CONSTITUTIONALITY IN THE ISSUE OF FRAMING OF CHARGES

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ABSTRACT

One of the basic elements of Criminal Jurisprudence is fair trial. To ensure a fair trial, the accused must be given appropriate opportunity to defend himself. There are various constitutional safeguards within CrPC to ensure fair trial. Once the charges are framed, they have to be read and explained to the person accused. The court can alter the charge but it should not alter the charge to the prejudice of the accused person. Accused must be given appropriate time to prepare his defence. In case, the accused cannot afford a legal practitioner, the court must provide him an advocate to defend his case. The right to a fair trial is a norm of international human rights law and also adopted by many countries in their procedural law. Countries like U.S.A., Canada, U.K. and India have adopted this norm and it is enshrined in their constitution. The right to a fair trial has been defined in numerous international instruments. The major features of criminal trial are preserved in the Universal Declaration of Human Rights 1948.

Article 10 (i) of the UDHR says that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Article 11 (ii) of the UDHR says that everyone charged with penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the necessary guarantees necessary for his defence. It also says that no one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed.

Article 6 of the European convention on Human Rights provides the minimum rights, adequate time and facilities to prepare their defence, access to legal representation, right to examine witness against them or have them examined, right to free assistance of an interpreter to everyone charged with a criminal offence.

The researchers in this project aim to critically analyse the practice of the courts regarding the framing of charges. In addition to this the project will also be a critical analysis on the method of investigation followed by the police. The scope of the study will be limited to the discrepancies in framing of charges by the courts and the discrepancies regarding investigation by the police officers.

1. INTRODUCTION

One basic requirement of 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 as to the accusation against him. This is vitally important to the accused in the preparation of his defence. 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 to be reduced into writing with great precision and clarity. The "charge" is then to be read and explained to the accused person.

Charge serves the purpose of notice or intimation to the accused, drawn up according to specific language of law, giving clear and unambiguous or precise notice of the nature of accusation that the accused is called upon to meet in the course of a trial.[1] In a criminal trial the charge is the foundation of the accusation and every care must be taken to see that it is not only properly framed but evidence is only tendered with respect to matters put in the charge and not the other matters.[2]

The provision regarding charge are contained in Sections 211 to 224 and 464. Sections 211 to 214 deal with what charge should contain; Sections 216 and 217 mention the power of the court to alter the charge and the procedure to be followed after such alteration. Section 218 gives the basic rule that for every distinct offence there shall be a separate charge and every charge shall be tried separately. Sections 219, 220, 221 and 223 give exceptions to the above rule. Sections 222 deals with the circumstances which the accused can be convicted of an offence for which he was not charged. Section 224 mentions the effect of withdrawal of the remaining charges on conviction on one of the several charges. Section 215 and 464 mentions the effects of errors in stating the offence or other particulars in charge, and of omission to frame, or error in charge.

[1] V.C. Shukla v State, 1980 (SCC) Cri 695
[2] Ramakrishna SawalaramRedkar v State of Maharashtra, 1980 Cri LJ 254 (BOM)

2. BASIC RULES REGARDING FRAMING OF CHARGES AND IT'S EXCEPTIONS

Section 218 of the Code says that for every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately. The object of Section 218 is to save the accused from being embarrassed in his defence if distinct offences are lumped together in one charge or in separate charges & are tried together.[3]Another reason is that the mind of the court might be prejudiced against the prisoner if he were tried in one trial upon different charges resting on different evidence. It might be difficult for the court trying him on one of the charges not to be influenced by the evidence against him on the other charges. The strict observance of Section 218 (1) may lead to multiciplity of trials, therefore exceptions, in suitable cases, have been provided by Section 218 (2) in Sections 219, 220, 221 & 223. The effects of non – compliance with provisions regarding charges would be considered later. It would however be useful to allude the decision of the Supreme Court in context of non – compliance with Section 218. In every case, in which a departure from the requirements of Section 218 has occurred, the question before the court is, whether the omission to frame the required charge has or has not in fact occasioned a failure of justice by prejudicing the accused in his defence & whether he has thus been deprived of a fair trial.[4]

The object of section 216 is to secure fair trial to the accused and it is the court to ensure that alteration or addition of charge has not caused prejudice to him. Though the power is wide and extensive, it must be exercised extensively and judiciously. The court cannot alter the charge to the prejudice of accused. Similarly, such power cannot be exercised after the accused is discharged of all the charges inasmuch as no charge exists against him section 216 will not apply.

