

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-49051-2018(O&M)
Date of decision: 10.01.2020

Sanjay Kathuria

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Sunil Panwar, Advocate for the petitioner

Mr. Manish Bansal, DAG, Haryana

ANIL KSHETARPAL, J.

Question which requires consideration is as to whether the evidence led by the prosecution after giving sufficient opportunity to the defence to cross examine the prosecution witnesses would stand nullified, on account of failure to frame charge by the Trial Court, in the absence of evidence of prejudice to the accused/prosecution? In other words, the issue which this Court is called upon to answer is that in the absence of prejudice either to the prosecution or to the accused, de novo recording of the prosecution evidence is necessary by recalling of the witnesses on account of failure of the Trial Magistrate/ Court to frame charge.

Before this Court proceeds to answer the question, at the outset, it shall be necessary to note that speedy trial of cases, either civil or criminal, is required to maintain law and order in the society. Article 20 of the Constitution of India provides that no person shall be convicted of any offence except for violation of law in force at the time of commission of the act charged as an offence. Article 21 provides for protection of life and

personal liberty. Speedy trial is one of the facet of protection of life and personal liberty.

Now a brief visit to the scheme of the Code in context of the question to be answered. Section 173 of the Code requires that every investigation shall be completed without unnecessary delay and as soon as it is completed, the police or the investigating agency shall submit police report to the Court. Section 207 of the Code provides that accused shall be supplied a copy of the police report and other documents free of costs. Section 208 of the Code deals with the cases instituted other than a police report and if it appears to the Magistrate that the offence is exclusively triable by the Court of Sessions, in that situation the Magistrate has been obligated upon to furnish to the accused free of costs copies of the statements and the documents as specified.

The charge is provided in Chapter XVII of the Code. Section 211 of the Code specifies the contents of charge whereas Section 212 of the Code provides particulars as to time, place and person. Section 213 of the Code provides that the manner of committing offence must be stated. Section 215 of the Code deals with the effect of errors whereas Sections 216 and 217 of the Code enables the Court to alter/add charge at any time before judgment is pronounced and recall of the witnesses when charge is altered. Section 215, 216 and 217 of the Code are extracted as under:-

“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.

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 has 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.”

Next important provision in Cr.P.C in the context of the present case is Section 240 of the Code, which falls in Chapter XIX, dealing with trial of warrant cases by Magistrates. Section 240 of the Code provides for framing of charge by the Magistrate, which is extracted as under:-

“240. Framing of charge.—(1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be

adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

Section 241 of the Code provides for passing an order of conviction on plea of guilty whereas Section 242 of the Code lays down procedure for recording evidence by the prosecution. Section 243 of the Code deals with the evidence of the defence. Sections 241, 242 and 243 of the Code are extracted as under:-

“241. Conviction on plea of guilty.—(1) If the accused pleads guilty, the Magistrate shall record the plea and may, in his discretion, convict him thereon.

242. Evidence for prosecution.—(1) If the accused refuses to plead or does not plead, or claims to be tried or the Magistrate does not convict the accused under Section 241, the Magistrate shall fix a date for the examination of witnesses:

Provided that the Magistrate shall supply in advance to the accused, the statement of witnesses recorded during investigation by the police.

(2) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

(3) On the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution:

Provided that the Magistrate may permit the cross-examination of any witness to be deferred until any other witness or witnesses have been examined or recall any witness for further cross-examination.

243. Evidence for defence.—(1) The accused shall then be called upon to enter upon his defence and produce his evidence; and if the accused puts in any written statement, the Magistrate shall file it with the record.

(2) If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing:

Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such

witness shall not be compelled under this section, unless the Magistrate is satisfied that it is necessary for the ends of justice.

(3) The Magistrate may, before summoning any witness on an application under sub-section (2), require that the reasonable expenses incurred by the witness in attending for the purposes of the trial be deposited in Court.”

The next important provision which helps the Court in interpreting the question is Section 464 of the Code which deals with the effect of omission to frame, or absence of, or error in charge, which reads as under:-

“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 charges, 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.”

