2026 INSC 301

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1617 OF 2026
[Arising out of SLP (Crl.) No. 8035 of 2025]

SANDEEP YADAV … APPELLANT(S)

VERSUS

SATISH & OTHERS … RESPONDENT(S)

J U D G M E N T

R. MAHADEVAN, J.

1. Leave granted.

2. The present Criminal Appeal arises out of the order dated 18.02.2025 passed by the High Court of Judicature at Allahabad[1] in an application under Section 482 of the Code of Criminal Procedure, 1973[2], being Application No. 39342 of 2024. By the impugned order, the High Court allowed the application filed by Respondents 1 to 5 (accused persons), set aside the order dated 07.10.2024 passed by the Additional District and Sessions Judge, Court No. 5 Aligarh[3] in Sessions Trial No. 21 of 2008, and directed that the trial be

[1] Hereinafter referred to as "the High Court"
[2] For short, "Cr.P.C"
[3] Hereinafter referred to as "the trial Court"

proceeded afresh in accordance with the mandate of Sections 241 and 242 Cr.P.C.

3. Briefly stated, the facts giving rise to the present appeal are as follows:

3.1. An FIR being No. 5 of 2007 was registered on 04.01.2007 at Police Station Quarsi, District Aligarh on the complaint lodged by the first informant, Rao Singh, for offences punishable under Sections 147, 148, 149, 307, 302 and 120B of the Indian Penal Code, 1860[4] and Section 7 of the Criminal Law Amendment Act, 1932 against nine accused persons, namely, Tanuj (A1), Satish (A2 / Respondent No. 1), Bijendra Singh (A3 / Respondent No. 2), Omkar (A4 / Respondent No. 3), Nempal (A5), Subhash (A6 / Respondent No. 4), Preetam (A7), Mohkam (A8 / Respondent No.5) and Narendra Sharma (A9).

3.2. As per the prosecution case, a dispute had arisen between the complainant party and Narendra Sharma (A9) relating to the sale of land. It was alleged that on 04.01.2007, the accused persons, sharing a common intention, arrived on motorcycles, armed with licensed as well as illegal firearms, and opened fire using pistols, rifles and double-barrel guns upon the informant and his brothers, namely Nahar Singh, Shripal Singh, Krishnapal and Kuldeep, resulting in serious injuries. One of the injured, Nahar Singh, later succumbed to his injuries. The appellant herein is his son.

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[4] For short, "IPC"

3.3. Upon completion of investigation, a charge sheet was filed against the accused persons. The jurisdictional Magistrate, after taking cognizance, committed the case to the Court of Sessions for trial.

3.4. On 27.03.2009, the trial Court proceeded to frame charges, to which the accused pleaded not guilty. However, the order framing charges remained unsigned owing to the absence of one of the accused, namely, Bijendra Singh (A3). Thereafter, on 01.06.2009, all the accused persons, along with their counsel, were present before the court, and charges were framed, whereafter the matter was posted for recording of prosecution evidence on 15.06.2009. The trial thereafter proceeded in the normal course, with the prosecution examining its witnesses, and the matter eventually reaching the stage of recording statements of the accused under Section 313 Cr.P.C.

3.5. At that stage, it came to the notice of the learned Presiding Officer that the formal charge had inadvertently remained unsigned. In order to cure the said defect, the trial Court framed a formal charge afresh against all the accused persons on 11.09.2024.

3.6. Subsequently, an application was moved by the appellant seeking that the evidence already recorded be taken into consideration and that the trial proceed from the existing stage. By order dated 07.10.2024, the trial Court allowed the said application, observing that the accused were fully aware of the charges framed against them and had extensively cross-examined the prosecution witnesses. The Court further noted that two prosecution witnesses had expired,

one had turned hostile, and there existed a likelihood of other witnesses turning hostile; thus, recalling witnesses for fresh examination would seriously prejudice the prosecution. Accordingly, the matter was directed to proceed to the stage of recording statements under Section 313 Cr.P.C.

3.7. Aggrieved thereby, Respondent Nos. 1 to 5 (accused persons) invoked the inherent jurisdiction of the High Court under Section 482 Cr.P.C. The High Court, by the impugned order dated 18.02.2025, allowed the application and directed that the trial be conducted afresh.

3.8. Therefore, the appellant has preferred the present appeal challenging the direction issued by the High Court.

4. The learned senior counsel for the appellant submitted that all the accused persons were fully aware of the charges framed against them and had actively participated in the trial for more than fourteen years. During this period, they effectively cross-examined the prosecution witnesses at length. It was contended that the present attempt to seek a *de novo* trial is a calculated effort to exploit a technical procedural irregularity, particularly in view of the fact that two of the most crucial witnesses, namely Rao Singh (Informant / PW-1) and Kuldeep Singh (Injured witness / PW-3) have since expired.

4.1. It was urged that the present case is not one of absence of charge, as erroneously assumed in the impugned order. On the contrary, charges were duly

framed and the accused were fully aware both of the nature of accusations and the evidence led against them.

