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Chargesheet : A Hidden Aspect.

Author :- Dr. Surender Kumar (Assistant Professor, MDU-CPAS, Gurugram)
Co-Author :- Tonish Singh (Research Scholar)

Abstract :-
To commence a trial and to set the law into motion the very first thing is the submission of the final report after the due-investigation done by the police officials. This final report acknowledging the commission of any wrongdoing on the part of accused is frequently called as chargesheet and has been pondered under section 173 of the Criminal Procedure Code of 1973. Chargesheet is the detailed collection and cumulation of data in a prescribed format provided by the legislature which is critical for the initiation of the trial by the competent court. Therefore, chargesheet is the theoretical representation of the criminal act which provides a clear view of the entire act to the court. Chargesheet shall be all inclusive and no fact or information of whatsoever manner shall be left out for the interest of justice.

Introduction :-
Chargesheet, what it actually is? And is it defined anywhere in CrPC? If we look deeply into the provision that inscribes the procedure of submission of final report by the officials of law enforcement agencies on the final completion of their diligent investigation, we find no definition of the word "Chargesheet". Whereas, on reading between the lines it is evident that the report which is submitted to the judicial magistrate showcasing that some act prohibited by law had been committed in his local jurisdiction for which he is competent to initiate trial, that report in a particular drafted manner is in general termed as chargesheet. Even if we go thoroughly through CrPC there is only one provision in which the word "Chargesheet" is mentioned, which talks about the power vested in the court regarding the postponement of any inquiry or adjournment of any trial in any given proceedings. Therefore, it can be said that the word "Chargesheet" is generally used for final report prepared by the police officer incharge of the investigation which is then submitted to the judicial magistrate having jurisdiction.

To define chargesheet in simple words it would be appropriate to quote it as a document which is drafted by the police officer incharge of the station, exercising his jurisdictional powers over the occurrence of criminal incidence which states the charges that are apparent through the wrongful act of the suspected person and which also contains all the detailed information regarding the occurrence of the criminal act. The manner and formatting of the chargesheet may vary from state to state depending upon the format prescribed by the state authorities but the soul of the document remains the same i.e it is the most important pillar in justice delivering system as it is not only a powerful tool in the hands of police but also plays a critical role in securing justice as the entire criminal trial is based on the information stated by the police office in the chargesheet.

Requirements of a Chargesheet :-
The condition that is sine qua non for the submission of chargesheet is that the law enforcement agency shall conduct a diligent probe into the matter reported through FIR and the probe shall suggest the happening of wrongful act prohibited by law. Therefore, it is obvious and clear that if the probe conducted suggests the happening of criminal act and the police officer have no other opinion suggesting a closure report. Then to initiate a criminal trial the law investigating agency shall expeditiously submit the final report in the court of justice having jurisdiction over the criminal matter.

Section 173(2), CrPC provides the contents of the chargesheet,

(a) The particulars of the person involved in committing the wrongful act and whether that person has been taken into custody by the enforcement agency (if yes is the person is in judicial custody or has been released on bail, if so mentioning of the fact that with or without sureties) or the suspect has been absconding.
(b) The particulars of the person affected by the act and the nature and grievance of the injury sustained by the victim and the opinion of the medical officer on the injury sustained (if any).
(c) The particulars of the person which witnessed the wrongful act, including their statement, stating their versions of the occurrence of the act.
(d) The detailed description of the facts and information, through which medium and by whom that was registered.
(e) The detailed observational view of the officer who have conducted the investigation on the occurrence of act.
(f) The charges made out against the suspects after due-investigation.
(g) Search report of the arrested person with detailed information that at what time, date and place the person was arrested and searched and in who's presence the search was conducted.
(h) Medical examination report of the arrested person (as per law the arrested person shall be examined every 24 hrs during the police custody)
(i) Recovery memo of anything recovered from the suspected/arrested person.
(j) Annexed with any MLR or FSL Report which is significant to the court during the trial.

Object and Importance of Chargesheet :-

The primary object of the chargesheet is that it is the most important part of the justice delivering system as it initiates the criminal proceedings or in simple words it can be said that it is very crucial as because trial against the accused can only be commenced after the submission of the final report by the police officer in the court of justice as stated in section 172(2), CrPC and therefore, it can be said the purpose of the chargesheet is to give a notice to the suspected person that after the diligent investigation into the matter the police is of the view that the person suspected is in some way related or involved in the wrongful act that is prohibited by law and the criminal charges are pointed against that suspected person and more importantly that suspected person is now called as the accused after the submission of chargesheet against him.

