

FRAMING OF CHARGES

by

Sri M.Chandrasekhara Reddy,
Junior Civil Judge Pulivendula

Introduction:

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

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

Before discussing the concept of framing of charge, it is essential to first understand certain fundamental aspects such as the meaning and definition of a charge, the object behind framing a charge, and the statutory provisions governing the same. Accordingly, the same are set out hereunder.

What is charge?

A **charge** is a precise statement of the offence the accused is alleged to have committed. ***Charge simply means accusation.***

Definition of charge

Charge is defined under section **2(b)** of The Code of Criminal Procedure (in short Cr..C) paramateria **Sec.2 (f)** of Bharatiya Nagarik Suraksha Sanhita (in brevity BNSS),2023, as, charge includes any head of charge when the charge contains more heads than one.

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.

In **Vinubhai Ranchhodbhai Patel vs. Rajubhai Dudabhai Patel, (2018) 7 SCC 743**, 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 entitled to discharge under sections 250 or 262 or 268 CrPC.

Statutory Provisions :

While framing charges, whether in Sessions cases or in Warrant cases, the following statutory provisions must be followed.

Description	Under Code of Criminal Procedure (Cr.P.C),1973	Under Bharatiya Nagarik Suraksha Sanhita (BNSS),2023
Contents of charge	Sec.211	Se.234
Particulars as to time, place and person	Sec.212	Sec.235
When manner of committing offence must be stated	sec.213	Sec.236
Separate charges for distinct offence	sec.218	Sec.241
Three offences of same kind within year may be charged together	Sec.219	Sec.242
Trial for more than one offence	Sec.220	Sec.243
What persons may be charged jointly	Sec.223	Sec.246

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 which 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.

The Hon'ble Apex Court in **Willie (William) Slaney Vs.State of M.P AIR 1956 SC 116. Wherein the Hon'ble Apex Court in paragraph no.85** held that, "The Code requires that there should a charge and it should be in writing. A deliberate breach of this basic requirement cannot be cured by the assertion that everything was orally explained to the accused and the assessors of jurors, and there was no possible or probable prejudice.

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 accused 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.

Time Limit

Sec.251(b), Sec.263 (1) of BNSS,2023: The Judge/Magistrate shall frame in writing a charge against the accused **within a period of sixty days from the date of first hearing on charge.**

In AMAN KUMAR Vs THE STATE OF BIHAR|SLP(CrI) No.8437/2025- The Honble Supreme Court has expressed grave concern over inordinate delays in the framing of charges in criminal trials, despite the mandate in Section 251(b) of the Bharatiya Nagarik Suraksha Sanhita (BNSS) that charges in cases exclusively triable by a court of sessions, charge must be framed **within 60 days** of the first hearing. Observing that such delays are among the primary causes for stagnation in criminal proceedings, the Bench said it was "of the considered opinion that certain directions need to be issued pan-India" to ensure adherence to the statutory mandate.

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 separate 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:

- 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);
- 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);
- 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 alternatively with having committed some of the said offences (section 244 BNSS);
- section 246 BNSS lays down that the following persons may be charged jointly and tried together:
- the persons accused of the same offence committed in the course of same transaction;
- persons accused of an offence and persons accused of abetment of or of an attempt to commit such offence;
- 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;
- persons accused of different offences in the same transaction;
- 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;
- persons accused of receiving stolen property or assits in concealing or disposal of stolen property;
- persons accused of any offence relating to counterfeit coin or any other offence

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 applies 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.

When is charge framed?

The court has to frame a charge **only if there is a prima-facie case.**

In **Jitendra Singh vs. State Of Rajasthan S.B.- 2023 LiveLaw (Raj) 37**, the Hon'ble Rajasthan High Court has observed that the framing of charge by the trial court is a determinative action and an important exercise of power, has said that forcing a person to go through the rigors of trial without there being any prima facie evidence would amount to a violation of his fundamental rights. The Hon'ble court said if the charges are framed without there being even a scruple of the ingredients or circumstances required to constitute an offence under the Sections alleged against the accused, then the accused is made to face the rigour of the trial which may prove to be deleterious to him as he may finally be acquitted of the charges so framed against him. The bench also noted that a detailed discussion of the evidence is not required during the stage of framing of charge but an application of mind by the trial court to see the sufficiency of material on record is required so as to put the accused to face the rigour of trial.

