

FRAMING OF CHARGES: A CLEAR GLIMPSE IN CURRENT SENERIO

Tanmay Dubey

LL.M

Seedling School of Law & Governance, Jaipur National University

Abstract

Talking about the concept of charge under code of criminal procedure , it is one of the most important and handpicked topic that is necessary in every aspect .My paper would be dealing with the concept of charge and how to frame it under code of criminal procedure in India. The fore most requirement of a fair trial in criminal jurisprudence is to give correct and brief information to the accused as to the accusation against him. This is vitally important to the accused in the preparation of his defence. In all trials under the Criminal Procedure Code the accused is informed of the accusation in the beginning itself. In case of serious offences, the Code requires that the accusations are to be formulated and reduced to writing with great precision & clarity. This "charge" is then to be read and explained to the accused person

Introduction

Every single charge under the ambit of code of criminal procedure, 1973 shall state the offence with which the accused is charged. The main concept behind a charge is precisely and succinctly to make aware the accused or particular individual, about the various issue for which he is being charged. It is necessary to pass on to the accused absolutely clearly and with certainty what the prosecution has accused him of or what the prosecution has against him. The main principle or we can say the foundation of criminal law is based on the fact that it is the right of the accused to be informed about the exact nature of the charge levelled against him.

Charge basically fulfils the purpose of notice or intimation to the accused, drawn up according to specific language of law, giving clear and unambiguous or precise notice of the nature of accusation that the accused is called upon to meet in the course of trial¹

Under section 2(b) CrPc, 1973, the definition of charge is mentioned as ‘charge’ includes any head of charge when the charge contains more heads than one. Hence it can be interpreted that when a charge contains more than one heads, the head of charges is likewise a charge.

Relevant Legal Provisions of Criminal Procedure Code (CrPC)

Section 211 & Section 212 specifies about Contents of Charge and mentioning of particulars as to time and place of the alleged offence in the charge.

This rule is to an extent relaxed in a case of criminal breach of trust or of dishonest misappropriation. Generally 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. It is obvious that the relaxation given by the above rule is applicable only in case of criminal breach of trust or dishonest misappropriation and not in case of any other offence like theft, falsification of accounts under Section 477-A of the IPC, cheating etc.

This rule is mandated to cover cases of persons who showed a deficiency in the accounts with which they were entrusted but who could not be shown to have misappropriated this or that specific sum²

¹ VC Shukla v. State through CBI 1980 Cri LJ 690, 732

² Shiam Sunder v. Emperor, AIR 1932 Oudh 145,147

Lets have a look on Section 213 What it says under the code of criminal procedure; when manner of committing offence must be stated:

When the nature of the case is such that the particulars mentioned in sections 211 and 212 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.

- Section 214 gives a rule for interpreting the words used in the charge: It provides 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 such offence is punishable.

Basic Procedure regarding charge & its trial

The initial requirement of a fair trial in criminal cases is a precise statement of the accusation. The code seeks to secure this requirement, first, by laying down in Sections 211 to 214 of CrPC as to what a charge should contain; next, stipulating in Section 218 of CrPC that for every distinct offence there should be a separate charge; and lastly, by laying down in the same section that each charge should be tried separately, so that what is sought to be achieved by the first two rules is not nullified by a joinder of numerous & unconnected charges³.

Nature and Purpose of charge

It is a necessary characteristic of charge to be precise in its scope and particular in its details.

In *V.C. Shukla vs. State*, Justice Desai opined that, 'the purpose of framing a charge is to give intimation to the accused of clear, unambiguous and precise notice of the nature of the accusation that the accused is called upon to meet in the course of a trial'.

Essentials of Charge

The following are the contents that are a must for a charge:

1. Stating the Offence

The offence must be expressed, in a charge sheet so that the accused may shield himself.

2. Describing the offence by the name

Along with the charge the name of the offence, related to such charge must be clearly defined and explained.

