CRIMINAL LAW – PRACTICE AND PROCEDURE

a) Framing of charges – Impact of non framing of charges in Criminal Trial
b) Alteration / Amendment of charges – Practice & Procedure.
c) Discharge

by

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I. Framing of Charges – Impact of Non Framing of Charges in Criminal Trial:

Procedural laws are ground rules for an otherwise elusive concept of justice. While all the noble talk about natural, human and constitutional rights may sound distant and even academic, procedure is the structure that translates those policies into actual practice. Charge framing, being part of the criminal procedural justice system has to be viewed in this perspective. May be, it is a routine exercise in a criminal trial to frame a charge but that routine has the sanctity of a time-seasoned jurisprudential concept behind it that "no man shall be condemned unheard" and that "no man shall be prejudiced in his defence". The act of charge framing on the part of the judge or the Magistrate must, therefore, be performed with the seriousness of effort that it richly deserves and one must avoid the pitfall of routinising it, for routinising leads to trivialising and trivialising to an ultimate fossilisation. Indian justice, may be a transplanted law culture of Anglo-Saxon moorings, but it is most certainly no fossil. Lawmen beware.

It is the fundamental principle of criminal law that the accused should be informed with certainty and accuracy the exact nature of charge brought against him. Otherwise he may be seriously prejudiced in his defence It is therefore, imperative that before a person is convicted of any offence, he should (subject to certain exceptions) be normally charged with having committed the offence specified and be given an opportunity to defend himself against such charge**.** He can be convicted only on proof of the particular offences so specified and not for offences not so specified

During the conduct of the trial, framing of a charge is an important function of the court. The purpose of framing of a charge is to put the accused at notice regarding the offence for which he is being tried before the court of competent jurisdiction. For want of requisite information of the offence and details thereof, the

accused should not suffer prejudice or there should not be failure of justice The purpose of framing of charge is to give intimation to accused of clear, unambiguous and precise notice of nature of accusation that he is called upon to meet in course of trial.

The object of framing charge is to inform the accused and to give him an idea as to what case he has to meet. The purport of framing charge, to read over and explain to the accused, is to provide an opportunity to the accused to meet the prosecution case. As it was not done, it occasioned a serious prejudice to the accused, which made the judgment of conviction recorded by the trial court unsustainable as per the judgment in a case between ***Arun Wahane Vs State of Maharashtra, (2011 Cri LJ 2220, 2222 (Bom)).***

Primarily it is the duty of the court to frame proper charge, but the Public Prosecutor appearing in the court before the commencement of the trial should see that proper charge (s) has been framed and request the court to amend the charge (s) framed in the court if found necessary as discussed in a case between ***Prakash Ashroba Ghule Vs State of Maharashtra, (2008 Cri LJ (NOC) 932):***

Before a charge is framed, the Magistrate of a trial judge must not only peruse the first information report, but also the statements of the witness recorded under section 161, Criminal Procedure Code (Cr.P.C), 1973 and the case diary and if upon consideration of all this material, he comes to a conclusion that a prima facie case is made out against the accused, he may charge the accused person. At the time of framing of charge what is required is that trial court on a careful consideration of the allegations contained in the complaint should be satisfied that prima facie ingredients of the offence alleged in the complaint are made out. At the stage of framing of charges, court should not undertake detailed analysis and evaluation of material as per the judgment in a case between ***State Vs Bangarappa, ((2001) I SCC 369).***

The trial court cannot swayed merely by the story of the prosecution, while dealing with the issue of framing of the charge. At the time of framing of the charge, the trial judge has to examine even the exculpatory statements, copies of which were given to the accused Under Section 208 Cr.P.C. Throughout the criminal proceeding the judge cannot act either as a spokesman for the prosecution, or as a post office for the prosecution. Being an impartial umpire, he is legally bound to equally weigh both the sides after examining the complete record of the case. Therefore, while framing the charge he must consider the exculpatory statements which were supplied to the accused and form part of the record of the case.

Sections 211 to 213 Cr.P.C., deal with the contents and form of a charge and specify the particulars that should be stated in every charge. The object of such statement is to enable the accused person to know the substantive charge, he will have to meet and to be ready for it before the evidence is given. Every charge must contain the following particulars:

1. A statement of the offence with which the accused is charged
2. A statement of the law and the section of the law against which the offence is said to have been committed
3. Particulars as to time and place of the alleged offence and the person against whom or the thing in respect of which it was committed
4. Particulars of the manner in which the alleged offence was committed. This is, however, necessary only where the particulars mentioned in Sections 211 and 212 do not give the accused sufficient notice of the matter, with which he is charged.

The extent of the particulars necessary to be given will depend on the facts and circumstances of each case. In drawing up a charge all verbiage should be avoided, as also matters which are not necessary for the prosecution to prove**.** Abbreviations should also be avoided**.** A charge should be precise in its scope and particular in its details.