3. JOINDER OF CHARGES:

Sections 218 to 222 of the code provide for the joinder of charges in one trial against the same accused. Section 223 deals with joint trial against two or more accused persons. The basic rule – section 218 lays down the basic rule relating to trial of offences relating to trial offences and enacts that for every distinct offence there must be separate charge and a separate trial for each such charge.

3.1- Exception 1:

[3]Aftab Ahmed Khan v State of Hyderabad, AIR 1954 SC 436
[4]Willey Slaney v State of M.P., AIR 1956 SC 116

Three offences of same kind within year may be charged together. In creating this exception, it was considered expedient to avoid multiplicity of the proceedings under the circumstances mentioned in Section 219. The section provides 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 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.

There are conflicting judicial opinions as to whether Sections 219 to 221 and 223 are mutually exclusive or whether they can be used to get a cumulative effect. In other words, the question whether it is open to the prosecution to take help partly of one section and partly of another section in order to justify the joinder of charges or whether the intention of law is that sections should be mutually exclusive and only one of them can be availed of at one time. The Allahabad High Court has pointed out in this connection that each of the four Sections 219, 220, 221 and 223 mentioned in Section 218 can individually be relied upon as justifying a joinder of charges in respect of any trial. Use cannot be made of two or more of these sections to justify the joinder of charges in respect of any trial. Use cannot be made of two or more of these sections together to justify a joinder.[5] In other words, it is not open to the prosecution to take help partly of one section and partly pf another in order to justify the charges. Further it has been observed that the normal rule as embodied in Section 218 has been made subject to the exceptions laid down in Sections 219 or 220 or 221 or 223. Each section is to be an exception individually. It is not the intention of the legislature to group together different sections in order to constitute an exception.[6]

3.2- Exception 2:

It speaks about offences committed in course of same transaction can be charged at one trial. If, in one series of acts so connected together 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. [Section 220(1)]

4. DISTINCT OFFENCE AND SEPARATE OFFENCE

[5] Sri Ram Varma v State, AIR 1956 All 466
[6] D.K. Chandra v State, (1952) 53 Cri LJ 779

In the case of Banwarilal Jhunjunwala & Ors v Union of India[7] the Supreme Court drew the distinction between distinct offence and separate offence by stating that, "*Section 233 of Cr. P.C. reads that '"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." The expression 'every distinct offence' must have a different content from the expression 'every offence' or 'each offence'. A separate charge is required for every distinct offence and not necessarily for each separate offence. The question is, what is meant by 'every distinct offence'? 'Distinct' means 'not identical'. It stresses characteristics that distinguish while the word 'separate' would stress the 'two things not being the same.' Two offences would be distinct if they be not in any way inter-related. If there be some inter-relation, there would be not distinctness and it would depend on the circumstances of the case in which the offences were committed whether there be separate charges for those offences or not.*"

In Chunoo v State[8], Justice Kidwai had said that, "*The use of the word 'distinct' is of great significance and the Legislature having inserted it, we must, so far as possible, give it a meaning and not treat it as redundant. `Every distinct offence' cannot be treated as having the same meaning as 'every offence'. The only meaning that the word 'distinct' can have in the context in which it occurs is to indicate that there should be no connection between the various acts which give rise to criminal liability. If there is such a connection, one action is not 'distinct' from other actions and each of them, even if it constitutes an offence, does not constitute a 'distinct' offence*". In the case of Sudheendrakumar Ray V. Emperor[9] the court observed that were a person who was chased by two constables had fired at them several times, but it seems to have been rightly assumed that the firing did not constitute more than one offence, though the point was not specifically raised or decided. In Promotha Natha Ray v. King Emperor[10] one charge was framed under s. 406 I.P.C., with respect to dealing with several books of accounts. It was held that the books formed one set of account books of the estate, were found together in two locked boxes the keys being with the appellant, and that therefore they may be fairly regarded as one item of property with which the appellant was dealing in one particular way. It was not accepted that a separate offence was committed with respect to each of the books.

