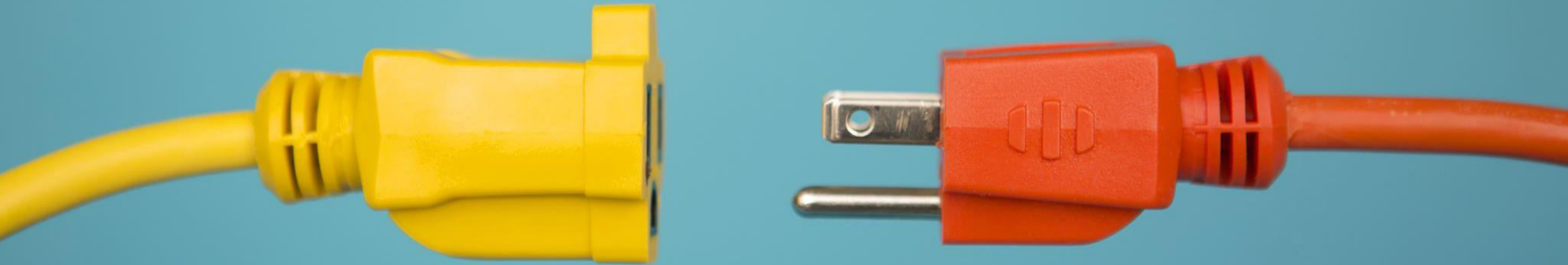


Charge under Cr. PC



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Chapter 17 – The Charge

Section 211 – Contents of charge

Section 212 – Particulars as to time, place and person

Section 213 – When manner of committing offence must be stated

Section 214 – Words in charge taken in sense of law under which offence is punishable

Section 215 – Effect of errors

Section 216 – Court may alter charge

Section 217 – Recall of witnesses when charge altered

Section 218 – Separate charges for distinct offences

Section 219 – Three offences of same kind within year may be charged together

Section 220 – Trial for more than one offence

Section 221 – Where it is doubtful what offence has been committed

Section 222 – When offence proved included in offence charged

Section 223 – What persons may be charged jointly

Section 224 – Withdrawal of remaining charges on conviction on one of several charges

Synopsis:

- Introduction
- Meaning
- Form and content of Charge
- Alteration of Charge and procedure thereafter
- Basic rule regarding Charge and its trial
- Conviction for an offence not charged when such offence is included in offence charged
- Withdrawal of remaining charges on conviction on one of several charges
- Applicability of provisions relating to joinder of charges to cases where no charge is frame
- Effect of omission to frame, or absence of, error in charge

Introduction

- One basic requirement of a fair trial in criminal cases is to give precise information to the accused as to the accusation against him.
- This is vitally important to the accused in the preparation of his defense.
- In all trials under the Code the accused is informed of the accusation in the beginning itself.
- In case of serious offences, the Code requires that the accusations are to be formulated and reduced to writing with great precision and clarity.
- This “charge” provisions relating to charge are aimed at giving full notice to the accused about the offence of which he is charged.
- It gives the accused accurate and precise information about the accusations made against him.
- Every charge under this Code shall state the offence with which the accused is charged.

Purpose and meaning of Framing charge

- In the ruling of a four-Judge Bench of the Hon“ble Supreme Court in:
- V.C. Shukla v. State 1980 CrLJ 690.
- Justice Desai opined that -
- the purpose of framing a charge is to give intimation to the accused of clear, unambiguous and precise notice of the nature of accusation that the accused is called upon to meet in the cause of a trial.
- Charge is defined under section 2(b) of the code of criminal procedure inclusively.
- According to this section, **the charge includes any head of the charge when there are more than one heads.**
- The charge under Code is defined in very vague and beyond the comprehension of the common man.

When Can Be Charged ?

- In all warrant cases whether triable by a Court of Session or by a Magistrate, a formal charge is required to be framed.
- Framing of Charge is, however, not necessary in summons case.
- Similarly, it is not necessary to frame charge in summary trials.
- At the stage of framing a charge, the court should consider the materials placed before the court; there is a prima facie case against the accused.
- The test to determine prima facie case depends upon the facts and circumstances of each case.

Charge Form No :32

CHARGE WITH ONE HEAD

I, (name and office of Magistrate, etc.), hereby charge you (name of accused person) as follows:-

That you, being a public servant in the..... Department, directly accepted from (state the name) gratification other than legal remuneration, as a motive for forbearing to do an official act, and thereby committed an offence punishable under Section 161 of the Indian Penal Code, and within the cognizance of this Court. And I hereby direct that you tried by this Court on the said charge.

(Signature and Seal of the Magistrate)

Essential elements of Charge

- Contents of Charge:
- Sections 211 to 224 specify the particulars that should be stated in the charge.
- **Section – 211: Contents of charge**
- Every charge under this Code 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 only.
- 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.

- The law and section of the law against which the offence is said to have been 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 charged was fulfilled in the particular case.
- The charge shall be written in the language of the Court.
- The court framing charge should avoid all unnecessary words.
- 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; and
- if such statement has been omitted, the Court may add it at any time before sentence is passed.

Alteration of Charge and procedure thereafter

- Any Court may alter or add to any charge at any time before judgment is pronounced.
- Every such alteration or addition shall be read and explained to the accused.
- If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court to prejudice the accused in his defense or the prosecutor in the conduct of the case the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.
- If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.
- If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction had been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.

Recall of Witnesses

- Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed-
- to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, unless the Court, for reasons to be recorded in writing, considers that the prosecutor or the accused, as the case may be, desires to recall or re-examine such witness for the purpose of vexation or delay or for defeating the ends of justice;
- also to call any further witness whom the Court may think to be material.

Separate charges 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:

Provided that where the accused person, by an application in writing, so desires and the Magistrate is of opinion that such person is not likely to be prejudiced thereby the Magistrate may try together all or any number of the charges framed against such person.

- Nothing in Sub-Section (1) shall affect the operation of the provisions of sections 219, 220, 221 and 223.
- A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and causing grievous hurt.

Exceptions: 1. Three offences of same kind within year may be charged together

- 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 offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three.
- Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code (45 of 1860) or of any special or local laws:

2) Trial for more than one offence

- If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.
- When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.

3) Where it is doubtful what offence has been committed

- If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.
- If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

What persons may be charged jointly?

- The following persons may be charged and tried together, namely:-
- persons accused of the same offence committed in the course of the same transaction;
- persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence;
- persons accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months;
- persons accused of different offences committed in the course of the same transaction;

What persons may be charged jointly?

- persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property 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;
- persons accused of offences under sections 411 and 414 of the Indian Penal Code (45 of 1860) or either of those sections in respect of stolen property the possession of which has been transferred by one offence;
- persons accused of any offence under Chapter XII of the Indian Penal Code (45 of 1860) 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; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges:

Withdrawal of remaining charges on conviction on one of several charges

- When a charge containing more heads than one is framed against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent, of the Court, withdraw the remaining charge or charges, or the Court of its own accord may stay the inquiry into, or trial of, such charge or charges and such withdrawal shall have the effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into, or trial of, the charge or charges so withdrawn.