

FRAMING OF CHARGE

1. Charge defined.
2. Relevant Provisions and Law.
3. Section 221 Cr.P.C.---
- Reproduced.
4. When and why a charge is to be framed?
5. Charge shall contain all material particulars.
6. Essentials of a charge.
7. Separate and joint charge.
8. Charge in challan case & private complaint.
9. Previous conviction.
10. Joinder and misjoinder of charge.
11. Exceptions.
12. Misjoinder of charges.
13. Joint trial.
14. Provisions directory and not mandatory.
15. Transaction.
16. Joint trial following competent. in the cases
17. Alteration amendment charge. or of
18. "May"---- Discretion of the Court.
19. Defect and error in or omission to frame charge.
20. Illegality not curable.
21. De nova trial.
22. Recalling of witnesses----
application u/s 540 Cr.P.C.
23. Powers of Appellate Court.
24. Withdrawal of trial---
--its effects.
25. Groundless charge or failure to prove.
26. Effects of admission or denial of charge.
27. Adjournment for an indefinite period.
28. Other cases of sine die adjournment, e.g. pendency of a civil suit

29 When a person is charged with one offence, he can be convicted of an other.

Charge defined.

i. According to encyclopedia law dictionary "charge" means an accusation made against a person in respect of an offence alleged to have been committed by him (AIR 1963 SC 1120).

A charge is a precise formulation of the specific accusation against a person who is entitled to know its nature at the earliest. It denotes charge formulated after inquiry, which an accused is to face in the trial. The object of framing of charge is to afford the defence an opportunity to concentrate its attention on the case that it has to meet. (KLR 1993 Cr.C. 8).

2. Relevant Provisions and Law.

Section 221 to 240 of Cr.P.C. deal with the framing of charge, trial for more than one offences, prove of charge, what persons may be charged jointly, withdrawal of the same conviction on one of several charges etc. Sections 221 to 240 give clear and explicit directions as to how charge should be drawn up. It is held more than once that the framing of a proper charge is vital to a criminal trial and that this is a matter on which the Court should bestow the most careful attention. (1996 Cr.L.J. 214).

Section 221 Cr.P.C.---- Reproduced.

1. **Charge to state offence.** Every charge under this code shall state the offence with which the accused is charged.
2. **Specific name of offence; sufficient description.** If the law, which creates the offence, gives it any specific name, the offence may be described in the charge by that name only.

3. **How stated where offence has no specific 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 to give the accused notice of the matter with which he is charged.
4. The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.
5. **What implied in charge.** The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particulars case.
6. **Language of charge.** The charge shall be written either in English or in the language of the court.
7. **Previous conviction when to be set out.** If the accused having been previously convicted of any offence, is liable by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge. If such statement has been omitted, the Court may add it any time before sentence is passed.

4. **When and why a charge is to be framed?**

A charge is to be framed if after pursuing a police report and all other documents/statements on record the Court comes to an opinion that prima facie an offence is made out against the accused and he should face trial. It does not per se mean that the accused is held guilty. He is only made aware about the case of the prosecutions borne out of the record upon which he is to be prosecuted. The object of framing a charge is to inform the accused to

know about the precise accusations against him and nothing more. (2000 P.Cr.L.J, 576).

Charge shall contain all material particulars.

5. It is a mandatory that charge shall contain all material particulars as to time, place as well as specific name of the alleged offence, the manner in which the offence was committed and the particulars of the accused so as to afford accused an opportunity to explain the matter with which he is charged. The purpose behind giving such particulars is that the person against whom such charge is framed should prepare his case accordingly and may not be misled in preparing his defence. (2000 P.Cr.L.J. 367). Charge is to be framed on the basis of the material placed before the Trial Court and while doing so the Court is not bound by the inquiry report submitted u/s 202 or in the police challan case by the report submitted under section 173 Cr.P.C. (2001 MLD 1125).

Essentials of a charge.

