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SESSION - I

CHARGE AND DISCHARGE

FRAMING OF CHARGES

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Framing of Charges

The accused who has to face the criminal tiral must be informed of the accusation against him. The purpose of framing a charge is to provide the accused with detailed information about the allegations against him. Framing of proper charge is one of the basic requirements of a fair trial. Charge is of great significance in a criminal trial as it helps not only helps the accused in knowing the accusation against him but also helps him in the preparation of his defence.

Bharatity Nagarik Suraksha Sanhita,2023 ('BNSS' for brevity) as well as Code of Criminal Procedure, 1973 ('CrPC' for brevity) do not give a detailed definition of charge. They merely state that charge includes any head of charge when the charge contains more heads than one.

In ***V. C. Shukla vs. State through CBI***[1], it was held by the Hon'ble Supreme Court of India that charge is an intimation of the accusation for which the accused person would face trial and be liable to defend themself.

The provisions regarding charge are contained in sections 211 to 224 and section 464 CrPC. The corresponding provisions in BNSS are respectively sections 234 to 241 and 510.

Object of framing charge

In a criminal trial the charge is the foundation of the accusation and every care must be taken to see that it is not only properly framed. At the initial stage of framing a charge the truth, veracity and effect of the evidence which the prosecution proposes to adduce are not to be considered meticulously.

1 1980 INSC 77

In ***Vinubhai Ranchhodbhai Patel vs. Rajubhai Dudabhai Patel***[2], the Hon'ble Supreme Court of India held that the accused is entitled in law to know with precision what is the law on which they are put to trial.

Charges are framed against the accused only when the Court finds that the accused is not entited to discharge under sections 250 or 262 or 268 CrPC.

In a sessions case the Judge shall frame a charge in writing against the accused when the Judge is of the opinion that there is ground for presuming that the accused has committed an offence as can be seen from section 252 BNSS. In warrant cases a charge shall be framed when a prima facie case has been made out against the accused as is evident from sections 263 and 269 of BNSS.

Contents of a charge

Section 234 BNSS which corresponds to section 211 CrPC states that the charge should enable the accused to know the offence with whiich he is charged, the law and section of law against which the offence is said to have been committed. Section 235 BNSS states that the particulars of time, date, place and person against whom the offence is said to have been committed should be mentioned.

Description of offence by name

Under section 234(2) of BNSS which corresponds to section 211(2) CrPC every charge framed should state the offence with which the acused is charged and if the law which creates the offence gives it a specific name, the offence should also be described in the charge by that name only. Section 234(4) states that the law and section of law against which the offence is said to have been committed shall be mentioned in the charge.

Language of the charge

The charge can only be in the language of the Court but it has to be explained to the accused in his own language before recording his plea.

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2 (2018) 7 SCC 743

Scope of section 235(2) BNSS

The normal rule is that there such be a separate charge for each distinct offence. In cases when the accused is charged with criminal breach of trust or dishonest misappropriation of money or other movable property, section 235(2) BNSS states that the charge can contain only the gross sum and the dates between which the same are alleged to have been committed, without specifying the particular items or exact dates thereof.

Separate charge for distinct offences

Section 241 BNSS lays down the general rule providing for a separte charge for every distinct offence and for separate trial for every such charge. The object is to give to the accused notice of the precise accusation and to afford him opportunity of defending himself properly.

Exceptions to the above rule

However sections 242, 243, 244, 245 and 245 carve out exceptions to this rule. The exceptions are:

(1) when the accused committed five offences of the same kind within a span of 12 months, he may be charged with and tried of such offences at one trial (section 242(1) BNSS);

(2) when more than one offence is committed by the same person in the same transaction, he may be charge with and tried at one trial, for every such offence (section 243 BNSS);

(3) when it is doubtful what offence has been committed then the accused may be charged with all or any of such offences or he may be charged alternativfely with having committed some of the said offences (section 244 BNSS);

(4) section 246 BNSS lays down that the following persons may be charged jointly and tried together:

(a) the persons accused of the same offence committed in the course of same transaction;

(b) persons accused of an offence and persons accused of abetment of or of an attempt to commit such offence;

(c) persons accused of more than one offence of the same kind within the meaning of section 242 BNSS committed by them jointly within the period of twelve months;

(d) persons accused of different offences in the same transaction;

(e) persons accused of theft, extortion or criminal misappropriation and persons accused of receiving or retaining or assisting in the disposal or concealment of property obtained in the commission of these offences;

(f) persons accused of receiving stolen property or assits in concealing or disposal of stolen property;

(g) persons accused of any offence relating to counterfeit coin or any other offfence under Chapter X of Bharatiya Nyaya Sanhita, 2023 relating to the same coin or of abetment or attempt to commit any such offence.

Section 246 BNSS apples when there is a doubt regarding which offence has been committed and in such a case, the Court has got a choice of charging for all the offences or only one of such offences.

Materials to be considered at the stage of framing of charge

The Hon'ble Supreme Court of India in ***State of Maharastra vs. Som Nath Thapa***[3], was pleased to hold if the Court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused had committed the offence. It was further held that at the stage of framing of charge the Court cannot look into the probative value of the materials on record.

In ***Union of India vs. Prafulla KumarSamal***[4], the Hon'ble Supreme Court of India observed that while considering the question of framing a charge, the Court has the undoubted power to sift and weigh the materials for the limited purpose for

3 (1996) 4 SCC 659

4 (1979) 3 SCC 4

finding out whether or not a prima facie case against the accused has been made out. In exercising the power the Court cannot act merely as a post office or a mouthpiece of the prosecution. It was observed further that the test to determine a prima facie case against the accused would naturally depend on the facts of each case and it is difficult to lay down the rule of universal application.

It was held that where the material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge and proceeding with the trial.

In ***Kanti Bhadra Shah vs. State of West Bengal***[5], the Hon'ble Supreme Court held that whenever the trial Court decides to frame charges, it is not necessary to record reasons or to do discuss evidence in detail.

In ***State of Andhra Pradesh vs. Golconda Linga Swamy***[6], the Hon'ble Supreme Court of India held that at the stage of framing of charge, evidence cannot be gone into meticulously. It was held that it is immaterial whether the case is based on direct or circumstantial evidence and a charge can be framed if there are materials showing possibility about commission of the offence by the accused as against certainty.

