
CHARGE AND ITS FORMS: AN OVERVIEW

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INTRODUCTION

One of the most basic requirements of a fair trial in criminal procedure is that the accused be given exact information about the charge levelled against him. In *Birichh Bhuian And Others vs State Of Bihar*, a charge was defined as “a precise formulation of a specific accusation made against a person of an offence alleged to have been committed by him”.¹ Charges serve as notice or intimation to the accused, and are written in specific legal language, giving clear and precise notice of the nature of the accusation that the accused would face during the trial. In *V.C. Shukla vs. State*, the court stated 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”.² The entire purpose of framing a charge is to allow the defence to focus its attention on the case at hand, and a charge that is written in such a vague manner that the necessary ingredients of the offence are not brought out, is flawed.

The code of criminal procedure seeks to secure the requirement of fair trial by defining what a charge should contain in Sections 211 to 214 of the CrPC; next, stipulating in Section 218 that each distinct offence should be charged separately; and finally, stipulating “in the same section that each charge should be tried separately, so that the first two rules are not nullified by a joinder of numerous & unconnected charges.”³

LEGISLATIVE REVIEW

Only when the court decides that the accused is not entitled to discharge under Sections 227⁴ (discharge in trial before court of sessions) and 239⁵ (discharge in trial in warrant cases) of the Code does the subject of drafting a charge arise. The terms relevant to the accused's discharge

¹ *Birichh Bhuian And Others vs State Of Bihar*, AIR 1963, SC 1120.

² *V.C. Shukla vs. State*, AIR 1980, 2 SCC 665.

³ Code of Criminal Procedure, 1973, § 218, Acts of parliament 1973 (India).

⁴ Code of Criminal Procedure, 1973, § 227, Acts of parliament 1973 (India).

⁵ Code of Criminal Procedure, 1973, § 239, Acts of parliament 1973 (India).

are crucial, and the Judge must first evaluate whether there are any reasonable grounds for proceeding against the accused. "At the stage of drafting of charge, the court is required to assess the information and documents on record" to determine if a prima facie case is made out, according to the Supreme Court. Only a prima facie case should be evaluated when making charges, with the corroborating value of the evidence being ignored. The Court does not have to be convinced that the case will culminate in a conviction; it just needs to be convinced that the accused could have committed the offence. However, once an individual has been charged, the court cannot dismiss the charge, he must be either be convicted or acquitted.

Under Section 211⁶ of the CrPC, there are four requirements of a valid charge:

“(i) It must state the offence with which the accused is charged.

(ii) If the law which creates the offence gives it any specific name, the offence must be described in the charge by that name only.

OR

(ii) Alternatively, if the law creating the offence does not give 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.

(iii) The law and the section of the law of the offence against which the offence is said to have been committed must be mentioned in the charge.

(iv) it must be written in the language of the Court.”

Section 211 provides that “the fact that the charge is made, is equivalent to a statement that every legal condition required by law to constitute the particular offence was fulfilled in that particular case.”⁷ Further, “if the accused has previously been convicted of any offence, and is now liable, by reason of such previous conviction, to enhanced punishment or to punishment of a different kind for a subsequent offence, and if it is intends to prove such previous conviction, the fact, date and place of the conviction is also to be stated in the charge. Even if

⁶ Code of Criminal Procedure, 1973, § 211, Acts of parliament 1973 (India).

⁷ Code of Criminal Procedure, 1973, § 211, Acts of parliament 1973 (India).

such a statement is omitted the Court can add it at any time before the sentence is passed against the accused.”

Section 212 then provides that “the charge must contain such particulars as to the time and place of the alleged offence.”⁸ The object of this section is to ensure that the accused has the fullest possible particulars of the accusation made against him. Thus, a charge for house-breaking and theft would be bad on account of vagueness, if it does not specify the articles stolen, or the name of the person whose house was broken into, or omits to mention the place where the offence was committed.