4.2. Elaborating further, learned senior counsel submitted that on 27.03.2009, charges were formally framed in the presence of all accused except Bijendra Singh (A3 / Respondent No. 2). Consequently, all other accused were put to notice of the charges on that date itself. Thereafter, on 01.06.2009, when all the accused persons, including Bijendra Singh, appeared before the court along with their counsel, the order sheet clearly recorded that charges stood framed against all of them. It was thus submitted that even Bijendra Singh was duly appraised of the charges on that date, and only thereafter did the trial proceed to the stage of recording evidence.

4.3. According to the learned senior counsel, since the charge had already been drafted on 27.03.2009, the same was read over and applied to all the accused on 01.06.2009. The mere fact that a fresh typed charge was not prepared or signed again does not lead to the conclusion that no charge had been framed.

4.4. It was further contended that the order dated 01.06.2009, which unequivocally records that charges had been framed against all the accused, was never challenged at any point of time over a span of more than fourteen years. The accused cannot now be permitted to contend that no charge had been framed from the inception of the trial.

4.5. The learned senior counsel emphasised that the legal requirement is not the obtaining of signatures of the accused on the formal charge, but ensuring that they are made aware of the accusations against them. The order sheet dated 27.03.2009, duly signed by the Presiding Officer, records the presence of all accused except Bijendra Singh. In such circumstances, it cannot be presumed that the charges were not read over or explained to them merely because the formal document does not bear their signatures.

4.6. As regards Bijendra Singh, it was reiterated that he was duly put to notice of the charges on 01.06.2009 in the presence of counsel. No objection was raised either on that date or at any subsequent stage, which clearly indicates that the accused had full knowledge of the charges and suffered no prejudice.

4.7. It was submitted that, at best, the omission to prepare or sign a fresh typed charge on 01.06.2009 constitutes a procedural irregularity. Such an inadvertent lapse cannot be elevated to a fatal defect so as to vitiate the entire trial.

4.8. The learned senior counsel further contended that the High Court failed to consider the significance of the order dated 01.06.2009 and instead proceeded solely on the basis that the formal charge dated 27.03.2009 was not signed by all accused.

4.9. It was also pointed out that the charges framed were identical to those set out in the charge sheet supplied to the accused, and no new or altered charge had been introduced so as to prejudice their defence. The extensive cross-

examination conducted by the accused over the course of the trial further demonstrates their complete awareness of the prosecution case.

4.10. The learned senior counsel additionally submitted that the present case is intertwined with a cross-case, wherein the accused in the present matter are prosecution witnesses, and vice versa. It was alleged that both sides entered into a compromise with a view to avoid conviction, pursuant to which PW-11 (Pappu) turned hostile in the present case, while Satish (A2 / Respondent No. 1) deposed as PW-7 in the cross-case also turned hostile. In furtherance of this arrangement, both sides filed applications under Section 311 Cr.P.C. on the same day seeking recall of witnesses, ostensibly to enable further witnesses to resile from their earlier statements. However, the trial Court rejected these applications, observing that they were intended solely to facilitate witnesses turning hostile.

4.11. It was submitted that having failed in their attempt under Section 311 Cr.P.C., the accused have now adopted a different strategy by raising a belated objection regarding the alleged defect in the framing of charge, with the ulterior motive of securing a *de novo* trial and thereby recalling witnesses.

4.12. The learned senior counsel contended that the present attempt is aimed at effacing the evidence recorded over a prolonged period of fourteen years, particularly when key witnesses have died. Significantly, the accused have neither pleaded nor demonstrated that they were misled in their defence on account of the alleged defect in the charge.

4.13. It was emphasised that no objection to the framing of charges was raised at any stage during the trial, and the issue surfaced only on 10.09.2024 when a technical irregularity was pointed out by the prosecution.

4.14. Reliance was placed on the Constitution Bench judgment in ***Willie (William) Slaney v. State of Madhya Pradesh***[5]**,** wherein it was held that even absence of a charge does not *ipso facto* vitiate a trial unless prejudice is shown. Referring to the principles underlying Sections 464 and 465 Cr.P.C., it was submitted that defects or irregularities in framing of charge are curable and cannot be treated as fatal unless they occasion a failure of justice.

4.15. In these circumstances, it was urged that permitting a fresh trial or recalling witnesses at this stage would seriously prejudice the prosecution and defeat the ends of justice, particularly when such a course is sought to be invoked on a belated and purely technical ground.

4.16. The learned senior counsel accordingly prayed that the impugned order be set aside and the trial be permitted to proceed from the stage at which it presently stands.

5. Supporting the case of the appellant, the learned counsel appearing for Respondent No. 6 - State of Uttar Pradesh submitted that the impugned order passed by the High Court suffers from serious legal infirmity.

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[5] AIR 1956 SC 116

5.1. It was contended that the direction for conducting a *de novo* trial has the effect of discarding the entire body of evidence recorded over a period of fourteen years. Such a course is neither warranted in law nor conducive to the ends of justice, particularly when the accused had actively participated in the proceedings throughout. It was further pointed out that during the pendency of the trial, certain crucial prosecution witnesses have expired, and there exists a real likelihood of other witnesses turning hostile if the trial is recommenced from the initial stage.