[7]MANU/SC/0159/1962
[8]MANU/UP/0314/1954
[9]I.L.R. 60 Cal. 643
[10]17 C.W.N. 479

5. SERIES OF ACTS AND SAME TRANSACTION

In Section 220 the word `transaction' means a group of facts so connected together as to involve certain ideas, viz., unity, continuity and connection. In order to determine whether a group of facts constitutes 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.[11] The real and substantial test by which to determine whether several offences are so connected as to form the same transaction depends on whether they are so related to one another in point of purpose, or as cause and effect, or as principal and subsidiary acts as to constitute one continuous action. The fact that offences are committed at different times does not necessarily show that they may not be so connected as to fall within this section. The proximity of time, unity or proximity of place, continuity of action, and community of purpose or design are elements for consideration, whether the alleged facts form the same transaction.' Where two incidents constitute one series of facts connected together as to form one transaction, even though more than one offences are committed, the accused can be charged for all the offences in the same trial, joint trial permissible.[12] accused gave six cheques to the complainant for presentation to the bank for encashment on one and all the cheques are dishonoured, all the acts of the accused of giving these cheques merged to form the same transaction the accused can be tried at one trial for such offence, S. 219 of CrPC , is not attracted in the case.[13]

Where the accused persons fired shot on the complainant and when the complainant was going to police station to lodge FIR, dragged him his house and caused injuries to him, the acts of the accused were in the same series of acts so as to form the same transaction, the accused could be tried for offences under Ss. 147, 148, 149, 323, 452 and 107, IPC at one tria1.[14]

Where a person is charged with some offences triable by Magistrate and others by Court of Sessions entire case shall be committed for" to the Court of Sessions.

[11] Kashiram Jhunjhunwalla v. Emperor, (1935) ILR 62 Cal 808.
[12] Queen Empress v. Vajiram, (1892) 16 Born 414, 424; Amrita Lal Hazra, Chaudhuri, (1938) 1 Cal 98; Nana (1939) Nag 686; Nabijan, (1946) 25 Pat Agarwal v. State of Bihar, 2005 (1) Crimes 634 (Jhar) (Accused making excess same work. Accused could be tried together for offences under PC Act 1988, S and 420.) 42.
[13] Gorey Lal v. State of U.P., 1994 CrLJ 1337 (1342) (All-DB).
[14] Sandeep Kumar v. State of U.P., 2004 (2) Crimes 317 (All).

5.1- Same transaction.-To constitute "same transaction" the series of acts alleged against the accused must be connected together in same way as for instance by proximity of time, unity of place, unity or community of purpose or design and continuity of action and the main test must really be continuity of action by which is meant the following up of some initial act through all its consequences and incidents until the series of acts or group of connected acts came to an end.[15] Where heroin was recovered from the possession of the accused, and further on the basis of the disclosure statement made by the accused another packet containing heroin was recovered from the house of the accused, the second recovery was during the same transaction, both the recoveries can be subject-matter of one trial in view of the provisions of S. 220.[16]

S. 220 applies where any one series of acts are so connected together as to form the same transaction and where more than once offence is committed, there can be a joint tria1:[17] Where different people have been defrauded by the same accused, each offence is a distinct offence, joint trial would not be ordered under S: 220.[18]