Every charge under the Code shall state, the offence with which the accused is charged. If the law which creates the offence, gives it any specific name, the offence may be described in the charge by that name only**.** If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged**.** The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged, was fulfilled in the particular case. The charge shall be written in the language of the court. If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to prove such previous conviction for the purpose of affecting the punishment, which the court may think fit to award for the subsequent offence, the fact, date and p lace of the previous conviction shall be stated in the charge, and if such statement has been omitted, the court may add it at any stage before the sentence is passed**.**

Even if a wrong section is mentioned in the FIR, that does not prevent the court from framing appropriate charges as considered in a case between ***CBI Vs Tapan Kumar Singh, ((2003) 6 SCC 175) :***

Section 211 of the Code of 1973 corresponds to Section 221 of the Code of 1898. No charge need, however, be framed in a summons or summary trial or trial for petty offences. It is only in warrant trials and sessions trials that charges must of necessity be struck by the court.

The object of a charge is to warn the accused person of the case he is to answer. It cannot be treated as if it was a part of a ceremonial**.** This, however, should not lead to an inference that the accused is taken by surprise in trials in which no charge is required to be framed (e.g. summons and summary trials and trials for petty offences – Sections 251 to 259, 260 to 265, and Sections 205 and 206, respectively). The requirement of the law even in those cases is that the substance of the accusation shall be stated to the accused, and he shall be asked to plead to that accusation. In matters of graver offences like warrant trial and sessions trial, however, the exercise in this behalf is supposed to be more elaborate, so as to leave nothing to chance and the theory behind the charge is that the law should acquire a professional efficiency while dealing with the twin-fold tasks of maintaining order in society as well as protecting the rights of the individuals.

If the charge is not framed in accordance with the provisions of the Code, not only the accused, but the prosecution is also likely to be prejudiced because, the defect in the charge may lead to an unmerited acquittal. This is because of the reason that in certain cases, the defect in the charge may by itself vitiate the entire trial and a defective charge could be the sole reason for an acquittal. Hence, every court shall take personal effort to see that the charge is framed as per law, applying its mind to all relevant aspects. The failure to do so will result in gross miscarriage of justice, since a fair trial cannot be ensured without a charge being framed, in accordance with law.

Section 211 of the Code deals with the form of charges and contents of charge. The Form of Charge referred to in Section 211 of the Code is available in Form 32 in Schedule II of the Code. The details of each offence are to be stated with reference to the particular accused who committed the offence and the person against whom such offence is committed. It also shows that if the charge is having two or more heads, each charge must be separately detailed. Legislature intended that the court shall frame charge in such a way that the charge shall contain the

necessary details of the distinct offence or offences which include date, time and place where the offence is committed and the person who committed the offence and the person against whom such offence is committed.

Section 212 of the Code, requires that the charge must contain particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed so as to give the accused a reasonably sufficient notice of the matter of which he is charged.

The purpose of framing charge is to give notice to the accused of allegations against him. Non-observance of any of the conditions under Section 212 Cr.P.C. unless cause prejudice to the accused or result in miscarriage of justice, cannot be a ground to interfere with conviction. In the instant case accused was charged under Section 409 IPC, but gross sum allegedly misappropriated was not mentioned, nor the dates between which the offence was committed were mentioned. However, the accused in reply to the questions put by the trial court, accuses stated that he understood the charge, the evidence was recorded in his presence and he also cross-examined the prosecution witnesses. Held, there was no failure of justice, and the trial was not vitiated.

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

The proviso to Section 212 (2) of the Code lays down that the time included between the first and the last of such dates as are referred to in Section 212 (2) Cr.P.C. shall not exceed one year.

The requirements of a valid charge were explained in ***Chittaranjan Das Vs State of West Bengal*** *reported in* ***AIR 1963 SC 1696 :*** and it was laid down that where dates of offence were not specified in a charge under Section 376 IPC and only an approximate idea of time specifying a period of 5 to 6 days was given, the charge was not invalid. Where the accused was tried separately for several offences Under Section 409 IPC including acts of criminal breach of trust committed within few months and all the acts were alleged to be committed in the course of the same transaction, the separate trials were held to be not illegal***.*** Where accused is convicted under section 302 IPC, his conviction under section 307/34 IPC also in

conviction with the same murder is improper as held in a case between ***Jagtar Singh Vs State of Punjab, (1994: 1994 SCC (Cri) 226) :***

Section 213 of the Code further in order to obliterate any possible chances of ambiguity and the resultant prejudice to the rights of the accused person, lays down that when the nature of the case is such that the particulars mentioned in sections 211 and 212 of the Code, do not give the accused sufficient notice of the matter with which he is charged, the charge under such circumstances must also contain such particulars of the matter in which the alleged offence was committed as will be sufficient for that purpose.

Section 214 is in the nature of an explanation that in every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which the offence is punishable. This is intended to serve and facilitate the understanding of the law and to lead the mind of the scholar through the same steps by which the minds of those who framed the law proceeded. This is also intended to minimize the possibility of ambiguity on account of doubtful expressions if used cannot be permitted to control the plain meaning of the words of the enactment, but on the other hand, the intention of the legislature is that the language of the charge must conform to, and be controlled by, the language of the enactment.

