

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ
نَحْمَدُهُ وَنُصَلِّي عَلَى رَسُولِهِ الْكَرِيمِ

LAW OF CRIMINAL CHARGE [Ch.XIX of Cr. P. C.]

Justice ® Dr. Munir Ahmad Mughal
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Introduction

Trial begins from the framing of the charge in a criminal case and ends at the pronouncement of the judgment in acquittal or conviction. The law of trial is the province of the Criminal Procedure which is an adjective law and is the machinery for the

implementation of the substantive law. In Pakistan the general substantive Criminal Penal law is contained in the Pakistan Penal Code, 1860¹ and the general procedural criminal law is contained in the Code of Criminal Procedure 1898². The special enactments are also there in respect of certain crimes and they provide specific procedure. Where it is so provided that special procedure is to apply in those cases and the general law of

¹ Act XLV of 1860. Historically, the Penal Code was drafted by Lord Macaulay, the President of the First Indian Law Commission in association with Messers Macleod, Anderson and Millet. This draft was submitted to the Governor-General of India in Council in 1837. Further revisions were suggested and made by Sir Barnes Peacock and several others and thus was completed in 1850 and was presented to the Legislative Council in 1856 and was passed on 6th October, 1860 as Act XLV of 1860 and to come into force on the 1st day of May 1861 but by an amending Act the date was enhanced for further eight months and thus it came into force on 1st day of January, 1862. In a Judicial precedent cited as AIR 1933 Bombay 417 (420) it was observed: The scheme of the Code generally speaking is that there is first the definition of an offence and then a penal provision relating to it. Unless the case falls within ambit of the definition, there will be no offence under the Code and no criminal liability under it.

² Act V of 1898. Students of legal and judicial education and those interested to know the legal history and getting training in legislative drafting will appreciate that no uniform law of Criminal procedure existed previous to 1882. There were separate Acts to guide criminal courts in the erstwhile provinces and the Presidency Towns. The Acts of procedure applying to the provinces were replaced by the general Criminal Procedure Code (Act XXV of 1861). This was replaced by Act X of 1872. A uniform law of procedure for the whole sub-continent came into force for the first time in 1882 by Act X of 1882 which was supplemented by a new Code in 1898.

procedure is to yield before it. Where there is no special law, the general law of procedure is applied. In Pakistan the law of charge is provided in two sections. Firstly, the charge framed by a Magistrate is provided in section 242 Cr.P.C³. 1898 and secondly the charge framed by a Sessions Judge is provided in section 265-D Cr.P.C. 1898. As to what is a charge, its language, its form, its joinder with other charges and all matters related to charge are given in Chapter XIX vide section 221 to 240 of the Cr.P.C. 1898. This paper is an attempt to explain the Charge in all

³ Cr. P. C. is the abbreviation of the short title of the enactment which is the Code of Criminal Procedure, 1898. C.P.C is the abbreviation of the short title of the enactment which is the Code of Civil Procedure, 1908. These abridgments have become popular by the use of the legal and judicial fraternity at the bench and the Bar. This is the outcome of practice or tradition.

aspects in the light of the judicial precedents on the subject.

What is a Charge?

A charge is a statement of the offence, that is, description of offence and the particulars of the offence.

What is the definition of the term “charge” and where to find this definition?

The defining section of the term charge is section 4(c) of the Cr.P.C. 1898. According to this definition a charge includes any head of charge

when the charge contains more heads than one.⁴

A charge is the precise formulation of the specific accusation made against a person, who is entitled to know its nature at the earliest stage.⁵

What is the object and requirement of law of framing a charge?

The object of framing a charge is given in section 221 of the Cr. P. C. 1898. This section has seven subsections each containing a specific requirement.

⁴ Such a definition is called an inclusive definition which adds meanings to the ordinary meaning of the word or as stated in the enactment itself.

⁵ Reily v. K.E., 28 Cal. 434 (actual at p. 437).

- ***Charge to State offence***

Every charge under this Code shall state the offence with which the accused is charged.⁶

- ***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.⁷

⁶Section 221 (1) of the Code of Criminal Procedure, 1898.
Muhammad Attique Butt v State, 2009 YLR 507 (DB) [Lahore High Court].

⁷ Section 221 (2) of the Code of Criminal Procedure, 1898.

- ***How stated when the 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.⁸

The law and the section of the law against which the offence is said to have been committed shall be mentioned in the charge.⁹

⁸ Section 221 (4) of the Code of Criminal Procedure, 1898.

⁹ Section 221 (4) of the Code of Criminal Procedure, 1898.

- ***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 particular case.¹⁰

- ***Language of charge***

The charge shall be written either in English or the language of the Court.¹¹

- ***Previous Conviction when to be set out***

If the accused having been previously convicted of any offence, is liable by reason of such previous

¹⁰ Section 221 (5) of the Code of Criminal Procedure, 1898.

¹¹ Section 221 (6) of the Code of Criminal Procedure, 1898.

conviction, to enhanced punishment, or to a punishment of a different kind, for subsequent offence, and it is intended to prove such previous conviction for the purpose of effecting 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.¹²

¹² Section 221 (7) of the Code of Criminal Procedure, 1898.

Which of the elementary principles of Criminal law has been mentioned in section 221 of the Cr. P. C.1898?

The elementary principles of criminal law mentioned in section 221 Cr. P. C. 1898 is that an accused person must know what the precise accusation against him is before he is called upon to enter on his defence.¹³

An accused is entitled to know with accuracy and certainty the exact nature of the charge brought against him. Unless he has this knowledge,

¹³ Indar Pal, AIR 1935 Lahore 409 (actual at p. 411); 1936 Cr. Cases 389.

he will be prejudiced in his defence , specially in cases where it is sought to implicate him for acts not committed by himself but by others with whom he is in company.¹⁴

What is the effect of failure to state in any substantial form the nature and particulars of the offence alleged against the accused?