The essentials of a charge are as under:

1. The charge should state the offence with which the accused is charged.
2. If the offence is named specifically by the law, which creates the offence, the offence may be described in the charge by that name only.
3. The law and section of the law against which the offence is committed should be mentioned.
4. The charge shall be written either in English or in the language of the Court.
5. In case of previous conviction of the accused for affecting the sentence, the fact and date, place of the previous conviction are to be stated.
6. Particulars as to the time, place of the offence, and the person against whom or the thing in respect of which it is committed.

- 7. Where the accused is charged with criminal breach of trust or dishonest misappropriation of money, it is sufficient to specify the gross sum in respect of which the offence is committed and the dates between which it is committed provided the time between the first and last date does not exceed one year.
- 8. When the particulars mentioned in section 221 and 222 are insufficient to notify accused with the matter with which he is charged, the charge should also contain such particulars of the manner in which the alleged offence was committed. (Extract of sections 221 to 240 Cr.P.C.).

7. Separate and joint charge.

A charge is what is known as indictment in the English Law. It is a statement of the offence, that is a description of the offence, and the particulars of the offence, that is a brief statement of the essential facts, which constitute the offence. The object of framing a charge is to give reasonable information and notice as to the matter with which the accused is charged and which he is called upon to defend. The basic requirement in every criminal trial is that the charge must be framed so as to give the accused a fairly reasonable idea as to the case which he is to face, and the validity of the charge must in each case be determined by the application of the test viz had the accused a reasonably sufficient notice of the matter with which he was charged? (AIR 1963 SC 1696).

The general rule as enacted in section 233 Cr.P.C. is that for every distinct offence of which any person is accused there shall be separate charge, and every such charge shall be tried separately. The cases mentioned in Section 234, 235, 236 and 239 Cr.P.C which sections are the exceptions to the general rule enable a plurality of offences to be dealt with in the same trial. (AIR 1938 P.C 130). A joint trial is, under these provisions, by no means compulsory. Nor can it be said that if several

accused charged for committing the same offence in the same transaction are tried separately then the trial will irrespective of any question of prejudice be illegal. The provisions of Section 234 to 239 Cr.P.C are merely enabling provisions and do not make it incumbent upon the criminal courts to hold a joint trial in every case (PLD 1969 SC 158). The general rule in section 233 Cr.P.C is based on a salutary principle that when each charge is tried separately, there is much less apprehension of prejudice to the accused as compared to a triad wherein several offences are combined together (1980 SCMR 402).

Section 233 relates to joinder of charges and provides that for every distinct offence of which any person is accused there shall be a separate charge and every charge shall be tried separately, except in the cases mentioned in sections 234, 235, 236 and 239. Section 234 provides that where a person is accused of more offence than one but they are of the same kind, committed within a year, from the first to last, they may be charged together. Section 235 relates to trial for more than one offence committed in one series of acts so connected together as to form the same transaction. Section 236 provides that where it is doubtful which of several offences is of such a nature as to constitute offence the accused may be charged with having committed all or any such offences and any number of such charge may be tried at once; or he may be charged in the alternative with having committed some one of the said offences. Section 237 provides that when a person is charged with one offence, he can be convicted of an other. Section 238 provides that when a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charge with it. Section 239 provides list as to what persons may be charged jointly.

Charge in challan case & private complaint.

A procedure as to trial has been laid down by the Supreme Court of Pakistan in Nur Elahi's case. (PLD 1966 SC Mr. Justice S.A. Rahman, of the August Court observed.