5.2. The learned counsel submitted that no prejudice whatsoever has been caused to the accused. The record clearly demonstrates that the accused were fully aware of the charges framed against them. The order dated 01.06.2009 specifically records that charges had been framed against all the accused in their presence and in the presence of their respective counsel. Significantly, the said order remained unchallenged for more than fifteen years.

5.3. The learned counsel emphasised that Section 464(1) Cr.P.C. expressly provides that no finding, sentence or order shall be invalidated merely on the ground of absence of charge or any error, omission, or irregularity therein, unless such defect has occasioned a failure of justice. In the present case, no such failure of justice has either been pleaded or demonstrated.

5.4. It was contended that the framing of charges afresh on 11.09.2024 was only a corrective step to cure a procedural irregularity. Such rectification does not *ipso facto* necessitate a retrial. A *de novo* trial is warranted only where the

defect has caused real and substantial prejudice to the accused. In the absence of such prejudice, the trial ought to proceed on the basis of the evidence already recorded.

5.5. Reliance was placed on ***Dinesh Seth v. State of NCT of Delhi***[6], wherein, this Court held that only such defect which affects the fundamental fairness of the trial, such as denial of a hearing or denial of an opportunity to defend, can be regarded as fatal, whereas procedural irregularities are curable in the absence of prejudice.

5.6. The learned counsel further emphasised that the criminal justice system must balance the rights of the accused with the interests of victims and society. Directing a retrial at this stage, particularly after the demise of key witnesses, would seriously prejudice the prosecution and undermine the administration of justice.

5.7. In view of the above, it was urged that the order of the trial Court dated 07.10.2024 be upheld and the impugned order of the High Court directing a *de novo* trial be set aside.

6. The learned senior counsel appearing for Respondent No. 1 (accused) contended that the procedure adopted by the trial Court by its order dated 07.10.2024 is wholly illegal, arbitrary and contrary to the settled principles governing criminal trials.

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[6] (2008) 14 SCC 94

6.1. It was submitted that in the present case, fresh charges were admittedly framed by the trial Court on 11.09.2024. Once such charges were framed, the earlier proceedings relating to the alleged framing of charges in 2009 lost their legal sanctity, particularly in view of the observations made by the learned Sessions Judge himself. The defect in the earlier proceedings was not a mere irregularity but a patent illegality, which could not be cured by resort to Section 464 Cr.P.C. Consequently, the trial was required to proceed afresh from the stage of framing of charge.

6.2. Elaborating further, it was submitted that the first order dated 27.03.2009, purporting to frame charges, was not signed by the Presiding Officer. On the same day, another order was passed which, though signed by the Presiding Officer, did not bear the signatures of all the accused persons. It contained the signatures of only five out of nine accused, namely Satish, Omkar, Preetam Singh, Narendra Sharma and Tanuj @ Rajesh. The remaining accused were not present when the charges were purportedly framed.

6.3. The learned senior counsel emphasised that Section 228 Cr.P.C. embodies both procedural and substantive safeguards. Procedurally, it mandates that charges must be framed before the trial commences. Substantively, it requires that the accused be asked whether he pleads guilty or claims to be tried. In the event of a plea of guilt, the court may convict; otherwise, it must proceed to trial.

6.4. It was contended that in the present case, this mandatory requirement was never complied with. There is nothing on record to indicate that the accused were ever called upon to plead guilty or not guilty after a valid framing of charge. In particular, insofar as those accused who were absent on 27.03.2009 are concerned, there is no material to show that their cases were segregated in exercise of powers under Section 317(2) Cr.P.C. Thus, the trial proceeded in clear violation of the statutory mandate.

6.5. It was further argued that such a foundational defect goes to the root of the matter and cannot be cured under Section 464 Cr.P.C. The trial Court, however, proceeded to allow the application of the prosecution and directed that the trial continue on the basis of evidence already recorded. In doing so, it overlooked the fundamental principle that the procedural foundation must precede the evidentiary process.

6.6. According to the learned senior counsel, once fresh charges were framed on 11.09.2024, it was incumbent upon the trial Court to strictly comply with Section 228(2) Cr.P.C. and call upon the accused to enter their plea. Upon denial of guilt, the court ought to have proceeded to record the prosecution evidence afresh. Instead, by directing reliance on previously recorded evidence, the trial Court acted in excess of its jurisdiction.

6.7. In these circumstances, it was submitted that the High Court rightly set aside the order dated 07.10.2024 and directed that the trial be conducted afresh in accordance with law.

7. The learned senior counsel appearing for Respondent No. 2, at the outset, submitted that in the Indian criminal justice system, courts are the repository of public faith and the guardians of fundamental rights. It was contended that strict adherence to due process is integral to a fair trial, and any departure from the procedure prescribed by law must be corrected to preserve the legitimacy of the judicial process.

7.1. It was submitted that the central issue in the present case concerns the validity of the order dated 27.03.2009 purporting to frame charges. According to the learned senior counsel, the said order was fundamentally defective, being unsigned and passed in the absence of certain accused, including Respondent No. 2. In such circumstances, the subsequent proceedings conducted without compliance with the mandatory requirements of Section 228 Cr.P.C stood vitiated.