In **Umesh Kumar v State of Andhra Pradesh, (2013) 10 SCC 591**, it is held that while framing of charges, the Court has to evaluate as to whether on the basis of materials and documents on record, there is a prima facie case to proceed against the accused. At this stage, the Court is not required to appreciate whether the material produced is sufficient or not for convicting the accused.

Materials to be considered at the stage of framing of charge

The Hon'ble Supreme Court of India in **State of Maharashtra vs. Som Nath Thapa, (1996) 4 SCC 659**, 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 Kumar Samal, (1979) 3 SCC 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 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, (2000) 1 SCC 722***, 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, (2004) 6 SCC 522***, 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, (2010) 9 SCC 368***, 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:-

- *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.*
- *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.*
- *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.

- *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.*
- *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.*
- *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.*
- *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."*

Effect of Errors:

Sec.215 Cr.P.C = Sec. 238 BNSS,2023

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

ALTERATION OF CHARGES:

Section 216 of Cr.P.C, 1973/ Sec.239 of BNSS 2023 deals with Court may alter the charge.

- Any Court may alter or add to any charge at any time before judgment is pronounced.
- Every such alteration or addition shall be read and explained to the accused.

- If the alteration or addition to a charge does not cause prejudice to the accused the Court may proceed with the trial.
- It causes prejudice to the accused or the prosecutor, the Court may either direct a new trial or adjourn the trial.
- If altered or added charge requires previous sanction, the case shall not be proceeded with until such sanction is obtained.

Section 217 Recall of witnesses when charge is altered:- When a charge is altered or added by the court after the commencement of trial then the court shall allow prosecutor and the accused to –

- Recall or re-summon the witnesses.
- Call any further witness whom the court may think to be material.

Can Court Add Or Alter Charges At Any Time, Even After Reserving Judgment?

In **Dr Nallapareddy Sridhar Reddy vs. State of Andhra Pradesh-AIR 2020 SUPREME COURT 753**, The Hon'ble Supreme Court after referring to precedents has observed that, it is clear that Section 216 provides the court an exclusive and wide-ranging power to change or alter any charge. The use of the words "at any time before judgment is pronounced" in Sub-Section (1) empowers the court to exercise its powers of altering or adding charges even after the completion of evidence, arguments and reserving of the judgment. The alteration or addition of a charge may be done if in the opinion of the court there was an omission in the framing of charge or if upon prima-facie examination of the material brought on record, it leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the alleged offence. The test to be adopted by the court while deciding upon an addition or alteration of a charge is that the material brought on record needs to have a direct link or nexus with the ingredients of the alleged offence. Addition of a charge merely commences the trial for the additional charges, whereupon, based on the evidence, it is to be determined whether the accused may be convicted for the additional charges. The court must exercise its powers under Section 216 judiciously and ensure that no prejudice is caused to the accused and that he is allowed to have a fair trial. The only constraint on the court's power is the prejudice likely to be caused to the accused by the addition or alteration of charges. Sub-Section (4) accordingly prescribes the approach to be adopted by the courts where prejudice may be caused.

The Hon'ble Supreme Court in ***Rohtas and Another v State of Haryana (Criminal Appeal No.38/2011)*** has held that it is permissible to alter a charge under Section 149 of the Indian Penal Code (IPC) to a charge under Section 34 IPC if the facts prove that the crime has been committed in furtherance of a common intention.

Referring to various precedents, the Hon'ble Supreme Court held that Section 34 IPC can be used in such a situation if common intention has been proved. The Hon'ble bench quoted the dictum laid down by a coordinate bench in the case, ***Karnail Singh v. State of Punjab- AIR 1954 SC 204*** as follows:

"...if the facts to be proved and the evidence to be adduced with reference to the charge under section 149 would be the same if the charge were under section 34, then the failure to charge the accused under section 34 could not result in any prejudice and in such cases the substitution of section 34 for section 149 must be held to be a formal matter".

