CHAPTER 1

Introduction

The framing of a proper charge is vital to a criminal trial and this is a matter on which the magistrate or judge should bestow the most careful attention. Alteration of charge is an important step in a criminal proceeding. It separates the inquiry stage from trial. The whole object of alteration of a proper charge is vital to ensure justice and this is a matter on which the magistrate or judge should bestow the most careful attention. Charge is to enable the defense to concentrate its attention on the case that he has to meet, and if charge is framed in a vague manner that the necessary ingredients of the offence with which the accused is convicted are not brought out in the charge, the charge remains defective. Material on record not showing Prima facie case, it was held that there was no application of mind on the part of the magistrate. Hence framing the charge was set aside. It is the first notice to the prisoner of the matter where of he is accused and it must convey to him with sufficient clearance and certify what the prosecution intends to prove against him and of which he would have to clear himself. In the matter of framing of charge the court cannot act blindly. If on the existing material there is no ground for presuming the accused person to be guilty, then there can hardly be any point in altering charges and going through the formality of a trial and then acquitting them however at the charge framing stage evidence can be gone into meticulously .It is only when the evidence produced, if unrebutted warrants a conviction, it is a fit case for framing of the charges but the accused should be discharged if no case is made on unrebutted evidence .Alteration of charge is required to see whether a prima facie case is duly made or not. Alteration of charge is done to ensure the exact offence and the same to be read over to the accused to be ensured with justice.

CHAPTER 2

Charge to state offence

2.1 Necessary things to state offence

Sub section (1) of section 221of code of criminal procedure defined the term charge to state offence, it stated that every charge under this code shall state the offence with which the accused is charged. The object of the charge is to enable the accused to have a clear idea of what he is being tried for and of the essential facts he has to meet.[1] The charge sheet corresponds to the english indictment, and it is very much more than a mere form. An accused person is entitled to be informed with the greatest precision what acts he is said to have committed. The object of a charge is to warn the accused of the case he is to answer.

2.2 Particular to be stated in the charge

An accused is entitled to know with accuracy and certainty the exact nature of the charge brought against him. Unless he has the knowledge, he will be prejudiced in his defence, especially in cases where it is sought to implicate hint acts not committed by himself but by others with whom he is in company. [2]When a person is charged with criminal offence, he must be told with particularity not only the act he is alleged to have committed which is said to constitute it, but also what is the law which he said to have infringed. Failure to state in any substantial form the nature and vitiate the whole proceedings. To say that prejudices has caused to the accused is not enough. It must also be shown how and why the prejudice has been caused. The court observed that the failure of the trial court is not mentioning the particular which are required to be mentioned

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[1] Md. Zahirul Islam-*The code of Civil Procedure*,4th ed. (Dhaka: Shams Publishers 2002). pp 684-685.
[2] *Ibid.*

u/s 221 and 222 of the code while framing charge deprived the accused proper defense and as such the error occasioned failure of justice.

2.3 Specific offence and its sufficient description

A charge which expressly mentions the specific name given to it by law would be a sufficient charge under this sub-section even if the ingredients of the offence are not given.[3] But if the specific name of the offence is not mentioned, the ingredients cannot be implied under subsection (5) of this section .In the absence of specification of any particular clause of the section the accused is expected to meet a case under all clause But when a particular clause is specified, he is not expected to meet a case under any other of the seven clauses of the section, and the charge would be defective .When the accused is charged with kidnapping and abduction, separate charges for each of the offence is necessary.[4] A single charge under section 366 P.C. [5]is defective in law .It is desirable that there should be separate charges in the alternative for these offence. It should appear plain whether the accused persons are being charged with kidnapping or are being charged with abduction and whether the intent alleged was to compel the victim to marry against her will or whether the kidnapping or abduction was with the knowledge that it was likely that the girl would be forced or seduced to illicit intercourse. The manner of cheating should be set out with precision. Where the actual findings support it, a conviction of an accused person under section 420 would be valid though the charge is under section 420 read with section 34, unless prejudice is shown to have occurred .Where the charge merely stated that on particular days the accused delivered 'seditious speeches and brought or attempted to bring into hatred or contempt' etc, it was held that the charge was certainly defective, but the accused was not under any misapprehension as the nature of the charge against him. Rioting is an offence with a specific name and it is sufficient to describe that offence by that name only

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[3] *Ibid.*

[4] *Ibid.*

[5] *The penal code* 1860 (Act no xlv of 1860).

under sub-section (2). Where all the accused are charged under section 147, Penal Code, with forming themselves into an unlawful assembly with the common object of committing arson a separate charge of abetment is wholly unnecessary and does not in fact arise . It is not necessary to use the words 'by force or by show of force' in the charge, where the offence is of rioting .

2.4 Charge must refer to the law and section

When a person is charged with a criminal offence, He must be told with particularly not only the act he is alleged to have committed which is said to constitute it, but also that is the law which he is said to have infringed .Where there are several parts to a section the charge should be framed in terms of the parts applicable. Where several persons are accused of an offence committed in furtherance of a common intention, by the application of section 34 of penal code. It is desirable that the same should be explicitly set out in the charge, but omission to refer to section 34, PC cannot affect the validity of the conviction, if the accused has not been prejudiced by such omission. In the case of charge of abetment, it is open to the prosecution to charge abetment generally and then if the evidence did not establish abetment other than in one particular form, to rely on that particular form for a conviction. The charge under section 107 PC would amount of notice to the accused that he had to meet a case of abetment in one or more of the ways indicated in that section . When the accused is to be charged with two offences such an example murder and abetment of murder, a charge under section 302 read with section 109 of penal code is defective. Section. 302 must be mentioned separately .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 the matters put in the charge and not the other matters. .