II. ALTERATION OF CHARGE

Any court may alter or add to any charge at any time before Judgment is pronounced***.*** Every such alteration shall be read and explained to the accused***.*** The power of the court to alter the charges is neither in doubt nor in dispute but in terms of Section 216 (2) Cr.P.C., it is obligatory on the part of the court to bring it to the notice of the accused and explain the same to the accused. Where the same was not done, there was non–compliance of Section 216 (2) Cr.P.C. as decided in a case between ***Sabbi Mallesu Vs State of A.P.,*** *((2006) 10 SCC 543).*

The charge can be amended at any stage during trial or an alternative charge can also be framed if the evidence so permits by affording proper opportunity to the accused.

It is open to the court to alter the charge at any time before the Judgment is pronounced in the case***.*** No illegality was found in framing additional charge under Section 304-B IPC along with Sections 306 and 201 IPC at a belated stage where evidence adduced in the case warranted. The same was observed in a case

between ***Subhash Vs State of U.P.,*** *(2009 Cri LJ (NOC) 294 (All))*. Section 216 Cr.P.C. gives power to the court to alter or add any charge at any time before the judgment is pronounced. Obviously, once the charge is framed, it cannot be said that the same cannot be subjected to any kind of further alterations. The same court itself can, in any appropriate case, alter or add the charge in the exercise of power under section 216 Cr.P.C. before the judgment is delivered.

The validity of omission to state the alternative charge was examined in ***Madan Raj Bhandari Vs State of Rajasthan*** (*(1969) 2 SCC 385 : AIR 1970 SC 436: 1970 Cri LJ 519)).* The competence of the court and the scope of its powers in striking a charge for an offence and convicting the accused for another offence was also examined in the said case***.*** A Magistrate is competent always to alter or add any charge till the time he has pronounced the Judgment***.*** Where the accused was charged under section 326 IPC but was convicted under section 326 read with section 34 IPC, without a charge being framed u nder section 34 IPC, it was held that the accused was misled in his defence and the error was not curable under section 537 of the Code of 1898 corresponding to Section 465 of the Code of 1973 as expressed in a case between ***Akham Amusakthi Singh Vs UT of Manipur,*** (AIR 1961 Mani 5: (1961) I Cri LJ 104). If the addition or alteration 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***.*** If during trial the trial court on a consideration of broad probabilities of the case based upon total effect of the evidence and documents produced is satisfied that any addition or alteration of the charge is necessary, it is free to do so, and there can be no legal bar to appropriately act as the exigencies of the case warrant or necessitate as per the judgment in a case between ***Hasanbhai Valibhai Qureshi Vs State of Gujarat,*** *((2004) 5 SCC 347: 2004 SCC (Cri) 1603).*

"Add to any charge" means the addition of a new charge. An alteration of a charge means changing or variation of an existing charge or making of a different charge. Under Section 216 Cr.P.C. addition to and alteration of a charge or charges implies one or more existing charge or charges. When the Appellants 4 and 5 were discharged of all the charges and no charge existed against them, an application Under Section 216 was not maintainable in their case. The Magistrate in his order did not say that he was proceeding suo motu against them. However, in cases of Appellants 1 to 3 against whom the charge Under Section 427 IPC was already in

existence there could arise the question of addition to or alteration of the charge. The Magistrate, therefore, while disposing of the application Under Section 216 Cr.P.C. had no jurisdiction to frame charges against Applicants 4 and 5 as examined in a case between ***Sohan Lal Vs. State of Rajasthan,*** (1990) 4 SCC 580 : 1990 SCC (Cri) 650)

Where accused is charged Under Section 149 IPC but not under Section 34 IPC, he can be convicted by applying Section 34 IPC as per the judgment in a case between ***Dani Singh Vs State of Bihar,*** ((2004) 13 SCC 203)

Though the power of the court to alter charges is undisputed, but it is obligatory on the court to bring the same to the notice of the accused and explain it to him in view of the Judgment in case between ***Sabbi Mallesu Vs State of A.P.,*** ((2006) 10 SCC 543).

Once the charges are framed, the same can be altered and / or added to, provided that there is some progress in the trial and some material comes before the trial court enabling it to alter or add to the charge already framed as held in a case between ***Verghese Stephen Vs CBI,*** *(2007 Cri LJ 4180, 4183 (Del)).*

If accused is charged with a grave offence but same is not established on merits or for a default of technical nature, he can still be convicted and punished for commission of a less grave offence without altering the charge, provided the lesser offence is of cognate nature and its ingredients are independently proved beyond reasonable doubt, accused does not suffer any prejudice and it does not result in failure of justice as expressed in a case between ***Rafiq Ahmad Vs State of U.P.,*** *(2011) 8 SCC 300 : (2011) 3 SCC (Cri) 498)*

But if the alteration or addition in 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***.*** 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 already been obtained for a prosecution on the same facts as those on which the altered or added charge is founded***.*** No document produced by the prosecutor or the defacto complainant before the Magistrate, subsequent to taking cognizance of the offence, could be looked into decide whether the charge framed is to be altered or additional charge is to be framed. An alteration or addition to the charge is warranted based on any such additional material only on recording such evidence***.***

Application to alter the charge cannot be rejected by the Magistrate on the mere ground that altering of charge would prolong the trial would be improper as cautioned in a case between ***Akbar A Puthen Veedu Vs State of Kerala,*** (2011 Cri LJ 2555, 2557 (Ker)).