A fair procedure would be for the learned trial Judge to take up the complaint witnesses mentioned in the police challan, if they were not already examined on behalf of the complaint, as Court witnesses under section 540-A of the Criminal Procedure code, so that they can be cross-examined by both the parties. This will enable the Court to have the whole relevant evidence included in one trial and a decision could be arrived at after a proper consideration of the entire material relied on by the parties. The accused persons would in addition obviously have the right to adduce defence evidence if they so choose. If that trial results in a conviction, it will be for the Public Prosecutor to consider whether or not he should withdraw from the prosecution, with the permission of the Court, under section 494 of the Code of Criminal Procedure Code, in the police challan case. It would be easy for him to take such a decision after the whole evidence has been thrashed out in the first trial. If the first case ends in an acquittal, he might still have to consider whether the Police version has not been so seriously damaged by what has been brought out in the first trial, as to justify withdrawal of the prosecution. Otherwise the second trial would be allowed to proceed to its normal conclusion and the parties would have the advantage of utilizing the material placed on the record of the earlier trial, by way of cross-examination of the relevant witnesses, as permitted by law.

This procedure is being suggested to avoid a difficulty that might otherwise confront the complainant. If the Police challan is taken up first for trial, the complainant would be under a handicap in so far as he would not be

in a position to cross-examine the witnesses of the prosecution. (PLD 1966 SC 708 P. 712).

Where the versions in the complaint case and challan case are different the sets of accused also not being the same, the decision in Nur Elahi's case would be more attracted. (PLD 1986 SC 737 + 1998 SCMR 652). Prosecution story being same but only number of accused connected with the commission of offence different, both such cases can be consolidated and tried together. (PLD 1987 Lah. 245 + 1980 P.Cr.L.J. 901). Where there are two cases one challan and other complaint case, having different set of accused, different versions in both cases, then both cases should be consolidated. Complaint case should be taken first and after examining witnesses in complaint case. Court would summon remaining witnesses mentioned in calendar of witnesses in challan case as Court witnesses. (2002 YLR 1714).

9. Previous conviction.

A "previous conviction" within the meaning of this section means a previous conviction by Pakistani Court and not by a foreign Court. (1930 Mad WN 173 + AIR 1919 All 63). If a person is intended to be tried and punished with enhanced punishment or with punishment of a different kind as being a previous offender, the particulars of the previous conviction should be stated in the charge. (AIR 1953 Kutch 1).

10. Joinder and misjoinder of charge.

Section 233 lays down a general rule viz., that for every distinct offence, of which any person is accused, there shall be a separate charge, and that every such charge shall be tried separately. (AIR 1950 All 167).

Section 233. separate charge for distinct offences. For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in sections 234, 235, 236 and 239 Cr.P.C.

Illustration.

"A" is accused of a theft on one occasion, and causing grievous hurt on another occasion. "A" must be separately charged and separately tried for the theft and causing grievous hurt:

11. Exceptions.

The general rule is that every distinct offence, for which any person is accused, shall be charged and tried separately. Section 233 Cr.P.C. provides, firstly, that there should be separate charge for every distinct offence, secondly, that there shall be a separate trial for every such charge except in four cases as provided in sections 234, 235, 236 and 239 Cr.P.C. Joinder in one charge of two or more distinct offences falling whether under the same section or under different sections is prohibited under this section to ensure a fair trial and to see that the accused is not bewildered by having to defend several unconnected charges. The object underlying section 233 is to save the accused from being embarrassed in his defence if distinct offences are lumped together in one charge or in separate charges and are tried together, but the Legislature has engrafted certain exceptions upon this rule contained in sections 234, 235 and 239. The underlying idea is that if too many charges are grouped together against an accused person, he might be handicapped or embarrassed in conducting his defence. The other substantial reason against joinder of charges or accused is to prevent the mind of the Court being prejudiced against the accused person if he was tried in one trial upon the different evidence, as at times it may be difficult for the Court trying him on one of the charges not to allow his mind being influenced by the evidence against him in other charges. (PLD 1964 Lah 339).

12. Misjoinder of charges.

A question of misjoinder of charges is not a question relating to the jurisdiction of the Court. A misjoinder of charges is a defect in the mode of the trial, in the procedure to be followed and this does not render the trial itself without

jurisdiction for the trial Court must decide whether the person accused can or cannot be tried jointly in view of the accusations leveled in that particular case. A mere non-compliance with the rules of procedure will not amount to an illegal exercise of jurisdiction, which can be a ground for grant of writ of certiorari. (PLD 1961 Dacca 155).

