

act or omission made punishable under the same provision of law and denotes the commission of offence in the same transaction. In terms of Section 403(1), Cr.P.C. a person once tried by Court of competent jurisdiction for the offence and convicted or acquitted of such offence shall not be liable to be tried again for the same offence. The bar contained in Section 403 for subsequent trial is not confined merely to the same offence but for any other offence as well on the same facts for which a different charge from the one made against an accused could be framed under Section 236 or an accused could be convicted under Section 237, Cr.P.C. In cases of acquittal, where Section 403, does not apply in terms the principle embodied in the section may be properly invoked in order to meet ends of justice. There is no reason for not extending that principle to an accused who has been convicted in earlier trial and has been put gain to subsequent trial on identical evidence and in regard to identical charges. The reason being that, the harassment caused to an accused by repeated convictions for same series of acts in same transaction and on identical evidence and identical charges is much more enormous than harassment caused to an accused who after facing the subsequent trial is bound to be acquitted. However, subject to exceptions a person once tried and convicted or acquitted cannot be subsequently tried not merely for the same offence but also for any other offence based on the same facts. An act committed by an accused, which is in consequence or pursuance of or is secondary to a principal act shall be deemed to be a part and parcel of the main offence and the principal as well as subsidiary act or omission shall jointly be treated as same offence and that out of the same set of facts in same transaction, a series of prosecution against an accused convicted or acquitted in earlier proceedings, is not to be allowed.¹⁷

7. ALTERATION IN CHARGE

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.¹⁸ Where in the course of the evidence an offence more aggravated than the one complained of is discovered it the duty of the Court to charge the accused with the more aggravated offence.¹⁹

Change of date as to the day when occurrence took place is not an

17. 2002 PCr.L.J 1712.

18. AIR 1929 Sind 250.

19. AIR 1929Lah. 838.