Chapter 3

What implied in charge

3.1 Implication and Language of charge

Under the sub-section 6 of the section 221 of CRPC the charge can be only in the language of the court. But if necessary, the charge may be translated and explained to the accused in the language he understands**.** It means the language of the charges shall be written either in English or in the language of the Court. The charge means 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. When any section of any law is quoted at the time of framing of charge, the section must be quoted in the language in which the law is framed. Where it is sought to implicate an accused person for acts not committed by himself, but by others with whom he was in company, the accused is entitled to know with certainty and accuracy the exact venue of the charge brought against him unless he has this knowledge, he is likely to be prejudiced in his defence. A mere mention of the relevant sections in the charge is not sufficient notice to the accused that he is sought to be made constructively liable Where there is only one consolidated charge against all the accused and it is silent about the constructive liability sought to be imposed on some accused for the injuries caused by the other accused, and it is not even stated that hurt was an offence which the members of the unlawful assemble other than those who caused it knew to be likely to be committed, the charge was loose and confusing. In all cases where charges are framed under sections 147, 148 substantive offence read with section 149 of the Penal Code, additional separate charges should be framed against each individual accused for an offence directly committed by him while being a member of such assembly and they should carefully take note of the provisions of section 221, 233 and 236 of the Cr. P.C. charge which causes prejudice to the accused due to error or irregularity makes out a case for retrial.

3.2 Previous conviction

A "previous conviction" means a previous conviction by a Bangladesh Court and not by a foreign Court. It means a conviction obtained before the moment of time when the charge is framed.[6] For the purposes of section 75 of the Penal Code,[7] a person can not be charged with conviction for an offence committed subsequent to the date of the latter offence is committed before the conviction for the former offence.

3.3 When charge regarding Previous conviction made:

If a person is intended to be tried and punished with enhanced punishment or with punishment of a different kind as being a previous offender the particulars of the previous conviction should be stated in the charge. The extent of the former punishment need not be stated. In the absence of a statement giving particulars of previous conviction is mentioned in the charge, the sentence cannot be based on eleven previous convictions.[8] Where that was done, the High Court reduced the sentence. However a statement of the previous conviction in the charge is not necessary where such conviction is to be taken into consideration, not for the purpose of awarding enhanced punishment under section 75 penal code but merely for the purpose of exercising the discretion of the court as to the extent of the punishment to be awarded within the maximum fixed for the offence Charged. where the previous conviction has been omitted from the charge, it may be added at any time before sentence is passed. A sentence passed already cannot be enhanced by the subsequent discovery of the fact that the prisoner has been previously convicted.

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[6] Zahirul Islam,*ibid*, p 687.

[7] *The penal code* 1860 (Act no xlv of 1860).

[8] *Ibid.-687.*

Chapter 4

Particular Matters for framing of charge

4.1 Particulars about Time, place and against whom offence was committed

In addition to the particulars specified in section 221, the charge should contain particulars as to the time and place of the alleged offence and the person against whom and the thing, if any, in respect of which the offence is alleged to have been committed. And in some cases necessary intention must be stated in the charge the object in framing charge is to give notice of the essential facts which the prosecution proposes to establish to bring home the charge to the accused so that he may not be prejudiced in his defense. The particulars given must be reasonably sufficient to give the accused notice of the matter with which he is charged. However failure to mention particulars given must be reasonably sufficient to give the accused notice of the matter with which he is charged.[9]

However failure to mention particulars precisely may not always invalidate the charge .The time of the alleged offence should be given in the charge with as much particularity as is necessary to give the accused sufficient notice of the matter of which he is charged .Where time cannot be specified in the charge having regard to the nature of the information available to the prosecution, failure to mention such particulars may not invalidate the charge . Where the accused was charged with lack-marketing in foreign currency; it was held that under the circumstances it was not feasible or necessary for the prosecution to give the dates and the charge was not bad .It is not in every case that it may be necessary to give the place of the commission of the offence. It all depends upon the circumstances of the case. In cases such as those of conspiracies and

[9] Zahirul Islam,*ibid*, p 689.

forgeries, it is very rare that the evidence as to the place where conspiracy was entered into or forgeries were committed may be available. It would be putting too much strain on the section if place is expected to be mentioned in the charge in such cases. In a case of theft, the charge should state the person whose property was stolen .In a charge of cheating; the name of the person cheated must be stated. A charge under section 405 P.C. must state who made the alleged entrustment or who suffered from the alleged breach of trust .In a charge under section 411, Penal Code the name of the owner must be specified . But in a charge of conspiracy to defraud the public by deceitful means, even if the names of the persons defrauded are not given, the charge is not bad. Similarly in a charge under clause (3) of section 161, Penal Code, the name of the authority to be influenced need not be mentioned.