5.2- Series of acts.-The offences which are committed in a series of acts are to be tried together. The sections do not expressly state that all offences which can be charged and tried together or for which various persons' can be charged and tried together must take place within the jurisdiction of the Court trying them. The provisions are in general terms. This section provides for the offences being charged with and tried at one trial and therefore provide for the trial of those offences at one trial in any Court which has jurisdiction over any of the offences committed in the course of the same transaction.[19] All offences committed in the course of the same transaction shall be tried together.[20] When series of acts are so connected together as to form the same transaction, all the offences may be tried together. The question whether the acts are so connected has to be decided considering the proximity of time and place, continuity of action and unity of purpose and design.[21] But in all such cases, it should be considered whether the alleged acts were, as a matter of fact, so connected in one series as to form essentially and strictly the same transaction.[22] "Transaction" means "carrying through" and suggests

[15] State of Karnataka v. M Balakrishna, 1980 CrLJ 1145 (Kant-DB) : ILR 1980 Kar 1070.
[16]Naresh Kakkar v. State, 1995 CrLJ 3062 (Del) : 56 (1994) DLT 53.
[17]State of Punjab v. Rajesh Syal, (2002) 8 SCC 158 : 2002 SCC (Cri) 1867 : 2003 CrLJ 60 (62) (SC).
[18]State of Punjab v. Rajesh Syal, (2002) 8 SCC 158 : 2002 SCC (Cri) 1867 : 2003 CrLJ 60 (62) (SC).
[19]Purushottamdas Dalmia v. State of W.B., AIR 1961 SC 1589 : 1961 (2) CrLJ 728, 733.
[20]State of Bihar v. Simranjit Singh Mann, 1987 CrLJ 999 (Pat-DB).
[21]K.P. Sundarson v. D.K Bhattacharjee, P.F.I., 1987 (3) Crimes 721, 724 (Cal).
[22] Queen Empress v Fakirapa, (1890) 15 Bom 491.

not necessarily proximity in time-so much as continuity of action and purpose. The Privy Council has held that identity of time is not an essential element in determining whether certain events form the same transaction within the meaning of this section. It is the continuity of action and the sameness of purpose that determine whether the events constitute the same transaction.[23] The word "transaction" has a synonym in the word "affair". Sir 'James Stephen defines it as "a group of facts, so connected together as to be referred to by a single name, as a crime, a contract, a wrong or any other subject of inquiry which may be in issue." If a man is found in concealed possession of a diamond necklace of which each individual diamond has been the subject of a separate theft and he knows that the diamonds have been stolen, his dishonest possession of the necklace is one "transaction" in the sense that that word is used in this section. Similarly the simultaneous possession of a number of bullocks at a fair and the offer of them for sale is one 'transaction'.

6. DUTY OF THE COURT IN THE FRAMING OF CHARGE

The presiding officer of a Court of Session must take at intelligent part in the proceedings and exercise due care while framing the charges or examining the accused persons as these are not matters of empty formality. He should not merely be a disinterested auditor of the context between the prosecution and the defence and should come to a clear understanding o, the actual events that occurred and ensure that proper and necessary steps have been taken to arrive at the truth.[24] The adversary system of trial being what it is, there is an unfortunate tendency for a judge presiding over a trial to assume the role of a referee or an umpire and to allow the trial to develop into a contest between the prosecution and the defence with the inevitable distortions flowing from combative and competitive elements entering the trial procedure. If a criminal Court is to be an effective instrument in dispensing justice, the presiding Judge must cease to be a spectator and a mere recording machine.[25] Once there is prima facie and satisfactory existence of sufficient grounds for proceeding against the accused, the Court is obliged to evaluate such material evidence instead of acquitting the accused from the very guilt itself, which may result in the failure of justice.[26]

At the stage of framing the charges the Court is not expected to go deep into probative value of the materials on record, the Court is obliged to see whether there is prima facie evidence in support of