When we speak of prejudice to an accused, it has to be shown that the accused has suffered some disability or detriment in the protections available to him under the Indian Criminal jurisprudence and that this has occasioned the accused with failure of justice. The courts should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage, as this expression is perhaps too pliable as per the Judgment of Hon'ble Apex Court in ***Rafiq Ahmad Vs State of U.P., (***(2011) 8 SCC 300 : (2011) 3 SCC (Cri) 498 : 2011 Cri LJ 4399)).

Where the Magistrate declined to frame additional charges against the accused in view of the bar imposed by Section 195 Cr.P.C., the refusal was held proper as per the Judgment in a case between ***Dongari Venkatram Vs M. Tirpathanna,*** (2006 Cri LJ 2697, 2699 (AP)).

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 to recall or resummon, 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***.*** The prosecutor and the defence, shall also be allowed to call any further witness whom the court may think to be material.

The accused intended only to cause hurt to the deceased by bulls and barrels of firearms and not to cause his death, amendment of charge from Section 304 r/w 34 to Section 302 r/w 34 IPC was not proper, was set aside as held in a case between ***Pappu Naubat Vs State of U.P.,*** (2008 Cri LJ (NOC) 437 (All)).

Where a charge of abetment was not disclosed to the accused who all the while was defending the charge of the main offence, the omission to state alternative charge was held to have prejudiced him in view of the Judgment in a case between ***Madan Raj Bhandari Vs State of Rajasthan,*** (1969) 2 SCC 385 : AIR 1970 SC 436: 1970 Cri LJ 519). The Cr.P.C. 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, or the charge finally preferred against him***.*** Where the court's order allowing the application for alteration of the charge did indicate with certainty as to what was the material which had come from the witnesses to show that the petitioner was, in fact, involved for the offences as alleged and that the charge required to be altered, the pleading on the basis of which the charge was sought to be altered was in general terms, the order did not indicate as to how and as what basis alteration was sought, order allowing alteration of the charge was found unsustainable, was set aside which was held in a case between ***Rakesh Kumar Luthra Vs State of H.P.,*** (2011 Crri LJ 1710, 1711 (HP)).

Where the accused initially was charged for offence under Section 498-A IPC, but evidence disclosed prima facie commission of offence Under section 304-B IPC was held proper as held in a case between ***Superintendent of Police Vs Sk. Dawood,*** (2012 Cri LJ 4137, 4142 (Mad)).

Section 216 of the new Code invests the court with comprehensive authority to remedy the defects in framing or non-framing of the charge discovered at any stage of the trial prior to judgment.

SUPPLY OF COPIES OF PAPERS TO THE ACCUSED

Before proceeding to frame charge against the accused the court shall ensure that the copies of all the documents relied upon by the prosecution, including copies of the documents filed along with the charge sheet Under Section 173 CrPC are furnished to the accused. Where the Sessions Judge trying the case in a hot haste and without giving any opportunity to the accused to file the application for their discharge and even without taking any precaution to see whether the police papers were actually supplied to the accused or not, he proceeded to frame the charges against the accused, held the order for framing charge against the accused was found not sustainable, was set aside as per the judgment in a case between ***Manik Lal Vs State of Jharkhand,*** (2012 Cri LJ 563 (Jhar))***.*** Where the copies of the statements of the witnesses, and documents were not furnished to the accused, order of the Magistrate for framing charges against the accused under sections 324 r/w 34, 504 and 506 IPC without complying with the provision of section 207 Cr.P.C. was held improper, was set aside as held in a case between ***Pramod Kumar Sharma Vs State of U.P.*** (2011 Cri LJ 1088, 1090 (All)).

PRESENCE OF THE ACCUSED

The proceedings for framing charge shall be conducted in the presence of the accused, in case his/her presence has been dispensed with in the present of his/her counsel. Framing of the charge in the absence of accused who had obtained anticipatory bail defeated the very purpose of Section 204 (2) Cr.P.C. as per judgment in a case between ***HDFC Bank Ltd., Vs J.J. Mannan,*** ((2010) I SCC 679 : (2010) I SCC (Cri) 879 :2010 Cri LJ 2293)).

LANGUAGE OF CHARGE

The charge shall be framed in the language of the court as per section 211 (6) Cr.P.C.

CHARGE TO BE READ OVER TO THE ACCUSED

After the charge or charges have been framed, the same shall be read over to the accused (s) where his/her presence has been dispensed with, to his/her counsel, and shall be asked whether he/she pleads guilty or not to the charge.

SIGNATURE / THUMB IMPRESSION OF THE ACCUSED ON THE CHARGE

The signatures of the accused, if he/she is illiterate, his thumb impression shall be obtained on the charge(s) framed by the court. A copy of the same shall also be given to him/her, in his/her absence to his/her counsel.

