



On Framing of Charge under the Criminal Procedure Code, 1973

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1. Introduction

A formal charge is to be framed in all warrant cases whether the offence is triable by the Court of Session or by the Magistrate. For the purpose of framing charge, therefore, the Judge is to consider judicially whether on consideration of the materials on record, it can be said that the accused has been reasonably connected with the offence alleged to have been committed and that on the basis of the said materials there is a reasonable probability or chance, as we normally call it, of the accused being found guilty of the offence alleged. If the answer is in the affirmative, the Judge will be at liberty to presume "that the accused has committed an offence" as mentioned in Section 228 of the Criminal Procedure Code, 1973 for the purpose of framing charge. On the contrary, if the answer is in the negative for want of sufficient material, the Judge shall discharge the accused as no charge can be framed.ⁱ Similarly, before Magistrate's Court, in warrant cases, if accused pleads guilty, he would be convicted under section 241 of Cr.P.C. and that if the charge is groundless, accused would be discharged under section 239 of Cr.P.C.

2. Chapter XVI relates to commencement of proceedings before the Magistrate

Under Section 204 the Magistrate has to issue process when there is sufficient ground for proceeding. Under Section 207 the copies of relevant documents are to be furnished to the accused. Then comes into picture Section 208 envisaging that a case otherwise than police report, it appears to the Magistrate issuing process against the accused that that offence is triable exclusively by the Court of Session. The Magistrate shall furnish various documents to the accused which include the statements recorded under sections 200 and 202 examined by the Magistrate, statements under Section 161 recorded by the police agency as also statements and confessions, if any, under Section 164 and the third category is referred to as "Any documents produced before the Magistrate on which the prosecution proposes to rely".ⁱⁱ

3. Sections 207 and 209 of the Code

Section 209 is the next logical provision in the chronological order under which the Magistrate can commit the accused to the Court of Session when it appears to him that the offence is triable exclusively by the Court of Session. The construction of the provisions of Section 207 and scope of a committal proceeding in the context of the committing Magistrate have been elaborately considered by this Court in Criminal Application. No. 1051 of 1980 with Criminal Application No. 1062 of 1980 Dr. Dattatraya Samant v. State of Maharashtra and Arun Mahadeo Naik v. State of Maharashtra respectively.ⁱⁱⁱ

4. Section 173 of the Code

Section 173 gives a clear idea as to what documents are to be furnished to the Magistrate along with the charge-sheet and the dominant part is that the police agency has to furnish only those documents

on which the prosecution proposes to rely and it is further high-lighted that even in respect of the statement under Section 161 the documents are to be furnished vis-a-vis those witnesses whom the prosecution intends to rely. Under Section 207 of the Code the Magistrate has to furnish copies of such documents which are forwarded by the police agency to the Magistrate which are brought into existence under Section 154, 161 or 164 of the Code and which in a bunch form the subject-matter of the provisions of Section 173.

5. The Procedure

It is worth noting that in the procedure prescribed for warrant cases in Chapter XIX there is some identical undercurrent vis-a-vis reference to the documents which are to be considered by the learned Magistrate for the purpose of framing of the charge. In other words, Sections 233, 235, and 240 refer to the same set of documents as flow out of the provisions of Section 173 on whose consideration and on examining the accused if so required and on hearing the parties the Magistrate can discharge the accused if the charge appears to be groundless or otherwise can frame a charge if there is ground for presuming that the accused has committed an offence. The same consideration at least vis-a-vis the obligation of the Sessions Court would apply in the context of the examination of the material and the documents. It is in the context of this situation that the terminology in Sections 227 and 228 is to be examined. In other words when it is mentioned in those provisions that the Sessions Court has to consider the record of the case and the documents submitted therewith it is referable only to that record and documents which is first lodged by the police to the Magistrate and then transmitted by the Magistrate to the Court of Session forming a record of the case with the documents accompanying the said record. In other words the documents referred to in Section 227 de hors of the word "Record" have got to be a restricted meaning referable only to those documents which find mention in Sections 173, 207 and 209 of the Code.

6. Section 240 of the Criminal Procedure Code - Framing of charge

1. If, upon such consideration examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion could be adequately punished by him, he shall frame in writing a charge against the accused.
2. The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.