[23]Babulal Sailendra Nath v. King-Emperor, (1938) 40 Born LR 787 : 65 IA 158 : (1938) 2 Cal 295; Hirday, (1945) 24 Pat 501. Ramnath Rai, (1933) Pat 161.
[24] Lalu Prasad v. State of Bihar, 2005 CrLJ 3538 (FB) (Pat) : 2005 (3) ICR 193 (Pat). 55.
[25] Ramchander v. State of Haryana, AIR 1981 SC 1036: 1981 CrLJ 609.
[26] Asstt. Director, Enforcement Directorate v. Khader Sulaiman, 2003 Mad LJ (Cri) 294 : 2003 CrLJ (Mad). 58

the charge levelled against the accused. While framing charges, there is no need to maintain the same standard to be adopted by the Court in scrutinizing the evidence at the time of trial, but all due diligence should be taken even at the stage of framing the charge as to whether the charges framed is supported with prima facie and sufficient material evidence.[27]

When the Court of Session does not find the case exclusively triable by it, it has to remit the case to the Chief Judicial Magistrate either after framing charge or without framing charge and the word 'may' as occurring in clause (a) does not convey a sense of compulsiveness or obligation.

In the absence of proper hearing and consideration at the time of framing charges there is every possibility that the charges are framed inadequately or inappropriately defeating the ends of justice. The approach to the issue of framing charge has to be pragmatic. Charge should not be framed in cases where the available material does not disclose the ingredients of the offence with which the accused is charged. Framing of charge in such cases is an exercise in futility and results in wasting valuable time of the Court. Where the material on the record did not disclose abetment of suicide by the petitioners, petitioners were discharged of offence under S. 306 IPC.[28] Charge in respect of same occurrence in two Sessions trials. The framing of charge in respect of the same occurrence in two separate session's cases offends Art. 20(3) of the Constitute and also the spirit of S. 300 Cr.P.C.

Defective charge.-When the complainant was not shown to have been in actual possession, charge of common intention to oust him from the said property cannot be framed.[29] Once a case has been committed u/s. 228 or 209 the Sessions Court has power to try the case even though it is not a case which is exclusively triable by a Court of Session.[30] When the Assistant Sessions Judge finding that a case committed to him is not exclusively triable by Court of Sessions transfers to Additional District Judge who was designated as the Chief Judicial Magistrate, is valid. With regard to committal of a case to the Court of Session there is no conflict between this section and S. 306(5)(a)(i).[31] The mechanical framing of charges on the draft charges given in the Schedule to the Cr.P.C., is not permissible.[32] Mere omission to mention S. 149 in the charge may be considered as an irregularity,

[27] Asstt. Director, Enforcement Directorate v. Khader Sulaiman, 2003 Mad LJ (Cri) 294 : 2003 CrLJ (Mad).
[28] Avinash J. Mahale v. State of Maharashtra, 2006 CrLJ 3123 (3124)
[29] Hikim Singh v. State of W.B., 1979 CrLJ 1255, 1257 (Cal-DB). 68.
[30] Yelugula Siva Prasad v. State of A.P., 1988 CrLJ 381 (AP).
[31] Abani Chowdhury v. State, 1980 CrLJ 614 (Cal-DB).
[32] Pati Ram v. State of U.P., 1994 CrLJ 3813 (All); Public Prosecutor, A.P. High Court v. Potharlanka renkaks

but failure to mention the nature of the offence committed by the accused would not be regarded a mere irregularity, the accused would not be convicted under S. 302/149 after reversing their conviction under S. 326, IPC, as there was no charge framed against them for such offence. Where S. 354, IPC was attributed to accused Al and A3, charge under S. 149, IPC framed only against the accused A2 was not only contrary to the basic principles but also ignominious.[33] The same occurrence cannot be the subject-matter of charge in two Session trials.[34]