By the enforcement of West Pakistan Act XVII of 1964, with effect from 1st April 1964, which amended section 537 of the Code in a way so as to include the mode of trial within the ambit of the above section, misjoinder of charges is no longer an illegality and the question has to be examined in the light of the fact whether any prejudice had or had not been caused to the persons arraigned at the trial. (PLD 1969 Lah 537).

13. **Joint trial.**

Section 234(1) Cr.P.C. postulate that when a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offence accused is charged with, he may be tried at one trial for any number of them not exceeding three.

The principle underlying this section is that the offences of the same kind in criminal Court within a space of short period, namely, twelve months from the first to the last of such offences may be tried together. This section lays down three limitations:

- (1) that the offences must be of the same kind,
- (2) that they must have been committed within the space of one year, and
- (3) that more than three offences should not be joined. (PLD 1964 Lah 339).

14. **Provisions directory and not mandatory.**

Section 234, Cr.P.C. is merely an enabling section and does not in any way deprive the Court of ordering a separate trial. It is not obligatory on the Court to have joint trial of more

than one offences committed within a period of 12 months. (PLD 1964 Lah 339). If prosecution decides to split the charges and try each of them separately the accused cannot insist on joinder of charges. (PLD 1965 Pesh 65, 1973 P.Cr.L.J. 457).

Section 235, Cr.P.C. is another exception to the rule in section 233 that there should be a separate trial for every offence charged. The general rule that every offence should be charged separately applies, though there may be one trial for all such offences under the provisions of the section. (AIR 1939 Cal 321).

Section 235, Cr.P.C. is an enabling section, (PLD 1964 Lah 183) and relates to

the joinder of charges of offences committed by the same person. It applies to a case in which the different offences are parts of one transaction. It is an enabling section and it is not obligatory that all charges should be specified. Requirement is that there must be one continuous thread of a common purpose running through the acts to support a joinder of charges in respect thereof. (1990 SCMR 1360).

15. Transaction.

"Transaction" means a group of facts so connected together as to involve certain ideas namely unity, continuity and connection. (1990 SCMR 1360) In order to determine whether a group of facts constitute one transaction it is necessary to ascertain whether they are so connected together as to constitute a whole, which can properly be described as a transaction. (1935 (62) Cal. 808).

16. Joint trial in the following cases competent.

- (i) Murder committed with unlicensed arms charged u/s 302, PPC, read with section 12 Arms Ordinance 1965, joint trial competent as envisaged by section 239(b), Cr.P.C. (1968 P.Cr.L.J. 559).

- (ii) Trial of two drivers of motor vehicle acting negligently causing collision resulting death of third person. (PLD 1962 Lah. 267).
- (iii) Gamber and keeper of gambling house. (PLD 1965 Lah. 340).
- (iv) Murderer of pursuer committed by accused while running away after killing a person. Both murders committed in course of same transaction. (PLD 1961 Kar. 137).
- (v) All accused apprehended on the same day time and place, one FIR with joint Mashir Nama and one challan. Separate trial illegal. (1986 P.Cr.L.J. 230, 1986 MLD 2477).

17. **Alteration or amendment of charge.**

Section 227 applies to all Courts and is intended to apply to alterations or additions to the charge during the course of the trial. (AIR 1953 All 191). Once charge is framed, it can only be altered after some material is available on record to justify that charge should have been framed for some other major offence and only then charge can be amended without recording evidence. (2001 MLD 916). The alterations or additions must be based on the facts disclosed by the evidence recorded, the materials on which the Court acts under this section being the evidence recorded before itself. (AIR 1915 Sind 50) Trial Court has power to amend charge at any time before pronouncement of judgment. (1983 P.Cr.L.J. 312). Although amendment can be sought at any time before pronouncement of a judgment, but it should be in the interest of justice and to check arriving at a wrong decision and not to prolong the proceedings. (1990 SCMR 267).

