

[CRIMINAL TRIAL] FROM “TAKING COGNIZANCE” TO “FRAMING OF CHARGES”

- Q.1 Which are the sources of taking cognizance of an offence?
- Q.2 What is the distinction between *cognizable* and *non-cognizable* offences?
- Q.3 What is a “*police report*” and when does it become a source for taking cognizance of an offence?
- Q.4 What is a “*private complaint*” and whether it can include both *cognizable* and *non-cognizable* offences?
- Q.5 What is the distinction between “*cognizable offence*” and the curial act of taking cognizance of an offence?
- Q.6 After registering an FIR for a cognizable offence, the Police arrests the accused and produces him before the Magistrate with a remand report. The Magistrate applies his mind to the FIR and remand report and remands the accused to judicial custody for 14 days. Has the Magistrate taken cognizance of the offence?
- Q.7. When a cognizable offence is brought to the notice of the Magistrate in a police report under Section 190 (1) (b) C.r.P.C, Is the Magistrate **bound** to take cognizance of the offence?
- Q.8. Will cognizance taken on an incomplete Police report vitiate the proceedings ?
- Q.9 Can a Magistrate who does not have territorial jurisdiction to try the case, take cognizance of the offence ?

- Q.10 (a)** Has the Magistrate taken cognizance of the offences in any of the following six situations?
- (b)** If the Magistrate has taken cognizance of the offences in any of the following situations, in which situation did he first take cognizance of the offences?

Six Situations

- i) At 4.30 p.m a Magistrate receives a private complaint alleging the commission of cognizable offences by the named accused therein. The complainant and his witnesses are present. After going through the complaint the Magistrate looks up at the clock and adjourns the case to the next day.
- ii) In the above situation, instead of adjourning the case, the Magistrate issued a search warrant as requested by the complainant.
- iii) In the above situation the Magistrate after making a record in the proceedings which reads ***“for recording the sworn statement of the complainant and the witnesses”*** adjourns the case to the next day.
- iv) In Situation (i) above the Magistrate after adjourning the case, records the sworn statement of the complainant and the witnesses on the next day.
- v) After perusing the complaint the Magistrate applies his mind and forwards the complaint to the Police under Section 156 (3) Cr.P.C. for investigation and report.

- vi) After recording the sworn statement of the complainant and the witnesses, the Magistrate issues summons to the accused.

Q.11 Is there any category of persons exempted from examination under Section 200 Cr.P.C and if so, who are they?

Q.12 When a Magistrate making over the complaint to another Magistrate under Section 192 Cr.P.C., has been exempted from examining the complainant and the witnesses by virtue of Clause (b) to the first proviso to Section 200 Cr.P.C., does not the proviso to the said Clause (b) contradict the said Clause (b) ?

Q.13 Can a complaint which does not make out any offence, be dismissed at the threshold?

Q.14 Is inquiry under Section 202 Cr.P.C, a must in all situations?

Q.15 Barring the above situations, is inquiry under Section 202 (1) Cr.P.C compulsory?

Q.16 Are there situations where the Magistrate cannot direct investigation by the Police under Section 202 (1) Cr.P.C. in respect of any case, and if so, which are they?

Q.17 Why is it that the proviso to Section 202 (2) Cr.P.C. contains a mandatory inquiry by the Magistrate if the offence is triable exclusively by the Court of Session?

Q.18 As per Clause (b) of the proviso to Section 202 (1) Cr.P.C., after excluding a complaint by a “**Court**”, it is stated that a direction for investigation under Section 202 (1) can be made only if the complainant and his witnesses, if any, have been examined under Section 200 Cr.P.C. Does this proviso apply to a complaint by a “**public servant**” who has been exempted from examination under Section 200 by virtue of Clause (a) of the proviso to Section 200?

Q.19 can a complaint be dismissed under Section 203 Cr.P.C at the post-cognizance stage?

Q20. If the accused is present in Court during the examination of the complainant or his witnesses under Section 200 Cr.P.C. or during Section 202 inquiry, can he not participate in the proceedings?