From the reading of the aforesaid relevant provisions and the phraseology used by the Legislature, this Court is of the considered view that in the absence of prejudice to the prosecution or the accused, the evidence which has already been recorded after giving sufficient opportunity to the accused before framing of the charge, would not necessarily require for the Court to recall all the prosecution witnesses. The reasons for arriving at such conclusion are as under:-

i) The purpose of framing charge is to inform the accused about the offence under which he is sought to be prosecuted. In other words, accused is required to be apprised of the fact that he has to defend the charge framed under distinct provisions. Section 218 of the Code provides that every distinct offence of which any person is accused shall be subject matter of separate charge. Section 173 of the Code mandates that the police/the investigating agency after conclusion of the investigation is required to submit a police report which shall contain various documents/information as specified in Section 173 (2) of the Code. Section 207 of the Code mandates that a copy of the complete police report shall be supplied to the accused alongwith First Information Report, statements recorded under Section

161(3) of the Code, the confessions and statements, if any, recorded under Section 164 of the Code and any other document or relevant extract thereof, forwarded to the Magistrate with the police report under sub section (5) of Section 173 of the Code. In other words, it is obligatory for the trial Court to supply to the accused, a complete copy of the police report and other documents, before he proceeds with the case. The purpose of Section 207 of the Code is also to apprise the accused and make him aware of the criminal case against him. Thus, the purpose of framing charge is also to draw attention of the accused and make him aware of the criminal charge being put forth by the prosecution against him. In these circumstances, failure to frame charge 'ipso facto' does not result in nullifying the evidence already recorded, if the trial Court fails to frame charge.

ii) On careful perusal of Sections 215, 216 and 217 of the Code it becomes clear that the Legislature provides that unless the accused was in fact misled by such error or omission or the prosecution or accused has suffered prejudice which is likely to result in failure of justice, recall all witnesses after alteration thereof or addition thereto, would not be necessary. Section 215 deals with errors/omissions. It provides that unless the accused was in fact misled by such error or omission or it has occasioned a failure of justice, shall not be regarded as material. Section 216 of the Code provides for alteration or addition to a charge at any time before judgment is pronounced. Sub-section (3) of Section 216 of the Code provides that in the event of additions or alteration to a charge, if in the opinion of the Court, there is no prejudice to the accused or the prosecutor in the conduct of the case, the Court may in its discretion, after such alteration or addition of the charge, proceed with the trial as if the altered or added charge had been the

original charge. On careful reading of Section 217 of the Code also leads the Court to the same conclusion. The scheme behind Section 240 of the Code is also the same is behind Section 211, 212 and 213 of the Code.

Most importantly on careful perusal of Section 464 of the Code it becomes clear that the effect of omission to frame or absence of charge is in itself not sufficient to set aside the judgment of conviction. It provides that no findings / sentence or order of 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, unless the Appellate Court forms an opinion that such error has resulted in failure of justice.

On examination of the aforesaid provisions and co-joint harmonious construction thereof, it becomes clear that failure to frame a charge has not been viewed to be per se significant which hits and results in vitiation of the entire proceeding itself. In this regard, reference can be made to the list of irregularities which result in vitiation of the proceedings as provided under Section 461 of the Code. The failure to frame charge is also not listed as irregularity in Section 464 of the Code, which does not vitiate the proceedings. However, mere non-inclusion of the failure to frame charge in Section 464 of the Code would not automatically lead the Court to form an opinion that on account of failure to frame the charge, the entire trial gets vitiated. The Courts are required to take purposive interpretation of various provisions of Act so that the object sought to be achieved i.e speedy trial and disposal of the cases, is achieved.

A Larger Bench of the Hon'ble Supreme Court in **Willie**

(William) Slaney vs The State Of Madhya Pradesh AIR 1956 SC 116

had interpreted the provisions of Criminal Procedure Code, 1898. The various provisions with regard to framing of the charge in the old Criminal Procedure Code and new Criminal Procedure Code as is applicable today are almost paramateria. The Hon'ble Supreme Court interpreted the provisions of the Criminal Procedure Code, 1898, as under:-

“20. Now there is no doubt that a charge forms the foundation of a sessions trial and is a most important step in it. The accused must know and understand what he is being tried for and must be told in clear and unambiguous terms: Section 271(1). There can be no shirking that or slurring over it, and this must appear on the face of the record. It cannot be established by evidence taken after the trial. But there is, in our opinion, equally no doubt that the Code expressly deals with this and expressly provides that no error, omission or irregularity in the charge, or even total absence of a charge, shall vitiate a trial unless prejudice to the accused is shown. This is repeatedly reiterated in a number of sections. The whole question therefore is whether the “charge” must be formally reduced to writing and expressed as a ritualistic formula in order to save the trial from the fundamental defect of an incurable illegality or whether the information that is the substance of the matter can be conveyed in other ways. The question is whether we are to grasp at the substance or play hide and seek among the shadows of procedure.