Principles governing framing of charge and discharge

The Hon'ble Supreme Court of India in ***Sajjan Kumar vs. CBI***[7], was pleased to lay down the following principles governing discharge and framing of charges:

> "17 On consideration of the authorities about the scope of section 227 and 228 of CrPC, the following principles emerge:-
>
> (i) The Judge while considering the question of framing the charges under section 227 of the CrPC 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. The test to determine prima facie case would depend upon the facts of each case.

5 (2000) 1 SCC 722
6 (2004) 6 SCC 522
7 (2010) 9 SCC 368

(ii) 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.

(iii) The Court 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 etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of sections 227 and 228 the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging there from taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

Error in framing charge

Section 238 BNSS which corresponds to section 215 CrPC states that omission in a charge cannot be regarded as material unless it is shown that by the accused that he has in fact been misled by such omission or that there has been failure of justice as result of such omission.

Section 510 BNSS corresponds to section 464 CrPC. It states that:

"**510. 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."

Sections 215 and 464 CrPC ensure that technicalities do not defeat justice. Both the sections lay that irregularity or error in framing a charge is not fatal unless the accused is able to show that prejudice is caused to him as result of such irregularity or omission.

The object of section 238 BNSS is to prevent failure of justice on account of irregularity in framing of charge.

Accused must show that he was prejudiced by omission or irregularity

A Constitution Bench of the Hon'ble Supreme Court of India in *Wille (William) Stanley vs. State of Madhya Pradesh*[8]considered the question whether omission to frame a charge or any error or irregularity in the charge, is by itself, is sufficient for quashing the conviction of the accused. After examining the issue in detail. Afte referring to sections 225, 232, 535 and 537 of the Code of Criminal Procedure, 1898 which are analogous to sections 225, 464 and 465 of Code of Criminal Procedure, 1973 it was held that:

8 AIR 1956 SC 116

"Now, as we have said, sections 225, 232, 535 and 537(a) between them, cover every conceivable type of error and irregularity referable to a charge that can possibly arise, ranging from cases in which there is a conviction with no charge at all from start to finish down to cases in which there is a charge but with errors, irregularities and omissions in it. The Code is emphatic that `whatever' the irregularity it is not to be regarded as fatal unless there is prejudice.

It is the substance that we must seek. Courts have to administer justice and justice includes the punishment of guilt just as much as the protection of innocence. Neither can be done if the shadow is mistaken for the substance and the goal is lost in a labyrinth of unsubstantial technicalities. Broad vision is required, a nice balancing of the rights of the State and the protection of society in general against protection from harassment to the individual and the risks of unjust conviction.

Every reasonable presumption must be made in favour of an accused person; he must be given the benefit of every reasonable doubt. The same broad principles of justice and fair play must be brought to bear when determining a matter of prejudice as in adjudging guilt. But when all is said and done what we are concerned to see is 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.

If all these elements are there and no prejudice is shown the conviction must stand whatever the irregularities whether traceable to the charge or to a want of one."

In ***Alister Anthony Pareira vs. State of Maharashtra***[9], the appellant was convicted of the offences punishable under sections 304 Part II, 338 and 337 of the Indian Penal Code ('IPC' for brevity). It was contended on behalf of the appellant that omission of the words "in drunken condition' caused grave prejudice to him and sought acquittal. The Hon'ble Supreme Court of India was pleased to hold that the omission of the words `in drunken condition' in the charge is not very material and, in any case, such omission has not at all resulted in prejudice to the appellant as he

9 (2012) 2 SCC 648

was fully aware of the prosecution evidence which consisted of drunken condition of the appellant at the time of incident.

Burden is on the accused to show failure of justice

In ***State of Uttar Pradesh vs. Paras Nathi Singh***[10], the Hon'ble Supreme Court of India after considering the language of section 464 CrPC held that the burden is on the accused to show that a failure of justice has been occasioned on account of error, omission or irregularity of the charge.

Conviction under section 302 r/w 149 IPC in the absence of specific charge under section 149 IPC

In ***Annareddy Sambasiva Reddy vs. State of Andhra Pradesh***[11], it was submitted on behalf of the accused that in the absence of a specific charge under section 149 IPC accused cannot be convicted under section 302 r/w 149 IPC as section 149 IPC creates a distinct and separate offence.

The Hon'ble Supreme Court of India rejected the said submission and held and held that mere non-framing of a charge under section 149 IPC on face of charges framed against appellant would not vitiate the conviction in the absence of any prejudice caused to them. By referring to section 464 Cr.P.C. it is held that mere defect in language, or in narration or in the form of charge would not render conviction unsustainable, provided the accused is not prejudiced thereby. It held that if ingredients of the section are obvious or implicit in the charge framed then conviction in regard thereto can be sustained, irrespective of the fact that said section has not been mentioned.

Duty of trial Court, Public Prosecutor while framing charges against the accused

In ***Soundarajan vs. State rep. By the Inspector of Police***[12], the Hon'ble Supreme Court of India dealt with a case in which the appellant was convicted of

10 2009 INSC 669
11 (2009) 12 SCC 546
12 2024 SCC OnLIne SC 424

the offences punishable under section 7 and section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act.

It was contended on behalf of the appellant that the learned trial Court omitted to frame specific charge on demand made by accused on two occasions and acceptance thereof and that because of this material defect in the charge and omission to frame a proper charge regarding demand allegedly made, grave prejudice has been caused to the appellant, who could not defend himself properly. While acquitting the accused of the offences, the Hon'ble Supreme Court of India held that

> "16. The trial Courts ought to be very meticulous when it comes to the framing of charges. In a given case, any such error or omission may lead to acquittal and/or a long delay in trial due to an order of remand which can be passed under subsection (2) of Section 464 of CrPC. Apart from the duty of the Trial Court, even the public prosecutor has a duty to be vigilant, and if a proper charge is not framed, it is his duty to apply to the Court to frame an appropriate charge."

In ***State of Andhra Pradesh vs. State of Andhra Pradesh***[13], the accused were charged with the offence punishable under section 148 IPC and though it was alleged that they were members of an unlawful assembly, it was not mentioned what the common object of such assembly was. It was also contended that the accused were convicted of the offence punishable under section 302 r/w 149 IPC despite the charge being framed for section 302 IPC simpliciter.

