

RMM LAW COLLEGE SAHARSA

CODE OF CRIMINAL PROCEDURE

IIIrd Part

Paper -3

**TOPIC- PROVISIONS AS TO
ACCUSED PERSONS OF**

Topic- Irregular Proceedings

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464. Effect of omission to frame, or absence of, or error in, charge.

(1) No finding sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charge, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may—

(a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommenced from the point immediately after the framing of the charge.

(b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit:

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

Comments

It is well-settled that where the Court frames a charge on a major Court the law does not provide that it should also frame a charge under the minor Court; *State of Maharashtra v. Vinayak Tukaram Utakar*, (1997) 2 Crimes 615 (Bom).

465. Finding or sentence when reversible by reason of error, omission or irregularity.

(1) Subject to the provisions hereinbefore contained, on finding sentence or order passed by a

Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or

revision on account of any error, omission or irregularity in the complaint, summons, warrant,

proclamation, order, judgment or other proceedings before or during trial or in any inquiry or

other proceedings under this Code, or any error, or irregularity in any sanction for the

prosecution unless in the opinion of that Court, a failure of justice has in fact been occasioned

thereby.

(2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

466. Defect or error not to make attachment unlawful.

No attachment made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want or form in the summons, conviction, writ of attachment or other proceedings relating thereto.