The Hon'ble bench also quoted from another precedent ***Nallabothu Venkaiah v. State of Andhra Pradesh- (2002) 7 SCC 117*** as follows:

"...charge under Section 302 with the aid of Section 149 could be converted into one under Section 302 r/w Section 34 if the criminal act done by several persons less than five in number in furtherance of common intention is proved."

The bench also observed:

*"Although both Section 34 and 149 of the IPC are modes for apportioning vicarious liability on the individual members of a group, there exist a few important differences between these two provisions. **Whereas Section 34 requires active participation and a prior meeting of minds, Section 149 IPC assigns liability merely by membership of the unlawful assembly.** In reality, such 'common intention' is usually indirectly inferred from conduct of the individuals and only seldom it is done through direct evidence".*

On facts, the Hon'ble SC noted that "the requirements of Section 34 of IPC are well established as the attack was apparently pre-meditated".

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, (1999) 2 SCC 522***, 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).

Can Charges Framed Cannot Be Deleted Invoking S.216 Cr.P.C/S.239 BNSS?

The Hon'ble Supreme Court in **DIRECTORATE OF REVENUE INTELLIGENCE VERSUS RAJ KUMAR ARORA & ORS- 2025 LiveLaw (SC) 434**, has held that the power under Section 216 of the Criminal Procedure Code (Cr.P.C.) cannot be invoked to delete charges already framed against an accused, as it can only be used to add or alter the existing charges.

When Court Alters Charges, Opportunity Must Be Given To Both Sides To Recall/Re-examine Witnesses:

The Hon'ble Supreme Court in **MADHUSUDAN & ORS. Vs. THE STATE OF MADHYA PRADESH- 2024 LiveLaw (SC) 418**, has held that in the event of an alteration of charges, an opportunity must be provided to the parties to recall or re-examine witnesses in reference to such altered charges, and the reasons for the alteration of charges must be recorded in the judgment.

Is Absence of Written Charge A Curable Defect?

The Hon'ble Calcutta High Court in **Ramesh Sharma Vs. Superintendent of Police, CBI, ACB Kolkata and Anr in C.R.R. 2160 of 2014 decided on 06.09.2016** in a decision pertaining to framing of charge in a corruption case, has said that absence of written charge is a curable defect when there is no proof that any prejudice is caused to the accused. Where this court will have to decide whether any prejudice was caused to the accused for not filling of the prescribed form. Section 464 of the Code may be taken into consideration in this regard.

Section 464 of the Code runs thus: Effect of omission to frame, or absence of, or error in, charge.-

"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."

If the court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may –

- In the case of an omission to frame a charge, order that a charge be framed, and that the trial be recommenced from that point immediately after the framing of charge;
- 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.”

Section 464 naturally comes after Section 228 (1)(b) of the Code and naturally this Court can say that Section 464 of the Code is a curative section and the defect that the learned trial court even did not frame in writing a charge against the accused can safely be cured.

Mere Non Framing of Charge U/Sec 149 IPC Will Not Vitiating Conviction In Absence Of Any Prejudice To Accused

The Hon'ble Supreme Court in **State of Uttar Pradesh vs Subhash @ Pappu | 2022 LiveLaw (SC) 336** observed that non-framing of a charge under Section 149 of the Indian Penal Code would not vitiate the conviction in the absence of any prejudice caused to the accused. 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.

Referring to Annareddy Sambasiva Reddy Vs. State of Andhra Pradesh, (2009) 12 SCC 546, the bench observed:

"This Court negated the said submission and observed and held that mere non-framing of a charge under Section 149 on face of charges framed against appellant would not vitiate the conviction in the absence of any prejudice caused to them. Considering Section 464 Cr.P.C. it is observed and 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 is further observed 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."

