

CHARGE & PROCEDURE

Discharge / Charge - Provisions at a Glance

Sections 211 to 224 CrPC (General law relating to charges)

Sections 226, 227, 228 CrPC (discharge or charge of accused by Sessions Judge)

(iii) Sections 239, 240 CrPC (discharge or charge of accused by Magistrate in State cases)

(iv) Sections 245, 246 CrPC (discharge or charge of accused by Magistrate in complaint cases)

(v) Section 464 CrPC (error, omission, irregularity or misjoinder etc. in charges)

(vi) Charges under special Acts (Explosive Substance Act, UAPA, POCSO etc)

(vii) Judicial pronouncements of SC and HC

Either discharge or charge

- . Discharge (239, 245) (Magisterial Trial)
- . Sections 226, 227, 228 Cr.P.C (Session Trial)
- . Materiale available on record (Police Report/Complaint)
 - . M.E. Shivalingamurthy Vs. CBI , (2020) 2 SCC 768
 - . No Roving Examination,
 - . Veracity of Witnesses not to be tested
 - . Contadictions not to be considered
 - . Basic infirmities are to be consideed (197 Cr.P.C)

Can accused file discharge petition after framing of charge?

Once charge has been framed, accused cannot be discharged.

Bharat Parikh Vs. CBI , 2008 CrLJ 3540 (SC)

Rati Lal Vs. State of Maharashtra, AIR 1979 SC 94

Purpose of Charge ? Right to Know about the accusation

- Contents of Charge - (Section 211 Cr.P.C)

. **State the Offence**

. **No Specific Name of Offence (Section 279, 304 IPC)**

. **Specific Name (Theft) (Section 379 IPC)**

. **Law and Section [Section 25(1-B)a, 26(1) Arms Act]**

. **Language of the Court**

. **Read and explained [Section 240(2)]**

What should be included in charge(s)?

- **Particulars as to time and place and person (Section 212)**

- . Time and Place of Occurrence
- . Against whom it was committed (325 IPC)
- . With respect to property, it was committed
- . CMP/CBT (Specify the gross sum)

- **Manner of Occurrence (Section 213)**

- . Giving false evidence (Section 193 IPC)
- . Manner is required to be stated

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Effect of Errors (Section 215)

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- . Error in stating the offence
- . Omission
- . Not fatal, **unless failure of justice.**
- . oooo (Several transaction) – Material Error
- . Murder (Ram/Shyam)
- . Both are Murdered - Material Error
 - . Never charged with Murder – XXXX

Alteration of Charge (Section 216)

. Alter or add

- . What will happen when no charge is framed ?
 - . Not framed at all ?
 - . Order sheet but no proforma ?
 - . Order Sheet/Prorma but no Signature ?

. Any time before judgment is pronounced

- . Procedure, if a charge added/alterd
 - . Read and explained
 - . No prejudice to parties – Proceed
 - . Prejudice – New trial / adjourn
 - . Sanction Required – No trial will proceed

. Altered/added after trial then (Section 217)

Joinder of Charge

Section 218 - For every distinct offence there shall be separate charge and every such charge shall be tried separately. (Rule)

- . Warrant Trial / Session Trial
- . 323, 341/379 (Share experience)
- . 323, 341/379 (What does it mean ?)

Except

- (a) Application of accused
- (b) 219, 220, 221 and 223. (Caution Note ??)

Section 219 -Three offences of *same kind* committed within year

- . With respect to same person/other
- . Theft by B in house of P, Q, R (Within 12 Months)

. Same Kind - Same amount of Punishment under IPC/law

. 379/380 IPC - Yes

. 379 IPC/39 Electricity Act - No

. Punishment ???? (Section 31 Cr.P.C)

Section 220 - Offences committed in course of same transaction by same accused .

. 323, 341, 379 IPC

. C.M.P / C.B.T.[220(2)]

. Act falling under different definitions [220(3)]

Child exposed- 317 / 304 IPC

. Act forming an offence and also constituting different
taken separately or groups [220(4)]

offence when

Section 323, 392, 394 IPC.

Section 221 Where the Offences committed is doubtful (221)

- . 379/411/414 IPC
- . Alternative charge
- . Charge under 379 IPC, conviction under 406 IPC
- . Illustration (b) of Section 221
- . Different Offence (Cognate Offence)

. Section 307/325 IPC

. Section 304B/306 IPC

- . Narwinder Singh Vs State of Punjab



2011 (1) Supreme 129

Section 222 Cr.P.C – When offence proved included in the offence charged .

