

RMM LAW COLLEGE SAHARSA

CODE OF CRIMINAL PROCEDURE

IIIrd Part

Paper -3

TOPIC- Joinder of Charges

Lecture Notes by- **BINOD KUMAR JHA**

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Section-221. Where it is doubtful what offence has been committed –

(1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences

(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it

Illustrations

(a) A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property or criminal breach of trust or cheating

(b) In the case mentioned, A is only charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be) though he was not charged with such offence

(c) A states on oath before the Magistrate that he saw B hit C with a club Before the Sessions Court A states on oath that B never hit C A may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot to be proved which of these contradictory statements was false

222. When offence proved included in offence charged

(1) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it

(3) When a person is charged with an offence, he may be convicted of an attempt to commit such offence although the attempt is not separately charged

(4) Nothing in this section shall be deemed to authorise a conviction of any minor offence where

the conditions requisite for the initiation of proceedings in respect of that minor offence have not been satisfied

Illustrations

(a) A is charged under section 407 of the Indian Penal Code (45 of 1860) with criminal breach of trust in respect of property entrusted to him as a carrier It appears, that he did commit criminal breach of trust under section 406 of that Code in respect of the property, but that it was not entrusted to him as a carrier He may be convicted of criminal breach of trust under the said section 406

(b) A is charged under section 325 of the Indian Penal Code (45 of 1860), with causing grievous hurt He proves that he acted on grave and sudden provocation He may be convicted under section 335 of that Code

Comments

(i) A Court is entitled to convict a person of an offence which is minor in comparison to the one for which he is tried; *Sangarabonia Sreenu v State of Andhra Pradesh*, (1997) 4 Supreme 214

(ii) 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; *State of Himachal Pradesh v Tara Dutta*, AIR 2000 SC 297

223. What persons may be charged jointly –

The following persons may be charged and tried together, namely:—

(a) persons accused of the same offence committed in the course of the same transaction;

(b) persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence;

(c) persons accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months;

(d) persons accused of different offences committed in the course of the same transaction;

(e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and 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;

(f) persons accused of offences under sections 411 and 414 of the Indian Penal Code (45 of 1860) or either of those sections in respect of stolen property the possession of which has been transferred by one offence;

(g) persons accused of any offence under Chapter XII of the Indian Penal Code (45 of 1860) relating to counterfeit coin and 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; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges:

Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the Magistrate may, if such

persons by an application in writing, so desire, and if he is satisfied that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together.

Comments

(i) Where there is a communality of purpose or design when there is continuity of action then all those persons involved can be accused of the same or different offences committed in course of same transaction. If such two diametrically opposite versions are put to joint trial the confusion which can cause in the trial could be incalculable. Permission to joint trial illegal; *Balbir v State of Haryana*, AIR 2000 SC 11: 2000 Cr LJ 169 (SC)

(ii) The two trials were separately conducted one after the other by the same Court before the same judge and judgment in both cases were separately pronounced on the same day. No doubt the session judge should take care of that he would confine his judgment in one case only to the evidence adduced in the case. The public prosecutor who prosecuted one case should avoid prosecution in other case. Permission for joint trial not legal; *Balbir v State of Haryana*, AIR 2000 SC 11: 2000 Cr LJ 169 (SC)

224. Withdrawal of remaining charges on conviction on one of several charges-

When a charge containing more heads than one is framed against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent, of the Court, withdraw the remaining charge or charges, or the Court of its own accord may stay the inquiry into, or trial of, such charge or charges and such withdrawal shall have the effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into, or trial of, the charge or charges so withdrawn.