Section 213 lays down that “if the nature of the case is such that the particulars mentioned in Sections 211 and 212 do not give to the accused sufficient notice of the matter with which he is charged, the charge must also mention such particulars of the manner in which the alleged offence was committed as would be sufficient for that purpose.”⁹

Section 214 then provides that, “in every charge, the words which are used in describing the offence are deemed to have been used in the same sense as attached to them by the law under which an offence is punishable.”¹⁰

Section 215 of the Code then expounds a salutary rule to the effect that “an error in stating either the offence or any other particular required to be stated in the charge, or omission in to stating the charge the offence or such particulars, cannot be regarded as material at any stage of the case, unless the accused was, in fact misled by such error or omission, and if this has caused a failure of justice.”¹¹ Under Sections 215 & 464¹² of CrPC, the object is to prevent failure of justice where there is some breach of the rules in the formulation of the charge. The two sections read together lay down that whatever the irregularity in framing of a charge, it is not fatal unless there is prejudiced caused to the accused. However, the clause also states that minor inconsistencies in describing the specifics of the offence will have no bearing on the trial or its conclusion. The court should consider the manner in which the accused conducted his defence and the nature of the objection when deciding whether the error or omission resulted

⁸ Code of Criminal Procedure, 1973, § 212, Acts of parliament 1973 (India).

⁹ Code of Criminal Procedure, 1973, § 213, Acts of parliament 1973 (India).

¹⁰ Code of Criminal Procedure, 1973, § 214, Acts of parliament 1973 (India).

¹¹ Code of Criminal Procedure, 1973, § 215, Acts of parliament 1973 (India).

¹² Code of Criminal Procedure, 1973, § 464, Acts of parliament 1973 (India).

in a failure of justice.

A power is given to the Court by Section 216 “to alter or add to any charge at any time before the judgment is pronounced in the matter. However, every such alteration or addition must be read and explained to the accused.”¹³ The section invests a comprehensive power to remedy the defects in the framing or non-framing of a charge, whether discovered at the initial stage of the trial or at any subsequent stage prior to the judgment. If the addition or alteration to a charge is such that, in the opinion of the Court, proceeding immediately with the trial is not likely to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, its discretion, “proceed with the trial as if the altered or added charge had been the original charge. If, on the other hand, such alteration or addition is likely to prejudice the accused or the prosecutor, the Court may adjourn the trial or may direct a fresh trial.” Further, although S. 216 gives power to the Court to add or to alter the charge, yet, this power is to be exercised with great discretion, and it is the Court's responsibility to ensure that the accused is not prejudiced by the addition or change of the charges.

Under Section 217, “whenever a charge is altered or added to by the Court after the trial has commenced, the prosecutor and the accused are to be allowed-

(a) to recall or re-summon any witness who has already been examined, and examine such witness with reference to the altered or added charge, unless the Court considers (for reasons to be recorded by it in writing) that such recall or re-examination of a witness is merely for the purpose of vexation or delaying or defeating the ends of justice and

(b) to call any further witnesses who are material witnesses in the opinion of the Court.”¹⁴

Sections 228¹⁵ and 240¹⁶ of the CrPC cover “framing of charge in Sessions and Warrant Cases, respectively.”

No charge needs to be framed in the following three cases, namely, -

¹³ Code of Criminal Procedure, 1973, § 216, Acts of parliament 1973 (India).

¹⁴ Code of Criminal Procedure, 1973, § 217, Acts of parliament 1973 (India).

¹⁵ Code of Criminal Procedure, 1973, § 228, Acts of parliament 1973 (India).

¹⁶ Code of Criminal Procedure, 1973, § 240, Acts of parliament 1973 (India).

- (a) “for inquiries under Section 116”¹⁷;
- (b) “for trials of summons-cases under Section 251”¹⁸;
- (c) “for summary cases where no appeal lies under Section 263”¹⁹

As per Section 464²⁰ of the Code, no judgment or order of a court will be invalid if there is an error or omission in framing the charge. In case the court feels there has been a miscarriage of justice due to the same, the court can order the beginning of a fresh trial.