4.2 Thing in respect of which offence was committed

A charge under section 147 Penal code, should state the property in respect of which the riot is said to have taken place. A charge under section 475, P.C. should state the particular papers bearing a counterfeit mark of device, which the accused had iii his possession with the intent mentioned in the section. A charge under section 411, Penal Code (receiving stolen property) must specify the articles alleged to be dishonestly received or retained. A charge under section 380, P.C. should state the articles stolen. Section 222 (2) makes it clear that if a person commit several criminal breach of trust, he may be charged in a lump in one charge in respect of the total sum of money misappropriated without the items of which it is composed or the dates on which those were misappropriated. But the proviso to the said section makes it further clear that such misappropriation must be within a period of one year. Where the provisions contained in section 233 were followed and the enabling provisions contained in section 222 (2), and section 234 were not made use of.[10] The trial court could before the pronouncement of the judgment provided in section 227 hold that combination of the

[10] *The Code of Criminal Procedure*,1898 (Act v of 1898).

charges would help the accused in facilitating his defence, and thereafter he could have altered the charges and proceeded accordingly, as provided in section 228, and the section next following. He could not make the defect a ground for acquitting the accused .The sub-section applies only to offences of criminal breach of trust or dishonest misappropriation. Where the accused is alleged to have obtained on different accession several sums from the complainant by false pretences a single charge of cheating in respect of all the items is not tenable. The sub-section only applies to cases of criminal breach of trust or dishonest misappropriation in respect of money and not in respect of any other property where the criminal breach of trust is with respect to shares and cloth, the sub-section does not apply.

Where a person commits criminal breach of trust or dishonest misappropriation in respect of various sums at different times in the course of a single year, he may be charged in respect of the total of all the sums as for a single offence without specifying the items of which it is composed or the dates on which they were misappropriated .The provision applies also to cases where a specific sum is alleged to have been the subject of the offence.

Chapter 5

Effect of error

5.1 Effect of errors in framing charge

This effect of error is intended to prevent any failure of justice for non compliance with the matters required to be stated in the charge. unless the irregularity in the charge has misled the accused and occasioned a failure of a justice, a conviction cannot be set aside. The "Error" referred to in this section must relate to the allegations of the prosecution upon which the charge is founded. There cannot be said to be an "error" in a charge because the evidence for the prosecution is subsequently, at the trial, found to be false or insufficient to establish the charge. Where the offences which did not constitute a single continuing offence, they ought to have been separately charged, but were joined together, the specific offences of which they were accused were satisfactorily proved by competent evidence and no miscarriage of justice is caused, the irregularity in framing the charge was such as could be and was cured under this section and section .[11]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, it has occasioned a failure of justice. Under section 225 when there is a charge and there is either error or omission in it or both, and whatever its nature, it is not to be regarded as material unless two conditions are fulfilled, both of which are matters of fact (1) The accused has in fact been misled by it, and (2) It has occasioned a failure of justice. Sections 535 and 537 of CRPC indicate that in the generality of cases the omission to frame a charge is pot pares fatal. It may be noticed that section 225 is with reference to a trial which was already commenced or taken place. It would, therefore, normally related to errors or omissions which occur in a trial that has validly commenced.

[11] Zahirul islam, *ibid*, p 697

This section lays down what errors and omissions in a charge are not material. An error or omission can be regarded as material only if the accused was in fact misled by it and it has occasioned a failure of justice. Where accused is not misled by the error or omission, but fully understands the case brought against him and raises all possible defence in the trial, the error or omission cannot be said to be a material. The mere fact that there was an error or omission is not enough. It must have occasioned a failure of justice. Mere vagueness of the charges amount only to an irregularity. The trial cannot be vitiated unless the accused is materially prejudiced thereby. So also a mere imperfection in the charge. Where neither the accused nor his advocate is misled by the charge of cheating or fail to understand the nature of the charge. The object of this section is to prevent the failure of justice where there has been some technical breach of the rules as to what should be stated in stating the offence as particulars.[12] Unless the irregularity or omission has misled or caused prejudices to the accused and occasioned a failure of justice it will not vitiate the trial.

5.2 Effect of material error in framing charge

Contemplates a new trial or remanding of the case to the trial court when the accused has been prejudiced by the absences of charge of framing of the charge at a belated stage. Where a person is convicted of an offence, and the Appellate Court is of the, opinion that he has been misled in his defense by the absence of a charge or by an error in the charge, a retrial shall be ordered on an amended charge. Where an accused is charged with one offence and convicted of a different offence with a charge being framed in respect of it, a retrial can be ordered if it is found that he has been misled in his defense by the absence of a charge. Where a charge against an accused is framed under Sec 332 read with sec 34, penal Code, but he is convicted for an offence under S. 332, P.C. the failure to frame a charge under Sec 332, P.C. causes prejudice to the accused,

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[12] Zahirul Haq- *Law and practice of Criminal Procedure,* 10th ed, (Dhaka: Bangladesh Law Book Company.26,Banla Bazar, 1st Floor.2009).p 431.

and conviction under sec332 P.C. cannot be sustained .Similarly where the accused is charged under S. 326, P.C. conviction cannot be made under S. 326, P.C. read with Sec 34, P.C.. But where in such a case the punishment already suffered by the accused was sufficient the Court declined to make an order for retrial .The court also declined to direct a retrial after a long lapse of time. Where a charge is framed in the alternative form in case in which the Code does not authorize the charge to be framed in such ' a form and the accused is thereby misled into pleading guilty to one of the offences instead of pleading not guilty to both the charges, a retrial may be ordered. **:** Where there is an absence of charge, the Appellate Court should direct retrial under this section. It is to be noted that the words "by the absence of a charge" cannot be read to mean "where there is a charge but none more for the offence of which the accused is convicted".

