

PAPER PRESENTATION SUBMITTED FOR DISTRICT JUDICIAL
OFFICERS CONFERENCE OF KRISHNA DISTRICT.

Topic : **FRAMING OF CHARGES**

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Introduction:

The charge is defined U/Sec.2(b) of Code of Criminal Procedure (Cr.P.C.), 1973 and the corresponding section in Bharatiya Nagarik Suraksha Sanhita, 2023 (B.N.S.S) is Sec.2(f). Hereinafter referred as “Cr.P.C” and “B.N.S.S.”

Charge is a formal expression of the Court which outlines the specific allegations against the accused. It is a crucial stage which requires the Court to apply its mind. The Court has to be cautious while framing of charge as only through this written statement, the accused comes to know the specific allegations made against him which enables him to prepare his defence. The general criticism is that over burden Courts failed to scrutinize the material at the stage of framing of charge.

The trial is conducted basing on the charge framed. So, it becomes important part of judicial proceedings. After perusing the entire material, once the Court frame the charges, it means of legal conditions necessary in law, to complete the offence has been made, it is assumed that prosecution has put all legal requirements to present the case in the Court.

Comparative overview : Cr.P.C Vs B.N.S.S:

BNSS-Chapter 8 Sections 234 to 251 deals with charge

CrPC-Chapter 19 Sections 238 to 250 deals with framing of charge

B.N.S.S mainly renumbers and simplifies the sections modernizing language and allows to use of electronic means for communication and record keeping, it fixes a time for framing of charge, while the substance and principles of framing of charges remain identical of Cr.P.C.

In a **warrant case** on police report, the Magistrate upon taking cognizance U/Sec.210 Cr.P.C supply documents and frame charges U/Sec.239/240 of Cr.P.C, whereas as per B.N.S.S the charge to be framed within 60 days. Sec.259-260 of B.N.S.S.

The **Sessions Court** has to frame charge within 60 days of the first hearing as per section 251(b) of B.N.S.S which is absent in Section 228 Cr.P.C. The other key issue is that the accused presence can be physical or virtual via audio, video means U/Sec.251(2) of B.N.S.S which enables and streamlines the process especially in remote areas which is absent in Cr.P.C.

Judicial pronouncement and principles:

- ➔ In **Willie (William) Slaney vs The State Of Madhya Pradesh - 1955 SCR (2)1140** where Justice Subba Rao quoted the purpose of charge is to inform the accused of the precise accusation against him was, so that he may prepare his defence.
- ➔ In **State of M.P Vs Mohanlal Soni (2000) 6 SCC 338** – wherein the Hon'ble Supreme Court held that at the stage of framing of charge, the Court must form a prima facie view whether there is “sufficient ground for proceeding: against the accused. It is not the stage to deeply assess the “probative value” of the prosecution’s material or to decide if the case is certain to lead to conviction. Even “strong suspicion” based on material that leads the Court to form a presumptive opinion on the factual ingredients of the offence can justify framing of charge. Also, the Court is allowed to consider only the documents placed on record, not extraneous material not part of the investigation record.
- ➔ In **Dr.Anup Kumar Srivatsava Vs State through CBI, (2017) 15 SCC 560** wherein the Hon'ble Supreme Court held that framing charge is a “major event” in a criminal trial; the Court must apply its mind to the entire record/documents before it, to decide whether to discharge the accused or frame a charge. But, even here, the Court is not supposed to examine in detail the sufficiency of the prosecution’s material (i.e.,

not weigh every piece as in a full trial) – only whether a ground for presuming commission of offence exists.

The Court discharged Srivastava, because it found the evidence (e.g., intercepted calls) did not constitute a prima facie case strong enough to proceed.

- ➔ In **Bhawna Bai Vs Ghanshyam & Others, (2019/2020) 2 SCC 217** wherein the Supreme Court clarified standards under Sections 227/228 Cr.P.C. It held that only a prima facie case needs to be seen at the stage of framing charges; the question of “beyond reasonable doubt” does not arise then. The Court also said that a detailed order giving reasons is not mandatory while framing a charge.
- ➔ In **State of Orissa Vs Debendra Nath Padhi – (2005) 1 SCC 568** - case is under Prevention of Corruption Act, accused intended to submit documents proving inconsistency at the stage of charge. The Hon'ble Supreme Court held that accused cannot produce defence documents at the time of framing of charge
- ➔ In **Sajjan Kumar Vs C.B.I – (2010) 9 SCC 368** – Accused was charged with Sections 302, 147, 148 and 120B of I.P.C. Accused claimed that the material placed were insufficient and contradictory statements of witnesses is unreliable, there is a huge delay. The Hon'ble Supreme Court held that even probable involvement of circumstantial suspicion is enough.
- ➔ In **State of Andhra Pradesh vs. Golconda Linga Swamy – AIR 2004 SC 3967** – where in the Hon'ble Supreme Court held that the charge is not merely the procedure formality, but a substantive accusation which crystallizes the offence enabling the accused to mount the effective defence. Charge must state the offence succinctly ensuring the accused apprehend the care of the case.
- ➔ In **Moti Lal Songara v. Prem Prakash Alias Pappu And Another – 2013(6) SCR 496**, it was held that charges are framed to avert prejudice, suppression of material fact which could vitiate the procedure.
- ➔ In **Union of India Vs Prafulla Kumar Samal and Others – (1979) 3 SCC 4** wherein Hon'ble Supreme Court held that if there is a grave