Another important factor of the chargesheet is that it enumerates all the discloser statements given by the accused as well as the witnesses to the police under section 161, CrPC whereas it is the matter of fact that section 161, CrPC when read with section 132 and section 147 of Evidence Act, 1872 clear indicates that the discloser statement is not a substantive evidence and is very weak in nature and to be true even weaker than the FIR because the statement recorded is neither on oath nor can it be crossed. Therefore can only be used for contradicting the witness that has turned hostile.

Practical Aspects :-

1. Time period for the submission of chargesheet :-

Theoretically if we go by the books then it is clearly mentioned in law that in case where the accused person is arrested and is in the custody of police for any such wrongful act that is prohibited by law and is punishable by more than 10 years of imprisonment, then in any such matter the chargesheet shall be submitted in the court of law within 90 days from the registration of FIR. Whereas, in any other wrongful act that is prohibited by law and is punishable the chargesheet shall be submitted in the court of law within 60 days from the registration of FIR. But, when we look into the practical aspect of it, the regular practice is such that the police have opted a way out and files the chargesheet within the time prescribed by law with a catch that the chargesheet submitted by them is generally incomplete in nature and then by obtaining a formal permission from the court of law the investigation is stretched beyond the prescribed time period and an additional report is submitted afterwards which generally is termed as supplementary chargesheet.

Whereas, the never discussed part of the practical law is that where the person is absconding or in case where the person have already been granted bail by the court then in such cases the police is not at all bound or concerned about filing the challan and it is commonly observed that police takes years

to file challan. On this very issue the apex court of India have time and again given its observation and directions to the central and state governments to strengthen the law.

1.1 Inordinate Delay :-

Inordinate delay in filing the final report/chargesheet may lead to fatal grievance, there is no straight jacket formula that can be applied by the court to find out whether it fits or not but the delay infers or gives raise to a suspicion that the investigation carried by the police is not fair or is done with some ulterior motive and the presiding judge have to use his judicious mind to reach a conclusion whether or not the delay is fatal in nature.

Practically it is seen that the inordinate delay in filing challan provides a space which is then through the means of corruption or nepotism used by the police to create lacuna in the case making the prosecution case weaker. In a way it can be said that this uninterrupted and ambiguous power of investigating officer is somewhere a cause of corruption in the law enforcement agency.

2. Further Investigation :-

There are several instances or situations, one of which as discussed above is that to comply with the conditions given in section 167, CrPCa incomplete chargesheet is submitted within 2 months at pre-mature investigation stage and further investigation is conducted to completely uncover the facts of the case. Similarly there are some other instances where the police have to conduct a further investigation, some of which are discussed here -

2.1 Direction of Magistrate :-

In the case of Bains it was iterated by the apex court that on submission of final report the magistrate shall apply his judicious mind as he is not bound by the conclusions drawn by the police in the chargesheet and his opinion may be completely different from that of the conclusions of the investigating officer and in such scenario the magistrate have the power to direct the investigating officer to conduct further investigation and then file a supplementary challan on the basis of the same. The most important point here is to understand that the magistrate may or may not take cognisance if the challan submitted by the investigating officer seems to be incorrect, he may direct the investigating officer for further investigation but in no circumstance have to the power to direct the officer to submit a particular kind of report or a report as to accord his own opinion.

Similarly, even after taking cognisance (post-cognisance) under section 190(1)(b), CrPC the magistrate have a discretionary power to order further investigation at any given point of time before the commencement of trial and this power can be exercised suo-moto by the court. In Dawood I. Kaskar it was clarified that the accused or the informant have no right whatsoever to demand re-investigation, it is the discretion of the court to do so. But, the court cannot interfere with the statutory powers of the investigating agency and hence the magistrate cannot order for a particular angle to be investigated.