21. First of all, Sections 221 to 223 of the Code, which undoubtedly envisage a formal written charge, set out what a charge must contain. A perusal of them reveals the reasons why a charge is required. It must set out the offence with which the accused is charged and if the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated “as to give the accused *notice of the matter with which he is charged*”. The charge must also contain such particulars of date, time, place and person “as are *reasonably* sufficient to give the accused notice of the matter with which he is charged”; and Section 223 says:

“When the nature of the case is such that the particulars mentioned in Sections 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed *as will be sufficient for that purpose*.”

22. It is clear to us that the object of the charge is not to introduce a provision that goes to the root of jurisdiction as, for example, the requirement of previous sanction under Section 197, but to enable the accused to have a clear idea of what he is being tried for and of the essential facts that he has to meet. But there are other ways of conveying this information. For example, in summons cases no formal charge is required: all that is necessary is to tell the accused the substance of the

accusation made against him (Section 242). The whole question is whether, in warrant cases and in sessions trials, the necessary information must be conveyed in one way and one way only, namely in a formal charge in order that the entire trial may not be ipso facto vitiated because of an incurable illegality, or whether that can be done in other and less formal ways, provided always that it is in fact conveyed in a clear and unambiguous manner and in circumstances that the court will regard as fair and in substantial, as opposed to purely technical, compliance with the requirements of the Code. The law could have provided one way as easily as another, but what it has chosen to do is set out in the following sections.”

While interpreting provisions of Code of Criminal Procedure, the Court is required to keep in mind that the Code of Criminal Procedure is a code laying down the procedure to be followed by the Courts. It is not a substantive Code. In other words, the Code only deals with the procedure to be followed by the Courts. The procedure to be followed by the Court has to be in consonance with the principles of natural justice and the provisions of the Code have to be interpreted in the manner which result in advancing the cause of justice. A small omission to follow the strict provisions of the procedure Code cannot be interpreted in such a manner that it results in failure of justice rather than help the Court in its advancement.

The present case arises from trial of warrant case by the Magistrate. The offences for which the petitioner is being tried, are under

Section 120-B IPC and Sections 419, 420, 467, 468, 471 IPC read with

Section 120-B IPC.

The Magistrate has recorded that re-examination of prosecution witness is not necessary as the prosecution has failed to establish the likelihood of any prejudice being caused to the accused. All the prosecution witnesses have already been cross-examined at length by the learned counsels for the accused. Learned counsel for the petitioner, although made sincere attempt to persuade this Court to take a view that in the absence of framing charge, the entire trial stands vitiated because the accused was not apprised of the charge against him, for which he is sought to be prosecuted and opportunity was not given to the accused to plead not guilty, however, this Court does not find substance therein. Learned counsel further submitted that on careful reading of Section 242 of the Code, evidence for prosecution could only be recorded, if the accused refuses to plead guilty or does not plead or claims to be tried or the Magistrate does not convict the accused. He submitted that the Magistrate could only fix a date for examination of witnesses thereafter.

This Court has considered submissions, however, finds that the argument of the learned counsel for the petitioner cannot be accepted for the reasons which have been already discussed in detail, in the foregoing paragraphs. In the present case, accused is represented by a counsel. It is not the case of the accused-petitioner that he did not know the case pending against him or he could not properly cross-examine the prosecution witnesses in the absence of specific order framing charge or non-framing of charge has resulted in failure of justice or caused prejudice to his defence. The accused is yet to lead defence evidence.

In this situation, this Court does not find any good ground to

interfere with the order of the Magistrate.

Dismissed.

10.1.2020	(ANIL KSHETARPAL)
rekha	JUDGE
Whether speaking/reasoned	Yes / No
Whether Reportable	Yes / No