DELETION OF CHARGE

A charge once framed must lead to either acquittal or conviction at the conclusion of the trial. Section 216 of the Code does not permit deletion of the same.

FRESH EVIDENCE AFTER ALTERATION OF CHARGE

Under Section 217 of the Code, whenever a charge is altered, the prosecution as well as the defence “shall be allowed” to recall or resummon and re-examine, any witnesses already examined and the court is bound to grant such a request and not refuse it on any ground, except in very rare circumstances.

After an alteration or addition of the charge the interest of the prosecution and the accused has to be safeguarded by permitting them to further examine or cross examine the witness already examined, as the case may be, and by affording them an opportunity to call other witnesses. It is undoubtedly true that discretion has been given to the court to direct a new trial after addition or alteration of any charge, but it does not mean that every such addition or alteration of any charge

which has been read over and explained to the accused would lead to inevitable inference that the court has directed a new trial for them. Unless the court passed a specific order and directs a new trial it cannot be presumed that a new trial has commenced only because an alteration or addition to a charge which has been read over and explained to the accused has been made. Any such direction given by the court has to be judged on the touchstone of prejudice to the accused or the prosecution.

In a case between ***Rambir Yadav Vs State of Bihar,*** reported in (1995) 4 SCC 392) it was held that

> *"after the addition of charges the prosecution expressly stated that they did not want to further examine the four witnesses already examined but they were willing to produce them if the accused so wanted. The accused, however, did not avail of this opportunity in accordance with Section 217 of the Code and, therefore, it was too late in the day for them to raise a grievance on that score. Even if there was any irregularity in the continuation of the trial against the appellants after the additional charges were framed the court would not be justified in setting aside the impugned judgment on that ground alone for there was not an iota of material on record where from it could be said that a failure of justice had occasioned thereby. In such a case Section 465 of the Code would squarely apply".*

If the evidence of witness sought to be recalled is of a purely formal nature and the concerned party merely desires to prolong and delay the trial by taking an unfair advantage of the right conferred under section 217, the court may refuse to resummon the witnesses as held in a case between ***Abdul Rahman Vs State of Kerala*** (1982 Cri.LJ 2087 (Raj)).

HOW AN AMENDMENT IN CHARGE TO BE MADE

Where the amendment in the charge is of minor nature, the amendment in the charge shall be carried out in red ink, duly signed and dated by the Magistrate/Judge. However, where the amendment made is substantial one, drastically changes the charge, fresh charge (s) shall be framed, and the original charge framed shall be kept on the file of the case. The signatures/ thumb impression of the accused shall also be obtained on the amended / reframed charge.

III. DISCHARGE

SECTION 227 AND 245 OF THE CODE OF CRIMINAL PROCEDURE DEALS WITH DISCHARGE:

"Sec.227. Discharge:- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reason for so doing".

Sec.245. When accused shall be discharged:- (1) If, upon taking all the evidence referred to in Section 244, 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 reason to be recorded by such Magistrate, he considers the charge to be groundless".

1) An order of discharge does not tantamount to acquittal of accused held in ***Viswanatham Vs Burman*** *(2003 Cr.L.J. 949 (Cal)).*

2) Reasons to be recorded for discharging accused held in ***Om Wati Vs State*** *(*AIR 2001 SC 1507)

3) Judge cannot act merely as a post office : - In ***Dilwar Balu Kurane Vs State of Maharashtra****, (2002 (2) SCC 135)*, it was held that:

> *"Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section 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; 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; by and large if two views are equally 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 justified to discharge the accused, and in exercising jurisdiction under section 227 of the Code of Criminal Procedure, the Judge 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 but should not make a roving enquiry into pros and cons of the matter and weigh the evidence as if he was conducting a trial".

4) Evidence need not be gone into meticulously:- In ***State of Andhra Pradesh Vs Golconda Linga Swamy and Anr.*****, (2004 (6) SCC 522)** it was held that:

"In all these cases there were either statements of witnesses or seizure of illicit distilled liquor which factors cannot be said to be without relevance. Whether the material already in existence or to be collected during investigation would be sufficient for holding the concerned accused persons guilty has to be considered at the time of trial. At the time of framing the charge it can be decided whether prima facie case has been made out showing commission of an offence and involvement of the charged persons. At that stage also evidence cannot be gone into meticulously. It is immaterial whether the case is based on direct or circumstantial evidence. Charge can be framed, if there are materials showing possibility about the commission of the crime as against certainty. That being so, the interference at the threshold with the F.I.R., is to be in very exceptional circumstances as held in ***R.P. Kapoor Vs State of Punjab*** *(AIR 1960 SC 866 = 1960 Cr.LJ 1239) and* ***State of Haryana Vs Bhajan Lal*** *(1992 Supp. (1) SCC 335 = 1992 SCC (Cri) 426).*

5) Husband's brother's wife and discharge :-

The Hon'ble Apex Court held in a case between ***Sherish Hardenia*** **Vs** ***State of MP*** *reported in* 2014 (14) SCC 406 as follows:

"While dealing with sections 227, 239 and 245 Cr.P.C., where the trial Court held that there was no prima facie case against husband's brother's wife for offences Under Section 498-A and 306 IPC and made an order of discharge and High Court affirmed the same it was held that the High Court arrived at the correct conclusion on the material available on record".

