

However, a
magistrate may try
together all



**ASSIGN
BUSTER**

However, a Magistrate may try together all or any number of charges framed against an accused, if the latter himself so desires by an application in writing, and if the Magistrate is also of the opinion that such a person is not likely to be prejudiced thereby. Thus, if A is accused of a theft on one occasion and of causing grievous hurt on another occasion, he must be charged separately and also tried separately for theft and for causing grievous hurt. The Code has introduced a provision, whereby a right is conferred on the accused person to make an application for joinder of the charges, and if the Magistrate is of the opinion that the accused is not likely to be prejudiced thereby, he may try together all or any number of charges framed against such a person. A similar provision is also to be found in S. 223 as regards joinder of persons at one trial.

The object of S. 218 is to ensure that the accused is not at a disadvantage in the matter of his defence, by having to meet several charges which are in no way connected to one another. The other object of the section is to see that the mind of the Court is not prejudiced against the accused if he is tried at one trial on different charges resting upon different pieces of evidence. If the rule was otherwise, it might become difficult for a Court trying a person on one of the charges not to be unduly influenced by the evidence against him relating to another charge. The Bombay High Court has held that, in a series of complaints of an offence alleged to have been committed on 14 different occasions, it is not permissible for the Magistrate to hear the evidence and write the judgment in one of the cases, and then pass merely consequential orders in the other cases. (Champaklal,—A.

I. R. 1941 Bom. 156) In a case decided by the Calcutta High Court, an offence was committed on a certain day by three persons. Six days later, a second offence was committed by the same three persons along with three other persons. The two cases were separately started against them, but subsequently, the Magistrate amalgamated the cases and tried the accused jointly for both the offences.

It was held that the trial was illegal, and the two offences could not be joined under any of the provisions of the Criminal Procedure Code. (Osman,—51 Cr. L.

J. 97)

Distinct Offence:

What S. 218 prescribed is a separate charge and a separate trial for distinct offences. When two offences are committed, and each has no connection with the other, they are said to be distinct offences. According to the Supreme Court, the word distinct means “ not identical”. Two offences would, therefore, be distinct, if they are not inter-related in any way.

(Banwarilal,—A. I. R. 1963 S. C. 1620) Thus, offences falling under different sections of the Indian Penal Code would be distinct offences. For instance, the following have been held to be distinct offences: (a) Theft and escape from lawful custody; (b) Kidnapping a boy and assaulting his mother; (c) Theft and receiving stolen property; (d) Possession of stolen property and assaulting a Police Officer; (e) Criminal misappropriation and cheating.

Likewise, offences committed on different occasions are distinct offences, even if they fall under the same section of the Indian Penal Code, as for instance— (a) Two attempts to cheat committed on two different dates; (b) Wrongful confinement and torture committed at several distinct times and places; (c) Receiving stolen articles on different occasions, —although such articles are the proceeds of a single burglary. So also, offences committed against different persons are also distinct offences, even if the offences are of the same kind, as for example,— (a) Misappropriation of three sums of money from three different persons; (b) Hurt caused to two different persons; (c) Wrongful confinement of several persons on several different occasions. It has also been held that swearing a false affidavit, and using that false affidavit, are two distinct offences, even though they may be parts of the same transaction. (Abdul Hamid, — 87 Cr. L. J. 492) On the other hand, offences of the same kind committed on one occasion, though consisting of several parts, are not different offences, but are to be treated as constituting only one offence? Thus, if a man steals several bullocks from another man (all at the same time), he is committing only one offence, and surely, there need not be as many charges against him as the number of bullocks stolen.

Similarly, the making of several false statements in the same deposition is one aggregate case of perjury, and the charges need not be multiplied by the number of false statements. (Rakhal,-16 Cal. 808) So also, it has been held that theft of two articles belonging to two different persons, committed at one and the same time, constitutes only one offence of theft, and not two. Hence, two convictions and sentences in such a case would not be legal.

(Krishna,—Ratanlal, 927)

Splitting up of the offences:

There is no provision in the Criminal Procedure Code for splitting up of the offences at the enquiry stage. However, the Magistrate need not wait till the time of framing the charge, but should consider the question of joinder of charges at an early stage.

If he does so, and directs the splitting of the challan before the stage of trial is reached, he would not be committing any irregularity. (Pannalal.—52 Cr. L. J.

1376)

Effect of misjoinder of charges:

A misjoinder of charges is a defect in the procedure followed at the trial, and it does not imply that the trial Court has acted without jurisdiction. The basic difference between want of jurisdiction and an irregular exercise of jurisdiction is always to be kept in mind. However, such a defect can be cured only by a Court of Appeal or a Court of Revision. The Supreme Court has, therefore, held that if the Appellate Court (which was competent to deal with the matter) has pronounced its judgment against the Petitioners, the matter having been finally decided, is not one to be re-opened in a Writ Petition under Art.

32 of the Constitution. (Janardhan,—52 Cr. L. J. 736) The Privy Council decision in Subramania's case (28 I A. 96) laid down the view that a misjoinder of charges (i.

e. joining of two or more charges which ought not to be joined in the same case) is an illegality, which cannot be cured by the provisions of S. 464.

However, the recent trend of judicial thought has discarded this decision in favour of the view that such an error can be cured by S. 464, —unless the accused has been prejudiced thereby. (Abdul Rehman,—54 I.

A. 96 P. C.) In a later decision, the Supreme Court, commenting on the applicability of S. 464, has observed as follows: “ The real question is not whether the matter is expressed positively or is stated in negative terms, but whether disregard of a particular provision amounts to substantial denial of a trial as contemplated by the Code and understood by the comprehensive expression, natural justice,” (Slamey,—1955 2 S.

C. R. 1140)