While repelling the contentions of the accused, the Hon'ble Supreme Court held that in judging a question of prejudice, as of guilt, the Court must act with a broad vision and look to the substance and not to the technicalities, and its 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 a full and fair chance to defend himself.

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13 (1998) 6 SCC 554

In ***K. Prema Sagar Rao vs. Yedla Srinivasa Rao***[14], the accused was convicted charged with offence punishable under section 304 – B IPC and in the alternative section 498 – A IPC. The accused was acquitted of the offence punishable under section 304 – B IPC but was convicted of the offence punishable under section 306 IPC. Rejecting the contention of the accused that he could not have been convicted of the offence punishable under section 306 IPC in the absence of any charge in respect of section 306 IPC, the Hon'ble Supreme Court held that the trial Court is not precluded from convicting the accused for the said offence when found proved.

It held that the provisions of sub – section (2) of section 221 read with sub – section 221 of the section can be taken aid of in convicting and convicting the accused of the offence of abetment of suicide under section 306 IPC along with or instead of section 498 – A IPC. It held that section 221 CrPC which deals with framing of charges when it is doubtful which offence has been committed take care of such situations and safeguard the powers of 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 for such offence.

If charge is framed against the accused for minor offence but he is convcited for major offence without addition or alteration of charge, it would amount to causing grave prejudice to the accused.

When can re-trial be ordered under section 464(2) CrPC?

The Hon'ble Supreme Court of India in ***Kammari Brahmiah and others vs. Public Prosecutor, High Court of Andhra Pradesh***[15], considered section 464 CrPC and held that if there is failure of justice occasioned by not framing of the charge or in case an error, omission or irregularity in charge re-trial of the case is to be directed as provided under sub-section (2).

Failure of justice

14 (2003) 1 SCC 217
15 (1999) 2 SCC 522

In ***Darbara Singh vs. State of Punjab***[16], the Hon'ble Supreme Court dealt with a case in which charges were framed against two of the accused under section 302 IPC and charge was framed against the third accused under section 302 r/w 34 IPC. The third accused was acquitted by the learned trial Court and the two accused were convicted of section 302 IPC. Repelling the contention that in the absence of charge under section 34 IPC the accused could not have been as the injury caused by one of the accused was not sufficient in the ordinary course of nature to cause death. It considerer the meaning of the phrase "failure of justice" appearing in sections 464, 465 CrPC and held that

> "15. The 'failure of justice' is an extremely pliable or facile expression, which can be made to fit into any situation in any case. The court must endeavour to find the truth. There would be 'failure of justice'; not only by unjust conviction, but also by acquittal of the guilty, as a result of unjust failure to produce requisite evidence. of course, the rights of the accused have to be kept in mind and also safeguarded, but they should not be over emphasized to the extent of forgetting that the victims also have rights. It has to be shown that the accused has suffered some disability or detriment in respect of the protections available to him under Indian Criminal Jurisprudence. 'Prejudice', is incapable of being interpreted in its generic sense and applied to criminal jurisprudence. The plea of prejudice has to be in relation to investigation or trial, and not with respect to matters falling outside their scope. Once the accused is able to show that there has been serious prejudice caused to him, with respect to either of these aspects, and that the same has defeated the rights available to him under jurisprudence, then the accused can seek benefit under the orders of the Court."

Conviction cannot be challenged unless there is failure of justice

In ***Baljinder Singh @ Ladoo vs. State of Punjab***[17], the Hon'ble Supreme Court while upholding the conviction of the appellants in a case where they were initially charged under section 302 r/w section 149 IPC but were convicted under Section 302 r/w Section 34 of IPC, held that the appellants were aware of the charges made against them and got a fair chance to defend themselves in the trial,

16 (2012) 10 SCC 476

17 2024 INSC 738

therefore it could not be said that failure of justice was caused to the appellants warranting overturning of conviction. It observed that:

> "Law is well-settled that in order to judge whether a failure of justice has been occasioned, it will be relevant to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself."

Conclusion

Framing of charge is not a mere empty formality. Every endeavour must be made in a criminal trial to ensure that appropriate charge is framed against the accused. Even though mere omission, error or irregularity in framing charges does not ipso facto vitiate trial, the accused should be made fully aware of the specific accusations against him in order to defend himself properly. Apart from safeguarding the interests of the accused, framing of proper charge also ensures that the intersts of the victims and the society at large are safeguarded and no guitly person goes unpunished only on account of error in framing the charge.

ALTERATION / AMENDMENT OF CHARGES – PRACTICE AND PROCEDURE

After framing of charges, if the Court comes across any new material in respect of an offence that the accused was not charged with earlier, the Court may alter or amend the charges. If there is omission in framing a charge, the Court can invoke its power to alter or amend the charge.

Section 239 of BNSS, 2023 states as follows

> "**239. 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 has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded."

Section 239 BNSS is analogous to section 216 CrPC.

Nature of power under section 216 CrPC

Section 216 CrPC confers jurisdiction on all Courts, to alter or add to any charge framed earlier, at any time before the judgment is pronounced. Sub-sections (2) to (5) lay down the procedure to be followed by a criminal Court after the charge has been added or altered.

The Hon'ble Supreme Court of India in ***Jasvinder Saini vs. State (Govt. of NCT of Delhi)***[18], was pleased to hold that the Court's power to alter or add any charge is unrestrained provided such addition or alteration is made before the judgment is pronounced.

Scope of section 216 CrPC

The Hon'ble Supreme Court of India delineated section 216 CrPC. It held that

> "15. Section 216 appears in Chapter XVII of the CrPC. Under the provisions of Section 216, the court is authorised to alter or add to the charge at any time before the judgment is pronounced. Whenever such an alteration or addition is made, it is to be read out and explained to the accused. The phrase "add to any charge" in sub-Section (1) includes addition of a new charge. The provision enables the alteration or addition of a charge based on materials brought on record during the course of trial. Section 216 provides that the addition or alteration has to be done "at any time before judgment is pronounced". Sub-section (3) provides that if the alteration or addition to a charge does not cause prejudice to the accused in his defence, or the persecutor in the conduct of the case, the court may proceed with the trial as if the additional or alternative charge is the original charge. Sub-Section (4) contemplates a situation where the addition or alteration of charge will prejudice the accused and empowers the court to either direct a new trial or adjourn the trial for such period as may be necessary to mitigate the prejudice likely to be caused to the accused. Section 217 of the CrPC deals with recalling of witnesses when the charge is altered or added by the court after commencement of the trial."