Such a failure in some cases may be a fatal defect which would vitiate the whole proceedings. Where an offence charged involved

¹⁴ Behari Mahton, 11 Cal 106; Amrit lal, 42 Cal. 967; Chhakari, 26 Criminal Law Journal 567; 85 Indian Cases 711; AIR 1926 Cal. 439;Kedar Nath, 29 CWN 408; 41 CLJ 172; 86 I.C. 705; 26 Criminal Law Journal 849.

consequences which may be stated in a general form, such as may arise in a case of arson where a man may by one act of arson set at fire and destroy several stacks of hays of several persons, no particular is required, the nature of the offence being sufficiently stated by the date, time and place of the setting fire; but extortion or obtaining money from persons by unlawful means involves stating with some approach to accuracy the approximate amounts alleged to have been obtained from each person and the nature of extortion used against each person.¹⁵

¹⁵ Ram Chandr 17 Cr. Law Journal 411 (All.).

Section 225 of the Cr. P. C. 1898 is on the subject of effect of error. It states that 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 the case as material, unless ,-

- the accused was in fact misled by such error or omission, and
- it has occasioned a failure of justice.

What legislative measures have been taken by the legislature to make this provision of law understandable?

The legislature has given five examples to make this provision of law understandable. Those are:

Example 1:

A is charged under section 242 PPC, with having been in possession of a counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, the word “fraudulently” being omitted in the charge. *Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material.*

Example 2:

A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out improperly. A defends himself, calls witnesses and gives his own account of the transaction. The Court may infer from this that *the omission to set out the manner of the cheating is not material.*

Example 3:

A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no means of knowing to which of them the charge referred and offered no defence. The court

may infer from such facts that the omission to set out the manner of cheating was, in the case, *a material error*.

Example 4:

A is charged with the murder of Khuda Bux on 21 January, 1882. In fact the murdered person was Haider Bux and the date of the murder was the 20th January, 1882. A was never charged with any murder but one and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haider Bux. The Court may infer from these facts that A was not misled, and that

the error in the charge was immaterial.

Example 5:

A was charged with the murdering Haider Bux on 20th January, 1882 (who tried to arrest him for that murder) on the 21st January 1882. When charged for the murder of Haider Bux, he was tried for the murder of Khuda bux. The witnesses present in his defence were witnesses in the case of Haider Bux. The Court may infer from this fact that A was misled and that the error in the charge was material.

Judicial precedents on test to determine whether error is material?

- In determining whether the error or omission has occasioned a failure of justice the Court should have regard to the manner in which the accused has conducted his defence and to the nature of the objection.¹⁶
- Where the charge did not correctly set out the facts of the case for the prosecution upon which it was founded, but it was clear from the answer which the accused gave to the court when examined under the provision of section 342 Cr. P. C. that he understood exactly what the case against him was, held that the defect in the framing of the charge

¹⁶ Ramji, 10 Bom. 124.

did not prejudice the accused in any way.¹⁷

- Where the accused did not make any objection to the defect in the form of charge, at the earliest possible occasion, and as a matter of fact no protest was made either in the Appellate Court or in the Revisional Court below, and they knew perfectly well what offences they were charged with, held that the irregularity had not occasioned any failure of justice.¹⁸
- Where the wording of the charge was neither accurate nor clear, but the accused and his counsel understood the real charge, and an objection to the validity of the charge was raised by the counsel for the first time during arguments, held that the defect was not

¹⁷ Gokal, 29 CWN 483; 26 Criminal Law Journal 906.

¹⁸ Bachu v. Piyara, 2 Luck. 430, 4 O.W.N. 341, 28 Law Journal 409.

material and was cured by section 537 of the Cr. P. C.¹⁹

What is the essence of a good charge?

The essence of a good charge is that it should contain such particulars of the manner in which the alleged offence was committed as will be sufficient to give the accused notice of the matter with which he is charged.²⁰

¹⁹ K.C.V. Reddy, 8 Rangoon 25; 31 Cr. P. C. Law Journal 793 (796, 797).

²⁰ Ghaus Bux , AIR 1935 Sind 34; 28 SLR 304; 36Cr. Law Journal 598; 154 Indian Cases 915.

1. When the accused appears or is brought before the Magistrate a formal charge shall be framed relating to the offence of which he is accused and he shall be asked whether he admits that he has committed the offence with which he is charged.”

Similarly section 265 D of the Cr. P. C. 1898 is as under:

265D. If after perusing the Police report, or as the case may be, the complaint, and all other documents and statements filed by the prosecution, the Court is of the opinion that there is ground for proceeding with the trial of the

accused it shall frame in writing a charge against the accused.”

The object of framing a charge is to give reasonable information and which the accused so charged 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 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., Has the accused a reasonably sufficient

notice of the matter with which he was charged.²¹

What are the essentials of a charge?

The following are the essentials of a charge, namely,-

- It should state the offence with which the accused is charged.
- If the offence is named specifically by law which creates the offence, the offence may be described in the charge by that name only.
- The law and the section of law against which the offence is committed should be mentioned.

²¹ Chittarajan v. State AIR 1963 SC 1696; M.Yunus Habib v. State PLD 2006 SC 155.

- The charge should be written either in English or in the language of the Court.
- 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.
- Particulars as to the time, place of the offence and the person against whom or the thing in respect of which it is committed.
- Where the accused is charged with criminal breach of trust or dishonest mis-appropriation 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 the last date does not exceed one year.

- When the particulars mentioned in sections 221 and 222 of the Cr. P. C. 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.