7.2. The learned senior counsel further pointed out that the trial Court itself, upon noticing these defects, passed an order dated 02.09.2024 acknowledging the irregularities in the earlier proceedings. This order was not challenged by any party. Consequently, it was only on 11.09.2024 that charges were validly framed for the first time. Once this position is accepted, it necessarily follows that the trial had to recommence from the stage contemplated under Section 228 Cr.P.C.

7.3. Emphasising a distinct facet, learned senior counsel submitted that the subsequent order dated 07.10.2024 suffers from a clear jurisdictional error.

After framing charges on 11.09.2024, the trial Court entertained an application (Application No. 159-Kha) filed by the son of the deceased, seeking that statements of witnesses recorded prior to the framing of valid charges be treated as evidence. According to the learned senior counsel, by permitting such an application and directing reliance on previously recorded evidence, the trial Court effectively bypassed the statutory framework governing criminal trials. This amounts to a patent jurisdictional error and not a mere procedural irregularity.

7.4. It was further submitted that once fresh charges were framed on 11.09.2024, the accused acquired a statutory right to seek discharge, to be called upon to enter their plea, and to defend themselves in a trial conducted strictly in accordance with law. Permitting earlier recorded evidence to be read against them would seriously prejudice these rights and result in a failure of justice.

7.5. It was thus submitted that the High Court having taken note of these serious statutory violations, rightly exercised its inherent jurisdiction to set aside the order dated 07.10.2024 and direct that the trial shall proceed afresh in accordance with law.

8. Adopting the submissions advanced on behalf of Respondent Nos. 1 and 2, the learned senior counsel appearing for Respondent Nos. 3 to 5 submitted that the impugned order of the High Court represents a plausible and legally

sustainable view, is consistent with due process, and consequently, warrants no interference by this Court.

9. We have considered the submissions made by the learned senior counsel and the learned counsel appearing for the parties and perused the materials available on record.

10. This Court, by order dated 23.05.2025, stayed the operation of the impugned order passed by the High Court. The said interim protection was extended from time to time and continued to operate until the matter was finally reserved for judgment.

11. The incident dates back to 04.01.2007, pursuant to which an FIR was registered against nine accused persons. Upon completion of investigation, a charge sheet was filed under Sections 147, 148, 149, 307, 302 and 120B IPC and Section 7 of the Criminal Law Amendment Act, 1932. The present controversy arises from the manner in which charges were framed. Although an order purporting to frame charges was passed on 27.03.2009, it remained unsigned due to the absence of one accused, and a subsequent order was passed on 10.06.2009 to the effect that charges were framed. The trial thereafter proceeded without objection, with several prosecution witnesses being examined and cross-examined. Upon noticing defects in the earlier process of charge framing, including the absence of a valid order in terms of Section

228 Cr.P.C, charges were subsequently framed by the trial Court, *vide* order dated 11.09.2024.

11.1. The appellant, son of deceased Nahar Singh, sought permission for the trial to proceed on the basis of evidence already recorded. This application was allowed by the trial Court by order dated 07.10.2024, and the matter was fixed for recording statements under Section 313 Cr.P.C. Aggrieved, the accused approached the High Court, which by order dated 18.02.2025, set aside the order of the trial Court, and directed that the trial proceed afresh in accordance with Sections 241 and 242 Cr.P.C. This order is under challenge in the present appeal.

12. It is also pertinent to note that a counter-FIR being FIR No. 5A of 2007 dated 05.01.2007 arising out of the same incident, is pending before the Court of the Additional District and Sessions Judge, Court No. 05, Aligarh, and is stated to be at the stage of defence evidence.

13. On the basis of the pleadings and submissions advanced, the following issues arise for our consideration:

(i) Whether there was substantial compliance with the requirement of framing of charges in accordance with law?

(ii) Whether the defect, if any, in the framing or signing of the charges constitutes an illegality vitiating the trial, or a curable irregularity within the meaning of Sections 215 and 464 Cr.P.C.?

(iii) Whether the High Court was justified in directing that the trial be conducted afresh, despite the fact that the trial had substantially progressed and prosecution evidence had already been recorded?

14. ***Issue No. 1***

Whether there was substantial compliance with the requirement of framing of charges in accordance with law?

14.1. The purpose of framing a charge in a criminal trial is to provide the accused with clear and precise notice of the accusation so as to enable him to effectively prepare and present his defence. Sections 211 to 213 Cr.P.C. make it clear that a charge must disclose the nature of the offence and the essential particulars necessary to inform the accused of the case he is required to meet. The fundamental object of a charge is thus one of notice and not a mere ritualistic formality. Section 228 Cr.P.C. further contemplates that upon consideration of the record and hearing the parties, the Court shall frame a charge in writing.

