

Law of
Charges in Criminal Trials

S.S. Upadhyay

*Former District & Sessions Judge/
Former Addl. Director (Training)
Institute of Judicial Training & Research, UP, Lucknow.
Member, Governing Body,
Chandigarh Judicial Academy, Chandigarh.
Former Legal Advisor to Governor
Raj Bhawan, Uttar Pradesh, Lucknow
Mobile : 9453048988
E-mail : ssupadhyay28@gmail.com
Website: lawhelpline.in*

1(A). Law regarding charges in criminal trials: Different laws relating to the charges in criminal trials are as under:

- (i) Sections 211 to 224 CrPC (general law relating to charges)
- (ii) Sections 226, 227, 228 CrPC (discharge or charge of accused by Sessions Judge)
- (iii) Sections 239, 240 CrPC (discharge or charge of accused by Magistrate in State cases)
- (iv) Sections 245, 246 CrPC (discharge or charge of accused by Magistrate in complaint cases)
- (v) Section 464 CrPC (error, omission, irregularity or misjoinder etc. in charges)
- (vi) Charges under special Acts
- (vii) Judicial pronouncements of the Supreme Court and High Courts

1(B). Object of framing of charge: The object of framing charge against an accused person in a criminal trial is to make him aware of what he is to be tried for by the court by clearly explaining to him the main facts sought to be established against him by the prosecution or the complainant so that he may have a full and fair chance to defend himself at the trial. See:

- (i) **Chandra Pakash Vs. State of Rajasthan, 2014 (86) ACC 836 (SC)**
- (ii) **Mainpal Vs. State of Haryana, AIR 2010 SC 3292**
- (iii) **State of West Bengal Vs. Laisal Haque, AIR 1989 SC 129**
- (iv) **Sivaraman Vs. State of Kerala, 1989 CrLJ 1501 (SC)**

2. Contents of charges (Sections 211, 212, 213 CrPC) : The contents of a charge are:

- (i) Name & designation of the Judge or Magistrate framing the charge.
- (ii) Name of the accused charged.
- (iii) Date, time & place of occurrence.

- (iv) Particulars of the person against whom or the property in respect of which the offence was committed.
- (v) Ingredients of the offence committed with its penal section.
- (vi) Name of the offence, if any, and the manner of its commission in brief (if required).
- (vii) Direction to the accused to be tried on the charge framed by the court
- (viii) Signature of the Judge or Magistrate framing the charge (and also the signature of the accused on the paper sheet containing the charges).
- (ix) Narration in brief that the charge has been read over/explained to the accused charged.
- (x) Expression, if any, of the accused whether he confesses to the offence or claims to be tried.

3(A). Only the material produced by the investigating agency, and not by the accused, can be considered by court for framing of charges :

At the time of framing of charges, the court can consider only the material placed before it by the investigating agency. While considering the question of discharge of the accused by the Sessions Judge u/s 227 CrPC or framing of charge u/s 228 CrPC and the Magistrate u/s 239 and 240 CrPC, the court of sessions can consider only the material submitted to it by the Magistrate at the time of commitment of the case u/s 209 CrPC. Scope of Sections 227 and 228 CrPC for court of sessions and that of the magisterial court u/s 239 and 240 CrPC is the same. At the stage of charge, trial court can consider only the police report referred to in Section 173(2) CrPC and the documents sent therewith. The only right the accused has at that stage is of being heard and nothing beyond that. Material produced by the accused cannot be considered by the sessions court u/s 227 or 228 CrPC and by the Magistrate u/s 239 or 240 CrPC. See:

(ia). M.E. Shivalingamurthy Vs. CBI, (2020) 2 SCC 768

- (i) **Bharat Parikh Vs. CBI, 2008 CrLJ 3540 (SC)**
- (ii) **Sachin Saxena alias Lucky Vs. State of UP, 2008 (62) ACC 454 (Allahabad)**
- (iii) **State of Orissa Vs. Debendra Nath Padhi, 2005 (51) ACC 209 (SC)(Three- Judge Bench)**
- (iv) **State Anti-Corruption Bureau, Hyderabad Vs. Suryaprakasan, (1999) SCC (Criminal) 373.**

3 (B). Ingredients of offences should be seen in the material produced before the court for framing of charges:

Duty of court at the stage of framing of charges is to see whether the ingredients of offences are available in the material produced before the

court. Contradictions in the statements of witnesses or sufficiency or truthfulness of the material placed before the court cannot be examined at the stage of framing of the charge. For this limited purpose, the court may sift the evidence. Court has to consider material only with a view to find out if there is ground for presuming that the accused has committed an offense and not for the purpose of arriving at a definite conclusion. 'Presume' means if on the basis of materials on record, court can come to the conclusion that commission of the offense is a probable consequence, then a case for framing of charge exists. See:

- (i) **State Vs. J. Doraiswamy, AIR 2019 SC 1518.**
- (ii) **State of Tamil Nadu Vs. N. Suresh Rajan, 2014 (84) ACC 656 (SC).**
- (iii) **Chitresh Kumar Chopra Vs. State Govt. of NCT of Delhi, (2009) 16 SCC 605.**

3(C). Charge can be framed on the basis of FIR, complaint or accompanying document or material brought on record during trial: Charge must be founded on the material available on record. It can be framed on the basis of the complaint or the FIR or accompanying documents or the material brought on record during the course of trial. See: **Anant Prakash Sinha @ Anant Sinha Vs. State of Haryana, 2016 (93) ACC 951 (SC).**

4. Production of documents/material by the accused at the time of framing of charges or discharge not permissible : At the time of framing of charges, the court can consider only the material placed before it by the investigating agency. While considering the question of discharge of accused u/s 227 CrPC or framing of charge u/s 228 CrPC, the court can consider only the material submitted to it by the Magistrate at the time of commitment of the case to sessions u/s 209 CrPC. Scope of Section 227, & 228 CrPC for court of sessions or Section 239 & 240 CrPC for magisterial courts is the same. At the stage of charge, trial court can consider only the police report referred to in Section 173 (2) CrPC and the documents sent therewith. The only right the accused has at that stage is of being heard and nothing beyond that. Material produced by the accused cannot be considered by the Sessions Judge u/s 227 / 228 CrPC and the Magistrate u/s 239/240 CrPC for purposes of discharging the accused or framing of charges against him. See:

- (i.) M.E. Shivalingamurthy Vs. CBI, (2020) 2 SCC 768**
- (ii) Bharat Parikh Vs. CBI, 2008 CrLJ 3540 (SC)**
- (iii). Rukmini Narvekar Vs. Vijaya Satardekar, AIR 2009 SC 1013**
- (iv). Sachin Saxena alias Lucky Vs. State of UP, 2008 (62) ACC 454 (Allahabad)**

(v).State of Orissa Vs. Debendra Nath Padhi, 2005 (51) ACC 209 (SC)(Three- Judge Bench)

(vi).State Anti-Corruption Bureau, Hyderabad Vs. Suryaprakasan, (1999) SCC (Criminal) 373.

5. Power of court to summon documents u/s 91 CrPC at the stage of framing of charges not permissible : Section 91 CrPC has no application at the stage of Sections 227 or 228 CrPC. Court of sessions cannot summon any document for the purpose of framing charge u/s 228 CrPC or discharging the accused u/s 227 CrPC. Same is the position of law for the court of Magistrate u/s 239 and 240 CrPC. See :

- (i) **State of Orissa Vs. Debendra Nath Padhi, 2005 (51) ACC 209 (SC)(Three-Judge Bench)**
- (ii) **State Anti-corruption Bureau, Hyderabad Vs. Suryaprakasham, (1999) SCC (Criminal) 373**

6(A). No in-depth assessment of material at the stage of framing of charges : At the stage of framing charges, trial court is not to examine and assess in detail the material placed on record by the prosecution nor is it for the court to consider the sufficiency of the materials to establish the offence alleged against the accused persons. Marshalling of facts and appreciation of evidence at the time of framing of charge is not in the domain of the court. See:

- (i) **Palwinder Singh Vs. Balwinder Singh, 2009(65) ACC 399 (SC)**
- (ii) **Prakash Singh Badal Vs. State of Punjab, (2007) 1 SCC 1.**
- (iii) **State of Delhi Vs. Gyan Devi & others, 2001 (42) ACC 39 (SC)**

6(B). Standard of scrutiny of evidence at the stage of framing of charges : The standard of test and proof of judgment which is to be applied finally before finding the accused guilty or otherwise is not exactly to be applied at the stage of Sections 227 or 228 and Sections 239 or 240 CrPC. Only a prima facie case has to be seen at the stage of framing of the charges and not the proof beyond reasonable doubts. See:

(i). Bhawna Bai Vs. Ghanshyam, (2020) 2 SCC 217

(ii).Superintendent and Remembrancer of Legal Affairs, West Bengal vs. Anil Kumar Bhunja, AIR 1980 SC 52.

