

CHARGE IN CRIMINAL CASES

Mr. Justice Nazir A. Bhatti

1. Chapter XIX of the Code of Criminal Procedure contains provisions with regard to the charge in criminal cases. Sections 221 to 240 specify different provisions regarding charge. The subject of charge in criminal cases is of utmost importance as the entire edifice of a criminal case is built upon the framing of a correct charge.

2. The accused should be informed with certainty and accuracy the exact nature of the charge brought against him. Otherwise, he may be seriously prejudiced in his defense. The charge should give a description of the offence. Where the law and the section of law are mentioned in the charge the omission of details is not so material as to prejudice the accused. Where there are patent inconsistencies between the charge as framed and the charge as put to the accused, the charge would be considered to be defective and the case may be remanded to the trial court for fresh decision. An accused is entitled to know with certainty and accuracy the exact nature of the charge brought against him, and unless he has this knowledge he must be seriously prejudiced in his defense. This is true in all cases, but it is more especially true in case where it is sought to implicate him or acts not committed by himself, but by others with whom he was in company. A charge should be so framed as to refer to the section of the Penal Code under which the offence charged is punishable.

3. Where time cannot be specified in the charge having regard to the nature of the information available to the prosecution, failure to mention such particulars may not invalidate the charge. Where the accused was charged with black-marketing in foreign currency but the charge did not state the exact amount of any money involved, it was held that under the circumstances it was not feasible or necessary for the prosecution to give the dates and the charge was not bad. A charge should be framed separately for each offence even if more than one offence are tried at one trial.

4. In determining whether any error, omission or irregularity has occasioned a failure of justice, the Court should have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings and to the manner in which the accused person has conducted his defense.

5. A charge can be amended or altered or added to at any time before judgment is pronounced. Where originally different charges were laid against two accused in a case and subsequently the charges were amended so that the two accused were charged with the same offence, it was held that the two accused could be said to be tried for the same offence within section 30 of the Evidence Act and that, under that section, the confession of one of the co-accused could be taken into consideration against the other. Where it is doubtful whether or not proceeding immediately with the trial will prejudice the accused, the Court must lean in favour of holding that such procedure will prejudice the accused. Where the Magistrate's order shows that the previous charges were cancelled and the prosecution witnesses were summoned a new, a new trial is directed in terms of section 229.

6. When two offences have been committed and each of these two offences has no connection with each other they are distinct offences. Where the accused is alleged to have committed three if not four dacoities in the course of the same night and the charge against them was to the effect that they on or about the said night committed dacoity at a certain place and thereby committed an offence punishable under section 395, P.P.C., it was held that the conviction was unsustainable, as the charge ought to have specified each alleged dacoity separately and the omission cannot be said to be a mere irregularity, even if the dacoities were also connected together as to form part of the same transaction. Accused cannot be charged at one time with more than three dacoities in all and the dacoities must be particularly specified.

7. There is nothing in the Code which directs that where an accused person is alleged to have done two or more acts, each of which may fall within the definition of an offence under one or another section of the Pakistan Penal Code, the section or sections in either case being the same, the joinder of the charges under those sections is illegal.

Substantially the acts amount in such a case to offences punishable under the same sections of the Pakistan Penal Code and therefore they are offences of the same kind.

8. Joint trial of different offences (under different enactments) does not vitiate proceedings in the absence of prejudice to the accused.

9. The burden of proof is on the prosecution to show that the case falls within the exceptions to the general rule.

10. When two or more offences when combined form a different offence, the accused may be tried jointly for the separate offences as well as for the offence which those acts constitute when combined. It must however be noted that where several acts of which one or more than one would, by itself or themselves constitute an offence, although when combined they may constitute a different offence, there can be a trial for each of such offences.

11. Where a charge is framed only for one offence but the offence committed is found to be some other than the one charged, provided, the same facts can sustain a charge for the latter offence, the accused can be convicted for such an offence. Even if the facts proved are slightly different from those alleged in the charge, a conviction based on the facts proved would be legal.