14.2. The Constitution Bench in ***Willie (William) Slaney v. State of Madhya Pradesh*** (supra), observed that criminal procedure is intended to advance the ends of justice and not to frustrate them by technicalities. It was further held that where there is substantial compliance with the requirements of law and the accused has had a fair trial with full knowledge of the case against him, mere

procedural errors or omissions would not vitiate the trial unless prejudice is demonstrated. The following paragraph is pertinent:

> ***"5.*** *Before we proceed to set out our answer and examine the provisions of the Code, we will pause to observe that the Code is a code of procedure and, like all procedural laws, is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. The object of the Code is to ensure that an accused person gets a full and fair trial along certain well-established and well-understood lines that accord with our notions of natural justice. If he does, if he is tried by a competent court, if he is told and clearly understands the nature of the offence for which he is being tried, if the case against him is fully and fairly explained to him and he is afforded a full and fair opportunity of defending himself, then, provided there is substantial compliance with the outward forms of the law, mere mistakes in procedure, mere inconsequential errors and omissions in the trial are regarded as venal by the Code and the trial is not vitiated unless the accused can show substantial prejudice. That, broadly speaking, is the basic principle on which the Code is based."*

14.3. The settled position of law is that the validity of a charge must be tested on whether the accused understood the case against him and was afforded a fair opportunity to defend himself. In ***Main Pal v. State of Haryana***[7]**,** this Court explained that the object of framing a charge is to give the accused a clear idea of the accusations and the essential facts he must meet, and that courts must look to the substance rather than technicalities while assessing prejudice. The following paragraph is apposite:

> ***"17.*** *The following principles relating to Sections 212, 215 and 464 of the Code, relevant to this case, become evident from the said enunciations:*
>
> ***(i)*** *The object of framing a charge is to enable an accused to have a clear idea of what he is being tried for and of the essential facts that he has to meet. The charge must also contain the particulars of date, time, place and person against*

[7] (2010) 10 SCC 130

whom the offence was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(ii) *The accused is entitled to know with certainty and accuracy, the exact nature of the charge against him, and unless he has such knowledge, his defence will be prejudiced. Where an accused is charged with having committed offence against one person but on the evidence led, he is convicted for committing offence against another person, without a charge being framed in respect of it, the accused will be prejudiced, resulting in a failure of justice. But there will be no prejudice or failure of justice where there was an error in the charge and the accused was aware of the error. Such knowledge can be inferred from the defence, that is, if the defence of the accused showed that he was defending himself against the real and actual charge and not the erroneous charge.*

(iii) *In judging a question of prejudice, as of guilt, the courts must act with a broad vision and look to the substance and not to the technicalities, and their main concern 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."*

14.4. In ***Rafiq Ahmad v. State of Uttar Pradesh***[8], this Court reiterated that the purpose of framing of charge is to put the accused to notice regarding the offence for which he is being tried. It was further held that non-framing of a charge or defects therein would not *ipso facto* vitiate the trial and that the question must always be examined in the facts of each case to determine whether prejudice or failure of justice has been occasioned. The following paragraphs are apposite:

"39. *During the conduct of the trial, framing of a charge is an important function of the court. Sections 211 to 224 of Chapter XVII of the Code of Criminal Procedure, 1973 have been devoted by the legislature to the various facets of the framing of charge and other related matters thereto. Under Section 211, the charge should state the offence with which the accused is charged and should contain the other particulars specified in that section-*

[8] (2011) 8 SCC 300

...

41. *We have referred to these provisions primarily to indicate that the purpose of framing of a charge is to put the accused at notice regarding the offence for which he is being tried before the court of competent jurisdiction. For want of requisite information of the offence and details thereof, the accused should not suffer prejudice or there should not be failure of justice, as held by this Court in Shamnsaheb M. Multtani v. State of Karnataka [(2001) 2 SCC 577 : 2001 SCC (Cri) 358]. The requirements of putting the accused at notice and there being a charge containing the requisite particulars, as contemplated under Section 211 CrPC, has to be read with reference to Section 215 of the Code. Every omission would not vitiate the trial. ....*

42. *Dinesh Seth v. State (NCT of Delhi) [(2008) 14 SCC 94 : (2009) 2 SCC (Cri) 783] was a case where the accused was charged with an offence under Section 304-B read with Section 34 IPC but was finally convicted for an offence under Section 498-A. The plea of prejudice, on the ground that no specific charge under Section 498-A was framed and the court, while referring to the facts and circumstances of the case and the cross-examination of the prosecution witnesses found that it was unmistakably shown that the defence had made concerted efforts to discredit the testimony alleging cruelty, was rejected and the accused was punished for an offence under Section 498-A. This clearly demonstrates the principle that in all cases, non-framing of a charge or some defect in drafting of the charge per se would not vitiate the trial itself. It will have to be examined in the facts and circumstances of a given case. Of course, the court has to keep in mind that the accused "must be" and not merely "may be" guilty of an offence. The mental distance between "may be" and "must be" is long and divides vague conjectures from sure conclusions (Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : AIR 1973 SC 2622].*

14.5. Applying the aforesaid principles to the facts of the present case, the record indicates that on 27.03.2009, the trial Court prepared the formal charge and recorded that the charges had been typed but were not signed due to the absence of one of the accused. Subsequently, on 01.06.2009, the Court recorded the presence of all the accused along with their counsel and noted that the charges had been framed, after which the matter was fixed for prosecution

evidence. These contemporaneous proceedings clearly indicate that the charge was read over and explained to the accused, thereby satisfying the substantive requirement that they must understand the nature of the accusations.