6(C). No deep evaluation of material for framing of charges : Roving and fishing enquiry at the stage of charges u/s 228 CrPC or discharge of the accused u/s 227 CrPC by the Sessions Judge and by the Magistrate u/s 239 or 240 CrPC is not permissible as it would amount to a mini-trial at the stage of framing of charges or discharging the accused and against all settled principles of criminal jurisprudence. See:

- (i). **Sajjan Kumar Vs. CBI, (2010) 9 SCC 368**
- (ii). **Prakash Singh Badal Vs. State of Punjab, (2007) 1 SCC 1.**
- (iii). **State of Orissa Vs. Debendra Nath Padhi, 2005 (51) ACC 209 (SC) (Three-Judge Bench)**

6(D). Truth & sufficiency of evidence at the stage of framing of charges not to be

tested: Assessment of truthfulness, sufficiency and acceptability of the material produced cannot be done at the time of framing of charges as the same can be done by the court only at the stage of trial. See:

- (i) **State of Maharashtra Vs. Salman Salim Khan, 2004 CrLJ 920 (SC) (Para 12)**
- (ii) **Liyaqat Vs. State of UP, 2008 (62) ACC 453 (Allahabad)**

6(E). Presumption of truth of material brought on record by prosecution at the stage of charge or discharge:

At the stage of consideration of discharge of accused u/s 227 CrPC or 239 CrPC, court has to proceed with the assumption that the material brought on record by the prosecution is true. Court has to find out from the material whether acts emerging, if taken on their face value, disclose ingredients constituting the alleged offence. Court is not required to go deep into the matter as would be required for conviction. While considering the plea of discharge, court is not permitted to appreciate evidence and act as appellate court. See:

- (i) **State Vs. J. Doraiswamy, AIR 2019 SC 1518.**
- (ii) **State of Tamil Nadu Vs. N. Suresh Rajan, 2014 (84) ACC 656 (SC).**

6(F). Contradictions etc in the statements of witnesses at the stage of charge not to be

seen : Where the victim of offences u/s 363, 366, 376 IPC in her statement u/s 161CrPC had named the accused but in her statement recorded by the Magistrate u/s 164 CrPC she had not named the accused, it has been held that the contradictions, embellishments and discrepancies in evidence collected by the Investigating Officer will be of no help to the accused at the stage of charge or discharge u/s 227 or 228 CrPC and u/s 239 or 240 CrPC. See:

- (i) **Ahmad Ullah Vs. State of UP, 2014 (84) ACC 12 (All)(LB).**
- (ii) **Sajjan Kumar Vs. CBI, 2010(71)ACC 611 (SC).**

6(G). Accused not to be discharged on the ground of inconsistencies in evidence:

Where the accused was discharged on the ground of inconsistencies in the medical reports, the Supreme Court held that the stage to appreciate the evidence to find out inconsistencies in the medical reports would arise only when the prosecution would lead evidence by examining the doctors in support of their medical reports and not at the stage of Section 227 or 239 CrPC. The discharge of the accused on the said

ground was held improper and set aside. **See: Bihari Lal Vs. State of Rajasthan, AIR 2019 SC 1995**

7(A). Charge to be framed even on strong suspicion: Charge can be framed even on the basis of strong suspicion founded upon materials before the court which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged against the accused. Call detail records between the accused persons prior to and after execution of the crime would constitute strong material for framing the charge against all the accused persons See :

(ia). **State NCT of Delhi Vs. Shiv Charan Bansal, (2020) 2 SCC 290**

(i) **Dinesh Tiwari Vs. State of UP, 2014 (86) ACC 872(SC)**

(ii) **Amit Kapoor Vs. Ramesh Chander, (2012) 9 SCC 460**

(iii) **Shoraj Singh Ahlawat Vs. State of UP, 2013 SC 52**

(iv) **Rakesh Vs. State of UP, 2009 (67) ACC 191 (All)**

(v) **Sanghi Brohters Pvt. Ltd. Vs. Sanjay Chaudhary, (2008) 10 SCC 681**

(vi) **Palwinder Singh Vs. Balwinder Singh, 2009(65) ACC 399 (SC)**

(vii) **Liyaqat Vs. State of UP, 2008 (62) ACC 453 (Allahabad)**

(viii) **Sachin Saxena alias Lucky Vs. State of UP, 2008 (62) ACC 454 (Allahabad)**

(ix) **Subhash Sharma Vs. State of UP, 2007 (57) ACC 1039 (Allahabad)**

(x) **Ajeet Singh Vs. State of UP, 2007 (57) ACC 1031 (Allahabad)**

(xi) **Rajbir Singh Vs. State of UP, 2006 (55) ACC 318 (SC)**

(xii) **Superintendent and Remembrancer of legal Affairs, West Bengal Vs. Anil Kumar Bhunja, AIR 1980 SC 52**

(xiii) **State of Bihar Vs. Ramesh Singh, AIR 1977 SC 2018**

7(B). When only suspicion & not grave suspicion, the accused to be discharged: If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial judge will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal. See: **Sajjan Kumar Vs. CBI, 2010(71)ACC 611 (SC).**

7(C). Unexplained grave suspicion sufficient for framing of charge : Where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge and proceeding with the trial. However, if two views are equally possible and the judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his rights to discharge the accused. See : **Union of India Vs. Prafulla Kumar Samal, 1979 (3) SCC 4.**

7(D). Charge to be framed even on confession of co-accused : It cannot be said that for purposes of framing charges, the evidence of the co-accused in the form of confession is insufficient. No further corroborative evidence is required for framing charges. Charge can be framed even on strong suspicion regarding involvement of the accused in the commission of the offence. See : **Subhash Sharma Vs. State of UP, 2007 (57) ACC 1039 (Allahabad).**

8(A). Hearing of prosecution and accused before charge of discharge mandatory:

Sections 226 & 227 CrPC and Sections 239 & 240 CrPC require hearing of the prosecution and the accused before framing of the charge or discharge of the accused. Trial courts should give opportunity to prosecution and the accused to be heard before the charge or discharge. Excerpts from the following Supreme Court ruling on the point of “hearing” is noticeable here :

“Right of a man to be heard in his defence is the most elementary protection and is the essence of fair adjudication. Even God did not pass sentence upon Adam before he was called upon to make his defence. Adam, says God “where art thou, has thou not eaten of the tree whereof I commanded thee that thou should not eat.” See : **Suresh Chandra Nauhorya Vs. Rajendra Rajak, 2006(65) ALR 333 (SC).**

8(B). Passing of preliminary order before framing of charges not mandatory : Sections

226 and 227 CrPC require hearing of the prosecution and the accused before the Sessions Judge before charging or discharging the accused. Passing of preliminary order before framing of charges u/s 228 CrPC by the Sessions Judge or by the Magistrate u/s 240 CrPC is not mandatory. It has been the settled practice in the trial courts that recording of preliminary order prior to framing of charges is not imperative or absolute because outright framing of charge itself amounts to a prima-facie or preliminary order and recording of reasons for framing charges separately is not required vide :

- (i) **Omwati Vs. State of Delhi, (2001) 4 SCC 333**
- (ii) **Kanti Bhadra Shah Vs. State of WB, 2000(40) ACC 441 (SC).**

8(C). Recording of reasons by passing a preliminary order for framing charge not a requirement of law: Framing of charge by the Magistrate u/s 240 CrPC itself amounts to a prima facie order. Showing reasons for framing a charge separately is

not a legal requirement. Court is required to record reasons only if it is to discharge the accused. See: **Kanti Bhadra Shah v State of West Bengal, AIR 2000 SC 522**)

8(D). Recording of detailed reasons for framing of charges u/s 228 or 240 CrPC not required : Recording of detailed reasons by court for framing of charges u/s 228 or 240 CrPC is not required. See: **Dinesh Tiwari Vs. State of UP, 2014 (86) ACC 872 (SC)**.