Test of prejudice to the accused to be kept in mind

In ***Anant Prakash Sinha @ Anant Sinha vs. State of Haryana***[19],it was held by the Hon'ble Supreme Court that It is obligatory on the part of the Court to see that no prejudice is caused to the accused and he is allowed to have a fair trial. There are in-built safeguards in Section 216 CrPC. It is the duty of the trial court to bear in mind that no prejudice is caused to the accused as that has the potentiality to affect a fair trial. Holding so, it dismissed the appeal.

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18 (2013) 7 SCC 256
19 (2016) 6 SCC 105

Application under section 216 CrPC is not maintainable against discharged accused

Under section 216 CrPC addition to and alteration of a charge or charges implies one or more existing charge or charges. In ***Sohan Lal vs. State of Rajasthan***[20], the Hon,ble Supreme Court of India held that the expression "add to any charge" means the addition of a new charge. It held that an alteration of a charge means changing or variation of an existing charge or making of a different charge. It held that when the appellants were discharged of all the charges and no charge existed against them, an application under section 216 CrPC was not maintainable in their case.

Application under section 216 CrPC not maintainable after framing of charges

In ***K. Ravi vs. State of Tamil Nadu***[21], the respondent No.2 filed application before the Sessions Court under section 227 CrPC seeking discharge. The said application came to be dismissed and charges were framed against the accused. After framing of charges, the respondent No.2 filed an application under section 216 CrPC stating that he was not present at the scene of offence at the time of offence which was also dismissed by the Sessions Court. The Hon'ble High Court in exercise of its revisional jurisdiction under section 397 CrPC set aside the order of the Sessions Court framing charges and order further investigation under section 173(8) CrPC.

Disapproving the Hon'ble High Court discharging the respondent No.2 from the charges levelled against him, though his earlier application seeking discharge was already dismissed by the Sessions Court and confirmed by the High Court which attained finality, the Hon'bel Supreme Court of India held that section 216 CrPC 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 CrPC has already been dismissed.

20 (1990) 4 SCC 580

21 2024 INSC 642

Alteration or addition of charges can only be based on material on record

The circumstances in which power under section 216 CrPC can be exercised are not mentioned in section 216 CrPC. In ***CBI vs. Karimullah Osan Khan***[22] the Hon'ble Supreme Court of India was pleased to hold that the Courts can exercise the power of addition or modification of charges under Section 216 CrPC, only when there exists some material before the Court, which has some connection or link with the charges sought to be amended, added or modified. It held that alteration or addition of a charge must be for an offence made out by the evidence recorded during the course of trial before the Court.

In the absence of any material showing the ingredients of new offence, the charge cannot be altered.

Alteration or addition of charges is the discretion of the Court

In ***P. Kartikalakshmi vs. Sri Ganesh***[23], the Hon'ble Supreme Court after considering section 216 CrPC concluded that the power of invocation of section 216 CrPC is exclusively confined with the Court as an enabling provision for the purpose of alteration or addition of any charge at any time before pronouncement of the judgment. It emphatically held that no party, neither de facto complainant nor the accused or for that matter the prosecution has any vested right to seek any addition or alteration of charge, because it is not provided under section 216 CrPC. It observed that if such a course to be adopted by the parties is allowed, then it will be well nigh impossible for the Criminal Court to conclude its proceedings and the concept of speedy trial will get jeopardized.

Prosecution is not permitted if previous sanction is necessary for new offence

In ***Food Inspector, Ernakulam v. P.S. Sreenivasa Shenoy***[24], the Hon'ble Supreme Court of India held that

> "26. What is intended is that a prosecution, which requires previous sanction, cannot be started without such sanction even by way of amending the charge

22 (2014) 11 SCC 538
23 (2017) 3 SCC 347
24 (2000) 6 SCC 348

midway the trial. If the amended charge includes a new offence for which previous sanction is necessary then prosecution for such new offence cannot be started without such sanction. However, the second limb of the sub-section makes it clear that if sanction was already obtained for prosecution on the same facts as those on which the new or altered charge is founded then no fresh sanction is necessary.'

Alteration or addition of changes at appellate stage

In ***Kantilal Chandulal Mehta vs. State of Maharashtra and another***[25], the Hon'ble Supreme Court examined scheme of CrPC and held that

"In our view the Criminal Procedure Code gives ample power to the Courts to alter or amend a charge whether by the trial court or by the appellate court provided that the accused has not to face a charge for a new offence or is not prejudiced either by keeping him in the dark about that charge or in not giving a full opportunity of meeting it and putting forward any defence open to him, on the charge finally preferred against him."

Altered charges should be brought to the notice of the accused

In ***Sabbi Mallesu vs. State of Andhra Pradesh***[26], the Hon'ble Supreme Court of Inda held that though the Court has the undisputed power to alter the charge, it is obligatory on its part to bring to the notice of the accused and explain it to him.

Charge cannot be deleted in exercise of power under section 216 CrPC

Section 239 BNSS only provides for alteration or addition of charge. It does not provide for deletion of charges. Deletion of charge is impermissible. Hence once a charge is framed, it must either result in acquittal or conviction of the accused.

25 (1969) 3 SCC 166
26 (2006) 10 SCC 543

In ***Ratilal Bhanji Mithani vs. State of Maharastra***[27], the Hon'ble Supreme Court of India held that the Magistrate had under the Code of Criminal Procedure has no power to delete the charges framed.

Procedure after alteration of charges

In ***Umesh Kumar vs. State of Andhra*** Pradesh[28] the Hon'ble Supreme Court held that under section 216 CrPC charges can be added or amended at any stage of the trial, before the pronouncement of judgment to suit the evidence adduced before the Court In case charges are framed the accused has to face the trial, charges can be added/altered at any stage of the trial, before the pronouncement of the judgment to suit the evidence adduced before the Court, the only requirement is that the witness has to be recalled as provided under section 217 CrPC when a charge is altered or added by the Court.