suspicion, the charge must be framed, sift evidence only to see if there is a prima facie case exists. In the above case, accused was a bureaucrat was charged with conspiracy and cheating, he claims that it is fabricated and insufficient evidence. The Court held that prima facie is enough to frame the charge.

- In **Kanti Bhadra Shah Vs State of West Bengal – (2000) 1 SCC 722** wherein the Hon'ble Supreme Court held that No law mandates to give detailed reason order while framing of charges which only requires when the accused is being discharged.

The accused challenged the charge order it lack of detailed reasons.

- In **State of Delhi Vs Gyan Devi and Others** wherein the Hon'ble Supreme Court held that that detailed evaluation of evidence is not allowed at charge stage.

accused was charged U/Secs.498A,304B of I.P.C. The charge was quashed as accused produced contrary evidence and claimed that statements are unreliable, there were no demand of dowry.

Content of Charge: Sec.211-224 Cr.P.C :: Sec.243-256 of B.N.S.S

The “content of charge includes the specific offense with which the accused is charged, the law and section violated, and the factual details of the crime, all written in the court's language. It must also state the date, time, and place of offense and any previous convictions of the accused that might lead to enhanced punishment.

Sec.211 of Cr.P.C corresponding Sec.234 of B.N.S.S emphasises what charge should contain. The charge should enable accused to know the offence with which he is charged and offence which he is alleged to have been committed. It demands the articulation of the offence which helps the accused to prepare his defence.

Components of a charge:

Name and details of the offence:- the charge must clearly state the offense. If the law creating the offense gives it a specific name (e.g., “theft”), that name can be used. If not, the definition of the offence must be stated to make it clear to the accused.

Law and Section: The specific law and section under which the offense was committed must be mentioned.

Factual particulars: This includes the date, time, and place where the offense occurred. It also includes a description of the facts that constitute the offense.

Language: The charge must be written in the language used by the Court.

Previous convictions: If the accused has a prior conviction, the charge must state the particulars of that conviction, as it can lead to enhanced punishment for the current offense. The charge of previous conviction can be framed at the beginning of trial or even in pendency.

General Rule under section 218(1) Cr.P.C corresponding 241 of B.N.S.S, a charge to be framed for each distinct offence. It provides that each different offence, there must be a distinct charge.

Exception to general rule 218 Cr.P.C.

When a person is accused of committing multiple offences, the law permits for joinder of multiple charges tried together in a single trial, Sec. 219 to 220 of Cr.P.C corresponding 221 to 223 of B.N.S.S. This is an exception to the general rule that each distinct offence must have separate charge.

Joinder of Charge:

Joinder of charges is permitted to improve judicial efficiency, save costs, and avoid repeating evidence by consolidating related charges against a single person into one trial. This is allowed under specific

conditions, such as when the offenses are connected to the “same transaction” or are of the “same kind” and when it is done in a way that is fair and does not prejudice the accused.

In the case of **K.Satwant Singh Vs State of Punjab AIR 1960 SC 266** 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.

Offences of same kind:

Three offences which are of the same kind, committed within a year may be charged together. This section has been provided to avoid multiplicity of the proceedings when the offences are of the same kind. It contains two circumstances:

1. According to Section 219(1) Cr.PC if a person has been accused of three offences of the same kind then the person can be tried for all the offences together if they have been committed within a span of twelve months from the first to the last offence. Sec.242(1) of B.N.S.S permitted to tried together if the persons committed five offence within span of one year.
2. Section 219(2) Cr.P.C talks about the offences which are of the same kind, also punishable with the same quantum of punishment, corresponding Sec.242(2) of B.N.S.S.

Offences under the same transaction:

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.

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 fulfil the objective of the former offence. In such cases, Section 220(2) Cr.P.C enables the Courts to try such offences together, corresponding section in B.N.S.S is 243(2).

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) Cr.P.C, corresponding section in B.N.S.S is 243(3).

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.