8(E). A charge framed by court cannot be set aside by superior court for want of preliminary order: A charge framed by the trial court u/s 228 CrPC or 240 CrPC cannot be quashed by the superior court on the ground that the trial court had not assigned any reasons as to how a prima facie case for framing of charges was made out. Courts are not required to assign reasons for framing charges. See: **Kalpana Nath Vs. State of U.P, 2011 (2) ALJ (NOC) 227 (All)**.

9(A). Recording of reasons before discharging accused mandatory: Court is required to record its reasons only if it decides to discharge the accused u/s 227 or 239 CrPC but it is not required to do so if it is to frame the charges against the accused. See:

(i) **Omwati Vs. State of Delhi, (2001) 4 SCC 333**

(ii) **Kanti Bhadra Shah v State of West Bengal, AIR 2000 SC 522**

9(B). Extent of appreciation of evidence at the stage of discharge of accused : At the stage of discharge of the accused u/s 227 CrPC or framing of charge u/s 228 CrPC, what is required to be seen is whether there are sufficient grounds to proceed against the accused. In the present case, it was held by the Supreme Court that the special court erred in virtually passing order of acquittal in the garb of order of discharge of the accused. See : **CBI Vs. Mukesh, (2009) 16 SCC 429**.

9(C). Scope of enquiry for discharge of accused : Section 227 and 239 CrPC in themselves contain enough guidelines as to the scope of enquiry for the purpose of discharging an accused. These Sections provide that “the Judge/Magistrate shall discharge the accused when he considers that there is no sufficient ground for proceeding against the accused. The word “ground” in the context is not a ground for conviction but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused would be determined and not at the time of framing of charge. The court, therefore, need not undertake an elaborate enquiry in sifting and weighing the material. Nor is it necessary to delve deep into various aspects. All that

the court has to consider is whether the evidentiary material on record, if generally accepted, would reasonably connect the accused with the crime. See :

(i) **R.S Mishra vs. State of Orissa, 2011 CrLJ 1654 (SC)**

(ii) **Sajjan Kumar Vs. CBI, 2010(71)ACC 611 (SC)**

(iii) **Stree Atyachar Virodhi Parishad vs. Dilip Nathumal Choradia, 1989 (1) SCC 715.**

9(D). Reliability of the statements of witnesses contained in case diary not to be questioned at the time of discharging the accused: Where in a trial of offence u/s 302 IPC, the Sessions Judge discharged some accused u/s 227 CrPC by holding the statements of the witnesses in the case diary as unreliable, the Allahabad High court held that meticulous examination of statements in case diary is not permissible at the stage of Section 227 CrPC and discharge of the accused was not proper. See : **Kamal Singh Vs. Resham, Singh, 1991 ALJ 364 (Allahabad)**

9(E). Order diluting and dropping charge by Magistrate without reasons depreciated by High Court: While Sections 227 and 239 CrPC provide for recording of reasons for discharging an accused, it is not so specifically stated in Section 228 and 240 CrPC. It can certainly be said that when the charge under a particular Section is dropped or diluted, some minimum reasons in nut-shell are expected to be recorded disclosing the consideration of the material on record. See: **R.S Mishra vs. State of Orissa, 2011 CrLJ 1654 (SC)**

Note – *In the case of R.S Mishra, the Magistrate was found to have diluted and dropped the charge of grievous offenses u/s 304 IPC mentioned in the charge sheet though prima facie case was made out in the case diary and the Orissa High Court then took suo motu cognizance of the matter by suggesting the High Court administration to check service record of the Magistrate before granting higher scale to him and strictures were also passed against him.*

9(F). Strictures against CJM, Basti for discharging accused for offences u/s 419, 420, 467, 468, 471 IPC: Relying upon the Supreme court decision in Union of India Vs. Prafulla Kumar Samal, 1979 (3) SCC 4, the Allahabad High court has in the case noted below passed strictures against the then CJM, Basti who had illegally discharged the accused of the offences u/s 419, 420, 467, 468, 471 IPC vide his order dated 14.5.2001. See: **Dr. Nar Narain Upadhyay Vs. State of UP, 2007 (57) ACC 333 (Allahabad)**

9(G). Magistrate not to discharge accused in a case triable by sessions : Magistrate cannot discharge an accused u/s 245 CrPC if the case is triable by court of sessions. See:

- (i) **Banwari Chauhan Vs. State of U.P, 2010(5) ALJ 89(All)**
- (ii) **Shagufta Begum Vs. State of U.P, 2009 (6) ALJ (NOC) 1100(All)**

9(H). No discharge of accused after framing of charge : Once charge has been framed, accused cannot be discharged See :

- (i) **Bharat Parikh Vs. CBI, 2008 CrLJ 3540 (SC)**
- (ii) **Rati Lal Vs. State of Maharashtra, AIR 1979 SC 94**

10(A). Alteration, addition or deletion of charge (Section 216 CrPC): Section 216 CrPC empowers the court to alter or add any charge at any time before the pronouncement of judgment. See: **Anant Prakash Sinha Vs. State of Haryana, (2016) 6 SCC 105.**

10(B) Altering charge framed u/s 304 IPC to Section 302 IPC by Addl. Sessions Judge held proper. See:

- (i) **Amrish Vs. State of UP, 2006 (54) ACC 515 (Allahabad L.B.)**
- (ii) **Hasanbhai Vs. State of Gujarat, 2004 (49) ACC 174 (SC)**

10(C). Charge can be changed or altered u/s 216 CrPC any time if material is available on record: Court can change or alter the charge if there is defect or something is left out. The test is that it must be founded on the material available on record. It can be on the basis of the complaint or the FIR or accompanying documents or the material brought on record during the course of trial. It can also be done at any time before pronouncement of judgment. It is not necessary to advert to each and every circumstance. Suffice it to say, if the Court has not framed a charge despite the material on record, it has the jurisdiction to add a charge. Similarly, it has the authority to alter the charge. The principle that has to be kept in mind is that the charge so framed by the Magistrate is in accord with the materials produced before him or if subsequent evidence comes on record. It is not to be understood that unless evidence has been led in, charges already framed cannot be altered, for that is not the purport of section 216 CrPC. It is obligatory on the part of the Court to see that no prejudice is caused to the accused and he is allowed to have a fair trial. There are in-built safeguards in section 216 CrPC. It is the duty of the trial court to bear in mind that no prejudice is caused to the accused as that has the potentiality to affect a fair trial. See: **Anant Prakash Sinha @ Anant Sinha Vs. State of Haryana, 2016 (93) ACC 951 (SC).**

10(D). Witnesses to be recalled if charge is altered or added (Section 217 CrPC):

Section 217 CrPC provides that when a charge is altered or a new charge is framed or added, the PWs or DWs would be recalled by the Court for fresh examination by the prosecution and the defence. Apart from the already examined witnesses, the prosecution and defence would be allowed by the court to examine additional witnesses as well if they so propose.

10(E). Conviction for charge u/s 302/149 IPC in place of already framed charge for

offence u/s 302 IPC held improper: Where charge was initially framed by the Sessions Judge u/s 302 IPC but without altering the charge, the Sessions Judge convicted the accused for offence u/s 302/149 IPC without having complied with the provisions of Section 216 (2) CrPC, the Supreme Court held that it was obligatory on the part of the Sessions Judge to bring to the notice of the accused about the alteration of the charge and explain it to him that the charge from Section 302 IPC was altered to Section 302/149 IPC. See: **Sabbi Mallesu Vs. State of A.P., (2006) 55 ACC 1020 (SC)**

10(F). Conviction for offence u/s 304-B IPC in place of already framed charge for

offence u/s 302 IPC held proper: Where the charge was initially framed by the Sessions Judge u/s 302 IPC and conviction was recorded u/s 304-B IPC, it has been held by the Supreme Court that since the accused was aware of the accusations against him and had not raised/stated contrary in his statements u/s 313 CrPC, his conviction for the offence u/s 304-B IPC was proper See : **Balbir Singh Vs. State of Punjab, AIR 2006 SC 3221**

10(G). Recall, cancellation & deletion of charge :

Charge once framed cannot be deleted, recalled or cancelled u/s 216 CrPC. It can be rather withdrawn u/s 224 CrPC after the pronouncement of judgment. Having framed charges against an accused, a Magistrate has no jurisdiction in law to recall such order on the ground that the prosecution had failed to comply with the provisions of Section 207 CrPC See :

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

(ii) **Vibhuti Narain Chaubey Vs. State of UP, 2002 (2) JIC 613 (Allahabad)**

10(H) Charge u/s 302 IPC should be framed alongwith charge u/s 304-B IPC:

The Supreme Court has directed all trial courts in India to ordinarily add Section 302 IPC to the charge of Section 304-B IPC so that death sentence can be imposed in heinous and barbaric crimes against women. See : **Rajbir Vs. State of Haryana, AIR 2011 SC 568**

Note: Registrar Generals of all High Courts have been directed by the Supreme Court to circulate this judgment to all trial courts in India for compliance.