- . Facts Proved
- . **Minor Offence – Conviction ??**
- . **Minor Offence Vs Same Kind of Offence**
- . Section 407/406 (YES)
- . Section 325/335 (YES)
- . Section 324/323 (YES)
- . Section 326/325 (YES)
- . Section 325/323, 324 (NO)
- . Section 326/323, 324 (NO)

What is the test ??

- . **Ingredients of Offence**
- . **Punishment**
- . **Main Offence/Attempt (Yes)**



Joinder of Persons

- Section 223 Criminal Procedure Code.

. 000/Same Transactions

. 000/Abetment/Attempt

. 000 (Jointly) - - Three Offence, within a Year

Mistakes often committed while framing Charges

(A) In case of Rajbir Vs. State of Haryana, AIR 2011 SC 568,

Hon'ble Apex Court directed that ordinarily Section 302 IPC should be alternatively framed in case of charge under Section 304-B IPC, so that death sentence can be imposed in heinous and barbaric crimes against women. HOWEVER,

Later on, in case of Jasvinder Saini Vs. State (Govt. of NCT of Delhi), AIR 2014 SC 841 it has been held that court should not frame an additional charge u/s 302 IPC in a trial of dowry mechanically 302 IPC, but if it is justified on the basis of evidence on record, it can be framed.

Example 1

An accused namely Rafiq committed rape upon 'X' aged about 15 years, on 18.02.20 at Pisca More, Ranchi. What will be appropriate charge ?

- Section 6 POCSO (Wrong)
- Section 6 POCSO, Section 376(2)(i) IPC (Wrong)
- Section 6 POCSO, Section 376(3) IPC *(Correct)
- Date of Enforcement - 21.04.18

Section 6 POCSO
10 Years (Minimum)

Alternative Punishment

Section 42 of POCSO

Section 376(2)(i) IPC
10 Years (Minimum)

Section 376(3) IPC
20 Years (Minimum)

Example 2

An accused namely Umesh committed rape upon 'A' aged about 11 years, on 18.12.19 at Bank More, Dhanbad. What will be appropriate charge ?

- Section 6 POCSO (Wrong)
- Section 6 POCSO, Section 376(2)(i) IPC (Wrong)
- Section 6 POCSO, Section 376AB IPC * (Correct)
- Date of Enforcement - 21.04.18

Section 6 POCSO
10 Years (Minimum)

Alternative Punishment

Section 42 of POCSO

Section 376(2)(i) IPC
10 Years (Minimum)

Section 376AB IPC
20 Years (Minimum)

Example 3

'A' has committed forcible sexual intercourse upon her wife 'X' aged about 15.5 years, on 11.08.20 against will. At the instance of X, Dhurwa PS Case No -118/20 was registered and after due investigation CS was submitted under Section 376 IPC. After commitment the case record is transferred in your court. A discharge petition is filed by accused stating that victim is his wife and in view of Explanation II of Proviso of Section 375 IPC, no case is made out. What will be your order ?

Independent Thought Vs UOI, AIR (SC) 2017 4904

Example 4

'A' has committed carnal intercourse against the order of nature with B, aged about 20 years, against his will on 10.12.18. At the instance of B, Dhurwa PS Case No -118/20 was registered and after due investigation CS was submitted under Section 377 IPC. A discharge petition is filed by accused stating that in view of judgment of Hon'ble Apex Court given in case of Navtej Singh Johar vs Union of India reported in AIR (SC) 2018 4321, no prosecution is sustainable. What will be your order ?

Example 4

'A' has instituted a case against B, who is in adulterous relation with wife of A. The occurrence is of between 12.04.19 to 12.03.21. After due investigation CS was submitted under Section 497 IPC. A discharge petition is filed by accused stating that in view of judgment of Hon'ble Apex Court given in case of Josheph Shine Vs Union of India (DOJ 27.11.18) no prosecution is sustainable What will be your order ?

Example 5

A, B, C, D and E are charged for committing Dacoity and Murder punishable under Section 396, 201 IPC. Whether they can be convicted for the offence punishable under Section 302 IPC, though no specific charge has been framed. (YES)

Rafiq Ahmad Vs State of UP AIR 2011 (SC) 3114,

Example 6

"A" is charged for committing rape upon prosecutrix under Section 376 IPC. During trial factum of rape could not be established, whether he can be convicted for the offence punishable under Section 376/511 IPC, though no specific charge has been framed. (YES)
[S.222(3)]

Pandhari Nath Vs State of Maharashtra

AIR 2010 (SC) 1453,

THANKS