Section 240 BNSS which is analogous to section 217 CrPC reads as follows:

"**240. 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."

If the alteration or addition of charge will cause prejudice to the prosecution or the accused to proceed with the trial immediately, then the trial Court can direct a new trial or grant an adjournment for such sufficient period of time as it deems fit. However, if such alteration or addition of charge, in the opinion of the trial Court, would not cause any prejudice either to the prosecution or to the accused, the trial Court shall proceed with the trial as if such altered charge was originally framed.

27 (1979) 2 SCC 179
28 (2013) 10 SCC 591

In ***Madhusudan vs. State of Madhya Pradesh***[29], 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. It was further held that in case, charges are altered by the Court, reasons for the same must be recorded in the judgment.

In ***Ranbir Yadav vs. State of Bihar***[30], the Hon'ble Supreme Court of India was pleased to hold that after an alteration or addition of the charge, the interests of the prosecution and the accused have to be safeguarded by permitting them to further examine or cross – examine witnesses already examined, as the case may be, and also affording them an opportunity of calling further witnesses.

Conclusion

The Courts are empowered to alter or add charges in order to ensure that the accused person is not prejudiced and his right to fair trial is not hampered. The Court should exercise its power judiciously and exercise its discretion wisely.

29 2024 LiveLaw (SC) 418
30 (1995) 4 SCC 392

DISCHARGE OF ACCUSED

The purpose of framing charge is to ensue that the Court should be satisfied that the allegations made against the accused are not frivolous and that there is some material for proceeding against the accused person.

A Court may refuse to proceed against the accused in the absence of prima facie casse against him and discharge him. Refusing to proceed further after issue of process is discharge. The intention of the legislature in enacting provisions for discharge of accused prior to facing trial is to prevent innocent persons from harassment by unscrupulous persons by filing frivolous cases.

Discharge by Court of Session

Section 250 of Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS' for brevity) provides for discharge in sessions cases. It reads as follows:

> "**250.Discharge**
>
> (1) The accused may prefer an application for discharge within a period of sixty days from the date of commitment of the case under section 232 (BNSS).
>
> (2) 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 doing so."

Section 227 of Code of Criminal Procedure ('CrPC' for brevity) contemplates discharge by the Court of Session. The trial Judge is required to discharge the accused if the Judge considers that there is no sufficient ground for proceeding against the accused.

Section 250(2) BNSS corresponds to section 227 CrPC. Section 250(1) BNSS stipulates a time limit of 60 days from the date of committal of the case within which an application for discharge should be filed by the accused.

Discharge in warrant cases instituted upon police report

Section 262 BNSS provides for discharge in warrant cases. It states that:

"**262. When accused shall be discharged**

(1) The accused may prefer an application for discharge within a period of sixty days from the date of supply of copies of documents under section 230.

(2) If, upon considering the police report and the documents sent with it under section 193 and making such examination, if any, of the accused, either physically or through audio – video electronic means, 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."

Section 239 CrPC provides for discharge of accused in warrant cases instituted upon a police report. The power under section 239 Cr.P.C. is exercisable when Magistrate considers the charge against the accused to be groundless.

Section 262(2) BNSS is similar to section 239 CrPC but section 262 BNSS provides an opportunity to the learned Magistrate to examine the accused either physically or through audio – video electronic means.

Section 262(1) BNSS stipulates a time limit of 60 days from the date of supply of documents under section 230 BNSS within which an application should for discharge should be filed by the accused.

Discharge in warrant cases instituted otherwise than on a police report

Section 268 of BNSS provides for discharge in warrant cases instituted otherwise than on a police report. It states that:

"**268. When accused shall be discharged**

(1) If, upon taking all the evidence referred to in section 267, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted would warrant his conviction, the Magistrate shall discharge him.

> (2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless."

Section 245 Cr.P.C. deals with warrant cases instituted otherwise than on a police report. Section 245 CrPC corresponds t.o section 268 of BNSS. The power under section 245 (1) Cr.P.C. is exercisable when the Magistrate considers that no case against the accused has been made out which, if unrebutted would warrant his conviction. The Magistrate has the power of discharging the accused at any previous stage of the case under section 245 (2) Cr.P.C.

Sections 227 and 239 Cr.P.C. provide for discharge before the recording of evidence on the basis of the police report, the documents sent along with it and examination of the accused after giving an opportunity to the parties to be heard. But the stage of discharge under section 245 Cr.P.C., on the other hand, is reached only after the evidence referred in section 244 is taken.

Despite the difference in the language of the provisions of sections 227, 239 and 245 Cr.P.C. and whichever provision may be applicable, the Court is required to see, at the time of framing of charge, that there is a prima facie case for proceeding against the accused. The main intention of granting a chance to the accused of making submissions as envisaged under sections 227 or 239 of Cr.P.C. is to assist the Court to determine whether it is required to proceed to conduct the trial.

Scope of enquiry under section 227 Cr.P.C.

In ***Union of India vs. Prafulla Kumar Samal and others***[31], the Hon'ble Supreme Court of India, while affirming the order of the High Court of Orissa upholding the order of discharge passed by the learned Sessions Court, was pleased to hold that the words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the

31 (1979) 3 SCC 4

prosecution. It enunciated the following principles to be kept in mine while considering an application filed under section 227 Cr.P.C.:

> (1) The Judge while considering the question of framing of charges under section 227 of Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out wheter 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 naturally difficult to lay down a rule of universal application. By and large, however, if two views are 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) In exercising the jurisdiction under section 227 of the Code, the Judge which under the present Code is a senior and experienced officer cannot act merely as a post office or mouthpiece of the prosecution, but has the power 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 the weigh the evidence as if he was conducting a trial.

The above principles were profitably referred by the Hon'ble Supreme Court of India in a catena of decisions including ***P. Vijayan vs. State of Kerala***[32], ***State of Tamil Nadu through Inspector of Police vs. N. Suresh Rajan***[33], ***Sheoraj Singh Ahlawat and others vs. State of Uttar Pradesh and another***[34].