- 10(I) Charge u/s 302 IPC to be added with Section 304-B IPC only when there is evidence for the same:** Discussing the earlier directions of the Supreme Court issued in the case of **Rajbir Vs. State of Haryana, AIR 2011 SC 568**, the Supreme Court, in the case noted below, has held that the trial court should not frame an additional charge u/s 302 IPC in a trial of dowry death case merely because of the directions in the Rajbir's case. In a dowry death case, an additional charge u/s 302 IPC along with the charge of Section 304-B IPC should only be framed when framing of such additional charge u/s 302 IPC is justified on the basis of evidence on record. See: **Jasvinder Saini Vs. State (Govt. of NCT of Delhi), AIR 2014 SC 841.**
- 10(J) Court has unrestricted power u/s 216 CrPC to add or alter any charge whenever it finds a charge defective:** Relying upon its previous decision in **Hasanbhai Valibhai Qureshi Vs. State of Gujrat, (2004) 5 SCC 347 (para 10)**, it has been ruled by the Hon'ble Supreme Court that the Court has unrestricted power u/s 216 CrPC to add or alter any charge whenever it finds the charge framed earlier defective. The court can re-examine the question of framing of a charge against the accused and pass an appropriate order if upon a prima facie appraisal of the evidence adduced before it, the trial court comes to the conclusion that there is any room for doing so. See: **Jasvinder Saini Vs. State (Government of NCT of Delhi), (2013) 7 SCC 256.**
- 11(A). Conviction for charge not framed :** Provisions contained u/s 215, 218, 221, 222, 464/465 CrPC are relevant for the purposes of this sub-topic. Where charge was initially framed by the Sessions Judge u/s 302 IPC but without altering the charge convicted the accused u/s 302/149 IPC without having complied with the provisions u/s 216 (2) CrPC, the supreme court held that it was obligatory on the part of the Sessions Judge to bring to the notice of the accused of the alteration of charge and explain it to him that the charge from Section 302 IPC was altered to Section 302/149 IPC. See: **Sabbi Mallesu Vs. State of A.P., (2006) 55 ACC 1020 (SC).**
- 11(B). Conviction for minor offence in place of charges framed for major offences permissible:** It is well settled legal position of law that if an accused is charged of a major offence but is not found guilty thereunder, he can be convicted of minor offence if the facts established indicate that such minor offence has been committed. See:

- (i) Rafiq Ahmed Alias Rafi Vs. State of UP, 2011(75) ACC 232(SC)
- (ii) Pandhari Nath Vs. State of Maharashtra, AIR 2010 SC 1453.
- (iii) State of Maharashtra Vs. Rajendra Jawanmal Gandhi, (1997) 8 SCC 386.
- (iv) Tarkeshwar Sahu Vs. State of Bihar, (2006) 8 SCC 560.
- (v) Willie (William) Slaney Vs. State of MP, AIR 1956 SC 116 (Constitution Bench).

11(C). Conviction for charge not framed : Where a charge for offence u/s 397 IPC was not framed by the trial court but the accused was convicted for offences u/s 120 B, 302, 392, 457 r/w Section 34 IPC and also for offence u/s 397 IPC and the High Court had in appeal set aside the conviction and sentence awarded by the trial court on the ground that charge for the offence u/s 397 IPC was not framed and remanded the case to the trial court for re-trial by framing a charge u/s 397 IPC as well, the Supreme Court set aside the judgment of the High Court by holding that the charges framed by the trial court did adequately encompass all essential facts building up offences imputed against the accused persons and omission to frame charge u/s 397 IPC was not fatal. See: **Bharamappa Gogi Vs. Praveen Murthy and Others, AIR 2016 Supreme Court 791.**

11(D). Non-framing of charge not to vitiate trial and conviction if the accused was aware of the accusations and had opportunity of defence: Relying on a Constitution Bench decision reported in Willie Slaney Vs. State of MP, AIR 1956 SC 116 (Five-Judge Bench), the Supreme Court has in the case noted below held that absence of charge would vitiate conviction only if the non-framing of the charge had caused prejudice to the accused or he was deprived of the opportunity to defend himself at trial or he was not aware of the accusations or he was deprived of the protection of the principles of natural justice. Conviction of the accused for offence u/s 302/34 IPC was held proper even when no charge for the said offence u/s 302/34 IPC was framed. The charges framed by the Additional Sessions Judge, Budaun were as under:

“Court of Additional Sessions Judge, Budaun

Charges

I, C.P. Singh, Special Judge (E.C. Act), Budaun hereby charge you

1. Nasir s/o Wali Mohammad r/o Oopar Para P.S. Kotwali, Budaun
2. Adil
3. Kamil s/o Banney Mian as follows:

Firstly: That you Nasir on 03.01.1986 at about 04.00 p.m. in Mohalla Oopar Para near Lalpul Budaun, P.S. Kotwali Budaun, formed common intention to make murderous

assault on Akhlaq and anyone else who came to his rescue and in furtherance of said common intention Rashid did commit murder by intentionally causing the death of aforesaid Akhlaq and you thereby committed an offence punishable under Section 302/34 of the Indian Penal Code and within my cognizance.

Secondly: That you Adil on aforesaid date, time and place voluntarily caused Adil injuries and thereby committed an offence punishable under Section 323 of the Indian Penal Code and within my cognizance.

Thirdly: That on aforesaid date , time and place, you Kamil and Nasir along with Rashid and Adil formed common intention to cause hurt to Akhlaq and anyone else and in furtherance of said common intention Adil voluntarily caused hurt to Akhlaq and you thereby committed an offence punishable under Section 323/34 of the Indian Penal Code and within my cognizance.

And I hereby direct that you be tried by this court on the said charges.

(C.P. Singh)
Addl. Sessions Judge,
Special Judge (E.C. Act),
Budaun
18.06.1986

Conviction of all the three accused namely Nasir, Adil and Kamil for the offence u/s 302/34 IPC was held proper by the Supreme Court despite the fact no charge u/s 302/34 IPC against the remaining two accused namely Nasir and Kamil was framed by the trial court but all the three accused persons shared the same very intention of murdering Akhlaq". **See: Kamil Vs. State of UP, AIR 2019 SC 45.**

11(E). Conviction for offence u/s 306 IPC in place of already framed charges for offences u/s u/s 498-A and 304-B IPC held proper :Where in a dowry death case, initially a case u/s 306 IPC was registered against the accused and a charge u/s 304-B IPC was ultimately framed by the court but the accused was convicted for offence u/s 306 IPC only without framing any charge u/s 306 IPC, it has been held that absence of charge being framed u/s 306 IPC is immaterial when the relevant and material facts were already part of charge u/s 498-A and 304B IPC. **See:**

- (i) **Satish Shetty Vs. State of Karnataka, AIR 2016 SC 2689.**
- (ii) **Narwinder Singh Vs. State of Punjab, AIR 2011 SC 686.**

11(F). Conviction u/s 304-B IPC in place of charge framed for offence u/s 302 IPC held proper: Where the charge was initially framed by the Sessions Judge u/s 302 IPC and conviction was recorded u/s 304-B IPC, it has been held by the Supreme Court that since the accused was aware of the accusations against him and had not raised/stated contrary in his statements u/s 313 CrPC, his conviction for the offence u/s 304-B IPC was proper See : **Balbir Singh Vs. State of Punjab, AIR 2006 SC 3221**

11(G). Conviction u/s 306 IPC when possible in the absence of framing of charge?: Accused was tried for the charges u/s 302, 304-B IPC and charge u/s 306 IPC was not framed. The Supreme Court, interpreting the provisions u/s 215, 386, 399, 401, 464 CrPC held that the revisional or appellate court u/s 464 CrPC can convict the accused for the unframed charge u/s 306 IPC provided the following conditions are fulfilled :