3. Defining and understanding the offense

In places where the criminal law has not named the offence then a definition/ meaning of the offence must be expressed.

4. Mentioning the law and section of law

The charge must contain the law or the section of the law against which the offence has been said to be committed.

5. Substantive requirements of offense to be complied with

³ *Sanatan Mondal v. State*, 1988 Cri LJ 238 (Cal)

The charge must fulfil the requirements of the offense, whether there are any exceptions are there or not and if there are then the charge should adhere to them.

6.Charge's language

It is to be noted that one of the basic essentials of charge is that the charge should be framed in English or the Court's language or the language which is understandable by an accused.

7.Accused person's previous convictions

Charge might state the fact, date, and place of the previous conviction in places where the accused is liable to enhanced punishment by virtue of his previous conviction and where such previous conviction has to be proved.

8.Details of Time, Place and Person

It is crucial for a charge to contain the time when offense happened, place where offense was committed, person against whom the offense was committed and any other object or thing against whom the offense was committed.

9.particulars of the way in which the offence was committed

In cases where the information above is not sufficient to give notice of the offense with which the alleged accused has been charged, then it is expected that the charge shall include the particulars of the manner in which the alleged offense was committed.

10.Thing in respect of which offense is committed

It is important for a charge to express the property in respect of which the offence is said to have taken place.

Let us now see Section 218 reads as Separate charges for distinct offences

The object of section 218 is to save the accused from being embarrassed in his defence if distinct offences are lumped together in one charge or in separate charges & are tried together⁴ Another reason is that the mind of the court might be prejudiced against the prisoner if he were tried in one trial upon different charges resting on different evidence. It might be difficult for the court trying him on one of the charges not to be influenced by the evidence against him on the other charges. The strict observance of Section 218(1) may lead to multiplicity of trials, therefore exceptions, in suitable cases, have been provided by Section 218(2) in Sections 219,220,221 & 223. The effects of non-compliance with provisions regarding charge would be considered later. It would however be useful to allude to the decision of the Supreme Court in context of non-compliance with Section 218. In every case, in which a departure from the requirements of Section 218 has occurred, the question before the courts is, whether the omission to frame the required charge has or has not in fact occasioned a failure of justice by prejudicing the accused in his defence, & whether he has thus been deprived of a fair trial⁵.

Power of Court to order separate trial in cases where joinder of charges or of offenders is permissible

The basic rule regarding charge is that for every distinct offence there shall be a separate charge & for every such charge there shall be separate trial. The only exceptions recognized are contained in Sections 219,220,221 & 223 of CrPC. Therefore separate trial is the rule and the joint trial is an exception. The sections containing the exceptions are only enabling provisions. A court has got the discretion to order a separate trial even though the case is covered by one of the exceptions enabling a joint trial⁶. A joint trial of a very large number of charges is very much to be deprecated even though it is not prohibited by law. A separate trial is always desirable

⁴ Aftab Ahmad Khan v. State of Hyderabad, AIR 1954 SC 436

⁵ Willie Slaney v. State of MP, AIR 1956 SC 116

⁶ Chunnoo v. State, AIR 1954 ALL 795

whenever there is risk of prejudice to the accused in a joint trial. The Supreme Court has taken the view that it is the option of the court whether to resort to Section 219,220 & 223 of the Code or whether to act as laid down in Section 218 and that the accused has no right to claim joinder of charges or of offenders⁷.

Conclusion

In a criminal trial the charge is the foundation of the accusation & every care must be taken to see that it is not only properly framed but evidence is only tampered with respect to matters put in the charge & not the other matters.

In framing a charge during a criminal trial, instituted upon a police report, the court is required to confine its attention to documents referred to under Section 173

The judge needs to be only convinced that there is a prime facie case, where there is no necessity to adduce reasons for framing charges. However, the magistrate is required to write an order showing reasons if he decides to discharge the accused:



⁷ Ranchhod Lal v. State of MP, AIR 1965 SC 1248