14.6. The trial thereafter proceeded in the ordinary course and the prosecution examined several witnesses over a considerable period. The defence actively participated in the proceedings and extensively cross-examined the prosecution witnesses. The nature of such cross-examination demonstrates that the accused were fully aware of the prosecution case, including their alleged roles, the manner of commission of the offence, and the defence sought to be set up, including the plea of alibi. The continued participation of the accused in the trial without raising any objection to the alleged defect in the charge further reinforces that they were not misled in any manner.

14.7. This Court has consistently held that where the accused clearly understood the nature of the allegations and had a full opportunity to defend themselves, defects in the charge cannot be treated as fatal. In ***Soundarajan v. State represented by the Inspector of Police, Vigilance Anti-Corruption, Dindigul***[9] it was reiterated that omission to frame a proper charge or defects therein are not fatal unless it is shown that such omission has occasioned a failure of justice. The following paragraph is relevant:

> ***"16.*** *Under Section 464 CrPC, omission to frame a charge or any error in charge is never fatal unless, in the opinion of the court, a failure of justice has in fact been occasioned thereby. In this case, from the perusal of the cross-*

[9] (2023) 16 SCC 141

> *examination of PW 3 and other prosecution witnesses made by the advocate for the appellant, it is apparent that the appellant had clearly understood the prosecution case about the first alleged demand made on 6-8-2004 and the subsequent alleged demand and acceptance on 13-8-2004. There is no doubt that this is a case of omission to frame a proper charge, and whatever charge has been framed is, per se defective. However, by reason of the said omission or defect, the accused was not prejudiced insofar as his right to defend is concerned. Therefore, in this case, the omission to frame charge and/or error in framing charge is not fatal."*

14.8. In the present case, the record affirmatively establishes that the accused were fully aware of the nature of the accusations and had an effective opportunity to defend themselves. No prejudice whatsoever has been demonstrated. Therefore, we are of the considered view that there was substantial compliance with the requirement of framing of charges in accordance with law.

15. <u>Issue No. (ii)</u>

Whether the defect, if any, in the framing or signing of the charges constitutes an illegality vitiating the trial, or a curable irregularity within the meaning of Sections 215 and 464 Cr.P.C?

15.1. Section 215 Cr.P.C. provides that no error or omission in the charge shall be regarded as material unless the accused was in fact misled and a failure of justice has been occasioned. Section 464 Cr.P.C. expressly stipulates the effect of omission to frame a charge or any error, omission, or irregularity therein. It makes it clear that no finding, sentence or order shall be deemed invalid merely

on such ground unless in the opinion of the appellate or revisional court, a failure of justice has in fact been occasioned.

15.2. For ease of reference, the aforesaid provisions read as under:

> *"**215. Effect of errors**.—No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice."*
>
> ***"464. Effect of omission to frame, or absence of, or error in, charge**.-*
> *(1) No finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.*
> *(2) If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may-*
> *(a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommenced from the point immediately after the framing of the charge;*
> *(b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit:*
> *Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction."*

A plain reading of Sections 215 and 464 Cr.P.C. indicates that the legislative emphasis is not on the existence of a defect, but on its consequence. Even the absence of a formally framed charge does not vitiate the proceedings. The decisive test is whether the accused was misled in the conduct of his defence and whether a failure of justice has resulted.

15.3. Significantly, Section 464(2) Cr.P.C. itself provides the remedial course where such failure is found, including framing of a charge and recommencement

of trial from an appropriate stage, or directing a fresh trial. This clearly indicates that the legislative intent is to cure defects in a manner that preserves the proceedings to the extent possible, rather than to invalidate the entire trial on technical grounds.

15.4. The jurisprudence on this issue stands settled since the Constitution Bench decision in ***Willie (William) Slaney v. State of Madhya Pradesh*** (supra), wherein this Court drew a distinction between fundamental illegality and curable procedural irregularity. It was held that only those defects which go to the root of jurisdiction or occasion real prejudice can vitiate the proceedings, whereas defects of a lesser degree constitute irregularities requiring proof of failure of justice. In that decision, this Court observed:

> ***"83.*** *After all, in our considering whether the defect is illegal or merely irregular, we shall have to take into account several factors, such as the form and the language of the mandatory provisions, the scheme and the object to be achieved, the nature of the violation, etc. Dealing with the question whether a provision in a statute is mandatory or directory, Lord Penzance observed in (Howard v. Bodington [Howard v. Bodington, (1877) LR 2 PD 203], PD pp. 210-11)*
>
> > *"... There may be many provisions in Acts of Parliament which, although they are not strictly obeyed, yet do not appear to the Court to be of that material importance to the subject-matter to which they refer, as that the legislature could have intended that the non-observance of them should be followed by a total failure of the whole proceedings. On the other hand, there are some provisions in respect of which the Court would take an opposite view, and would feel that they are matters which must be strictly obeyed, otherwise the whole proceedings that subsequently follow must come to an end."*
>
> *These words can be applied mutatis mutandis to cases where there is no charge at all. The gravity of the defect will have to be considered to determine if it falls within one class or the other. Is it a mere unimportant mistake in procedure or is it substantial and vital? The answer will depend largely on the facts and*