- (a) That the accused was aware of the basic ingredients of that offence.
- (b) That the main facts sought to be established against the accused were explained to him clearly.
- (c) That the accused got a fair chance to defend himself. See:
 - (i) **Radha Mohan Singh alias Lal Saheb Vs. State of UP, 2006 (54) ACC 862 (Three-Judge Bench)**
 - (ii) **Dalbir Singh Vs. State of UP, (2004) 5 SCC 334 (Three-Judge Bench)**

11(H). Conviction for charge not framed held proper : Where charges were framed against four accused for offenses u/s 147,148, 324, 302 r/w Sec 149 IPC but one of the accused alone was convicted u/s 302 IPC simpliciter, it has been held that the accused can be convicted for which no charge was framed unless it had occasioned failure of justice. See: **Balraje Vs. State of Maharashtra, (2010) 6 SCC 673**

12(A).Defective charge and its effect: The absence of a charge under one or the other of the various heads of criminal liability for the offence cannot be said to be fatal by itself, and before a conviction for the substantive offence, without a charge, can be set aside, prejudice will have to be made out. If it is so grave that prejudice will necessarily be implied or imported, it may be described as an illegality. If the seriousness of the omission is of a lesser degree, it will be an irregularity and prejudice by way of failure of justice will have to be established. See:

- (i) Abdul Sayeed Vs. State of M.P, (2010) 10 SCC 259
- (ii) Sanichar Sahni Vs. State of Bihar, 2009 (66) ACC 926 (SC)
- (iii) Willie Slaney Vs. State of M.P., AIR 1956 SC 116 (Five Judge Bench)
- (iv) Gurpreet Singh Vs. State of Punjab, (2005) 12 SCC 615
- (v) State of A.P. Vs. Thakkidirani Reddy, (2001) 9 SCC 528

12(B). Errors & omissions in framing charges when fatal? : Section 215 and Section 464 CrPC provide that the proceedings of a criminal trial do not get vitiated because of some error, omission or irregularity in the charge unless (i) the omission is vital (ii) substance of accusation is totally different from what was sought to be established by the prosecution (iii) accused was misled in defending himself and prejudice was caused to him for that reason and (iv) there was no material to frame charge of particular penal section, see the cases note below :

- (ia.) Somasundaram Vs. State, (2020) 7 SCC 722
- (i) Vinubhai Ranchhodbhai Patel Vs. Rajivbhai Dudabhai Patel, (2018) 7 SCC 743.
- (ii) State of Maharashtra Vs. Salman Salim Khan, 2004 (48) ACC 606 (SC)
- (iii) SOU. Vijaya Vs. State of Maharashtra, (2003) 8 SCC 296
- (iv) State of West Bengal Vs. Ansar Sheikh, 2002 (1) JIC 409 (SC)

12(C) . No prejudice if the accused was aware of the error in charge : There will be no prejudice or failure of justice where there was an error in the charge and the accused was aware of the error. Such knowledge can be inferred from the defense, i.e., if the defense of the accused showed that he was defending himself against the real and actual charge and not the erroneous charge. In judging a question of prejudice, as of guilt, the courts must act with a broad vision and look to the substance and not to the technicalities and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a fool and fair chance to defend himself. See :

- (i). Somasundaram Vs. State, (2020) 7 SCC 722
- (ii). Mainpal Vs. State of Haryana, AIR 2010 SC 3292.

13(A). Framing of charge with the Aid of Section 34 IPC : Necessary conditions for the applicability of Section 34 IPC are common intention to commit a criminal act and participation therein of all the persons in furtherance of that intention. A specific overt act on the part of the accused is not necessary. Participation in action implies

acting in concert. A solitary accused can be convicted with the aid of Section 34 IPC although all other accused have been acquitted. To attract Section 34 IPC, it is not necessary that each one of accused must assault or cause injury. It is enough if it is shown that they shared common intention to commit the offence :

- (i) **Daya Shankar Vs. State of M.P., 2009(1) Supreme 298**
- (ii) **Bishnu Vs. State of W.B., 2006(54) ACC 441 (SC)**
- (iii) **Saravanan Vs. State of Pondicherry, 2005(25) AIC 374 (SC)**
- (iv) **Mangu Khan Vs. State of Rajasthan, 2005(2) SCJ 467**
- (v) **Krishnan Vs. State, 2003(47) ACC 497**
- (vi) **Nandu Rastogi Vs. State of Bihar, 2002(2) JIC 905 (SC)**

13(B). Effect of absence of Section 34 IPC in charge : If no prejudice is shown by the accused, non framing of charge u/s 34 IPC does not vitiate the trial & conviction. If conviction of accused with the aid of Sec 34 IPC in place of Sec 149 IPC is recorded but no prejudice to accused is shown by such error, the trial and conviction will not be vitiated. See :

- (i) **Abdul Sayeed Vs. State of M.P, (2010) 10 SCC 259**
- (ii) **Dalip Singh Vs. State of Punjab, AIR 1953 SC 364**
- (iii) **Malhu Yadav Vs. State of Bihar, (2002) 5 SCC 724**
- (iv) **Dhaneswar Mahakud Vs. State of Orissa, (2006) 9 SCC 307**
- (v) **Anna Reddy Sambasiva Reddy Vs. State of A.P,(2009) 12 SCC 546**
- (vi) **Virendra Singh Vs. State of M.P,(2010) 8 SCC 407.**

13(C). Charge not to vitiate for want of Section 34 IPC : Where two accused persons had waited for the deceased, collected sticks from hiding and mounted attack on the deceased by causing injuries on vital parts of body and the attack continued even after the deceased fell down, it has been held by the Hon'ble Supreme Court that the circumstances clearly indicate that the attack was pre-planned and the accused persons shared common intention to kill the accused and failure to show section 34 IPC in the charge framed for the offence u/s 302 IPC would not vitiate the charge. See : **Chinnam Kameswara Rao Vs State of AP, AIR 2013 SC 3602.**

13(D). Conviction for offence u/s 302 IPC without the aid of Section 34 IPC held proper: Where accused along with other co-accused was charged for the offences u/s 147, 148, 307, 302, 452, 326 IPC without any mention of Section 34 IPC in the charge but the accusations were known to the accused and no prejudice was

established, the Supreme Court held that absence of charge with the aid of Section 34 IPC was not fatal to prosecution and the conviction of the accused was proper. See:

- (i) **Anil Sharma Vs. State of Jharkhand, (2004) 5 SCC 679**
- (ii) **Kammari Brahmaiah Vs. Public prosecutor, 1999 (38) ACC 408 (SC)**
- (iii) **Dhanna Vs. State of M.P., (1996) 10 SCC 79.**

14(A). Framing of Charges with the Aid of Section 149 IPC : To attract Section 149 IPC regarding constructive liability of members of an unlawful assembly, proof regarding overt act of any individual /accused is not necessary. Direct evidence of common object is generally not available and the same has to be gathered from the acts committed and result therefrom. If membership of unlawful assembly is once established, Section 149 IPC is to attract even if no definite role has been assigned to a particular accused. Common object need not be product of common concert but may be formed on spur of the moment. Nature of common object is a question of fact to be determined by considering the nature of arms, nature of assembly and behaviour of its members etc. See:

- (i) **Mahmood Vs. State of UP, AIR 2008 SC 515**
- (ii) **Bhanwar Singh Vs. State of M.P., 2008(62) ACC 353 (SC)**
- (iii) **Bishnu Vs. State of W.B., 2006(54) ACC 441 (SC)**
- (iv) **Charan Singh Vs. State of UP, (2004)4 SCC 205**
- (v) **Bhagwan Singh Vs. State of M.P., 2002(44) ACC 1112 (SC)**

14(B). Total number of convicted accused plus unnamed accused should not be less than five for conviction with the aid of Section 149 IPC : Total six named accused and no unknown persons were involved in the murder. All accused persons were acquitted of all charges except the appellant. The acquittal attained finality. In such circumstances possibility of conviction of the appellant u/s 148/149 IPC could have arisen only if there would have been certain unknown persons besides the named five acquitted co-accused. Hence, the appellant was also acquitted by the Supreme Court. Conviction with the aid of Sections 148/149 IPC cannot be recorded in the absence of at least five accused. Either at least five accused should stand convicted, or total number of convicted accused plus unnamed accused should not be less than five. **See: Ramvir Vs State of Uttar Pradesh, (2019) 2 SCC 237**

14(C). Altering charge from Section 302/149 IPC to Section 302/34 IPC held improper:

Eight co-accused persons were already acquitted of the charges u/s 302/149 IPC. Subsequently, charge against remaining three-accused persons was altered by the court u/s 216 CrPC from Section 302/149 IPC to Section 302/34 IPC. The allegations against these three accused persons were that they had instigated (lalkarana) the other accused persons to commit the murder. Prosecution had failed to prove common intention on the part of the said three accused persons to commit the murder. The Supreme Court set aside the conviction of the said three accused persons for the offence u/s 302/34 IPC by holding the charges unsustainable. See: **Mala Singh Vs. State of Haryana, AIR 2019 SC 1026.**

15(A). Charges against an accused u/s 147 or 148 cannot be framed at the same time : A

person cannot be charged simultaneously with both the offences by the very nature of the offences u/s 147 and 148 IPC. A person can only be held guilty of an offence punishable either u/s 147 or u/s 148 IPC. See :

- (i) **Vinubhai Ranchhodbhai Patel Vs. Rajivbhai Dudabhai Patel, (2018) 7 SCC 743**
- (ii) **Dalvir Singh Vs. State of UP, (2004) 5 SCC 334.**

15(B). Conviction for charge u/s 148 IPC set aside as the accused was not armed with deadly weapons:

Where six members of an unlawful assembly committed offence u/s 307 IPC and except one all other remaining accused were armed with deadly weapons like guns, lathis and takua but all the six accused were convicted by the trial court for the offences u/s 147, 148, 307/149, 324/149, 323/149 IPC, the Supreme Court set aside the conviction of that accused u/s 148 IPC who was not armed with deadly weapons and altered his conviction from Section 148 IPC to Section 147 IPC but the conviction of remaining five accused u/s 148 IPC was upheld as they were armed with deadly weapons. See: **Kabul Singh Vs. State of Punjab, 1995 SCC (Criminal) 1035.**

15(C). A single accused cannot be charged and convicted for the offence u/s 120-B of the IPC :

Addl. Sessions Judge, Lucknow condemned for being totally negligent, careless and ignorant of the law in framing charge and convicting against a single accused for offence u/s 120-B IPC. The Division Bench directed the ASJ to undergo exhaustive training at the JTRI, Lucknow to be recharged with the nuances of law on the point. See: Judgment dated 25.02.2015 of the Lucknow Bench in Criminal

Appeal No. 1150/2011, Hoshiyar Singh Vs. State of UP. Rulings relied on in the said case of Hoshiyar Singh are as under:

- (i) **Vinayak Vs. State of Maharashtra, 1984 SCC (Criminal) 605 (Three-Judge Bench)**
- (ii) **Dalip Singh Vs. State of Punjab, 1954 SCR 145**

15(D). Supreme Court deprecated Judicial Officers of the State of Bihar for improper framing of charges : “We are constrained to say that this is not an isolated case but it is almost a stereotype. It is our experience that in criminal trials in Bihar no proper attention is paid to the framing of charges and the examination of the accused under section 313 of the Code of Criminal Procedure, the two very important stages in a criminal trial. The framing of the charge and the examination of the accused are mostly done in the most unmindful and mechanical manner. We wish that the Patna High Court should take note of the neglectful way in which some of the Courts in the State appear to be conducting trials of serious offences and take appropriate corrective steps.” See: **Sajjan Sharma Vs. State of Bihar, (2011) 2 SCC 206 (para 14).**

16. New accused not to be added at the stage of framing charges u/s 228 CrPC : Sessions Court from the stage of committal of the case by magistrate till the stage indicated in Section 230 CrPC can deal only with the accused referred to in Section 209 CrPC. There is no intermediary stage till then for Sessions Judge to add any other person as accused. Sessions court can add any other person as accused u/s 319 CrPC only after collection of evidence. See: **Ranjit Singh Vs. State of Punjab, 1998(37) ACC 768 (SC)(Three -Judge Bench)**

17. Charge against two or more persons for their joint trial (Section 223 CrPC) : Section 223 CrPC provides for different categories of accused persons who may be charged together for their joint trial. But clubbing and consolidation of two such cases is not permissible u/s 223 CrPC if the prosecution versions in the two cases are materially different, contradictory and mutually exclusive. Such cases can be tried together but cannot be consolidated. Evidence in such cases has to be recorded separately in both the cases and they should be decided simultaneously by the same trial court. See:

- (i) **Harjinder Singh Vs. State of Punjab, 1985 SCC (Criminal) 93**
- (ii) **Kewal Krishan Vs. Suraj Bhan, AIR 1980 SC 1780**

18(A).Revision u/s 397 CrPC against framing of charges lies: An order framing charge in a criminal trial is neither an interlocutory order nor a final order and therefore can be challenged u/s 397 CrPC or u/s 482 CrPC. **Asian Resurfacing of Road Agency (P) Ltd. Vs. CBI, (2018)16 SCC 299 (Three- Judge Bench)**

18(B). Revision not maintainable against framing of charges : No revision lies against the framing of charges. See:

(i) **State of Maharashtra Vs. Salman Salim Khan, 2004(48) ACC 606 (SC)**

(ii) **Munna Devi Vs. State of Rajasthan, AIR 2002 SC 107.**

19. Sessions Judge not to send back the case to Magistrate for trial even when the charge framed by him u/s 228(1)(a) CrPC is exclusively triable by court of Magistrate:

According to Section 26 CrPC, the court of sessions may try any offence under the IPC and in case a charge framed by court of sessions u/s 228(1)(a) CrPC is found exclusively triable by court of Magistrate, even then it is not necessary that the case should be sent to the CJM or any other judicial magistrate for trial of the same. Cross-cases having arisen out of the same incident must be tried by one and the same court. See: **Sudhir & Others Vs. State of M.P., 2001 (42) ACC 479 (SC)**

20.1. Non compliance with Section 207 CrPC vitiates charge: If the copies of statements of witness & documents relied in support of charges are not supplied to the accused, then order framing charges against the accused is not proper for non-compliance of the mandatory provision of Section 207 CrPC. See: **Pramod Kumar sharma Vs. State of UP, 2011 CrLJ 1088 (All).**

20.2. Contents in memory card or pen drive cannot be supplied to accused u/s 207 CrPC. Contents in memory card or pen drive cannot be supplied to accused u/s 207 CrPC. See: **P. Gopalkrishnan Vs. State of Kerala, (2020) 9 SCC 161**

21. POCSO Court to try both the cases where accused is charged under SC/ST Act also : A perusal of Section 20 of the SC/ST (Prevention of Atrocities) Act, 1989 and Section 42-A of the Protection of Children from Sexual Offences Act, 2012 reveals that there is a direct conflict between the two non obstante clauses contained in these two different enactments. If Section 20 of the SC/ST Act is to be invoked in a case involving offences under both the Acts, the same would be triable by a Special Court constituted under Section 14 of the SC/ST Act and if provisions of Section 42-A of

the POCSO Act are to be applied, such a case shall be tried by a Special Court constituted under Section 28 of the POCSO Act. Dealing with an issue identical to the case on hand, the Apex Court in *Sarwan Singh Vs. Kasturi Lal*, AIR 1977 SC 265 held thus : "When two or more laws operate in the same field and each contains a non obstante clause stating that its provisions will override those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration. For resolving such inter se conflicts, one other test may also be applied though the persuasive force of such a test is but one of the factors which combine to give a fair meaning to the language of the law. That test is that the later enactment must prevail over the earlier one. Bearing in mind the language of the two laws, their object and purpose, and the fact that one of them is later in point of time and was enacted with the knowledge of the non-obstante clauses in the earlier. In *KSL & Industries Limited Vs. Arihant Threads Limited & Others*, AIR 2015 SC 498, the Apex Court held thus :In view of the non obstante clause contained in both the Acts, one of the important tests is the purpose of the two enactments. It is important to recognize and ensure that the purpose of both enactments is as far as possible fulfilled. A perusal of both the enactments would show that POCSO Act is a self contained legislation which was introduced with a view to protect the children from the offences of sexual assault, harassment, pornography and allied offences. It was introduced with number of safeguards to the children at every stage of the proceedings by incorporating a child friendly procedure. The legislature introduced the non obstante clause in Section 42-A of the POCSO Act with effect from 20.06.2012 giving an overriding effect to the provisions of the POCSO Act though the legislature was aware about the existence of non obstante clause in Section 20 of the SC/ST Act. Applying the test of chronology, the POCSO Act, 2012 came into force with effect from 20.06.2012 whereas SC/ST Act was in force from 30.01.1990. The POCSO Act being beneficial to all and later in point of time, it is to be held that the provisions of POCSO Act have to be followed for trying cases where the accused is charged for the offences under both the enactments." See: **State of A.P. Vs. Mangali Yadgiri, 2016 CrLJ 1415 (Hyderabad High Court)(AP) (paras 14 to 20).**