5.3 Plea of guilty and Conviction on plea of guilty

Where the accused makes a plea of guilty in writing, the provisions of this section are fully complied with and he can be convicted on that plea .The president case of the prosecutions that the ten round of rifle and gun cartridges were recovered from the possession of the convict appellant but the charge appears to have been framed for illegal possession of five rounds of cartridges and in the absence of any explanation for the rest five cartridge the charge has become defective and as such the trial has been vitiated.[13]If the accused pleads guilty, the Court shall record the plea and may, in its discretion, convict him thereon. This section corresponds to sub section (2) of old section 271of CRPC. It is open to the court to accept or not, the plea of guilt. Conviction on a plea of guilty is not sustainable when the facts alleged or proved by the prosecution do not amount to an offence. A plea of guilty should not be accepted in capital sentences. In a case of murder, it has long been the practice of the court not to accept the plea of guilty, for murder is a mixed question of fact and law, and requires a certain intention or knowledge. Where an accused person pleads guilty, the court should record his confession and forthwith convict him

[13].*Aslam Jahangir v State.5 (1986) BLC 514 .*

therein. If there are other persons being tried with him, it is illegal for the court to postpone his conviction in order that he may technically be said to be jointly tried for the same offence with the other co-accused, and so that any statement in the nature of a confession he may have made may be considered against the co-accused. Where the court does not thinks it expedient to act upon the accuser's plea of guilty the accused may be treated in such cases as if he had pleaded not guilty and the trial may be proceed within the ordinary way.

Where the court does not accept the plea of guilty and proceeds with the trial by recording evidence if is not justified in convicting the accused by reverting to the plea of guilty without referring to the evidence. Where a deaf and dumb person was convicted of an offence upon a trial without an attempt to communicate with him the charge against him, the conviction is liable to be set aside. Admission of guilt by the accused can be convicted solely relying on such admission. Whether such admission is to be recorded in the language of the accused. The reply of the accused while pleading guilty to the charge should be set down as nearly as possible in his own words and that having not been done the court is not in a position to know what he actually admitted.[14] The accused may not understand the implication of such charge unless it is clearly explained to him that the consequence of admission of guilt shall be fraught with punishment like hanging or imprisonment for life basing the conviction solely on the basis of admission is ill, disapproved by all the superior courts because murder is a mixed question of law and fact and unless the court is satisfied that the accused knew exactly what was implied by his plea of guilty, the plea should not be accepted but the case should be proceeded . It is not safe at all to base the conviction on the plea of guilty alone by the accused in case of murder.

[14] Zahirul Haq ,*ibid*, p 501.

Chapter 6

Alteration of charge

6.1 Court may alter charge as discretion of Court

The Court has a large discretion to alter or add to a charge framed under the Code of criminal procedure. Therefore although in the complaint there is no allegation that one of the accused abetted the other in the commission of any offence, the Court can frame proper charges for offences disclosed in the allegations and in proper cases even alter it at any stage of the trial in accordance with evidence, provided no prejudice is caused to the accused. There is no question of prejudice when the case is still at the stage of charge .The Magistrate must be ever ready, as the facts of the case are disclosed to either alter or add to the charge, or to refer the case under Sec 347 .The court has a power to add to a charge. The word "Alter" includes withdrawal by a session judge of a charge added by him to the charge on which the commitment has been made. The court may alter or add to any charge upon its own motion or on application by the prosecution which should be made immediately after the charge is explained by the magistrate. The court may alter or add to the charge at any time before judgment is pronounced it may be done at appellate stage before the pronouncement of the judgment of appeal. but it must exercise a sound and wise discretion in so doing. This section confer jurisdiction on all Courts to alter or add to any charge framed earlier at any time before judgment is pronounced. The section invests the Court with an all comprehensive power of remedying defects, whether they arise out of the framing of a charge or of the non framing of a charge, whether they are discovered at the inception of the trial or at any subsequent stage of it prior to the pronouncement of judgment the court opined in *Ah. Akbar Khan v State*[15] that it is the duty of the Magistrate to alter or amend the charge, when in the course of a trial he finds at any time before judgment is pronounced that the trial has proceeded on imperfect or erroneous charge. Remedy by way of addition or altering the charge is not confined only when an offence is disclosed in the course of a trial. If at the commencement of trial there

[15] *34 (1982) DLR (HC) 95.*

was an omission to frame a proper charge and it is discovered subsequently the court opined in *Abdul Awal Khhan v State*[16] that defect too can be rectified by amending the charge at any time before the judgment is pronounced.[17] When facts are proved constituting an aggravated offence the Magistrate must either alter the charge under this section or refer the case u/s. 347 .Where the accused is charged for minor offence but convicted for a major offence he is definitely prejudiced and irregularity committed cannot be cured.