> *circumstances of each case. If it is so grave that prejudice will necessarily be implied or imported, it may be described as an illegality. If the seriousness of the omission is of a lesser degree, it will be an irregularity and prejudice by way of failure of justice will have to be established.*

15.5. The distinction between an illegality and an irregularity is thus well established. An illegality is one that strikes at the root of jurisdiction or renders the trial fundamentally unfair, whereas an irregularity is a defect in procedure which does not vitiate the proceedings unless prejudice is demonstrated.

15.6. Applying these principles to the present case, the defect complained of does not rise to the level of a jurisdictional illegality. The record indicates that the charge was substantively framed on 01.06.2009 in the presence of the accused, and the trial thereafter proceeded without objection from the defence.

15.7. The omission of a signature on the charge, though a procedural lapse, does not render the proceedings invalid when the charge was in fact prepared, recorded, read over, and acted upon by the Court and the parties. The record affirmatively demonstrates that the accused had full knowledge of the accusations and effectively contested the prosecution case. The nature of cross-examination and the defence adopted leave no manner of doubt that the accused were neither misled nor prejudiced.

15.8. This position is consistent with the principles laid down in ***Kamalanantha and others v. State of Tamil Nadu***[10], where active participation

[10] (2005) 5 SCC 194

in trial and full awareness of the prosecution case was treated as decisive indicators of absence of prejudice despite defects in the charge.

15.9. The conduct of the accused is also significant. The objection to the alleged defect was raised belatedly in the year 2024, after substantial progress of the trial and after the demise of key eyewitnesses. Such delayed challenge is a relevant circumstance indicating absence of genuine prejudice, as recognized in *Willie Slaney (supra)*.

15.10. The record further shows that the defence had already availed full opportunity of cross-examination, as noted by the trial Court while rejecting the application under Section 311 Cr.P.C. The attempt to reopen the proceedings at such a belated stage reinforces the conclusion that the objection is technical in nature.

15.11. Acceptance of such belated challenges founded on procedural irregularities would defeat the object of criminal procedure, which is to advance the cause of justice and not to frustrate it on technical grounds.

15.12. In view of the above, this Court holds that the defect relating to the absence of signature on the charge does not constitute an illegality. It is, at best, a curable procedural irregularity within the ambit of Sections 215 and 464 Cr.P.C. In the absence of any demonstrated failure of justice, such defect cannot vitiate the proceedings.

15.13. Accordingly, this issue is answered in favour of the appellant by holding that the defect is curable and does not invalidate the trial.

16. Issue No. (iii)

Whether the High Court was justified in directing that the trial be conducted afresh, despite the fact that the trial had substantially progressed and prosecution evidence had already been recorded?

16.1. A direction to conduct a trial afresh implies that the earlier proceedings are set aside and the case is reopened from the initial stage as if no trial had taken place. The law is well settled that such a course is an exceptional one and can be resorted to only where it is indispensable to avert a miscarriage of justice. This power cannot be exercised to enable the prosecution to fill lacunae or to rectify deficiencies in its case. The governing consideration must always be the ends of justice.

16.2. In ***State of M.P. v. Bhooraji and others***[11] this Court emphasised the limited scope for directing a fresh trial and cautioned that appellate courts must not set aside proceedings merely on account of procedural irregularities unless such irregularity has resulted in a failure of justice. It was observed that Section 465 Cr.P.C. embodies a legislative mandate discouraging the annulment of proceedings on technical grounds in the absence of prejudice. The following paragraph is relevant:

> ***"15.*** *A reading of the section 465 makes it clear that the error, omission or irregularity in the proceedings held before or during the trial or in any enquiry were reckoned by the legislature as possible occurrences in criminal courts. Yet the legislature disfavoured axing down the proceedings or to direct repetition of*

[11] (2001) 7 SCC 679

> *the whole proceedings afresh. Hence, the legislature imposed a prohibition that unless such error, omission or irregularity has occasioned "a failure of justice" the superior court shall not quash the proceedings merely on the ground of such error, omission or irregularity."*

16.3. The expression "failure of justice" has been explained in ***Shamnsaheb M. Multtani v. State of Karnataka***[12], where this Court cautioned that the said expression should not be employed loosely and that courts must carefully ascertain whether there has been a real miscarriage of justice or whether the plea is merely a pretext. The following paragraph is apposite:

> *"23. We often hear about 'failure of justice' and quite often the submission in a criminal court is accentuated with the said expression. Perhaps it is too pliable or facile an expression which could be fitted in any situation of a case. The expression 'failure of justice' would appear, sometimes, as an etymological chameleon (the simile is borrowed from Lord Diplock in Town Investments Ltd. v. Deptt. of the Environment [(1977) 1 All ER 813: 1978 AC 359: (1977) 2 WLR 450 (HL)]). The criminal court, particularly the superior court should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage."*