18. **"May" --- Discretion of the Court.**

The court has a large discretion to alter or add to a charge framed under the Code. (AIR 1937 Bom 260). The alteration or addition of a charge must be for an offence made out by the

evidence recorded in the course of the trial before the Court (AIR 1929 Sind 250).

19. **Defect and error in or omission to frame charge.**

There should be no inconsistency in charge as framed and charge as put to the accused in examination under section 342, Cr.P.C. (1968 P.Cr.L.J. 759) A defective charge may entail retrial. (1992 MLD 1253).

Conviction based on a defective charge is against the mandatory requirement of section 222(1) Cr.P.C. and causes prejudice to the case. (1997 P.Cr.L.J. 1663) Case split up into fifteen special cases besides the main one. Acquittal on first account, proceedings in other trials illegal. (PLD 1971 Dacca 56). Charge vague and not mentioning place and time of occurrence, date of occurrence given in charge different from given by witnesses, charge offends against provisions of section 222, Cr.P.C. (1987 P.Cr.L.J.) One trial of two drivers of different trucks not permissible. (1988 MLD 2393 (1)).

20. **Illegality not curable.**

There is a distinction between an illegality and an irregularity for the purpose of section 537, Cr.P.C. where the non-compliance with the provisions of Code of Criminal Procedure is with regard to a matter of a formal character, result in an irregularity curable by section 537 of the Code, but where the non-compliance amounts to a serious and substantial disregard of the provisions of the Code relating to the mode of conducting a trial, the result is an illegality. A trial, in contravention of the relevant provision of Chapter XIX of Cr.P.C. is illegal and section 537 of the Code cannot be invoked. (PLD 1952 Lah 185).

De nova trial.

21. Section 232 enacts that if an appellate or revisional court is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge or by any error in the charge, it shall direct a new trial to be held upon a charge framed in whatever manner it thinks fit. In view of these provisions, at one time, distinction was made between an illegality and irregularity. The leading case on the subject was *Subrahmania ayya V. King* (1902 ILR Madrad 61, 97) where the appellant had been charge with no less than 41 acts, extending over a period of two years in contravention of Section 234 Cr.P.C. which prescribes that a person can only be tried for three offences of the same kind if committed within a period of two years. It was held that disobedience to an express provision as to a mode of trial could not be regarded as a mere irregularity; such a phrase as 'irregularity' was not appropriate to the illegality of trying an accused person for many different offences at the same time and those offences being spread over a longer period than by law could have been tried together in one indictment. However, this case was later considered in another Privy Council case and it was held that the bare facts of failure to comply with the mandatory provisions of a section in that case it was section 360 Cr.P.C. unaccompanied by a failure of justice is not enough to vitiate the proceedings which may be cured by sections 535 and 537 Cr.P.C. (AIR 1927 PC 44).

22. Recalling of witnesses---- application u/s 540 Cr.P.C.

Alleged misappropriated amount increased by the transferee Court and the charge also amended accordingly. But the witness already examined not recalled as required by this section. Non-compliance of provision of the section would entail conviction set aside (1986 P.Cr.L.J. 1236) Charge under section 161, PPC read with section 5(2) P.C.A. Later charge subsequently withdrawn, accused entitled to recall prosecution witnesses. (PLD 1950 Dacca 9).

23. Powers of Appellate Court.

When an Appellate Court finds that there is material error in the charge framed by the trial Court on which the accused was tried, it may under section 232 of the Cr.P.C. direct a re-trial upon the new charge if it is of the opinion that the accused was misled in his defence by the error in the charge. The Courts are generally allow to order re-trial on account of defect in the charge if the determination of the appeal on the available evidence would not prejudice the accused. (2003 YLR 1607).

Trial Court is competent to alter the charge at any stage in exercise of its inherent jurisdiction conferred on it u/s 535 read with section 537. Appellate Court also enjoys the same powers particularly in reference case u/s 374, Cr.P.C. for confirmation or otherwise of death sentence u/s 302, PPC. (2001 SCMR 424).