7. DISCREPANCY DURING INVESTIGATION

The police in order to proceed with the case in his hand tries to force the accused to make an incriminatory statement and thereby tries to use it against the accused under Section 161 of CrPC. However this has been condemned in a lot of judgements by the Supreme Court and the High Courts. Justice Krishna Iyer in the case of Nandiny Sathpathy v P.L. Dalani had observed that, "The charge, it is so obvious, has a wide-ranging 'scope and considerable temporal sweep, covering activities and acquisitions, sources and resources private and public dealings and nexus with finances, personal and of relatives. The dimensions of the offences naturally broadened the area of investigation, and to do justice to such investigation, the net of interrogation had to be cast wide. Inevitably, a police officer who is not too precise, too sensitive and too constitutionally conscientious is apt to trample under foot the guaranteed right of testimonial tacitness. This is precisely the grievance of the appellant, and the defence of the respondent is the absence of the 'right of silence, to use the familiar phrase of 20th century vintage." In addition to it the Court had also observed that, "Whether we consider the Talmudic law or the Magna Carta, the Fifth Amendment, the provisions of other constitutions or Art. 20(3), the driving force- behind the refusal to permit forced self-crimination is the system of torture by investigators and Courts from medieval times to modern days. Law is a response to life and the English rule of the accused's privilege of silence may easily be traced as a sharp reaction to the court of Star-Chamber when self-incrimination was not regarded wrongful. Indeed, then the central feature of the criminal proceedings, as Holdsworth has noted, was the examination of the accused.The horror and terror that then prevailed did, as a reaction give rise to the reverential principle of immunity from interrogation for the accused. Sir James Stephen has observed: For at least a century and a half the (English) Courts have acted upon the supposition that to question a prisoner is illegal This opinion arose from a peculiar and accidental state of things which has long since- passed away and our modem

[33] Public Prosecutor, A.P. High Court v. Potharlanka Venkateswarlu, 2002 (4) All Cri LR 466: 2002 (1) Andh LT PI AP 395 : 2002 CrLJ 3145 (3147) (AP).
[34] Raghavan v. State of Kerala, 1998 CrLJ 3649 (Ker).

law is in fact derived from somewhat questionable source though it may no doubt be defended (Sir James Stephen (1857). "Two important considerations must be placed at the forefront before sizing up the importance and impregnability of the anti-self-incrimination guarantee. The first is that we cannot afford to write off the fear of police torture leading to forced self-incrimination as a thing of the past. Recent Indian history does not permit it, contemporary world history does not condone it." He had stated that Section 161(2) is subjected to the restrictions prescribed under Section 161 (2) of CrPC and that the accused is not supposed to give self – incriminatory statements.

Generally the investigating officer (IO) opts for the wrong method of investigation to the offence. The police officers tend to initially go for a very superficial method of investigation. They compel the accused and the other witnesses to give their statements and then they start their further investigation. This is the reason which leads to erroneous framing of charges against the accused. The accused is wrongly implicated whereas the real accused is shielded due to the faulty investigation by the IO. In Malimath Committee Report Justice Malimath had said that, "*Unfortunately, the investigating officers are not given training in interrogation techniques and sophisticated investigation skills*."

In the case of Harkirat Singh v State of Punjab,[35] The Supreme Court had observed that when the FIR and statements by the witnesses were taken in a single day with material contradictions arising between the both, the investigation was perfunctory and that the investigating agency has tried to shield the real offender. In the case of Narmada Shankar v Dan Pal Singh[36], Allahabad High Court had stated that, "*It will be a sad day for the country if the police starts making false evidence; thereby revealing a closed mind and a bias in favour of the police*." In this case a person had filed a suit for malicious prosecution against five police officials for maliciously conducting proceedings against him without any solid grounds.

Due to the system of compelled testimony by the police officials the witnesses have to make substantial improvements subsequently in the trial stage. In the case of Khushal Chand vs The State (Nct Of Delhi), Delhi High Court had observed that the statements by the witnesses had been taken by the police under compulsion and therefore when the witnesses made subsequent improvements on

[35]MANU/SC/0815/1997
[36]1966 CriLJ 834

their statements in the trial the Court gave benefit of doubt to the accused and released the accused. In the case of Subhash Chand vs State Of Haryana & Ors[37], Supreme Court had observed that, "the statements of witnesses who made substantial improvements over their statements under Section 161 CrPC did not inspire confidence."