In ***State of Rajasthan vs. Ashok Kumar Kashyap***[35],while setting aside an order of discharge, the Hon'ble Supreme Court of India was pleased to hold that at the stage of section 227 Cr.P.C., the Judge has to merely sift evidence in order to find out whether or not there is sufficient ground for proceeding against the

32 (2010) 2 SCC 709
33 (2014) 11 SCC 709
34 (2013) 11 SCC 476
35 (2021) 11 SCC 191

accused. It was held that while exercising judicial mind to facts of the case in order to determine whether case for trial has been made out by prosecution, it is not necessary for Court to enter into pros and cons of matter or into weighing and balancing of evidence and probabilities which is really function of Court, after trial starts.

Nature of inquiry while considering application under section 227 CrPC

The Hon'ble Supreme Court of India in ***Kanchan Kumar vs. State of Bihar***[36], was pleased to hold that a simple and necessary inquiry should be conducted for a proper adjudication of an application for discharge for coming to a conclusion that a prima facie case is made out for the accused to stand trial. It held that the threshold of scrutiny required to adjudicate an application under Section 227 CrPC is to consider the broad probabilities of the case and the total effect of the material on record, including examination of any infirmities appearing in the case.

Principles governing discharge

The accused is entitled for discharge if he is able to demonstrate that even after considering the prosecution material, there is no use at all in proceeding with such case. An order of discharge can only be passed if sufficient grounds do not exist for proceeding against the him on a general consideration of the materials placed before it by the investigating agency. The Court has to consider while ordering discharge of accused, whether the evidentiary material on record, if generally accepted, would reasonably connect the accused with the crime. If trial would be an exercise in futility, it should be brought to a quick end.

At the time of considering an application for discharge, the Court is required to consider to the limited extent to find out whether there is prima facie evidence against the accused to believe that he has committed any offence as alleged by the prosecution; if prima facie evidence is available against the accused then there cannot be an order of discharge.

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36 (2022) 9 SCC 577

The accused would be entitled for discharge if evidence (i.e., statements by police or documents concerned), which prosecution proposes to adduce to prove the guilt of accused, even if fully accepted before it is challenged in cross–examination or rebutted by defence evidence, cannot show that the accused committed the offence. However, the defence of the accused cannot be looked into at the stage of discharge. The accused has no right to produce any document at that stage. The application for discharge has to be considered on the premise that the materials brought on record by the prosecution are true.

In ***State of Tamil Nadu v N Suresh Rajan***[37], it was observed by the Hon'ble Supreme Court of India that notwithstanding the difference in language of sections 227 and 239 CrPC, the approach of the Court concerned is to be common under both provisions.

Hearing submission of accused

The accused has to be heard on the basis of the record filed by the prosecution and documents submitted therewith, but it cannot mean opportunity to file documents should be granted to the accused.

In ***Asim Shariff vs. National Investigation Agency***[38], the Hon'ble Supreme Court of India held that It is expected from the trial Judge to exercise his judicial mind to determine as to whether a case for trial has been made out or not. The Court is not expected to hold a mini trial by marshalling the evidence on record,

Record of the case

The expression "record of the case" used in section 227 CrPC was considered by the Hon'ble Supreme Court of India in ***M.E. Shivalingamurthy vs. Central Bureau of Investigation***[39], is to be understood as the documents and the articles, if any, produced by the prosecution

37 (2014) 11 SCC 709
38 (2019) 7 SCC 148
39 (2020) 2 SCC 768

In ***State of Orissa vs. Debendra Nath Padhi***[40], the Hon'ble Supreme Court held that the expression 'record of the case' means material produced by prosecution alone that is required to be considered by the Court and not the material produced by the accused. Right of accused to seek discharge by filing unimpeachable and unsustainable material of sterling quality and invocation of Article 21 of the Constitution of India, is a misplaced process. At the stage of framing charge, defence of accused could not be put forth and therefore, hearing the submission of the accused has to be confined to the materials produced by the police. The accused has no right to seek an order under section 91 of the Code would ordinarily not arise till the stage of defence.

Recording of reasons

In case of discharge of accused, the use of expression "reasons" has been inserted in sections 227, 239 and 245 of Cr.P.C. This shows that it is imperative to record reasons in an order for discharge.

The Hon'ble High Court of Andhra Pradesh in ***Penumatcha Lakshmi Narayanaraju vs Padala Chellareddy and others***[41]was pleased to hold that it necessary for a Magistrate to give reasons for discharging the accused.

In ***State of Karnataka vs. L. Muniswamy***[42], held that the trial Court should assign reasons for an order passed in an application filed under section 227 Cr.P.C. to enable the superior Courts to examine the correctness of the reasons for which the Sessions Judge has held that there is no sufficient ground for proceeding against the accused. If the trial Court decides to frame a charge there is no legal requirement that it should pass an order specifying the reasons as to why he opts to do so.

The recording of reasons while discharging an accused was re-emphasised by the Hon'ble Supreme Court of India in ***Kanti Bhadra Shah vs. State of West***

40 (2005) 1 SCC 568
41 AIR 1961 AP 117
42 AIR 1977 SC 1489

Bengal[43]. It held that ff the Magistrate considers that there are grounds to discharge the accused he must record the reasons for doing so.

It is only when the Sessions Judge decides to discharge the accused under section 227 CrPC that he has to assign the reasons and not when he decides to frame the charge under section 228 CrPC as held by the Hon'ble Supreme Court of India in ***Smt. Om Wati vs. State, through Delhi Admn***[44].

Sufficient ground for proceeding and not sufficient ground for conviction

The Court of Sessions or the Magistrate has to consider the the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge or the Magistrate has thereafter to pass an order either of discharge or frame charges against the accused. If the Court finds that there is no sufficient ground for proceeding against the accused or that the charge against the accused is groundless, it shall discharge the accused and record it reasons for doing so as required by the Code. If on the other hand, the Judge is of the opinion that there is ground for presuming that the accused has committed an offence, he shall frame the charge in writing against the accused. Therefore, at the time of framing of charge, the Court is not required to meticulously judge the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce at the trial. It is not obligatory for the Court at that stage to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. At that stage, the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. If there is a strong suspicion which leads the Court to think that there is a ground for presuming that the accused has committed an offence, then it will not be open for the Court to say that there were no sufficient grounds for proceeding against the accused. Appreciation of evidence meticulously at this stage is impermissible.