22. Certain Draft Model Charges :

(1)

uewuk @ vkjksi ¼izFke½

U;k;ky; U;kf;d eftLVz~sV] d{k la[;k&2] eFkqjk A
n.Mokn la[;k%110@2008

jkT;

izfr

lqjs'k vkfn

Fkkuk& o`Unkou] tuin& eFkqjk

/kkjk&323@34] 324@34] 325@34] 326@34]

452@34] 504] 506 Hkk-n-la-

vkjksi

eSa] jes'k dqekj] U;kf;d eftLVz~sV] d{k la[k&2] eFkqjk vki vfHk;qDrx.k 1- eksgu] 2- lksgu rFkk 3- x.ks'k ij fuEukafdr vkjksi yxkrk gwWa&&

izFke& ;g fd vki vfHk;qDrx.k 1 yxk;r 3 mijksDr us fnukWad 20-12-2008 dks le; yxHkx 2-00 cts fnu esa vius lkekU; vk'k; ds vxzlj.k esa oknh eqdnek@pksfVy dYyw dh LFkku o`Unkou frijgk fLFkr nqdku esa ?kqldj mls LosPN;k migfr dkfjr djus ds vk'k; ls ykr ?kwlksa ls ekj ihVdj mDr pksfVy dYyw dks lk/kkj.k izd`fr dh migfr;kWa dkfjr dha vkSj mlds }kjk vkius ,slk vijk/k dkfjr fd;k tks Hkkjrh; n.M lafgrk dh /kkjk 323 lifBr /kkjk 34 ds vUrxZr n.Muh; vijk/k dh dksfV esa vkrk gS vkSj esjs laKku esa gSA

f}rh;& ;g fd vki vfHk;qDrx.k 1 yxk;r 3 mijksDr us fnukWad 20-12-2008 dks le; yxHkx 2-00 cts fnu esa vius lkekU; vk'k; ds vxzlj.k esa oknh eqdnek@pksfVy dYyw dks migfr dkfjr djus ds vk'k; ls mldks LFkku o`Unkou frijgk fLFkr nqdku esa ?kqldj dqYgkM+h o pkdqvksa ls izgkj djds LosPN;k migfr dkfjr dh vkSj mlds }kjk vkius ,slk vijk/k dkfjr fd;k tks Hkkjrh; n.M lafgrk dh /kkjk 324 lifBr /kkjk 34 ds vUrxZr n.Muh; vijk/k dh dksfV esa vkrk gS vkSj esjs laKku esa gSA

r`rh;& ;g fd vki vfHk;qDrx.k 1 yxk;r 3 mijksDr us fnukWad 20-12-2008 dks le; yxHkx 2-00 cts fnu esa vius lkekU; vk'k; ds vxzlj.k esa oknh eqdnek@pksfVy dYyw dks migfr dkfjr djus ds vk'k; ls mldh LFkku o`Unkou frijgk fLFkr nqdku esa ?kqldj dqYgkM+h o pkdqvksa ls izgkj djds LosPN;k ?kksj migfr dkfjr dh ftlls mlds ck;sa gkFk dh dykbZ dh gM~Mh VwV x;h vkSj mlds }kjk vkius ,slk vijk/k dkfjr fd;k tks Hkkjrh; n.M lafgrk dh /kkjk 325 lifBr /kkjk 34 ds vUrxZr n.Muh; vijk/k dh dksfV esa vkrk gS vkSj esjs laKku esa gSA

prqFkZ& ;g fd vki vfHk;qDrx.k 1 yxk;r 3 mijksDr us fnukWad 20-12-2008 dks le; yxHkx 2-00 cts fnu esa vius lkekU; vk'k; ds vxzlj.k esa oknh eqdnek@pksfVy dYyw dks

g0 vfHk;qDrx.k

xEHkhj migfr dkfjr djus ds vk'k; Is mldh LfKku o`Unkou frjkgk fLFkr nqdku esa ?kqldj dqYgkM+h o pkdqvkSa Is izgkj djds mlds lhus ij nk;ha vksj LosPN;k xEHkhj migfr dkfjr dh vkSj mlds }kjk vkus ,slk vijk/k dkfjr fd;k tks Hkkjrh; n.M lafgrk dh /kkjk 326 lifBr /kkjk 34 ds vUrxZr n.Muh; vijk/k dh dksfV esa vkrk gS vkSj esjs laKku esa gSA

iape& ;g fd vki vfHk;qDrx.k 1 yxk;r 3 mijksDr us fnukWad 20-12-2008 dks le; yxHkx 2-00 cts fnu esa vius lkekU; vk'k; ds vxzlj.k esa oknh eqdnek@pksfVy dYyw dks migfr dkfjr djus dh rS;kjh djds mldh LfKku o`Unkou frjkgk fLFkr nqdku esa vfrpkj dkfjr fd;k vkSj mlds }kjk vkus ,slk vijk/k dkfjr fd;k tks Hkkjrh; n.M lafgrk dh /kkjk 452 lifBr /kkjk 34 ds vUrxZr n.Muh; vijk/k dh dksfV esa vkrk gS vkSj esjs laKku esa gSA

"k"Be~& ;g fd vki vfHk;qDrx.k 1 yxk;r 3 mijksDr us fnukWad 20-12-2008 dks le; yxHkx 2-00 cts fnu esa LfKku o`Unkou frjkgk fLFkr oknh eqdnek dYyw dh nqdku ij tkdj mls ^^lkyk** dgdj lk'k; viekfu djrs gq, bl vk'k; Is izdksfir fd;k fd ,sls izdksiu Is og yksd'kkfUr Hkax dj nsrKA bl izdkj vkus ,slk d`R; fd;k tks Hkkjrh; n.M lafgrk dh /kkjk 504 ds vUrxZr n.Muh; vijk/k dh dksfV esa vkrk gS vkSj esjs laKku esa gSA

llre~& ;g fd vki vfHk;qDrx.k 1 yxk;r 3 mijksDr us fnukWad 20-12-2008 dks le; yxHkx 2-00 cts fnu esa LfKku o`Unkou frjkgk fLFkr oknh eqdnek dYyw dh nqdku ij tkdj mls rFkk mlds ifjokj dks tku Is ekj nsus dh /kedh bl vk'k; Is nh fd mls rFkk mlds ifjokj dks la=kl dkfjr fd;k tk;sA bl izdkj vkus ,slk d`R; fd;k tks Hkkjrh; n.M lafgrk dh /kkjk 506 ds vUrxZr n.Muh; vijk/k dh dksfV esa vkrk gS vkSj esjs laKku esa gSA

eSa ,rn~}kjk funsZ'k nsrk gwWa fd vkidk bl U;k;ky; }kjk mijksDr vkjksiksa ij fopkj.k fd;k tk,A

g0

¼ jes'k dqekj ½

fnukWad%20-9-2016

U;kf;d eftLVz~sV] d{k

la[;k&2]

eFkqjk

mijksDr vkjksi i<+dj vfHk;qDrx.k dks lquk;k o le>k;k x;kA
vfHk;qDrx.k us vkjksiksa ls bUdkj djrs gq, fopkj.k dh
ekWax dhA

g0

¼ jes'k dqekj ½

fnukWad%20-9-2016

U;kf;d

eftLVz~sV] d{k la[;k&2]

eFkqjk

(2)

uewuk @ vkjksi ¼f}rh;½

U;k;ky; U;kf;d eftLVz~sV] d{k la[;k&2] eFkqjk A

n.Mokn la[;k%112@2008

jkT;

izfr

fot; vkfn

Fkkuk& o`Unkou] tuin& eFkqjk

/kkjk& 148] 323@149] 325@149 Hkk-n-la-

vkjksi

eSa] jes'k dqekj] U;kf;d eftLVz~sV] d{k la[;k&2] eFkqjk vki vfHk;qDrx.k 1- fot;] 2-
izdk'k] 3- jksfgr 4- jkds'k] 5- f=Hkqou rFkk 6- lq/kkdj ij fuEukafdr vkjksi yxkrk
gwWa&&

izFke& ;g fd vki vfHk;qDrx.k 1 yxk;r 6 mijksDr us fnukaWd 20-12-2008 dks le; yxHkx 2-00 cts fnu esa LfKku o`Unkou frjkgk fLFkr oknh eqdnek dYyw dh nqdku ij cyiwoZd o voS/k :i ls dCtk djus ds fy, fof/kfo:) teko dkfjr fd;k rFkk mDr fof/kfo:) teko ds lnL; ds :i esa fof/kfo:) teko ds lkekU; mn~ns'; ds vxzlj.k esa vki vfHk;qDrx.k us ns'kh reUps] dqYgkM+h] pdkw o ryokj tSls ?kkrd vk;q/kksa ls lqfTtr gksdj fgalk dk iz;ksx djrs gq, cyok dkfjr fd;k vkSj mlDs }kjk vki vfHk;qDrx.k us ,slk vij/k dkfjr fd;k tks Hkkjrh; n.M lafgrk dh /kkjk 148 ds vUrxZr n.Muh; vij/k dh dksfV esa vkrk gS vkSj esjs laKku esa gSA