2.2 Divulgence of new facts :-

Another instance is where some new facts have been reviled or some critical information has been unveiled suggesting that the view of the case may completely change when looked upon from this new perspective on the basis of this new fact or information and the investigating officer is satisfied with such fact or information, in such scenario the investigating officer may, by invoking his statutory power conduct further investigation. Here a question of prudence arises that, wether in such scenario the investigating officer have the suo-moto power to conduct or will he have to take prior permission from the court of law? This question was answered by the apex court stating that, the law docent mandate taking prior permission under section 178(8), CrPC by the investigating officer from the court of law for conducting further investigation and it is the statutory right of the police and this right can even be exercised after the submission of the challan before the judicial magistrate. Whereas, the apex court also suggested in the same case that, still as a matter of prudence the police shall take a formal permission from the court of law but if this formal permission is not taken then it would be a mere irregularity not of a nature to vitiate the trial.

3. Re-Investigation :-
Similar to that of chargesheet, the term re-investigation is no where mentioned in the criminal code, 1973. De-novo investigation is a fresh investigation from the scratch which wipes out the older investigation in-toto. In Vinay Tyagi the apex court discussed on the issue of re-investigation and have iterated that, the magistrate cannot order re-investigation into a matter and neither the law enforcement agencies have the power to conduct a re-investigation. Yes there are some exceptional circumstances where a fresh/re-investigation can be conducted by the order of the superior court only when the court is of the view that the investigation done is exfacia tainted or unfair or maladies and have done harm to the justice then in such circumstance for the interest of justice, by invoking the inherent powers of High Court under section 482, CrPC or of the Supreme Court under A142 of The Constitution of India, such an order can be passed. Whereas, passing of such order for conducting re-investigation docent means that the previous investigation is completely ruled out, in fact the previous investigation foams part of the record of the fresh investigation and in case the judge is of the view that the previous investigation needs to rejected in-toto then in such case he shall record his reasons of doing so in writing.

Another issue relating to re-investigation after the appearance of the accused was also addressed in the present case by the apex court and the previously followed judgment of Randhir Singh Rana was reversed stating that now even at the stage of post cognisance orders for further investigation or even re-investigation can be passed by the court of law.

Procedure on submission of Chargesheet :-
On submission of the chargesheet/challan by the investigating officer in the court, it is on the judge to examine the report submitted and use his judicious mind to arrive at a conclusion whether or not to accept the final report. Therefore, the judge may :-

(a) Accept the chargesheet/challan submitted by the police and may initiate the trial by taking cognisance under section 190(1)(b), CrPC.
(b) Reject the final report submitted by the police and may drop the proceedings.
(c) Direct the investigating officer under section 156(3) to conduct further investigation.

Rejection of the final report by the judge is not the end or a full-stop to the legal recourse as if the victim is affected by the rejection of final report he may proceed to file a protest petition against such rejection and then can put his side of the story before the presiding magistrate on which the court may decide in favour or against him depending upon the facts and circumstances.

Conclusion :-
To conclude it would be appropriate to quote that the reality is not always as beautiful as it is portrayed in the books and no matter how clean the theory may look there is always some strains when practical is conducted. Therefore, same goes with the concept of the final report, theoretically the code is drafted with a perfect procedure but the sad reality is that it is old and have not properly evolved with the advancement of time because of which the practice have not changed and police have founded out new ways of corruption and enriching themselves by favouring the suspects by intentionally planting loopholes in the chargesheet so that the accused can take advantage of the same and the case may be weakened against him. There are several issues that need to be addressed and the overall procedure needs some advancement.

Proposal for practical implementation :-
Practically the investigating procedure is porous and the police enjoys the monopoly of power when it comes to making a final report of any matter reported and investigated. There is a very famous saying in Hindi "पुलिसरस्सीकासांपऔरसांपकीरस्सीबनासकतीहै" this perfectly portrays the reality of the power enjoyed by the police while making final report. Therefore based on the practical scenarios which are

prevalent and generally followed by the police during the course of investigation and making of final report here are some proposed suggestions based on this study :-

(a) There shall be a check on the powers enjoyed by the police and the checking authority shall not be a beneficiary to police or to the parties.
(b) The medical examination report of the accused at the time of arrest shall not be excused and should be a mandatory mandate.
(c) The culture of taking signature on blank papers and then afterwards preparing the statement or any report or any memo shall come to an end by the way of digital verification.
(d) Further investigation on revelation of any new fact shall be with the permission of court on submission of a brief of that fact.
(e) Inordinate delay in submitting the challan shall be questioned and the investigating officer shall submit its reason in writing for the same in court.
(f) Judge shall judiciously look into the lacunas and loopholes left by the police in the chargesheet.
(g) Equity and good concise shall be on the same footing as that of law while taking cognisance for the issue of process.

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