12. Section 237 and 238, Cr.P.C. are two exceptions to the general rule that a person cannot be convicted of an offence of which he was not charged, and of which consequently he had no notice.

13. Section 237, Cr.P.C. enables the Court to convict a person of an offence which is disclosed in the evidence and for which he might have been charged.

14. The accused charged with a major offence may be convicted of a minor offence when the graver charge gives to the accused notice of all circumstances which constitute the minor offence but when the circumstances embodying the major charge do not necessarily, and according to the definition of the offence, constituted the minor offence also, the principle no longer applies. The notice of the graver charge does not in such cases necessarily involve notice of all that constitute the latter offence.

15. A person can be charged for offences of the same nature not exceeding three within a year even if they were committed against several persons.

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

- a) persons accused of the same offence committed in the course of the same transaction;
- b) persons accused of an offence and persons accused of abetment, or of an attempt to commit such offence;
- c) persons accused of more than one offence of the same kind, within the meaning of section 234 committed by them jointly within the period of twelve months;
- d) persons accused of different offences committed in the course of the same transaction;
- e) persons accused of an offence which includes theft, extortion, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property the 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;

f) persons accused of offences under sections 411 and 414 of the Pakistan Penal Code or either of those sections in respect of stolen property the possession of which has been transferred by one offence; and

g) persons accused of any offence under Chapter XII of the Pakistan Penal Code 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.

17. A charge can be withdrawn or stayed under section 240. If it is not withdrawn or stayed the Magistrate is bound to pass judgment on each count and pass an order either of acquittal or conviction, as the case may be. It is not

open to a Magistrate to pass no order on a charge framed against an accused person. The inference which would follow from not recording a conviction would be that the accused was found not guilty and was acquitted.

18. After giving the aforesaid general guidelines in respect of the subject of charge we can broadly distribute the subject into the following categories:

a. Description of offence. Section 221 contains provisions regarding form of charge. Every charge 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. 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 gives the accused notice of the matter with which he is charged. The law and section of law against which the offence is committed shall be mentioned in the charge. The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence was fulfilled.

b. Particulars as to time, place and person. Section 222 pertains to this subject. The charge shall contain such particulars as to the time and place of the alleged offence and the person against whom or the thing in respect of which it was committed as are reasonably sufficient to give the accused notice of the matter with which he is charged. However when the nature of the case is such that the aforesaid particulars 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. If a person is accused of the theft of an article at a certain time and place, the charge need not set out the manner in which the theft was committed. But if a person is accused of giving false evidence at a given time and place, the charge must set out such portion of the evidence which is alleged to be false. In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them by the law under which such offence is punishable.

c. Effect of erroneous charge: 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 case as material unless the accused was misled by such error and it occasioned a failure of justice.

d. Alteration of charge: Every Court is competent to alter or add to any charge at any time before judgment is pronounced but every such alteration or addition has to be read and explained to the accused. If the new or added or altered charge is such that proceeding immediately with the trial is likely to prejudice the accused or the prosecutor, the Court either direct a new trial or adjourn the trial for such period as may be necessary. Whenever a charge is altered or added to after the commencement of the trial, the prosecutors and the accused shall be allowed to recall or re-summon any witness already examined and such witness may be re-examined with regard to the addition or alteration made in the charge.

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

f. Doubt about offence: If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts will prove, the accused may be charged with having committed all or any of such offences. Joint trial of offences under different laws is permissible when offences are committed in course of same transaction. When a person is charged for one offence he can be convicted of another when it appears in evidence that he had committed a different offence although he may not be charged with it, provided the accused is not prejudiced by his conviction for the offence for which he was not charged.

g. Offences specified in section 239 can be tried together.

h. Where an accused is charged for several offences and is convicted for any one of them, he may be acquitted or the other charges or the remaining charge may be withdrawn.