The persons who can be joined together:

Section 223 Cr.P.C corresponding section 246 B.N.S.S 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:

1. The accused persons who have committed the same offence in the course of the same transaction.
2. The persons who have committed a particular offence in the course of the same commission.
3. The persons who are covered under the ambit of Section 219.
4. The persons who in the same course of the transaction have committed different offences.
5. 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.

6. The persons who have been accused of commission of offence 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.
7. The persons who have been accused of any offence under Chapter XII of the Indian Penal Code related to the counterfeit coins.

Alternative charges:

Section 221 Cr.P.C corresponding section 244 B.N.S.S 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.

Power of court to order separate trial in cases wherein joinder of charges or of offences 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.
- The provisions regarding the exceptions have only enabling nature, and it is at the discretion of the Courts whether or not to apply them to a particular case. In the case of **Ranchhod Lal Vs 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.

- The question regarding the misjoinder of charges and joint trial for distinct offences was answered by the Hon'ble Supreme Court in the case of **Union of India Vs 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.

Reasons for permitting joinder of charges:

Judicial efficiency: Trying multiple charges at once prevents the court, prosecution, and defence from having to conduct separate trials for each offense, which saves significant time.

Cost effective: It reduces the financial and time costs associated with multiple trials for the same individual.

Consistency: It avoids the repetition of the same evidence in multiple trials, which is a more efficient use of the court's resources and promotes a more consistent and efficient legal process.

Comprehensive examination: A single trial allows for a more comprehensive examination of all relevant facts when the offences are connected to a single transaction or a series of related acts.

Specific legal situations: It is particularly useful in cases where the evidence against one accused can be used to support the case against another accused in a joint trial.

The Court must ensure that joining the charges does not cause prejudice or harassment to the accused, if it does, the court has the discretion to order separate trials for certain charges.

Alteration of Charges:

A Court can alter or add charges at any time before a judgment is pronounced, a power granted under section 216 of the Code of Criminal Procedure. The altered or added charge must be read and

explained to the accused, and the Court will proceed with the trial unless it would cause prejudice to either the accused or the prosecutor. This power is exclusive to the Court and is meant to be exercised to reflect the evidence presented during the trial.

When the charges are framed and proceed with trial and during the trial, if it appears that charges framed is wrong, incomplete or needs some corroboration, the Court can alter or add charges to it. Sec.216 of Cr.P.C corresponding Sec.239 of B.N.S.S empowers the Court to alter or add any charge at any time before judgment is pronounced.

The altered charge must be read and explain to the accused. If the alteration causes prejudice to the accused, the court must allow a fresh trial or allow the accused to recall or re-examine witnesses to ensure justice and correct errors to prevent miscarriage of justice due to the technical mistakes in framing of charges.

Process for altering or adding charges:

Initiation: The Court can initiate this process on its own, but neither the prosecution nor the accused has a right to demand it through an application.

Notification: Any alteration or addition must be read out and explained to the accused.

Continuing the trial: If the charge does not prejudice the defence, the court can proceed as if the new charge was the original one. If the charge is significant, the court can either adjourn the trial or order a new trial to prevent prejudice.

New sanction: If a new charge requires a previous sanction for prosecution, the Court cannot proceed until that sanction is obtained.

Evidence-based: The power is used when the evidence presented during the trial warrants a change or addition to the original charges.

Judicial discretion: The decision is at the court's discretion and is not a routine procedure. It is exercised in appropriate cases where the evidence supports the change.

Prejudice: The primary concern is ensuring that the accused is not prejudiced by the change, safeguarding their right to a fair trial.

If the alteration or addition of the charge is of such that proceeding immediately with the trial is not like in the opinion of the Court, to produce accused in his defence or prosecution in conducting the case, the court may in its discretion, after such alteration or addition has been made, proceed with the trial as if alteration or adding charge has been originally charged.

Some of the judicial pronouncement explaining the consequences of alteration of charges:

- ➔ In **Jasvinder Saini Vs State (Govt. Of NCT of Delh) – (2013) 7 SCC 256** – Originally charges were framed U/Sec.304B, 498A of I.P.C. Later section 302 of I.P.C was added during trial. Accused contended that framing of new charge cause prejudice. The Court can add or alter charge any time but must ensure no prejudice, caused to the accused.
- ➔ In **Ranbir Yadav Vs State of Bihar – (1995) 4 SCC 392**, the Hon'ble Supreme Court held that after alteration or addition of charge, the interests of the prosecution and the accused have to be safeguarded by permitting them further examination or cross examination of witnesses already examined providing an opportunity for both prosecution as well as accused. The Court should exercise the power judiciously and exercise its discretion wisely without causing prejudice to the accused and ensuring right of fair trial.
- ➔ In **K.Prema Sagar Rao Vs Yedla Srinivasa Rao – (2003) 1 SCC 217** – Accused was charged U/Sec.304B, 498A of I.P.C, he was convicted U/Sec.306 of I.P.C. Accused contended that conviction U/Sec.306 of I.P.c was illegal as no such charge exists. The conviction without charge permitted if facts support the offence and no prejudice caused.

