provisions would be applicable while determining the question of discharging the accused before framing of charge.

1. Warrant cases triable by Court of session (Section 227)
2. Warrant cases triable by magistrate (Section 239)
3. summon cases triable by magistrate [Section 245 (1 and 2)]

Section 239 of The Criminal Procedure Code provides for hearing for the purpose of consideration of charge. The provision is applicable in a warrant case triable by magistrate. It is provided under the section that the magistrate after examination of the report submitted by the police and the material placed there with and after affording an opportunity of being heard to the prosecution as well as the accused, is of the opinion that the allegations against the accused are groundless and even does not disclose prima facie case against the accused, he may pass order of discharge of the accused after assigning reasons for doing so.

In Satish Mehra vs Delhi administration reported in 1996 volume 9 SCC page 766 the Supreme Court observed that the object of section 227 and section 239 is to enable the court to take a decision whether it is necessary to proceed with the trial or to put an end to it at the initial stage. It is necessary for the magistrate/ judge to afford an opportunity of being heard to the prosecution as well as to the accused for coming to a conclusion whether it is necessary to proceed to the next stage of the trial by frame in charge. The Supreme Court further observed that there is nothing in the code which restricts the scope of hearing the oral arguments of the accused and if he succeeds in placing on record any material which fundamentally destroys the sustainability of the prosecution case then it will be highly unjustified to suggest that no such material can be looked into at this stage.

However the larger bench of 3 judges of the Honorable Supreme Court in the matter of State of Odisha versus Debendranath Padhi reported in 2005 Vol. 1 SCC 568 held that at the time of framing of charge accused has no right to produce any material as the Code of Criminal Procedure, 1973 does not grant any right to file any material or documents at

the stage of framing of charges and held that Satish Mehra's case (Supra) was not correctly decided. It was further held that it is the settled position of law that the accused cannot be permitted to put forth his defence at the stage of framing of charge.

#### **Order of framing charge is neither final nor interlocutory**

The stage of framing of charge is one of the very important stage in a trial where the accused gets an opportunity under law to be exonerated from the allegations without undergoing to trial of the case. The court has ample power to discharge the accused without referring him further to undergo a trial for the accusation against him, if he finds that there is no prima facie case against the accused. And if there is sufficient material showing prima facie case against the accused the court would proceed further by framing charge on the accused under the relevant sections and will fix date for the evidence of prosecution. Now it is interesting to find out whether the order of framing of charge would be final order or it would be an interlocutory order and further to see what would be the remedy available to the accused against the order of framing of charge.

It was held in V.C. Shukla's case that the order framing a charge is an interlocutory order and therefore appeal against such an order is not maintainable. However it was further held by the Supreme Court in Asian Resurfacing of Road Agency in criminal appeal no. 1375 -1376 of 2013 decided on 28 March 2013 that a petition under section 482 of the Code of Criminal Procedure and a petition under article 227 of the Constitution of India are maintainable against the order of framing of charge. It was further held by the court that order of framing of charge was not a purely interlocutory order so as to attract the bar of section 397(2) of the Code of Criminal Procedure, 1973 but the same would be an intermediate class of order between a final and a purely interlocutory order. Court has applied the English law test according to which if the order in question is reversed then whether the original action would go on or will terminate and if while reversing the order the original action terminates the order cannot be construed to be an interlocutory order and therefore the proviso attached to Section 397 of the Code of Criminal Procedure, 1973 will not be attracted.

#### **CONCLUSION:**

Charge under Criminal Procedure Code 1973 is one of the most important stage of a trial. The stage of charge is not only important to the accused but at the same time is of great importance for the prosecution as it is incumbent upon the prosecution to make out a case for trial in terms of section 226 of the Code. Each party is supposed to analyse the material on record minutely, more particularly the accused, as the accused has the opportunity to exonerate at the initial stage of the case, if he is able to demonstrate from the record that even if the prosecution case is taken on its face value, the same does not disclose any prima facie case against him. It is necessary that charge should contain the necessary information of the offence so as to enable the accused to know what exactly the prosecution is supposed to prove against him. Any error or omission in framing of charge is not considered material lapse unless the accused demonstrates that he is actually misled by such error or omission resulting into grave prejudice to his defence. The accused cannot be permitted to place on record any material to put forth his defence at the stage of framing of charge. The order of framing of charge is neither final nor interlocutory but is an intermediate order.

#### **REFERENCES:**

1. <https://lawtimesjournal.in/charge-under-crpc/>
2. <https://blog-ipleaders-in.cdn.ampproject.org/>
3. <https://lawtimesjournal.in/charge/>
4. <https://indiankanoon.org>

5. <https://www.legalservicesindia.com/article/1122>
6. <https://indiankanoon.org/doc/105261366/>
7. <https://indiankanoon.org/doc/849843/>
8. <https://indiankanoon.org/doc/100785982/>
9. <https://indiankanoon.org/docfragment/172610348>
10. Shamsaheb M. Multani vs. State of Karnataka (2001) 2 SCC 577.
11. State of West Bengal versus Ajit Kumar Saha 1988 Cr.L.J. NOC 2 (Cal.)
12. Dalbir vs. State of U.P decided on 08-04-2004
13. Gurcharan Singh vs. State of Punjab AIR 1957 SC 623
14. Rafiq Ahmed vs. State of U.P. 2011 (8)SCC 300
15. Willie (William) salney vs. State of M.P AIR 1956 SC 116
16. Asian Resurfacing of Road Agency vs. CBI Cr. Appeal No. 1375-1376 of 2013 decided on 28-03-2018
17. Sanagaraboina Sreenu vs. State of A.P 1997 (5) SCC 348
18. V.C. Shukla Vs. State 1980 AIR 962
19. Satish Mehra vs. Delhi Administration 1996 (9)SCC 766