JUDICIAL REVIEW

The most basic and important object of forming and drafting charges is to make the accused aware of the offences he has committed. The charge should be precise and clear. The Calcutta High Court held in *Ballavdas Agarwalla vs C.B.L. Bhatnagar*²¹ that in a defamation case under S. 500 of the I.P.C., the alleged defamatory statements on which the prosecution relies should be separately and precisely mentioned in the charge, so that the accused knows exactly what case he has to face. Moreover, a charge of falsification of accounts should also describe the specific accounts that are alleged to have been falsified, and a charge including a vague and generic allegation of falsification would be irregular. Further, in every charge of rioting and unlawful assembly, the common object must be set out. The Magistrate must specify, in the charge itself, the common object of the unlawful assembly. Therefore, a conviction for rioting on a charge which does not state the common object is liable to be set aside. An exception to the charge being specific is adultery. The Orissa High Court held that if an adultery charge is sufficiently specific as to the place of occurrence and clearly mentions a period, the mere omission to give each day does not amount to prejudice. It can be difficult to determine the exact date or dates of sexual intercourse in an adultery case. As a result, specifying two dates between which the claimed offence was committed would suffice in such circumstances.

It is also to be remembered that the Court, while substituting one charge for another, cannot ignore the basic requisites of a charge. Thus, a charge for rape cannot be altered into a charge for adultery, because the complaint of the husband is a preliminary requisite for adultery. In

¹⁷ Code of Criminal Procedure, 1973, § 116, Acts of parliament 1973 (India).

¹⁸ Code of Criminal Procedure, 1973, § 251, Acts of parliament 1973 (India).

¹⁹ Code of Criminal Procedure, 1973, § 263, Acts of parliament 1973 (India).

²⁰ Code of Criminal Procedure, 1973, § 464, Acts of parliament 1973 (India).

²¹ *Ballavdas Agarwalla vs C.B.L. Bhatnagar*, A.I.R. 1943 Cal. 473.

one case, where the accused was charged only with kidnapping but the Sessions Judge left it up to the jury to convict him of abduction as well, it was ascertained that the notice of the charge of kidnapping was not a fair, proper, or sufficient notice for a charge of abduction, and the conviction was overturned.

The Supreme Court, in *Kantilal Chandulal Mehta vs State Of Maharashtra*,²² observed: "The Criminal Procedure Code gives ample power to the Court to alter or amend a charge provided that the accused has not to face a charge for new offence, or is not prejudiced, either by keeping him in the dark about the charge, or in not giving him a full opportunity of meeting it and putting forward any defence open to him, on the charge finally preferred against him." However, when a charge fails to accurately put forth the facts of the case, but it is obvious from the responses given to the Court that the accused knows exactly what the case against him is, it will be determined that the charge's framing error did not prejudice the accused. If the accused does not oppose or protest a defect in the charge at the earliest opportunity, and they are fully aware of the charges against them, it will be assumed that the irregularity did not result in a failure of justice. Even if the charges are defective, it cannot be stated that justice has been miscarried as long as the accused is informed of the situation. The Court also has the authority to add or change the charge; however, this authority must be handled with great discretion, and it is the Court's responsibility to ensure that the accused is not prejudiced by it.

CONCLUSION

The object of the charge is to ensure a fair trial by giving the accused a notice of the matter he is charged with. If the relevant information is conveyed to him and no prejudice is caused to him because of the charges, the accused cannot succeed by merely arguing that the charges were framed defectively. Nor could a conviction recorded on charged under wrong provisions be reversed if the accused was informed of the details of the offences committed and thus no prejudice was caused to him. A conviction cannot be overturned simply because a charge was not properly framed or because the charge was defective. Procedural laws are intended to serve the ends of justice rather than to impede them via technicalities.

²² *Kantilal Chandulal Mehta vs State Of Maharashtra And Anr*, A.I.R. 1970 S.C. 359