Where an alteration in the charge occasions a failure of justice, the Court of revision may interfere. (AIR 1931 Mad 439).

24. Withdrawal of trial----its effects.

A withdrawal of charges under 494 Cr.P.C section amounts to acquittal of such charge. (AIR 1929 All 899). A stay of inquiry or trial of charges under this section has the effect of an acquittal on such charge or charge or charges unless the conviction be set aside. (AIR 1925 Pat 623).

The word "withdrawal" does not include a "stay" made by the Court. Thus, where the Court does not proceed with the remaining charges it does not amount to withdrawal within section 240 and therefore, such stay cannot operate as acquittal. (AIR 1959 All 703).

25. Groundless charge or failure to prove.

Word "groundless" as used in section 249-A Cr.P.C is not capable of any precise definition, which however, means that when there are no good grounds for charge, the word charge means a formal accusation of criminal liability. (1992 P.Cr.L.J.)

110) If a Magistrate judicially comes to conclusion that no criminal offence is made out, he can acquit accused under this section. (1990 P.Cr.L.J. 347). When charge is framed it can be presumed that prima facie case is made out. Proceedings should not be quashed. (1986 MLD 1084).

Where the prosecution has failed to prove a charge against the accused it cannot be said that for merely failure to prove the charge, the charge would become defected.

26. **Effects of admission or denial of charge.**

After a formal charge has been framed, the accused is to be called upon to plead guilty or not guilty. When the trial is by a Magistrate and the accused admits that he has committed the offence, his admission shall be recorded as nearly as possible in his own words and if he shows no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly. (Section 243). If the trial is before a High Court or a Court of Session and the accused pleads guilty, the court shall record the plea and may in its discretion convict him thereon. (Section 265-E).

It is obvious that the admission by the accused of the commission of the offence or the admission that he is guilty and has no defence to make, followed by a conviction thereon, puts an end to the trial.

But where the accused does not plead guilty or does not admit the commission of the offence, the hearing of the case commences. This is the point of the trial where issues such as double jeopardy and jurisdiction of the court to try etc., may appropriately be raised (PLD 1963 Lah.390 FB).

27. **Adjournment for an indefinite period.**

The power under section 344 is to postpone or adjourn "from time to time" and "for such time as it considers reasonable". There was a controversy as to whether the expressions "from time to time" and "for such time as considers reasonable" give the power to adjourn a case sine die, that is, for

an indefinite period. This controversy was set in *Shadi Khan V. Muhammad Saleem*. (PLD 1978 SC 38). It was held that these expressions should not be given a rigid meaning "for in doing so it would lead to an impossible situation necessitating the production of a number of accused in court and thereby causing hinderance to the trial of the cases. On this view of the matter, there is no occasion for postponing the commencement of the trial now and again". Therefore, even if the period was not specified still the interregnum must be regarded as reasonable and a sufficient compliance of the words "for such time". The result is that cases such as *Saif-ur-Rehman V. State* (PLD 1978 Lah 314) and *Sajjad Hussain V. State* (PLD 1978 Lah 922) and the cases relied upon in those cases stand over-ruled.

Shadi Khan V. Muhammad Saleem arose out of a sessions case; that is to say, it concerned the power of the session court to adjourn as case sine die. In this behalf, it is significant to note that while subsection (1) of section 344 uses the general expression "court" its proviso deals with the power of Magistrates. Now when an accused is in custody, the question of adjourning a case is closely linked with remanding the accused to jail. That is why subsection (1), when it gives the power to adjourn, also gives the power to remand the accused in custody. The combined effect of subsection (1) of section 344 and its proviso seems to be that while the court of session and a High Court may adjourn a case for an indefinite period and may also remand an accused to custody for an indefinite period or sine die, the power of a Magistrate to remand an accused to custody is subject to the condition that the remand shall not exceed 15 days at a time. (PLD 1978 SC 38) & (PLD 1978 Lah 922)