

RMM LAW COLLEGE SAHARSA

CODE OF CRIMINAL PROCEDURE

IIIrd Part

Paper -3

TOPIC- The charge and Joinder of Charges

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Section- 215. Effect of errors –

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, and it has occasioned a failure of justice

Illustrations

(a) A is charged under section 242 of the Indian Penal Code (45 of 1860), with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit," the word " fraudulently" being omitted in the charge Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material

(b) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly A defends himself, calls witnesses and gives his own account of the transaction The Court may infer from this that the omission to set out the manner of the cheating is not material

(c) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge There were many transactions between A and B, and A had no means of knowing to which of them the charge referred, and offered no defence The Court may infer from such facts that the omission to set out the manner of the cheating was, in the case, a material error

(d) A is charged with the murder of Khoda Baksh on the 21st January, 1882 In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January, 1882 A was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial

(e) A was charged with murdering Haidar Baksh on the 20th January, 1882, and Khoda Baksh (who tried to arrest him for that murder) on the 21st January, 1882 When charged for the murder of Haidar Baksh, he was tried for the murder of Khoda Baksh The witnesses present in his defence were witnesses in the case of Haidar Baksh The Court may infer from this that A was misled, and that the error was material

Section- 216. Court may alter charge

(1) Any Court may alter or add to any charge at any time before judgment is pronounced

(2) Every such alteration or addition shall be read and explained to the accused

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court to prejudice the accused in his defence or the prosecutor in the conduct of the case the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction had been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded

217. Recall of witnesses when charge altered -

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—

(a) to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, unless the Court, for reasons to be recorded in writing, considers that the prosecutor or the accused, as the case may be, desires to recall or re-examine such witness for the purpose of vexation or delay or for defeating the ends of justice;

(b) also to call any further witness whom the Court may think to be material

B—Joinder of Charges

Section- 218. Separate charges for distinct offences -

(1) For every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately: Provided that where the accused person, by an application in writing, so desires and the Magistrate is of opinion that such person is not likely to be prejudiced thereby the Magistrate may try together all or any number of the charges framed against such person

(2) Nothing in sub-section (1) shall affect the operation of the provisions of sections 219, 220, 221 and 223

Illustration

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion A must be separately charged and separately tried for the theft and causing grievous hurt 219. Three offences of same kind within year may be charged together –

(1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code (45 of 1860) or of any special or local laws: Provided that, for the purposes of this section, an offence punishable under section 379 of the Indian Penal Code (45 of 1860) shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code, and that an offence punishable under any section of the said Code, or of any special or local law, shall be deemed to be an

offence of the same kind as an attempt to commit such offence, when such an attempt is an offence

Section- 220. Trial for more than one offence -

(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence

(2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub-section (2) of section 212 or in sub-section (1) of section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence

(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences

(4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, or such acts

(5) Nothing contained in this section shall affect section 71 of the Indian Penal Code (45 of 1860)

Illustrations to sub-section (1)

(a) A rescues B a person in lawful custody, and in so doing causes grievous hurt to C, a constable, in whose custody B was, A may be charged with, and convicted of, offences under sections 225 and 333 of the Indian Penal Code (45 of 1860)

(b) A commits house-breaking by day with intent to commit adultery, and commits in the house so entered, adultery with B's wife A may be separately charged with, and convicted of, offences under sections 454 and 497 of the Indian Penal Code (45 of 1860)

(c) A entices B, the wife of C, away from C, with intent to commit adultery with B, and then commits adultery with her A may be separately charged with, and convicted of, offences under sections 498 and 497 of the Indian Penal Code (45 of 1860)

(d) A has in his possession several seals, knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under section 466 of the Indian Penal Code (45 of 1860) A may be separately charged with, and convicted of, the possession of each seal under section 473 of the Indian Penal Code (45 of 1860)

(e) With intent to cause injury to B, A institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding, and also falsely accuses B of having committed an offence, knowing that there is no just or lawful ground for such charge A may be separately charged with, and convicted of, two offences under section 211 of the Indian Penal Code (45 of 1860)

(f) A with intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge On the trial, A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence A may be separately charged with and convicted of, offences under sections 211 and 194 of the Indian Penal Code (45 of 1860)

(g) A with six others, commits the offences, of rioting, grievous hurt and assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot A may be separately charged with, and convicted of, offences under sections 147, 325 and 152 of the Indian Penal Code (45 of 1860)

(h) A threatens B, C and D at the same time with injury to their persons with intent to cause alarm to them A may be separately charged with, and convicted of, each of the three offences under section 506 of the Indian Penal Code (45 of 1860) The separate charges referred to in illustrations (a) to (h) respectively, may be tried at the same time

Illustrations to sub-section (3)

(i) A wrongfully strikes B with a cane A may be separately charged with and convicted of, offences under sections 352 and 323 of the Indian Penal Code (45 of 1860)

(j) Several stolen sacks of corn are made over to A and B, who knew they are stolen property, for the purpose of concealing them A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain-pit A and B may be separately charged with and convicted of, offences under sections 411 and 414 of the Indian Penal Code (45 of 1860)