8. PREJUDICE TO THE ACCUSED DUE TO ERRONEOUS FRAMING OF CHARGES

Supreme Court in the case of Ram Deo Prasad v State of Bihar[38] had criticized the trial court on the ground of erroneous framing of charges. In a case where a girl of 4 years was kidnapped for the purpose of sexual intercourse, the court had failed to frame charges under section 366 A or 367 of Indian Penal Code, 1860. The Court had also criticized the examination of the accused by the trial court and had stated that, "This is all! The first question was an empty formality and the second question was evidently asked even without looking to the charge as there was no charge of abducting the child from her father's house against that appellant. The whole of s. 313 was, thus, squeezed into the third and the last question." In the case of Jainandan Prasad Singh v State of Bihar[39], Patna High Court had stated that, "the appellant had deceitfully taken custody of his wife with an intention to kill her. This was a distinct offence punishable u/s. 364 of the I.P.C., but no charge was framed in this respect and that being so the facts in relation to such a charge could not be permitted to be recorded." The Supreme Court in the case of Sajjan Sharma v State of Bihar[40] had condemned the Trial Court by saying that they had committed huge errors in the framing of charges. In a case where the facts of the case imply that there has been a commission of an offence under Section 27 of Arms Act and Section 148 of IPC the court had failed to put the same while framing of charges. The Court also said that the Trial Court was in framing the charge of Section 302. In addition to this Supreme Court had said that this copy of the judgement should be given to Bihar state judicial academy so that they don't commit these kind of errors in the future.

The Supreme Court in Satyavir Singh Rathi v State through C.B.I.[41] had stated that, "It is trite law, nevertheless fundamental, that the prisoner's attention should be drawn to every inculpatory material

[37]2011 (1) JCC 41 SC
[38]2013 Indlaw SC 221
[39]2014 Indlaw PAT 283
[40]2011 Indlaw SC 15
[41] 2011 Indlaw SC 309

so as to enable him to explain it. This is the basis fairness of a criminal trial and failures in this area may gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed. However, where such an omission has occurred it does not ipso facto vitiate the proceedings and prejudice occasioned by such defect must be established by the accused. In the event of an evidentiary material not being put to the accused, the court must ordinarily eschew such material from consideration. It is also open to the appellate court to call upon the counsel for the accused to show what explanation the accused has as regards the circumstances established against him but not put to him and if the accused is unable to offer the appellate court any plausible or reasonable explanation of such circumstances, the court may assure that no acceptable answer exists and that even if the accused had been questioned at the proper time in the trial court he would not have been able to furnished any ground".

The Supreme Court in the case of Union of India v Prafulla Kumar Samal and Another[42] had stated that, "The words 'not sufficient ground for proceeding against the accused' clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial starts. At the stage of s. 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him."

CONCLUSION

Framing of charges is the most important stage of a criminal trial. Charge is the foundation of accusation and every care must be taken to see that charges are properly framed. While framing a charge, only a prima facie case needs to be made out. In later stages of trial, this leads to discrepancies because evidence adduced during the course of trial may lead the case to an entirely different aspect. There are many cases when trial courts have failed to frame the charges properly. Inefficiency of

[42]1978 Indlaw SC 252.

subordinate judiciary further amplifies the problem. Faulty investigation of police also leads framing of incorrect charges. Errors while framing charges vitiates the very purpose of fair trial.

Ordinarily, the accused is informed about the about the accusations in the beginning itself. However, under sections 216, courts can alter the charge after commencement of trial without prejudice to accused. There are cases when courts have altered the charge and the accused was not given a proper hearing violating his right of fair hearing. This is against a cardinal principle of law *audi alteram partem* which means the other party must be given a fair hearing so that it can adduce evidence and witnesses in its defence.