6) Sections 227, 239 and 245 Cr.P.C.:-

The Hon'ble Apex Court held in a case between ***State of Tamilnadu Vs N.Suresh Rajan*** *reported in 2014 (11) SCC 709 as follows:*

"Under Section 227 Cr.P.C., the trial court is required to discharge the accused if it "considers that there is not sufficient ground for proceeding against the accused". However discharge under Section 239 Cr.P.C. can be ordered when "the Magistrate considers the charge against the accused to be groundless".

The power to discharge is exercisable under Section 245 (1) Cr.P.C. when "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". Thus there is difference in language employed in Sections 227, 239 and 245 Cr.P.C. but notwithstanding these differences and whichever provision may be applicable, the Court is required at the stage to see that there is prima facie case for proceeding against the accused".

7) Suppression of fact:-

The Hon'ble Apex Court held in a case between ***Motilal Songara Vs Prem Prakash*** reported in AIR 2013 SC 2078 = 2013 Cr.LJ 2977 as follows:

where the accused suppressed the fact of framing charges before the Revisional Court against an order of Magistrate taking cognizance of offence and thereupon prayed for discharge it was held that High Court was not justified in discharging the accused as the accused tried to gain advantage by suppression of fact"

8) Non – availability of second dying declaration: -

The Hon'ble Apex Court held in a case between ***In re Bed Kumar Rai*** reported in 2001 Cr.LJ 2683 (Sikkim) as follows:

"where the Court was of the opinion that the second dying declaration was not available and accused be discharged, it was held that such opinion is not warranted at the stage of framing of the charge since whether first dying declaration or second dying declaration would be reliable or not. These questions are to be considered in the context of the evidence and the circumstances of the case at the trial".

9) Statements by the witnesses:- In *State Vs Syed Shabbir Hussain (**2006 Cr.lj 903 (Kar)*** it was held that Courts have to consider the *prima facie* case while framing charges and should not consider in detail the statements by the witnesses and if such statements had been scrutinized, the order of discharge in such a case cannot be sustained.

10) Discharge of accused in case of dowry death: -

The Hon'ble Apex Court held in a case between ***Dr. Hemant Taneja Vs State (****2004 Cr.LJ 3558 (All)****)****, as follows:*

> *"where the deceased died an unnatural death at her matrimonial home within a year of marriage, the statements of mother and brother of the deceased reveal the deceased having been subjected to harassment, torture, cruelty for non -fulfillment of dowry demand it was held that it would not be proper to discharge the accused for offences under Sections 304-B, 498-A and 306 IPC on the basis of the report of the handwriting expert as to the suicide note exonerating the accused".*

11) Meticulous judging of evidence:- In ***Ram Swarup Singh Vs State*** *(2006 Cr.LJ 4441 (Pat)) and (AIR 2005 SC 3820)* it was held that meticulous judging of evidence or probable defence cannot be made the grounds of discharge where the complainant and his witnesses supported prosecution.

12) E-Mails and Letters reflecting deep love:-

The Hon'ble Apex Court held in a case between ***Sarbans Singh Vs State*** reported in 2005 (1) *Crimes 532 (Del)* where in it was held that

> *"where the e-mails and letters between the deceased wife and the husband reflect deep love, the self contradictory statement of the mother and vague statement of the father of the deceased and the suicidal note not implicating the accused, the framing of charges under Sections 306 and 498-A IPC cannot be sustained".*

13) Materials by the accused:-

The object of providing such an opportunity as is envisaged in Section 227 of the Cr.P.C., is to enable the Court to decide whether it is necessary to proceed to conduct the trial. If the case ends there it gains a lot of time of the Court and saves much human efforts and cost. If the materials produced by the accused even at that early stage would clinch the issue, why the Court should shut it out saying that such documents need be produced only after wasting a lot more time in the name of trial proceedings. Hence, the Sessions Judge would be within his powers to consider even material which the accused may produce at the stage contemplated in Section 227 Cr.P.C. But when the Judge is fairly certain that there is no prospect of the case ending in conviction the valuable time of the Court should not be wasted for holding a trial only for the purpose of formally completing

the procedure to pronounce the conclusion on a future date. The same was decided in a case between ***Satish Mehra Vs Delhi Administration & Anr.,*** *(*1996 (9) SCC 766 = 1996 SCC (Cri) 1104).

14) *Sections* 227 and 91 Cr.P.C.:-

The Hon'ble Apex Court held in a case between ***Mahesh Vs State*** reported in 2006 Cr.LJ 1778 (All) as follows:

> *"where the direct testimony of the informant and the other eye witnesses to the effect that they had seen the accused at the spot at the time of incident are available, it was held that at the time of framing charge the accused has no right to request for summoning of document in the context of discharge on the basis of so called evidence of alibi".*

15) Not sufficient ground for proceeding against the accused:-

In a case between **Yogesh Vs State of Maharashtra** *reported in 2008 (2) Crimes 263 (SC)* the Hon'ble Apex Court dealt with the meaning of the words "not sufficient ground for proceeding against the accused".