43 (2000) 1 SCC 522
44 (2001) 4 SCC 333

The Hon'ble Supreme Court of India in ***State of Bihar vs. Ramesh Singh***[45] was pleased to hold that if the scales as to the guilt or innocence of the accused are even at the conclusion of the trial, then on the theory of benefit of doubt, the case must end in the acquittal of the accused; but if on the other hand, the scales are even at the initial stage of making an order under Section 227 or Section 228 of the Code, then in such a situation, ordinarily and generally, the order will have to be made under Section 228 and not under Section 227 of the Code. The test is whether there is sufficient ground for proceeding and not whether there are sufficient grounds for conviction.

The Hon'ble Supreme Court of India in ***Dipakbhai Jagdhishchandra Patel vs. State of Gujarat***[46] was pleased to hold that:

> "21. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting of material before the Court is not to be meticulous in the sense that Court dons the mantle of the trial Judge hearing arguments after the entire evidence has been adduced after a full fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with the materials available, a case is made our for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material."

In ***Manjit Singh Virdi vs. Husaain Mohammed Shattaf***[47]***, (2023) 7 SCC 633.***Truthfulness, sufficiency and acceptability of the material produced can only be considered at the stage of trial.

Defence of accused cannot be considered in discharge application

The Hon'ble Supreme Court of India in S***tate of Gujarat vs. Dilipsinh Kishorsinh Rao***[48], held that at the time of framing of charge, the accused has no

45 (1977) 4 SCC 39
46 (2009) 16 SCC 547
47 (2023) 7 SCC 633
48 2023 INSC 894

right to produce any material or call upon the Court to examine the same. Elucidating the principles to consider an application for discharge, it held that

> 10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged.
>
> 11. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression "the record of the case" used in Section 227 Cr. P.C. is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency.

The Hon'ble Supreme Court of India in ***Rajnish Kumar Biswakarma vs. State of NCT of Delhi and another***[49], the Hon'ble Supreme Court of India held that the trial Court cannot consider any document which is not part of the charge-sheet. It disapproved the Hon'ble High Court directing the learned trial Court to consider documents which are not part of charge-sheet at the time of framing of charge.

Invalidity of sanction not be considered in application for discharge

In ***Central Bureau of Investigation vs. Mrs. Pramila Virendra Kumar Agarwal***[50], the Hon'ble Supreme Court of India that though the absence of sanction can be agitated during stage of discharge application, but the issue of invalidity of the sanction is to be raised during the trial. An appeal was filed by CBI challenging the order of the Hon'ble High Court confirming the order of discharge passed by the learned trial Court in respect of offence punishable under sections 13(1)(e) read with section 13(2) of the Prevention of Corruption Act, 1988. the Hon'ble Supreme Court allowed the appeal and held that that though the absence of sanction can be

49 2024 LiveLaw (SC) 937
50 (2020) 17 SCC 664

agitated during stage of discharge application, but the issue of invalidity of the sanction is to be raised during the trial.

Once charge is framed, there can be no discharge:

In ***Bharat Parikh vs. CBI***[51], the Hon'ble Supreme Court of India held that One important position that should be kept in mind is that once the charge is framed under section 228 Cr.P.C. or other provisions relating to criminal trial, the Court has no power to go back for any reason and cancel or drop the charge and discharge the accused.

Similarly in ***Ratilal Bhanji Mithani vs. State of Maharastra***[52], it was held that once a charge is framed, a Magistrate has no power to discharge the accused.

When can accused be discharged:

In ***T. V. Sharma vs. R. Meeraiah and others***[53], the Hon'ble High Court of Andhra Pradesh was pleased to hold that the language of section 227 Cr.P.C. is wide enough to include any ground which the Sessions Judge considers sufficient for not proceeding against the accused. The ground may be that the evidence produced is not sufficient to warrant the Sessions Judge to proceed against the accused, or it may be that there is no legal ground for proceeding against the accused even on the facts placed before the Judge. Thus, if therefore, the Sessions Judge finds that the accused cannot be proceeded against as no sanction has been obtained or that the prosecution is clearly barred by limitation, or that he is precluded from doing so because of a prior judgment of the High Court, the Sessions Judge is not justified in discharging the accused but is bound to do so.

Inconsistencies in prosecution case cannot be considered at the stage of framing of charge

In ***Ghulam Hassan Beigh Vs Mohammad Maqbool Magrey***[54]*, t*he Hon'ble Supreme Court of India was unimpressed by order of the trial Court discharging the

51 (2008) 10 SCC 109
52 (1979) 2 SCC 179
53 AIR 1980 AP 219
54 2022 SCC OnLIne SC 913

accused of the offence punishable under section 302 I.P.C. based on post mortem examination report. The Hon'ble Supreme Court held that the prosecution should have been given opportunity to prove the relevant facts including post mortem report during through the medical officer concerned by leading oral evidence and thereby seek the opinion of the expert. It is too early on the part of the trial court as well as the High Court to arrive at the conclusion that since no injuries were noted in the post mortem report, the death of the deceased on account of cardio-respiratory failure cannot said to be having any nexus with the incident in question.

In ***Bihari Lal vs. State of Rajasthan***[55], the Hon'ble Supreme Court of India was pleased to set aside the order of discharge passed by trial Court and affirmed by the Hon'ble High Court. The Hon'ble Supreme Court of India was pleased to hold that the stage to appreciate the evidence with a view to find fault or/and inconsistencies in the medical reports would arise only when the prosecution leads evidence by examining the doctors in support of the medical reports and not at the state of framing a charge.

The Hon'ble Supreme Court of India in ***State of Rajasthan vs. Ashok Kumar Kashyap***[56] held that a mini tria is not permissible at the time of considering the discharge application. It was held that defeence on merits is not to be considered at the stage of framing of charge and/or at the stage of discharge application.

In ***Sanikommu Vijay Bhaskar Reddy vs. State of Andhra Pradesh***[57], the Hon'ble High Court of Andhra Pradesh was pleased to hold that the plea of alibit taken by the accused is a matter relating to a question of fact as to whether the accused was present at the scene of the offence at the time of offence or not. It held that the disputed questions of fact required evidence and appreciation of the same in final adjudication of case and the ground that the accused was somewhere else could not be a ground to discharge him from the said case.

