



FRAMING OF CHARGE - BNSS

1. Is imperfection in the charge curable?

Ans. Yes, provided no prejudice has been shown to have resulted on account of it.

2. Is not the non-framing of charge fatal?

Ans. Not always, except when the convict is able to establish that the defect in framing the charges has caused real prejudice to him and that he was not informed as to what was the real case against him and that he could not defend himself properly.

3. Is not a technical defect in the charge material?

Ans. No, unless prejudice has been caused to the accused so as to attract Section 238 BNSS

4. At the stage of framing charge is it necessary for the Court to meticulously consider the evidence and other materials produced by the prosecution ?

Ans. No. A meticulous consideration of the materials and evidence by the Court is not required at that stage.

5. When a wrong Section is mentioned in the FIR, is it permissible for the Court state the appropriate Section while framing charge ?

Ans. Yes.

6. Can the Appellate Court add to or alter the charge ?

Ans. Yes.

7. What do you mean by “prejudice” ?

Ans. When the accused alleges prejudice, it has to be shown that the accused has suffered some disability or detriment in the protections available to him under the Indian criminal jurisprudence and that this has occasioned a failure of justice. Wherever a plea of prejudice is raised by the accused, it must be examined with reference to the above rights and safeguards, as it is the violation of these rights alone that may result in the weakening of the case of the prosecution and benefit to the accused in accordance with law. The plea of prejudice has to be in relation to investigation or trial and not in relation to matters falling beyond their scope.

8. What is meant by “failure of justice” ?

Ans. One of the cardinal principles of natural justice is that no man should be condemned without being heard (*audi alteram partem*). But Courts often hesitate to approve the contention that failure of justice had occasioned merely because a person was not heard on a particular aspect. However, if the aspect is of such a nature that non-explanation of it has contributed to penalizing an individual, the Court should say that since he was not given the opportunity to explain that aspect there was failure of justice on account of non-compliance with the principle of natural justice.

9. Will not a defect in the language or in the narration or in the form of charge, render the conviction bad ?

Ans. No, unless the accused had suffered prejudice thereby.

10. Since Section 239 BNSS. enables the Court to alter or add to the charge, is it not permissible for the Court to allow an application under Section 239 BNSS in respect of an accused who has already been discharged ?

Ans. No. Alteration or addition of a charge pre-supposes the existence of a charge against the accused. When after the accused was discharged, there was no charge existing against the said accused

11. Does it not follow that the trial has to commence de novo after the addition or alteration of charge ?

Ans. Court has discretion to direct a new trial after the addition or alteration of charge. But, unless there is a specific order to that effect it cannot be presumed that a new trial has commenced. No direction for new trial can be given unless proceeding with the trial is likely to prejudice the accused or the prosecution. Even if there was any irregularity in continuation of the trial after framing of additional charges, judgment not open to be set aside in the absence of failure or justice

12. What do you mean by misjoinder of charges?

Ans. Section 241 BNSS is under the heading “joinder of charges”. Therefore, if the joinder of charges is in contravention of the procedure prescribed under Section 241 BNSS, it would be misjoinder of charges

13. Is it not permissible for the accused to demand as of right his trial with co-accused under Section 246 BNSS?

Ans. No.

14. How to determine the question of prejudice?

Ans. For judging the question of prejudice, the Court must act with a broad vision and look to the substance and not to the technicalities. The main concern of the Court 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 full and fair chance to defend himself. The principles laid down in **Slaney’s case** will have to be followed throughout.