6.2 When trial may be made after alteration:

Section 228 to 231of CRPC Provide that the accused or that prosecution should not be embarrassed or prejudiced by the alteration of the charge under previous section. Where the amended charge merely repeats in more appropriate words the substance of the original charge or there is no objection to proceeding with the trial immediately. The expression "add to" in this section do not mean an addition of a few words to the existing charge, but means addition of new charge. The Court may add a new charge, at any time before judgment is pronounced. This clearly shows that the words added to the concept of a new charge is implicate. When an accused was charge sheeted under S. 323 and 325 P.C, but charge was framed under S. 323 only, the Magistrate could add a charge u/s 325. Under this section addition and alteration of a charge or charges implies one or more existing charge or charges. When the accused, were discharged of all the charges' and no charge existed against them, an application under this section was not maintainable.

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[16] *12(1960) DLR (HC) 100.*

Accused Charged under section 148,302/149 of penal code but convicted under section 302 on the question whether such conviction is sustainable in law, Court held: Conviction under section 302/34 penal code is permissible in the facts and circumstances of the case. The framing of a specific and distinct charge in respect of every distinct head of criminal liability constituting an offence, is the foundation for a conviction and sentence, thereof. The question then arose for consideration whether such lacuna has prejudiced the accused or not. on consideration of the question of prejudice it was held, 'in all the circumstances above noticed, we are satisfied that the absences of specific charge against the appellate under section 307 and 302 pc has materially prejudiced him.[18]

6.3 Distinct Charge

In cases in which the amendment of the charge is of such a nature that proceeding immediately with the trial of the case will prejudice the prosecution or the accused, this section provides that the trial should be adjourned or a retrial should be held. Such retrial can be directed by the trying Court itself and there is no need to refer the case to the High Court for this purpose .Where it is doubtful whether or not proceeding immediately with the trial will prejudice the accused, the Court must lean in favor of holding that such procedure will prejudice the accused .Where the Magistrates order shows that the previous charges were cancelled and the prosecution witnesses were summoned, a new trial is directed in terms of S. 229. Where the accused has not been given a proper opportunity of defending himself against the altered charge.

The proceedings can be set aside and a retrial ordered. This section provides that 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 and also to call any further witness whom the Court may think to be material. The accused is entitled to recall the prosecution witness after alteration of charge, even

[18] *Shawai alias Mohammad Hossain V State.41 (1990) DLR 373 .*

if the alteration did not affect his defence .This section is mandatory therefore, whenever a charge is amended the Court is bound to allow the prosecution and the accused to recall and examine any witness who may have been already examined. Where the case was originally registered under section 376, 452 P.C. but after recording entire evidence, the charge was framed against the petitioner under section 354 P.C. Subsequently, an order was passed that prima facie case under section 376 P.C. had been made out and the charge was altered to section 376 P.C. The trial Court did not ask the prosecutor or the accused if they wanted to recall, summon or examine with reference to such alteration, any witness, who had already been examined. Where there are two or more accused persons and the charge against one of them only has been altered, the other accused must also be allowed to cross-examine the prosecution witnesses again or to lead fresh evidence in defence under this section. A request to summon a fresh witness can only be refused on the ground that the evidence of the witness is not thought by the Court to be material .If no application is made for the recalling of any witnesses and their examination, it cannot be subsequently planned that the examination contemplated by the section was not allowed .Where in the Course of a trial the Magistrate alters the charge and decides to send the case to the Sessions under Sec 347, this section has no application .

When the accused appears or is brought before the Magistrate, and if the Magistrate, upon consideration of record of the case and the documents submitted therewith and making such examination, if any of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, considers the charge to be groundless, he shall discharge the accused and record his reasons for so doing. The procedure prescribed by this section should be strictly followed. An order of discharge can be made only according to the words of the section that no case has been made out. The Magistrate should first take into consideration (a) in police case, the prosecution case as given in FIR, charge-sheet, statements of witnesses recorded by police and the documents produced including medical certificate and (b) in complaint case, the petition of complaint, statement of witnesses recorded during judicial enquiry, report of enquiry officer and medical certificate if produced and also hear the defence and then apply the law to the Criminal acts to find whether

there is prima facie case and the Magistrate can discharge the accused if no case has been made out. The trial court has a wide power to frame charges and this cannot be interfered with by the revisional Court by way of giving direction for altering a charge or framing a charge.[19] Magistrate cannot discharge accused persons on the plea of alibi that they were at different places at the time of commission of offences alleged by the prosecution Magistrate's 'finding' in this regard is based on no evidence. Mere submission of some papers supporting alibi is neither sufficient nor admissible as the stage of adducing defence evidence was yet come Magistrate's order of discharge was not sustainable as it was based on gross misconception of law. Provision of Section 241A is to be strictly followed. An order of discharge can be made only when no case is made out against the accused. The impugned order of discharge shows that the trial Judge did not consider the F.I.R, Charge-sheet, statements of witnesses recorded under section 161 of the Code of Criminal Procedure and the documents relating to the forging of the cheques and other documents. The order of discharge has been made on a total non-application of judicial mind to the meterials on record. . The previous statements of the witnesses recorded under section 164 Cr.P.0 can only be used at the time of trial for the purpose of contradiction under section 145 of the Evidence Act, 1872.[20]

When charges are framed by the trial court on the basis of statements of the witnesses recorded under section 161 Cr. P. C this can not be interfered with lightly on the basis of statements recovered under section 164 Cr. P. C which can not be used before trial. However law does not permit to keep the victims in judicial custody for indefinite period. Accused may be discharged when the allegations are found groundless on the basis of materials on record. Special Judge cannot discharged the accused on extraneous matters beyond the record, be that under section 241A or 265C of the Cr. P. C. Discharge of accused under section 241A of the Code of Criminal Procedure is not proper when there are prima facie materials on record for framing charge. Magistrate is bound to proceed with the trial of the case when the

[19] Zahirul Haq ,*ibid*, p 457.