16) Discharge application and Appeal:-

The Hon'ble Apex Court held in a case between ***State Vs J.Doraiswamy*** reported in AIR 2019 SC 1518 as follows:

> *"While dealing with the manner of deciding a discharge application it was held that Courts cannot act as appellate Court appreciating evidence and pointing out the inconsistencies in the statement of witnesses since consideration of record for the purpose of discharge application is different from consideration while deciding an appeal".*

17) Discharge and acquittal:-

The Hon'ble Apex Court held in a case between ***Public Prosecutor, H.C. of A.P., Vs P. Subhash Chandra Reddy*** reported in 2003 Cr.LJ 4776 as follows:

> *"the meaning of the term "discharge" is altogether different from the term "acquittal" and discharge of accused for want of valid sanction does not amount to acquittal".*

18) Want of sanction and discharge:-

The Hon'ble Apex Court held in a case between ***R. Ramachandra Nair Vs State of Kerala*** reported in 2011 (4) SCC 395 as follows:

"while dealing with Sections 50 and 23 of the Sree Sankaracharya University of Sanskrit Act, 1994, Section 13 of the Prevention of Corruption Act, 1988, Sections 409, 463, 477A and 120B IPC, it was held that where all the alleged actions of the accused were in discharge of his duties as Vice Chancellor and on facts and for want of sanction, a mandatory requirement under Section 50(2) of the Sree Sankaracharya University of Sanskrit Act, 1994, the accused to be discharged".

19) Communal riots and discharge of police personnel:-

The discharge of some police personnel charged with Sections 302, 307 read with Section 34 IPC in relation to communal riots in Mumbai city had fallen for consideration before the Apex Court in an appeal by a private party in a judgment of ***Noorul Huda Maqbool Ahmed Vs Ram Deo Tyagi and others*** *reported in 2011 (3) Crimes 69 = 2011 (7) SCC 95 = 2011 Cr.LJ 4264.* The decision of T.T. Antony Vs State of Kerala reported in AIR 2001 SC 2637, was referred to wherein it was held that the observations and findings in a report of Commission of Inquiry are only meant for information of the Government and Courts are not bound by such report and they have to decide on evidence in accordance with law.

20) Ground of want of sanction and discharge application:-

The Hon'ble Apex Court held in a case between ***Sayyed Ahmad and others Vs State of A.P.,*** reported in 2019 (3) An.LT (Cri) 112 (AP) = 2019 (2) Am.LJ339 as follows:

"On appreciation of facts of the case and the ground of want of sanction under section 197 Cr.P.C. in a discharge application under section 239 Cr.P.C., it was held that dismissal of application was proper since if an offence is entirely unconnected with the official duty, there can be no protection to such public servant"

21) Committal Court and discharge of accused:-

The Hon'ble Apex Court held in a case between **State Vs K.P.S. Jayachandran,** reported in 2008 Cr.LJ 4591 (Mad) as follows:

"There is no provision for the accused to file any discharge application before the committal court and may be for either the Sessions Court to discharge the accused or the High Court to quash the proceedings".

22) Discharge on ground of delay of trial:-

The Hon'ble Apex Court held in a case between **Basirul Haque Vs Chand Mohammad,** reported in 2007 Cr.LJ 2323 (Cal) as follows:

> *"Where substantial time was wasted in the matter of sending or not sending questioned documents to the handwriting expert and missing documents were detected at a later date, since it cannot be said that the complainant willfully delayed the matter it was held that discharge of accused on ground of such delay cannot be sustained".*

23) Ground Premature:-

The Hon'ble Apex Court held in a case between ***Md Mustafa* Vs State,** reported in 2006 Cr.LJ 786 (Jhar) as follows:

> *"Where the complainant was yet to adduce evidence before charge, the prayer for discharge on the ground that the very complaint was groundless cannot be maintained as such ground being premature".*

24) Suo Motu order for further investigation and discharge:-

The Hon'ble Apex Court held in a case between **Bikash Ranjan Rout Vs State (NCT of Delhi),** reported in AIR 2019 SC 2002 = 2019 (5) SCC 542 = 2019 Cr.LJ 2787 as follows:

> *"The Magistrate cannot suo motu direct for further investigation Under Section 173 (8) of the Cr.P.C. in a case at the post – cognizance stage, more particularly when, in exercise of powers under Section 227 / 239 Cr.P.C., the Magistrate discharges the accused. However by virtue of the provisions of Sections 173 (8) of the Cr.P.C. the Investigating Officer can apply for further investigation even after forwarding the report Under Section 173 (2), Cr.P.C., and even after the discharge of the accused. The aforesaid shall be at the instance of the Investigating Officer- Police Officer in-charge and the Magistrate has no jurisdiction to suo motu pass an order for further investigation after he discharges the accused".*

25) Plea of *alibi* a question of fact:-

The Hon'ble Apex Court held in a case between ***Jitendra Kumar Vs State of U.P.,*** reported in 2001 Cr.LJ 2872 (All) as follows:

> *"Where the plea of alibi was not considered by police though it was specifically brought to the notice of police at the stage of investigation, it was held that such plea being a question of fact, can be settled after*

evidence had been adduced and such plea cannot be gone into while exercising jurisdiction under section 482 Cr.P.C."