Burden is on the accused to show failure of justice:

In *State of Uttar Pradesh vs. Paras Nathi Singh, 2009 INSC 669*, 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.

Whether detailed reasons and elaborate enquiry is required for framing the charges?

NO, The Hon'ble Supreme Court in *Bhawna Bai Vs. Ghanshyam and Others - AIR 2020 SUPREME COURT 554*, has observed that for framing the charges under Section 228 of the Code of Criminal Procedure, a trial judge is not required to record detailed reasons and observed that, at the stage of framing the charge, the court is not required to hold an elaborate enquiry; only prima-facie case is to be seen.

Accused cannot invoke S.91 CrPC to compel prosecution to produce things at the stage of framing of charge:

The Hon'ble Supreme Court in *STATE OF RAJASTHAN VERSUS SWARN SINGH @ BABA- 2024 LiveLaw (SC) 136* has observed that the courts cannot issue processes under Section 91 of the Code of Criminal Procedure (Cr.P.C) to compel the production of things/documents based on the application made by the accused at the stage of framing of charges.

Court not obligated to frame Charges if Offences are not made out from admitted evidence of prosecution

The Hon'ble Supreme Court in *SHASHIKANT SHARMA vs. THE STATE OF UTTAR PRADESH- 2023 LiveLaw (SC) 1037* has reiterated that if the necessary ingredients of an offence are not made out from the admitted evidence of the prosecution, then the Court is not obligated to frame a charge for such an offence against the accused.

Has accused got any right to produce any material at the time of framing of Charge:

NO, The Hon'ble Supreme Court in *State of Gujarat v. Dilipsingh Kishorsinh Rao-2023 LiveLaw (SC) 874*, held that at the stage of framing charges, the accused does not have the right to produce any material or documents to contest the case. The Court further emphasized that at the charges

stage, the trial court should base its decision solely on the charge sheet material provided by the prosecution, presuming the material to be true for the purpose of determining the existence of a prima facie case.

Defence of Accused Cannot Be Put Forth At the Stage of Framing of Charges:

In **Pushpendra Kumar Sinha v. The State of Jharkhand-2022 LiveLaw (Jha) 9** held that "That at the stage of framing of charge the defence of the accused cannot be put forth." The expression "hearing the submissions of the accused" cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the stage of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police."

Trial Courts, Public Prosecutors Should Be Vigilant While Framing Of Charges Against Accused:

The Hon'ble Supreme Court in **Soundarajan vs State 2023 LiveLaw (SC) 314** observed that Trial Courts and the Public Prosecutors should be vigilant in the matter of framing of charges. The Hon'ble Supreme Court noted that "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 sub-section (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 "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"

Defence on merits is not to be considered at the stage of framing of the charge:

In **State of Rajasthan vs. Ashok Kumar Kashyap- LL 2021 SC 210-** The Hon'ble Supreme Court observed that defence on merits is not to be considered at the stage of framing of the charge and/or at the stage of discharge application.

Orders Framing Charges or Refusing Discharge neither Interlocutory nor Final; Not Affected By Bar U/Sec 397 (2) Cr.P.C

The Hon'ble Supreme Court in **Sanjay Kumar Rai Vs. State of Uttar Pradesh- LL 2021 SC 246** has 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.

Is Framing of the charges an impediment in ordering further investigation /re- investigation/ de novo investigation?

In Anant Thanur Karmuse vs State of Maharashtra- 2023 LiveLaw (SC) 136 The Hon'ble Supreme Court has taken note of various precedents which hold the **constitutional courts can order** further investigation even after charges are framed. Mere filing of the charge sheet and framing of the charges cannot be an impediment in ordering further investigation /re-investigation / denovo investigation, if the facts so warrant, the Hon'ble supreme Court added.

CONCLUSION:

Thus, the object of the charge is to ensure a fair trial by giving the accused a notice of the matter he is charged with. Therefore, it is the sacred duty of the Presiding Officers to frame charges by considering the material on record and it cannot be assigned to ministerial staff.