Q21. Is not the Court of Session entitled to directly take cognizance of an offence exclusively triable by a Court of Session, either on a “*Police Report*” or a “*private complaint*” and is there any exception to it?

Q22. Is it necessary that “*initiation of proceedings*” under Chapter XV Cr.P.C. should precede “*commencement of proceedings*” under Chapter XVI ?

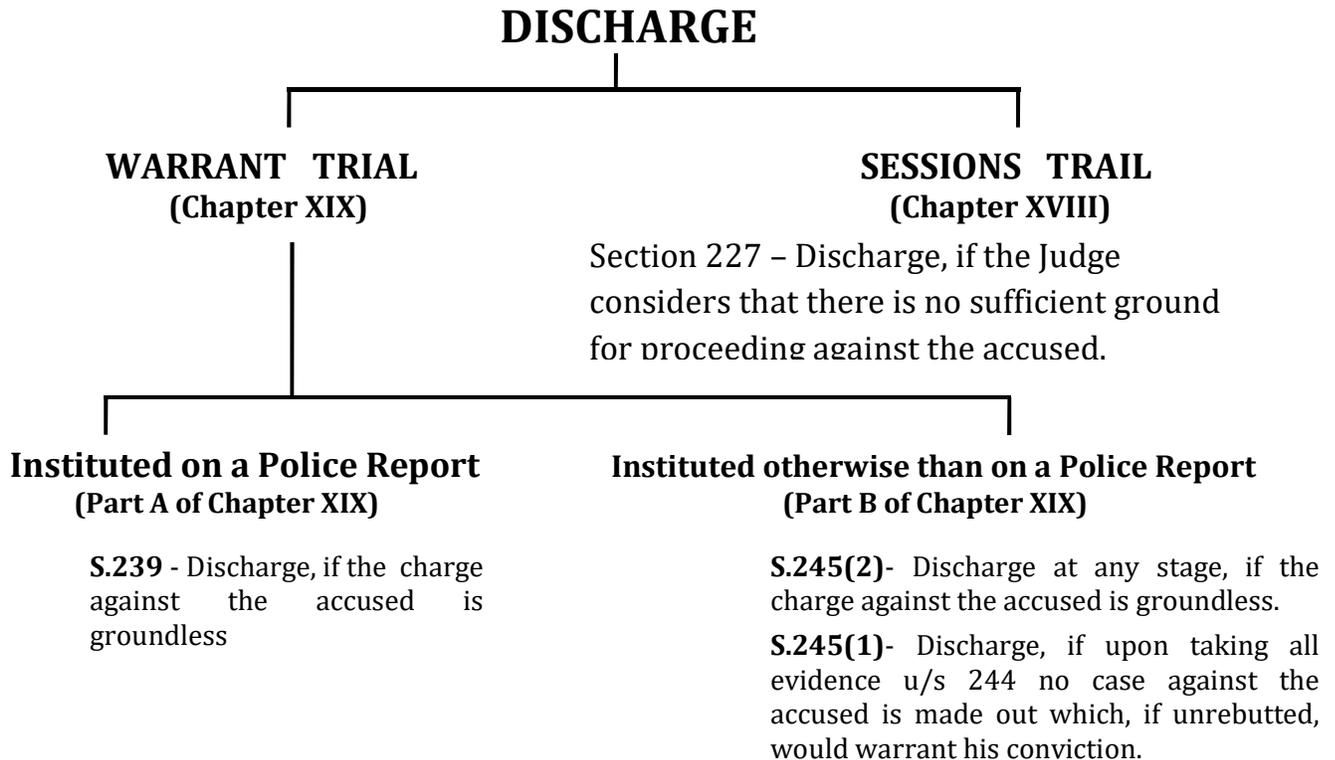
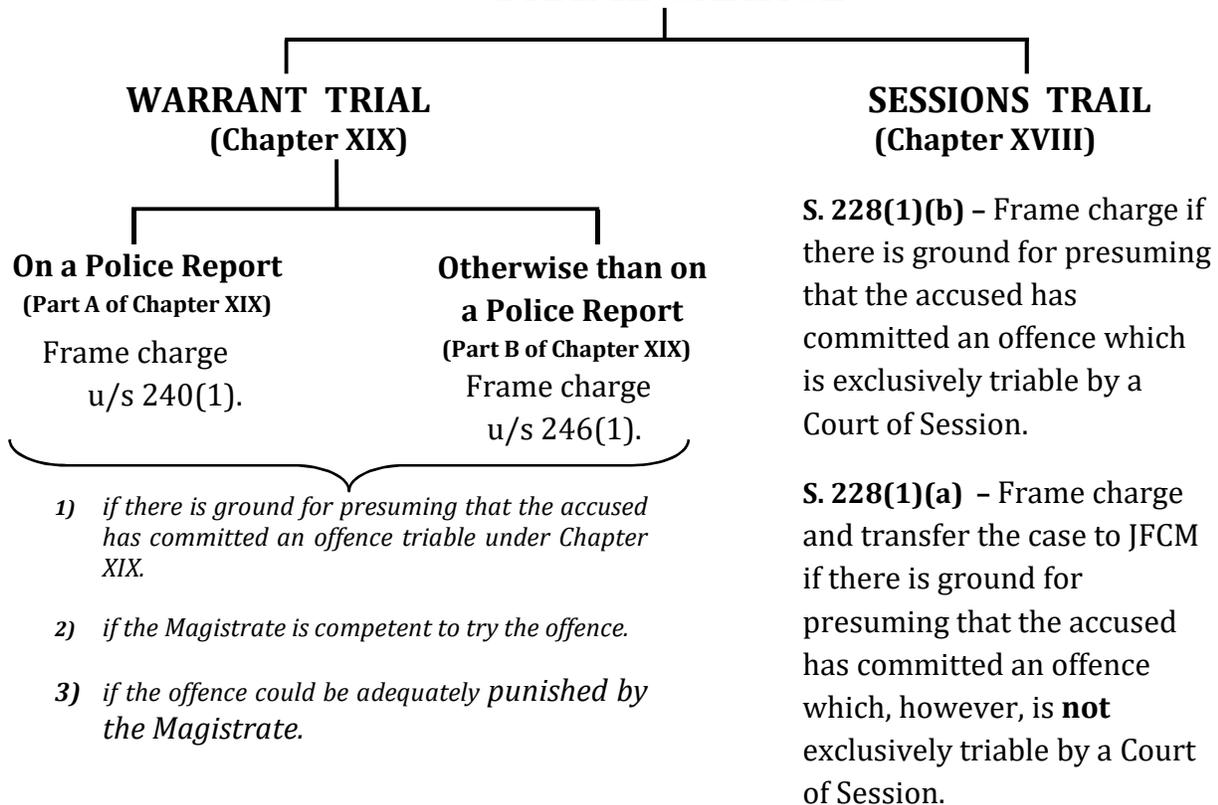
Q23. When does the trial begin in summary and summons cases ?