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55 AIR 2019 SC 1995
56 (2021) 11 SCC 191
57 2022 LiveLaw (AP) 71

Distinction between discharge under section 245 (1) and 245 (2) CrPC

The Hon'ble Supreme Court of India in ***Ajay Kumar Ghose vs. State of Jharkhand***[58], was pleased to explain in detail the difference between procedure in the trial of warrant case on the basis of a police report and that instituted otherwise than on the police report, particularly sections 238 and 239 CrPC on one side and sections 244 and 245 CrPC, on the other.

It was held that in a warrant case, instituted on a police report, if, on examination of documents, the Magistrate comes to the prima facie conclusion that there is a ground for proceeding with the trial, he proceeds to frame the charge. For framing the charge, he does not have to pass a separate order.

It was held that In a warrant trial instituted otherwise than on a police report, the Magistrate has to hear the prosecution and take all such evidence, as may be produced under section 244 CrPC All this evidence is evidence before charge. It is after all this, evidence is taken, then the Magistrate has to consider under section 245 (1) CrPC whether any case against the accused is made out, which, if unrebutted, would warrant his conviction, and if the Magistrate comes to the conclusion that there is no such case made out against the accused, the Magistrate proceeds to discharge him. It was explained that the complainant then gets the second opportunity to lead evidence in support of the charge unlike a warrant trial on police report, where there is only one opportunity. In the warrant trial instituted otherwise than the police report, the complainant gets two opportunities to lead evidence, firstly, before the charge is framed and secondly, after the charge and a Magistrate can discharge the accused at any previous stage of the case under section 245 (2) CrPC, if he finds the charge to be groundless.

Explaining the difference between sections 245 (1) and 245 (2) CrPC the Hon'ble Supreme Court of India was pleased to hold that the Magistrate has to consider whether if the evidence led by the prosecution before him under section 244 remains unrebutted, the conviction of the accused would be warranted. If there

58 (2009) 14 SCC 115

is no discernible incriminating material in the evidence, then the Magistrate proceeds to discharge the accused under section 245(1) CrPC

It explained that under sub-section (2) of section 245 CrPC, the Magistrate has the power of discharging the accused at any previous stage of the case, i.e., even before such evidence is led. There is no question of any consideration of evidence at that stage, because there is none. The Magistrate can take this decision before the accused appears or is brought before the Court or the evidence is led under Section 244 CrPC.

An accused added under section 319 CrPC cannot seek discharge

The Hon'ble Supreme Court of India in ***Jogendra Yadav vs. State of Bihar***[59]***,*** was pleased to interpret and distinguish sections 227 and 319 CrPC. It was held that the standard of proof for summoning a person as an accused under section 319 CrPC is higher than the standard of proof employed for framing a charge against an accused. A person who is summoned as an accused to stand trial and added as such to the proceedings on the basis of a stricter standard of proof cannot be allowed to be discharged from the proceedings on the basis of lesser standard of proof such as prima facie connection with the offence necessary for charging the accused.

The Hon'ble Supreme Court of India was pleased to hold that a person who is added as an accused under section 319 CrPC ought not to be given an opportunity to avail the remedy of discharge under section 227 CrPC

Difference between order of discharge and framing of charge

A conjoint reading of sections 227 and 228 CrPC, sections 239 and 240 CrPC and sections 245 and 246 CrPC goes to show that while the Court has to pass a reasoned order of discharge after considering the material on record, at the time of framing of charge, the Court is only to form an opinion to presume that the accused has committed the offence.

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59 (2015) 9 SCC 244

Difference between discharge and acquittal

Discharge of an accused and his acquittal after trial are entirely different. An accused is discharged where there is no prima facie case made out against him even before he has entered his defence and prior to framing of charge. An acquittal takes place when accused has been called upon to enter his defence and a charge has been framed against him and only after completion of trial.

A person who is discharged may again be charged with the same offence, if other material is discovered subsequently. A person who is acquiited of an offence cannot be put on trial again for the offence of which he has been acquitted.

Revision lies against discharge order

In ***Municipal Corporation of Delhi vs. Girdharilal Sapuru***[60]***,*** it was held that an order of discharge terminates the proceedings and therefore it is revisable order under section 397 (1) CrPC.

In ***Sanjay Kumar Rai vs. State of Uttar Pradesh***[61], the Hon'ble Supreme Court of India by placing referring to ***Madhu Limaye vs. State of Maharastra***[62],held that orders framing charges or refusing discharge are neither interlocutory nor final in nature and are therefore not affected by the bar of Section 397 (2) of the Code of Criminal Procedure.

Whether accused can be discharged in a summons cases

In ***Subramanium Sethuraman v. State of Maharashtra***[63], a three Judge Bench of the Hon'ble Supreme Court of India was pleased to hold that a summons case which is covered by Chapter XX CrPC which does not contemplate a stage of discharge like section 239 which provides for a discharge in a warrant case. It was held that the High Court was correct in coming to the conclusion that once the plea of the accused is recorded under Section 252 of the Code the procedure

60 (1981) 2 SCC 758
61 AIR 2021 SC 2351
62 (1977) 4 SCC 551
63 (2014) 13 SCC 324

contemplated under Chapter XX has to be followed which is to take the trial to its logical conclusion. The remedy under section 482 CrPC with the High court would still be available to the accused.

Whether time limit prescribed in BNSS is mandatory

Section 250(1) BNSS prescribes time period of 60 days from the date of committal of the case for filing application for discharge by the accused in sessions cases. Section 262(1) BNSS also prescribes a time period of 60 days from the date of supply of copies of documents under section 230 for filing discharge in warrant cases instituted on a police report.

In ***Sajith vs. State of Kerala***[64], the Hon'ble High Court of Kerala considered section 250 BNSS. It held that the use of word 'may' used in section 250(1) BNSS and it is meant to be discretionary unlike in cases where the 'shall' is used. It held that it is for this reason that no separate provision is provided under which the Court can extend the time line provided in section 250(1) BNSS. It was held that the Court can consider an application for discharge even after expiry of sixty days since the time limit is not mandatory and is only directory.

Conclusion

The provisions of discharge are enacted to ensure that no person has to face the ordeal of a criminal trial without there being a prima facie case against him. These provisions ensure that no person is falsely implicated in any case.

64 2024 LiveLaw (Ker) 585