[20] *The Evidence Act* 1877(Act no 1 of 1872).

discharge order is set aside by Additional Sessions Judge in exercise of his revisional jurisdiction. The learned Special Judge discharged the accused persons considering the some extraneous materials which were not available either in the complaint petition or in the record and as such the Special Judge acted beyond his jurisdiction be that it under section 241A or 265C of the Code discharging the accused by illegally relying upon some extraneous materials which were not in the record.

Accused cannot be discharged under section 241A/265-C of the Code of Criminal Procedure, 1898 when there are prima facie ingredients of the offence alleged to stifle the prosecution before trial. The nature of offence can well be thrashed out in the trial. Discharge of accused on plea of alibi-not permissible- Plea of alibi by way of defence can only be taken during trial subject to satisfactory proof thereof. At the time of framing charge the court or Magistrate has to see only if the prosecution has been able to establish prima-facie case against the accused to go for trial. Accused can not be discharged on plea of alibi at this stage. The accused appellants are likely to be prejudiced by such misjoinder as the framing of such charge for a schedule and non-schedule offence cannot be said to be altogether without jurisdiction. If upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Court considers that there is no sufficient ground for proceeding against the accused, it shall discharge the accused and record the reasons for so doing. This section is new. There is no scope for examination of any witness, but there is scope for both sides to argue their case in favour of framing charge or discharge. The Judge shall also record reasons of discharge. The Judge is not bound to pronounce a definite judgment on the question whether the accused is guilty or not.

That function should be reserved for trial. The words sufficient grounds for proceedings' do not mean 'sufficient grounds for conviction'. Satisfactory evidence to go to trial must be regarded as sufficient ground for proceedings. The function of the Judge under this section is very limited. The function of the Judge is not to weigh the evidence and circumstances at this stage of the case for and

against the purpose of finding out the guilt or otherwise of the accused. Under Section 265C Cr.P.C it is the duty of the Court of Sessions, upon consideration of the materials on record and after hearing the parties, to discharge those accused persons' against whom it appears to the Court that there is no ground for proceeding so that frivolous cases and cases of no evidence do not occupy the time of the Court and innocent persons are subjected to the rigours and expenses of a full-scale trial. The legislature has enacted section 265C Cr.P.C apparently to protect the accused from facing the agony of futile and useless trial when the statements of the complainant and his witnesses available on record (read with the statement of the accused, if any) do not make out any prima facie case against the accused. Just as the accused is to be presumed innocent till he is proved to be guilty, similarly the prosecution or the person wronged cannot be throttled by the court arbitrarily and capriciously and must be given due opportunity to prove his case against the alleged wrong doer, if on initial scrutiny is found that his allegation does disclose the commission of a criminal offence against an accused. The sessions Judge must put on record reasons based on materials for discharge of an accused person, failing which the order of discharge liable to be set aside. After investigation and finding a prima facie case the police submitted a charge-sheet against 12 persons including 9 opposite parties. The Sessions judge discharged 9 opposite parties without recording any reasons thereof and framed charge against the remaining 3 accused.

The commitment proceedings having been done with in the dispensation of criminal justice, it becomes incumbent on the Sessions Court to scrutinise the materials on record carefully and to record his reasons for passing an order of discharge under section 265C of the Code of Criminal Procedure. If before framing the charge the Sessions Court considers that there is no sufficient ground for proceeding against the accused, then it shall discharge the accused and record the reason for so doing under section 265 Cr. P. C. A Magistrate has similar power under section 241A Cr. P. C. The object of section 265C of the Code of Criminal Procedure is to enquire into the materials on record for prima facie satisfaction of the Court as to whether the accused should be discharged or proceeded against so that innocent persons may not be harassed on false and frivolous allegations. If on the other hand, if the Court finds that there is ground for

presuming that the accused has committed an offence it shall frame necessary charges against him under section 265D of the Code. When prima facie there is no material on record to show that the accused was in any way connected with the alleged offence it is to be held that there is no sufficient ground for proceeding against the accused and he should be discharged. Section 265C and Section 241A of the Code are two independent sections which deals with discharge of an accused brought for trial inrespect of cases triable by a Court of sessions and by a Court of Magistrate. These two sections indicate that when an accused is brought for trial before a court of law the Court upon hearing the parties and on consideration of the record of the case and the documents may discharge the accused. These two sections having nothing to do with quashing of a proceeding. Section 561A is an independent inherent power of the High Court Division and this power can be exercised in case of abuse of process of court and for securing the ends of justice and or to give effect to any order under the Code.