Q24. When does the trial start in warrant and sessions cases ?

Q25. When the accused pleads guilty, is it an instance of judicial confession and should the Magistrate follow the safeguards provided under Section 164 (3) and (4) Cr.P.C. ?

DISCHARGE/CHARGE

The procedure for discharging the accused or for framing charge against the accused can be illustrated by the following table :-

**FRAME CHARGE**

Questions on Discharge/Charge

- Q.26** What is the criteria under Sec. 227 Cr.P.C. for discharging and under Sec. 228 Cr.P.C. for framing a charge against the accused ?
- Q.27** What is the object of charge?
- Q.28** Is imperfection in the charge curable?
- Q.29** What are the contents of the charge framed by the Court?
- Q.30** Is not the non-framing of charge fatal?
- Q.31** Is not a technical defect in the charge material?
- Q.32** Is it not *proof* of the materials relied on by the prosecution which is relevant for establishing the validity of the charge ?
- Q.33** At the stage of framing charge is it not necessary for the Court to meticulously consider the evidence and other materials produced by the prosecution ?
- Q.34** When a wrong Section is mentioned in the FIR, is it permissible for the Court state the appropriate Section while framing charge ?
- Q.35** Accused is convicted under Section 302 IPC. Is it not permissible for the Court to convict the accused for the offence punishable under Section 307 read with Section 34 IPC also in connection with the same murder ?
- Q.36** Even though the recitals in the charge have stated that the main object of the criminal conspiracy was cheating by impersonation, in the charge under Section 419 IPC there is no specific mention of cheating by personation. Is not the accused justified in contenting that he was charged for cheating simpliciter?

- Q.37** What is the distinction between “*common intention*” under Section 34 IPC and “*common object*” under Section 149 IPC?
- Q.38** Where a charge has been framed against 5 named accused persons for the offence of murder under Section 302 read with Section 149 IPC and if two out of the above 5 persons are acquitted, can the surviving 3 accused persons be convicted for murder under Section 302 read with Section 149 IPC or under Section 302 simpliciter ?
- Q.39** Is it permissible for the trial Court, on a consideration of the broad probabilities of the case and based upon the total effect of the evidence and documents produced, to decide to add to or to alter the charge ?
- Q.40** Can the Appellate Court add to or alter the charge ?
- Q.41** What do you mean by “*prejudice*” ?
- Q.42** What is meant by “*failure of justice*” ?
- Q.43** Will not a defect in the language or in the narration or in the form of charge, render the conviction bad ?
- Q.44** What is the criteria under Sec. 227 Cr.P.C. for discharging and under Sec. 228 Cr.P.C. for framing a charge against the accused ?
- Q.45** The defence contends that since Sec. 149 I.P.C. creates a distinct and separate offence, conviction of the accused with the aid of Sec. 149 is unsustainable in the absence of a specific charge under Section 149. Is the said contention sound ?

- Q.46** Since Section 216 Cr.P.C. enables the Court to alter or add to the charge, is it not permissible for the Court to allow an application under Section 216 Cr.P.C. in respect of an accused who has already been discharged ?
- Q.47** Does it not follow that the trial has to commence *de novo* after the addition or alteration of charge ?
- Q.48** Accused was convicted under Section 302 I.P.C. read with Sec. 34 I.P.C. without a charge under Sec. 34 I.P.C. The reason given in support of the conviction is that common intention can be formed at the spot and inference regarding such common intention can be drawn even in the absence of evidence of pre-concert of minds. Is the conviction sustainable ?
- Q.49** A1 to A3 were charged under Sec. 302 and 201 read with Sec. 34 I.P.C. A2 and A3 were acquitted of the charge under Sec. 302 read with Sec. 34 I.P.C.. Can A1 alone be convicted under Sec. 302 I.P.C. simpliciter without an independent charge under Sec. 302 I.P.C. ?
- Q.50** What do you mean by misjoinder of charges?
- Q.51** What is the object of Section 218 Cr.P.C?
- Q.52** What is the meaning of “same transaction” occurring in Sections 220 and 223 Cr.P.C?
- Q.53** What is a “*minor offence*” within the meaning of Section 222 Cr.P.C?
- Q.54** When the main offence with which the accused is charged is murder, can he not be convicted of an offence under Section