16.4. The contours of the power to order a fresh trial were further elucidated in ***Ajay Kumar Ghoshal and others v. State of Bihar and another***[13]**,** wherein it was held that such a direction can be issued only in exceptional circumstances, such as where the trial is vitiated by serious illegality, lack of jurisdiction, or where the parties were prevented from leading material evidence, resulting in there being no real trial in the eyes of law. The relevant paragraph reads as under:

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[12] (2001) 2 SCC 577
[13] (2017) 12 SCC 699

> ***"12.*** *"De novo" trial means a "new trial" ordered by an appellate court in exceptional cases when the original trial failed to make a determination in a manner dictated by law. The trial is conducted afresh by the court as if there had not been a trial in first instance. Undoubtedly, the appellate court has power to direct the lower court to hold "de novo" trial. But the question is when such power should be exercised. As stated in Ukha Kolhe v. State of Maharashtra [Ukha Kolhe v. State of Maharashtra, (1964) 1 SCR 926 : AIR 1963 SC 1531: (1963) 2 Cri LJ 418], the Court held that: (AIR p. 1537, para 11)*
>
> > *"11. An order for retrial of a criminal case is made in exceptional cases, and not unless the appellate court is satisfied that the Court trying the proceeding had no jurisdiction to try it or that the trial was vitiated by serious illegalities or irregularities or on account of misconception of the nature of the proceedings and on that account in substance there had been no real trial or that the prosecutor or an accused was, for reasons over which he had no control, prevented from leading or tendering evidence material to the charge, and in the interests of justice the appellate court deems it appropriate, having regard to the circumstances of the case, that the accused should be put on his trial again. An order of retrial wipes out from the record the earlier proceeding, and exposes the person accused to another trial which affords the prosecutor an opportunity to rectify the infirmities disclosed in the earlier trial, and will not ordinarily be countenanced when it is made merely to enable the prosecutor to lead evidence which he could but has not cared to lead either on account of insufficient appreciation of the nature of the case or for other reasons."*

16.5. Similarly, in ***Nasib Singh v. State of Punjab and another***[14]***,*** this Court reiterated that retrial may be directed only in exceptional cases to avert miscarriage of justice, and not for mere procedural lapses or minor irregularities.

16.6. The settled test, therefore, is whether the earlier trial was so fundamentally flawed that it resulted in a complete failure of justice, or whether the defect is of such a nature that it cannot be cured without directing a fresh trial.

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[14] (2022) 2 SCC 89

16.7. Applying the aforesaid principles to the facts of the present case, the direction of the High Court to conduct the trial afresh was clearly unwarranted.

16.8. The record indicates that the trial had substantially progressed. Charges were framed in the presence of the accused on 01.06.2009, and the prosecution examined several witnesses over a prolonged period. The accused actively participated in the proceedings and extensively cross-examined the witnesses. The trial had reached an advanced stage and was nearing completion.

16.9. It is also a matter of record that two crucial eyewitnesses, namely PW-1 Ravi Singh and PW-3 Kuldeep Singh, had passed away by the time the High Court passed the impugned order. Directing the trial to be conducted afresh in such circumstances would irretrievably prejudice the prosecution by depriving it of vital evidence and would defeat, rather than advance, the cause of justice.

16.10. As discussed, the defect in the charge was, at best, a curable procedural irregularity falling within the ambit of Sections 215 and 464 Cr.P.C. No finding has been recorded by the High Court that such defect had occasioned a failure of justice or that the accused were misled in the conduct of their defence.

16.11. An order directing a fresh trial cannot be passed in a routine or mechanical manner. It must be supported by a clear and reasoned finding that the earlier proceedings were vitiated to such an extent that continuation thereof would result in miscarriage of justice. No such finding is discernible in the impugned order. In the absence of any demonstrated prejudice, the High Court

was not justified in invoking its jurisdiction under Section 482 Cr.P.C. to set aside the entire trial and direct that it be conducted afresh.

16.12. It must also be borne in mind that criminal proceedings cannot be prolonged indefinitely on account of curable procedural defects. The rights of victims and the interest of society in timely administration of justice are equally relevant considerations.

16.13. Accordingly, this issue is answered against the respondents, holding that the High Court was not justified in directing that the trial be conducted afresh after it had substantially progressed and evidence had already been recorded.

17. For the reasons stated above, we are of the considered view that the impugned judgment of the High Court cannot be sustained.

18. Accordingly, the Criminal Appeal is allowed. The impugned order dated 18.02.2025 passed by the High Court is set aside and the order dated 07.10.2024 passed by the trial Court is restored. The trial Court shall proceed with the matter from the stage at which it stood prior to the passing of the impugned order and shall make an endeavour to conclude the proceedings expeditiously in accordance with law.

19. Pending application(s), if any, shall stand disposed of.

.....J.
[AHSANUDDIN AMANULLAH]

……...……J.
[R. MAHADEVAN]

NEW DELHI;
MARCH 25, 2026.