

(1963) 12 GUJ CK 0003
In the Gujarat High Court

Kantilal Keshavlal Shah

APPELLANT

Vs

Prabhodhchandra Panachand and Others

RESPONDENT

Date of Decision : 20-12-1963

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 227, 227
Penal Code, 1860 (IPC) — Section 224, 307, 307, 324

Citation : (1963) 12 GUJ CK 0003

Hon'ble Judges : V.B. Raju, J

Bench : Single Bench

Judgement

V.B. Raju, J.—One Lohar Babu Jakhu was committed to the Sessions Court on a charge u/s 307 I.P. Code but the learned Sessions Judge of Kutch at Bhuj framed a charge u/s 324 Indian Penal Code. To such a charge the accused pleaded guilty and thereupon he was convicted u/s 224 I.P. Code and sentenced to rigorous imprisonment for three months and to pay a fine of Rs. 50/- in default rigorous imprisonment for two months.

2 u/s 207(7) Criminal Procedure Code if a Magistrate is of the opinion that an accused person should be committed for trial he shall frame a charge under his hand declaring with what offence the accused is charged. u/s 271 of the same Code that charge has to be read out in Court and explained to the accused at the commencement of the proceedings in the Sessions Court and the accused should be asked whether he pleads guilty to the charge or claims to be tried. The proceedings before the Sessions Court therefore open with the charge already framed by the committing Magistrate.

3. But it is open to the Sessions Judge after commencing the proceedings to alter the charge. It is provided in Section 227 of the Criminal Procedure Code as follows:

(1) Any Court may alter or add to any charge at any time before judgment is pronounced or in the case of trials by jury before the Court of Sessions or High Court before the verdict of the jury is returned.

(2) Every such alteration or addition shall be read and explained to the accused.

The Learned Counsel for the accused relies on Section 226 of the Criminal Procedure Code which reads as follows:

When any person is committed for trial without a charge or with an imperfect or erroneous charge the Court or in the case of a High Court, the Clerk of the State may frame a charge or add to or otherwise alter the charge as the case may be having regard to the rules contained in this Code as the form of charges.

This section contemplates three alternatives in which a charge can be framed by the Sessions Court or the High Court as the case may be first namely: (1) where a person is committed for trial without a charge; (2) where a person is committed for trial with an imperfect charge; and (3) where a person is committed for trial with an erroneous charge. In the first case the section provides that the Sessions Court or the High Court as the case may be may frame a charge. In the second and third cases the section provides that the Sessions Court or the High Court as the case may be may add to or otherwise alter the charge having regard to the rules contained in the Code of Criminal Procedure as to the form of charges.

4. It is contended by the Learned Counsel for the accused that u/s 226 Cr. P.C. it is open to a Sessions Judge to frame a charge u/s 323 or 324 I.P. Code although the Magistrate has committed the accused to the Sessions Court for trial u/s 302 or Section 307 Indian Penal Code. The contention is that the Sessions Judge can do so if on the evidence there is no sufficient ground to commit the accused person to the Sessions Court for trial u/s 302 or Section 307 Indian Penal Code. This contention must be rejected because Section 226 Cri. Pro. Code gives powers to the Sessions Court to frame a charge only in cases where a person is committed for trial without a charge. The power of framing a charge is restricted to such a case. In cases where a person is committed to the Sessions Court for trial with an imperfect or erroneous charge the Sessions Court may add to or otherwise alter the charge.

5. But the instant case is not a case of adding to or altering the charge framed by the committing Magistrate. Section 226 Criminal Procedure Code deals with the form of charges. It deals with cases where there is no charge or where there is an imperfect form of charge or error in the form of the charge. Section 226 is found in Chapter XIX of the Criminal Procedure Code which is headed Form of charge. If therefore there is an error in the charge as framed by the committing Magistrate in regard to the form of the charge that can be corrected by the Sessions Court.

6. In any case the Sessions trial must open with the reading of a charge as framed by the committing Magistrate This is so provided in Section 271 of the Criminal Procedure Code. Having done so the Sessions Judge might alter or add to the charge. In cases where an accused person is committed to the Sessions Court for trial without a charge it is open to him u/s 226 Criminal Procedure Code

to frame a charge. But in cases where an accused person has been committed to the Sessions Court for trial upon a charge framed by the committing Magistrate after reading out and explaining the charge to the accused and taking the plea of the accused to such charge u/s 271 Cri. Pro. Code the Sessions Judge may alter or correct the charge as provided in Section 227 Criminal Procedure Code and Section 226 Criminal Procedure Code. The contention that it is open to the Sessions Court before commencing the proceedings of the Sessions trial to frame a fresh charge under a different section altogether without reading out and explaining the charge as framed by the Committing Magistrate cannot be accepted. The contention of the Learned Counsel for the accused is that it is open to the Sessions Court to do so if in his opinion the evidence does not justify the framing of a charge for an offence under which the Committing Magistrate has framed the charge. This power of quashing a charge rests only with the High Court and cannot be exercised by the Sessions Court u/s 226 or Section 227 of the Code of Criminal Procedure.

7. When a person has been committed to the Sessions Court for trial for a particular offence the Sessions Court must try him for that offence but it is not open to the Sessions Court to quash the charge directly or indirectly by framing a fresh charge for a different offence altogether. This is in fact what the learned Sessions Judge has done. In fact he has given no reasons for framing a charge u/s 324 Indian Penal Code and not reading out the charge u/s 307 Indian Penal Code to the accused as provided in Section 227 Criminal Procedure Code. Whether he gives reasons or not the Sessions Judge has no power to indirectly or directly quash the charge under which an accused person has been committed to the Sessions Court for trial. The revision application is allowed and the conviction of the accused-opponent No. 1 and the sentence passed upon him u/s 324 Indian Penal Code are set aside. The learned Sessions Judge is directed to re-try the accused person upon the charge u/s 307 Indian Penal Code upon which he has been committed. The Sessions Court has of course power to amend and alter the charge as already stated above.