Difference between alteration of charges and joinder of charges:

1. Joinder of charge binds multiple charges for single trial
2. Alteration of charge modifies or adding of charge to the existing charge
3. Joinder of charges is very much before or after trial is commenced
4. Alteration of charge at any time before judgment
5. Joinder of charge is for convenience and efficient
6. Alteration of charge is for correct or adjusting charges basing on the basis of evidence.

Once the charges are framed, the trial is progressed, at any stage of the trial, the prosecution may withdraw the some of the charges with the permission of the Court and the charges cannot be deleted by the Court which frames the charge.

➔ In **Ratilal Bhanji Mithani Vs State of Maharastra – (1979) 2 SCC 179** wherein the Hon'ble Supreme Court held that Magistrate has no power under the Code of Criminal Procedure to delete the charges framed.

Errors in framing charges:

Errors in framing charges are not always fatal to a trial as sections 215 and 464 of the Cr.P.C state that such errors are considered material if they are caused a "failure of justice". This means the courts will not invalidate a trial solely because of an error, omission or irregularity unless it can be proved that the accused was mislead or that the error resulted in miscarriage of justice. If a failure of justice is found the appellant court can order a new trial or in rare cases squash the conviction if no valid charge could have been preferred.

Evaluation of errors:

1. The finding, sentence or order is not automatically invalid due to error in charge or even if no charge is framed.
2. An error is only considered material if it is proven that accused was misled by it or that it has resulted in failure of justice.
3. Failure of justice can occur if accused was prevented from adequately preparing their defence or creates prejudice against him

Omission of charges and misjoinder of charges also can be treated as an error if it results in miscarriage of justice.

Section 215 & 464 of Cr.P.C corresponding 238 & 510 of B.N.S.S states that while the omission of charge, he has been mis-lead and or there has been failure of justice as a result in such omission.

- ➔ In **Alister Anthony Pareira Vs State of Maharashtra – (2012) 2 SCC 648**, the Hon'ble Supreme Court held that the accused convicted for the offence U/Sec.304-II, 338, 337 of I.P.C. It was contended that omission of word "in a drunken condition" in the charge caused the grave prejudice to him. The Hon'ble Supreme Court held that omission of the word "in a drunken condition" in the charge is not material and such omission did not result in causing prejudice to the accused.
- ➔ In **Soundarajan Vs State rep. By the Inspector of Police, Vigilance Anticorruption Dindigul**, the Hon'ble Supreme Court held that demand of gratification on particular date was not mentioned in the charge, the omission in the charge with regard to demand of gratification is an error in framing of charges, but such omission did not cause prejudice to the accused, therefore, framing of charge was not considered as fatal.(accused was acquitted as prosecution failed to prove the demand and acceptance)
- ➔ In **Annareddy Sambasiva Reddy Vs State of Andhra Pradesh – (2009) 12 SCC 546** – Accused urged that Sec.149 of I.P.C common object was not explicitly charged. So conviction is illegal, omission of charge is not fatal unless prejudice caused.

➔ In **State of Bihar Vs Ramesh Singh – (1977)4 SCC 39** wherein the Hon'ble Supreme Court held that at this stage, the only suspicion is enough not full proof.

accused was charged U/Sec.302 of I.P.C, the trial Court discharged the accused stating that evidence was weak and conviction unlikely. There were no eye witnesses and evidence does not prove guilty.

What happens if an error is not material:

Trial validity: If an error is deemed non-material, it will not automatically invalidate the charge or the trial.

Proceeding with the trial: The court may allow the trial to continue as if the error did not occur.

Judicial discretion: The court has the discretion to proceed with the trial if it believes that a simple correction will not prejudice the accused or the prosecution.

Conclusion :-

The evolution of judicial interpretation from Willie Slaney to Kanti Bhadra Shah and Golconda Linga Swamy shows a consistent effort by the Courts to streamline the process of framing charges. The law now firmly recognizes that this stage requires only a tentative evaluation of material to ascertain the existence of a prima facie case or grave suspicion. Courts are not expected to give elaborate reasons, nor can they engage in meticulous scrutiny of evidence or entertain defence documents. Equally, procedural errors or omissions in charges do not vitiate the trial unless prejudice to the accused is clearly demonstrated. Thus, the frame work governing the framing of charges serves as a crucial mid point between safe guarding individual liberty and ensuring effective criminal administrative of justice.

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