Discharge under the provisions of these sections is of different character than the discharge of the accused under sub-section (2B) of section 202 where discharge is made before taking of the cognizance. In our view there is no scope for making further enquiry after discharge if the accused under sections 241A or 265C of the Code as the same is made after taking cognizance. So, all necessary materials are before the court and as the order is passed on consideration of all such materials, there is no scope for passing any order for holding further inquiry. But there is scope for further enquiry when accused is discharged under the provision of sub-section (211) of section 202 of the Code as the said order is made before taking of the cognizance.

Chapter 7

Joinder of charges

7.1 What is distinct offence and which are not distinct offence

The framing of a specific and distinct charge in respect of every distinct head of Criminal liability Constituting an offences is the foundation for conviction and sentence therefore. When two offences have been committed but they have no connection with each other, they are distinct offence. A separate charge is required for every distinct offence and not necessarily for each separate offence. Distinct means not identical. Two offences would be distinct if they be not in any way interrelated. 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. Retention of stolen property stolen in two different thefts is one offence. Even receipt of stolen property, removed in the course of two thefts, would constitute only one offence, unless there is evidence that the property was received by the accused at two different times. Offences under Sec 30 of p.c. and Arms Act are distinct offences and should be tried separately unless the case is covered by any of the four sections .Where the accused killed a man and subsequently his wife, it was held that the two murder were distinct offence and the inclusion of both in one charge offended against this section . If an accused at one and at the same time and also at the same place attacks and causes injuries to several persons. he commits as many distinct ofences as the persons he attacks, although the whole thing may have been done in the course of same transaction. So, if four dacoities were committed in houses adjoining one another and situate in the same locality, by the same gang at one and the same time and in furtherance of their common design to loot every one residing in that part of the village, it may be possible to say that the transaction was one, but it can not be said that the whole thing amounted to single offence.

In case of a series of dacoity committed in four different flats of the same premises owned by different persons almost at the same time, form same transaction framing a rolled up charge without discussing each offence of dacoity separately demand retrial . The offence of obstructing a public servant in the discharge of his public functions under Sec186 of P.C. is distinct from the offence of voluntary causing hurt to defer a public servant from his duty under Sec 332 though the two offences have same common elements. In most cases whether a separate sentence can be passed for an offence, is the simplest test as to whether it is a distinct offence or not. The following are not distinct offence:-

(1) Making a number of false statement in one deposition .
(2)Filing several forged documents simultaneously.
(3)Receiving of properties stolen from different persons on one occasion.
(4) Misappropriation of several sums of money in regard to the same individual .
(5) Misappropriating several books of account of an estate.
(6) Stealing several articles at one time.
(7) Receiving a bribe partly on one day and partly on another.
(8) Inseparable acts in a continuous action constitute one offence only.
(9) False information against several persons.
(10) Cheating, if the object is to obtain full contract price, even though inferior timber was supplied at number of places at different occasion .
(11) Making a number of false entries to cover one defalcation.
(12) Attempting to murder two persons by firing a single shot as they were raising an alarm is only one offence and not two.
(13) Selling articles above control price to a person for himself and. his friends does not constitute distinct offence.
(14) Conspiracy containing element of abetment

7. 2 Separate charges for distinct offence

Section 233 to 239 of CRPC deal with the joinder of charges and they must be read together and not in isolation. This section lay down that for every distinct offence or which any person is accused, there shall be a separate charge and every such charge shall be tried except in the cases mentioned in SS. 234, 235, 236 and 239. The only exception to S. 233 is the one provided in S. 222 (2) but. that exception does not apply to a charge of falsification of accounts because it applies in case of breach of trust or dishonest misappropriation of money .Rules forbidding the joinder of charge have been framed for the benefit of the accused. The underlying idea is that if too many charges are grouped together against an accused person, he might be handicapped or embarrassed in conducting his defence. Moreover there is likelihood of the judge being unconsciously prejudiced against the accused when a large number of accusations are brought against him. The object of this section is two fold: In the first place to give an accused person notice of the charge which he has to meet; and the accused to see that he is not embarrassed by having to meet charge in no way connected with one another[21] .The provisions of this section are mandatory and their non-observance vitiates the trial . If the prosecution wishes to justify a trial in which two or more charges are joined it is for the prosecution to strictly establish that the joinder is permissible under any one or more of the sections mentioned in Sec 233. For every distinct offence of which any person is accused, a separate charge should be framed.[22] Dhaka High court in a .recent case observed that the trial court committed illegality in framing one charge for two murder. Even though the case is one in which the accused may be tried at one trial for all the offences under the provisions of Sections 234, 235, 236 and 239. I Where a number of accused are tried together and they are charged with different offences it is desirable to frame a separate charge in respect of each separate offence. Where it is intended to charge an accused person in the alternative with having committed one of the other offence, separate alternative charges should be framed.