411 IPC (*dishonestly receiving stolen property*) by applying Section 222 (2) Cr.P.C?

- Q.55** Where the accused is acquitted of an offence of a higher degree, can he be convicted for a lesser offence?
- Q.56** Is it not permissible for the accused to demand as of right his trial with co-accused under Section 223 Cr.P.C?
- Q.57** Is not a conviction and sentence recorded by the Court in a joint trial, invalid?
- Q.58** The charge is conspiracy to commit an offence followed by a charge in respect of that offence as well. Conspiracy is not established and the accused is acquitted of the offence of conspiracy. Can the accused be convicted in respect of the substantive offence ?
- Q.59** The charge is criminal conspiracy to commit a particular offence. Prosecution failed to prove that particular offence. Can there be a conviction for criminal conspiracy alone ?
- Q.60** The overt acts committed pursuant to the criminal conspiracy were committed beyond the jurisdiction of the Court having jurisdiction to try the offence of criminal conspiracy. Can that Court try the other offences ?
- Q.61** Court is having jurisdiction to try the offences committed in pursuance of the criminal conspiracy. But the offence of criminal conspiracy was committed outside its territorial limits. Can that court also try the offence of criminal conspiracy ?

- Q.62** In a charge for offences punishable under Sections 498 – A and 304 – B I.P.C. against the accused for subjecting his deceased wife to such cruelty and harassment as to drive her to commit suicide, is it permissible for the court to convict the accused without a specific charge for an offence punishable under Sec. 306 I.P.C. by drawing the presumption under Sec. 113 – A of the Evidence Act along with or instead of Sec. 498 – A I.P.C. in a case where the offence under Sec. 304 – B has not been proved?
- Q.63** In an altercation between the husband and wife not involving any demand for money or property, the husband in response to a retort by the wife, slaps her on the cheek. She lodges a complaint before the police who eventually charge sheets the husband for an offence punishable under Section 498 A IPC. The husband pleads for a discharge before the Magistrate. Can he succeed ?
- Q.64** The charge is that the accused committed murder punishable under Sec. 302 I.P.C. and also caused disappearance of the evidence of murder punishable under Sec. 201 I.P.C. Accused is acquitted of the offence of murder. Can he be convicted under Sec. 201 I.P.C ?
- Q.65** Where the accused are charged under Section 302 read with Sec. 149 I.P.C., can they be convicted for Sec. 302 with the aid of Sec. 109 I.P.C. without a specific charge under Section 109 I.P.C ?
- Q.66** Where the accused in a murder case are acquitted of the charge under Sec. 148 I.P.C (which was the only offence relating to

constructive liability charged against the accused) can they be convicted under Sec. 302 read with Sec. 149 I.P.C, in the absence of a charge under Section 149 IPC ?

- Q.67** Is not the Court entitled to convict the accused for an offence punishable under Section 304B IPC by resort to Section 222 Cr.P.C in a case where the charge is under Section 302 IPC ?
- Q.68** Accused persons faced trial for charge under Sections 211, 215, 216, 218, 221 and 464 I.P.C. There was no charge under Section 34 I.P.C. Court convicted them with the aid of Sec. 34 I.P.C. Is it legal ?
- Q.69** Can an irregularity in the charge become an incurable illegality?
- Q.70** How to determine the question of prejudice?
- Q.71** What is the extent of the power of the Court to alter charge ?
- Q.72** Can common intention be formed on the spot at the scene of crime and how to find it out ?
- Q.73** Charge was framed under Sec. 149 I.P.C. and not under Sec. 34 I.P.C. But conviction recorded by applying Sec. 34 I.P.C. Is it correct ?
- Q.74** Does the non-framing of a charge under Section 149 I.P.C. which creates a distinct and separate offence vitiate the conviction ?
- Q.75** Is it permissible to prosecute directors who were in-charge of and responsible to the company without simultaneously prosecuting the company as well ?
- Q.76** During preliminary hearing under Sec. 227 Cr.P.C. the accused produces certain unimpeachable documents which, if accepted,

are sure to discharge the accused. But the Sessions Judge refuses to consider those documents which are of a sterling character. Is it proper ?

Q.77 Is it permissible for the Public Prosecutor at the stage of opening the prosecution case under Section 226 Cr.P.C to inform the Court that since a prosecution witness has been won over by the defence he will not be examining that witness?

*Kochi,
18-07-2020*

*Justice V. Ramkumar,
Former Judge,
High Court of Kerala.*