द्वितीय- ;g fd vki vfHk;qDrx.k 1 yxk;r 6 mijksDr us fnukWad 20-12-2008 dks le; yxHkx 2-00 cts fnu esa fof/kfo:) teko ds lnL; ds :i esa mlDs lkekU; mn~ns'; ds vxzlj.k esa oknh eqdnek@pksfVy dYyw dh LfKku o`Unkou frjkgk fLFkr nqdku esa ?kqldj mls migfr dkfjr djus ds vk'k; ls ykr ?kwlksa ls LosPN;k ekj ihVdj mDr pksfVy dYyw dks lk/kkj.k izd`fr dh migfr;kWa dkfjr dha vkSj mlDs }kjk vki vfHk;qDrx.k us ,slk vij/k dkfjr fd;k tks Hkkjrh; n.M lafgrk dh /kkjk 323 lifBr /kkjk 149 ds vUrxZr n.Muh; vij/k dh dksfV esa vkrk gS vkSj esjs laKku esa gSA

तृतीय& ;g fd vki vfHk;qDrx.k 1 yxk;r 6 mijksDr us fnukWad 20-12-2008 dks le; yxHkx 2-00 cts fnu esa fof/kfo:) teko ds lnL; ds :i esa mlDs lkekU; mn~ns'; ds vxzlj.k esa oknh eqdnek@pksfVy dYyw dks migfr dkfjr djus ds vk'k; ls mldh LfKku o`Unkou frjkgk fLFkr nqdku esa ?kqldj dqYgkM+h o pdkqvksa ls izgkj djds mls LosPN;k xEHkhj migfr dkfjr dh ftlls mlDs ck;sa gkFk dh dykbZ dh gM~Mh VwV x;h vkSj mlDs }kjk vki vfHk;qDrx.k us ,slk vij/k dkfjr fd;k tks Hkkjrh; n.M lafgrk dh /kkjk 325 lifBr /kkjk 149 ds vUrxZr n.Muh; vij/k dh dksfV esa vkrk gS vkSj esjs laKku esa gSA

g0

vfHk
;qDr

x.k

eSa ,rn~}kjk funsZ'k nsrk gwWa fd vki vfHk;qDrx.k dk bl U;k;ky;
}kjk mijksDr vkjksiksa ij fopkj.k fd;k tk,A

g0

¼ jes'k dqekj ½

fnukWad%20-9-2016

U;kf;d

eftLVz~sV] d{k la[;k&2]

eFkqjk

mijksDr vkjksi i<+dj vfHk;qDrx.k dks lquk;k o le>k;k x;kA
vfHk;qDrx.k us vkjksiksa ls bUdkj djrs gq, fopkj.k dh
ekWax dhA

g0

¼ jes'k dqekj ½

fnukWad%20-9-2016

U;kf;d

eftLVz~sV] d{k la[;k&2]

eFkqjk

(3)

uewuk @ vkjksi ¼r`rh;½

U;k;ky; U;kf;d eftLVz~sV] d{k la[;k&2] eFkqjk A

n.Mokn la[;k%111 @2008

jkT;

izfr

eksgu

Fkkuk& o`Unkou] tuin& eFkqjk

/kkjk& 379] 411 Hkk-n-la-

vkjksi

eSa] jes'k dqekj] U;kf;d eftLVz~sV] d{k la[;k&2] eFkqjk vki vfHk;qDr eksgu ij fuEukafdr vkjksi yxkrk gwWa&&

izFke& ;g fd fnukWad 25-10-2008 dks le; yxHkx 12-00 cts jkr esa vki xzke xkserhuxj fLFkr ikdZ Is oknh eqdnek thou dqekj dh ,d vnn lkbfdy csbZekuh Is pqjkdj ys x;s rFkk mlDs }kjk vkius ,slk d`R; dkfjr fd;k tks Hkkjrh; n.M lafgrk dh /kkjk 379 ds vUrxZr n.Muh; vijj/k dh dksfV esa vkrk gS vkSj esjs laKku esa gSA f}rh;& ;g fd fnukWad 28-10-2008 dks le; yxHkx 10-00 cts fnu esa vkids xzke xkserhuxj fLFkr ?kj Is ,d vnn pksjh'kqnk lkbfdy] ftls vki ;g tkurs gq, Hkh fd og pksjh'kqnk lkbfdy Fkh] csbZekuh Is j[ks gq, Fks] iqfyl }kjk cjen dh x;h vkSj mlDs }kjk vkius ,slk d`R; dkfjr fd;k tks Hkkjrh; n.M lafgrk dh /kkjk 411 ds vUrxZr n.Muh; vijj/k dh dksfV esa vkrk gS vkSj esjs laKku esa gSA

eSa ,rn~}kjk funsZ'k nsrk gwWa fd vkidk bl U;k;ky; }kjk mijksDr vkjksiksa ij fopkj.k fd;k tk,A

g0

¼ jes'k dqekj ½

f nukWad%20-9-2016

U;kf;d

eftLVz~sV] d{k la[;k&2

eFkqjk

g0

mijksDr vkjksi i<+dj vfHk;qDr dks lquk;k o le>k;k x;kA

vfHk

vfHk;qDr us vkjksiksa ls bUdkj djrs gq, fopkj.k dh

;qDr

ekWax dhA

g0

¼ jes'k dqekj ½

f nukWad%20-9-2016

U;kf;d

eftLVz~sV] d{k la[;k&2

eFkqjk

(4)

uewuk @ vkjksi ¼prqFkZ½

U;k;ky; U;kf;d eftLVz~sV] d{k la[;k&2] y[kuÅA

n.Mokn la[;k%112@2009

jkT;

izfr

fouksn

Fkkuk& xkserhuxj] tuin y[kuÅA

/kkjk& 25, vk;q/k vf/kfu;e

vkjksi

eSa] jes'k dqekj] U;kf;d eftLVz~sV] d{k la[;k&2] y[kuÅ vki vfHk;qDr fouksn ij fuEukafdr vkjksi yxkrk gwWa&&

;g fd f nukWad 10&8&2009 dks le; yxHkx 05 cts lk;adky LFkku i=dkj pkS]kgk] xkserhuxj] y[kuÅ ij vki vk;q/k vf/kfu;e] 1959 dh /kkjk 3 dk vfrdze.k djrs gq, vius dCts esa ,d vnn voS/k vkXus;kL= rFkk nks vnn dkjrwl j]ks gq, Fks vkSj mlDs }kjk vkius ,slk vijk/k dkfjr fd;k tks mDr vf/kfu;e dh /kkjk 25 ¼1&ch½

¼,½ ds vUrxZr n.Muh; gS vkSj esjs laKku esa gSA eSa
,rn~}kjk funsZ'k nsrk gwWa fd vkidk fopkj.k bl U;k;ky; }kjk mDr
vkjksi ij fd;k tk,A

g0

¼ jes'k dqekj

½

U;kf;d eftLVz~sV] d{k

g0

la[;k&2]

vf

y[kuÅ

Hk

;q fnukWad%20-9-2016

Dr mijksDr vkjksi i<+dj vfHk;qDr dks lquk;k o le>k;k x;kA vfHk;qDr

us vkjksi ls bUdkj djrs gq, fopkj.k dh ekWax dhA

g0

¼ jes'k dqekj ½

U;kf;d eftLVz~sV] d{k la[;k&2]

y[kuÅ

fnukWad%20-9-2016