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[21] *Abdul Matin v SDM 13 (1961) DLR (AD) 313.*

[22] *State v Azhar Gazi 23 (1971) DLR (HC) 91.*

7.3 Three offences of same kind within one year may be charged Together

Three offences of same kind within one year defined section 234 of the CRPC provide for joinder of the charge as also accused person in respect of similar offences committed during period of one year. The exception is based on the principle of avoidance of multiplicity of proceedings. Illegality whether can be cured by striking of a charge although a judge has power under sec. 234 to alter a charge before judgment is pronounced still he cannot cure an illegality. This section governs the case where there is only one accused. The case of several persons being accused of more offences than one of the same kind committed within the space of twelve months is dealt with in section 239 (c).A person can be charged for offences of the same kind not exceeding three within a year, even if they were committed against several person .This section applies only where a persons is accused of more offences than one of the same kind. The compliance that is required of section 234 is not a substantial compliance but actual compliance. It is not enough that the acts must be similar or that the offences must be similar, but in order to bring a case within this section the offences must be of the same kind as defined by subsection (2). It does not apply where a person is accused of offences which are not of the same kind, such as criminal breach of trust and falsification of accounts or offences of theft, forgery and cheating or Criminal breach of trust and forgery .Section 235 is another exception to the general rule in section 233. It provides that where several distinct offences are committed by a person in one series of acts so connected with each other as to form the same transaction, then he can be charged with and tried for every such offence, irrespective of their number at one trial. The crucial point of determination would be whether the facts composing the several offences are connected together in such a way as to constitute one transaction. In order to bring a case within section 235, the first element to establish is a series of acts which would necessarily imply the acts being connected together. It will have to be shown further that the acts form the same transaction. Mere sequence of time may establish the first element but not necessarily the other.

There must be one continuous thread of a common purpose running through the acts. Sub-section (1) applies where on some of the facts so connected together as to form the same transaction, one offence may be charged him but it does not apply to cases where on the same facts a person might be charged with two offences. Following persons are may be charged together:

Persons accused of the same offence committed in the course of the same transaction .
Persons accused of an offence and persons accused of abetment, or of an attempt to commit such offence.
Persons accused of more than one offence of the same kind, within the meaning of section 234 committed by them jointly within the period of twelve months.
Persons accused of different offences committed in the course of the same transaction.
Persons accused of an offence which includes theft, extortion, or criminal misappropriation.
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 offence under section 411 and 414 of the penal code 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 penal Code relating to counterfeit coin.
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.

While sections 234-236 deal with the joinder of charges against the same accused person in the same trial section 239 deal with that against more than one accused person in the same trial.[23] This section is the last exception to section 233 which lays down the general principle that every offence must be charged and tried separately. Under it is open to the court to avail itself cumulatively of the provisions of the different clauses for the purpose of framing charges and charges so framed will not be in violation of the law. Section 239 relates to charges and has no reference to jurisdiction or venue of trial. The fact that accused persons may be charged and tried jointly under section 239 does not give territorial jurisdiction to a court to try them. The clauses of section 239 are mutually exclusive in the sense that they cannot be added one to another so as to bring some of the persons charged under one clause and some under another and so to put them upon their trial all together at one and the same time, but they are not mutually exclusive in the sense that persons accused of an offence and person accused of abetment or of an attempt can only be tried at one trial because their case comes under clause (b). Their case might, for instance, come under clause (d). Clause (e) refers also to attempts or abetments of offences eithin the meaning of section 234 and section 239 (c). But if persons more than one are to be tried and charged together, their case must be brought within one of the clauses of section 223 before they can be, tried together, or the trial is contrary to law. This section confers a discretion upon a magistrate to try persons accused of an offence before him either jointly or separately. That is clear from the expression 'may' which appears in this section. But at the same time the discretion is to be exercised by him judicially, and according to certain well-established principles.

[23] Zahirul Islam ,*ibid*,p 728.

Chapter 8

CONCLUSION

It is the liberty of court to alter the charge in order to established the crime of the accused. Trial system is a scientific method of disposing a case and charge is the gate way to trial. All charge must be based on the sound foundation of concrete accusation. Hypothetical charge is no charge at all. Alterations of means Dynamic way of casting charge with brevity and decency of framing charge. While the charge is read in presence of the accused, it should be ensured that the offence he committed is read over to him in the open court. If the accused remains absconding during the inception of the case till trial is completed under section 339B of the CRPC the accused is tried. If the accused remains absconding during trial only section 339B2 of the CRPC is applied. without charge trial cannot be done and if the same is done trial is vitiated. Every charge should contain the time place and manner of offence done by the accused. without any offence no charge can be done. Specific offence can be noted in the specific charge. Charge should be altered in brevity, and be read in the language understandable to the accused. If charge is altered, the accused should be given the liberty to listen and answer the same. Alteration of charge can be done any time during trial.

References

Books

1. Md.Zahirul Islam-*The code of Civil Procedure,* 4thed, (Dhaka: Shams Publishers 2002).
2. Ratan Lal Ranchhoddas & Diraj Lal Keshaval Thakore- *The Code of criminal Procedure* 15th ed, (Dahaka: Bangla bazaar 2002).
3. Zahirul Haq- *Law and practice of Criminal Procedure,* 10th ed, (Dhaka: Bangladesh Law Book Company, 26Bangla Bazar,1st Floor.2009).

Statues

1. The Code of Criminal Procedure,1898 (Act v of 1898).
2. The Evidence Act 1877(Act no 1 of 1872).
3. The penal code 1860 (Act no xlv of 1860).

Table of case