26) Quashing of criminal proceeding and discharge application:-

The Hon'ble Apex Court held in a case between ***Harish Dahiya Vs State of Punjab,*** reported in 2019 (18) SCC 69 = 2020 (3) SCC (Cri.) 834 as follows:

"The Apex Court while dealing with quashing of criminal proceeding and considering discharge application held that the grounds for quashing criminal proceedings and for allowing or disallowing discharge applications are totally different".

Chapter XVIII of Bharatiya Nagarik Suraksha Sanhitha 2023 (B.N.S.S.)

Section 2 (f) of B.N.S.S. (Definition):

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

(i) Section 234 of B.N.S.S (Sec.211 of Cr.P.C.):

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

(ii) Sec.235 of B.N.S.S.: Particulars as to time, place and person (Sec.212 of Cr.P.C.):

1. The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.
2. When the accused is charged with criminal breach of trust or dishonest misappropriation of money or other movable property, it shall be sufficient to specify the gross sum or, as the case may be, describe the movable property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 242:

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

(iii) Sec.236 of B.N.S.S.: When the manner of committing offence must be stated (Sec.213 of Cr.P.C.):

When the nature of the case is such that the particulars mentioned in sections 234 and 235 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

(iv) Sec.237 of B.N.S.S.: Words in charge taken in sense of law under which offence is punishable(Sec.214 of Cr.P.C.):

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

(v) Sec.238 of B.N.S.S.: Effect of errors (Sec.215 of Cr.P.C.):

No errors in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

(vi) Sec.239 of B.N.S.S.: Court may alter charge (Sec.216 of Cr.P.C.):

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.

(vii) Sec.240 of B.N.S.S.: Recall of witnesses when charge altered (Sec.217 of Cr.P.C.):

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 of 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 thing to be material.

(viii) Sec.241 of B.N.S.S.: Separate charges for distinct offences (Sec.218 of Cr.P.C.):

1. For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately.

   Provided that where the accused person, by an application in writing, so desires and the Magistrate is of opinion that such person is not likely to be prejudiced thereby, the Magistrate may try together all or any number of the charges framed against such person.
2. Nothing in Sub -Section (1) shall affect the operation the provisions of sections 242, 243, 244 and 246.

(ix) Sec.242 of B.N.S.S.: Offences of same kind within year may be charged together (Sec.219 of Cr.P.C.):

1. When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding five.
2. Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Bharatiya Nyaya Sanhitha, 2023 or of any special or local law:

   Provided that for the purpose of this section, an offence punishable under sub-section (2) of section 303 of the Bharatiya Nyaya Sanhitha, 2023 shall be deemed to be an offence of the same kind as an offence punishable Under Secton 305 of the said Sanhitha, and that an offence punishable under any section of the said Sanhitha, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.

(x) Sec.243 of B.N.S.S.: Trial for more than one offence (Sec.220 of Cr.P.C.):

1. If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same

person, he may be charged with, and tried at one trial for, every such offence.

2. When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub-section (2) of section 235 or in sub-section (1) of section 242, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.
3. If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.
4. If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.
5. Nothing contained in this section shall affect section 9 of Bharatiya Nyaya Sanhitha, 2023.

(xi) <u>Sec.244 of B.N.S.S.: Where it is doubtful what offence has been committed (Sec.221 of Cr.P.C.):</u>

1. If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed someone of the said offences.
2. If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

(xii) <u>Sec.245 of B.N.S.S.: When offence proved included in offence charged : (Sec.222 of Cr.P.C.):</u>

1. When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.
2. When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.
3. When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged.
4. Nothing in this section shall be deemed to authorize a conviction of any minor offence where the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied.

(xiii) <u>Sec.246 of B.N.S.S.: What persons may be charged jointly: (Sec.223 of Cr.P.C.):</u>

The following persons may be charged and tried together, namely:-

1. Persons accused of the same offence committed in the course of the same transactions;
2. Persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence;
3. Persons accused of more than one offence of the same kind, within the meaning of section 242 committed by them jointly within the period of twelve months;
4. Persons accused of different offences committed in the course of the same transaction;
5. Persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first- named persons, or of abetment of or attempting to commit any such last -named offence;

6. Persons accused of offences under sub-sections (2) and (5) of section 317 of the Bharatiya Nyaya Sanhitha, 2023 or either of those sections in respect of stolen property the possession of which has been transferred by one offence;
7. Persons accused of any offence under Chapter X of the Bharatiya Nyaya Sanhitha, 2023 relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges:

   Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the Magistrate or Court of Session may, if such persons by an application in writing, so desire, and if he or it is satisfied that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together.

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