1. For the purpose of framing of a charge: Section 240 of the Code provides for framing of a charge if, upon consideration of the police report and the documents sent therewith and making such examination, if any, of the accused as the Magistrate thinks necessary, the Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence triable under Chapter XIX, which such Magistrate is competent to try and which can be adequately punished by him.^{iv}

2. Judicial opinion is required: The judicial opinion regarding the approach to be adopted for framing of charge is that such charges should be framed if the Court prima facie finds that there is sufficient ground for proceeding against the accused. The Court is not required to appreciate evidence as if to determine whether the material produced was sufficient to convict the accused. The following passage from the decision in State of M.P. v. Mohanlal Soni,^v is in this regard apposite: "The crystallized judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused."

3. The proceedings under section 240 amount Trial: In V.C. Shukla v. State through C.B.I.,^{vi} the Hon'ble Apex Court held as infra: "...The proceedings starting with Section 238 of the Code including any discharge or framing of charges under Section 239 or 240 amount to a trial..."^{vii}

4. “Nullus commodum capere potest de injuria suapropria”: In Union of India & Ors. V. Major Gneral Madan Lal Yadav (Retd.),^{viii} a three-Judge Bench while dealing with the proceedings in General Court Martial under the provisions of the Army Act, 1950, applied legal maxim “nullus commodum capere potest de injuria suapropria” (no one can take advantage of his own wrong), and referred to various dictionary meanings of the word ‘trial’ and came to the conclusion that “It would, therefore, be clear that trial means act of proving or judicial examination or determination of the issues including its own jurisdiction or authority in accordance with law or adjudging guilt or innocence of the accused including all steps necessary thereto. The trial commences with the performance of the first act or steps necessary or essential to proceed with the trial.

5. Sections 228 and 240 of Cr.P.C: In “Common Cause”, A Registered Society thr. It’s Director v. Union of India & Ors.^{ix}, the Hon’ble Apex Court while dealing with the issue held:

1. In case of trials before Sessions Court the trials shall be treated to have commenced when charges are framed under Section 228 of the Code of Criminal Procedure, 1973 in the concerned cases.
2. In cases of trials of warrant cases by Magistrates if the cases are instituted upon police reports the trials shall be treated to have commenced when charges are framed under Section 240 of the Code of Criminal Procedure, 1973, while in trials of warrant cases by Magistrates when cases are instituted otherwise than on police report such trials shall be treated to have commenced when charges are framed against the concerned accused under Section 246 of the Code of Criminal Procedure, 1973.
3. In cases of trials of summons cases by Magistrates the trials would be considered to have commenced when the accused who appear or are brought before the Magistrate are asked under Section 251 whether they plead guilty or have any defence to make.” (Emphasis added)

6. The right of accused at the stage of framing charge:- In State Anti-Corruption Bureau, Hyderabad and Another v. P. Suryaprakasam^x where considering the scope of Sections 239 and 240 of the Code it was held that at the time of framing of charge, what the trial court is required to, and can consider are only the police report referred to under Section 173 of the Code and the documents sent with it. The only right the accused has at that stage is of being heard and nothing beyond that (emphasis supplied).^{xi}

7. Conclusion

The net result of this analysis would be that under the procedural law the accused does not get a right to invite the Court to consider any other additional material than the one collected by the police, lodged with the Magistrate and forwarded to the Court of Session, on which the prosecution wants to rely for the purpose of claiming a discharge. Section 211 of the Code explains us about the contents of charge. Section 215 of the Code deals with effect of errors in charge. Section 464 of the Code describes as to effect of omission to frame, or absence of, or error in, charge. The dicta of the Hon’ble Apex Court in Mohan Singh v. State of Bihar, has categorically explained the importance of framing charge in criminal cases. Similarly, V.C. Shukla v. State, through C.B.I. is another important ruling to know the importance of framing charge in a criminal case.

ⁱSee. Sati Kanta Guha And Anr. v. State Of West Bengal, 1977 CriLJ 1644

ⁱⁱSopan Namdeo Hadke V.The State of Maharashtra 1985 CriLJ 1642.

ⁱⁱⁱ1981 Cri LJ 1819 (Bom).

^{iv}See: Sheoraj Singh Ahlawat & Ors v. State Of U.P (Supra).

^v2000 Cri.LJ 3504

^{vi}AIR 1980 SC 962,

^{vii}See: Hardeep Singh v. State of Punjab & Ors (2014).

^{viii}AIR 1996 SC 1340.

^{ix}AIR 1997 SC 1539,

^x1999 SCC (Cri.) 373

^{xi}See: State of Orissa v. Debendra Nath Padhi (2004).