**S**[**ection 397: Challenging Improper framing of Charges or Irregular trial**](http://legaldraftsjalan.blogspot.com/2018/09/section-397-challenging-improper.html)

Instructions for drafting

Parties to the Application:

The Accused / convict would be the Applicants herein; and the concerned State would be the Respondents, alongwith the complainant, if there was a prosecution on a private complaint.

Jurisdiction of Courts:

1.      The Sessions Court and the High Court have concurrent jurisdiction. However, Sessions Court must first be approached, despite the fact that if the Applicant loses in the Sessions Court, he cannot file second Revision, although he may adopt any other legal remedy like Application u/s 482 of CrPC, 1973 or may invoke Writ jurisdiction or Article 227 jurisdiction of High Court.

2.      For Sessions Court to exercise Revisional jurisdiction, the Magistrates Court must be situated within the local jurisdiction of the Sessions Court.

3.      For High Court to exercise Revisional jurisdiction, the Magistrates Court must be within its jurisdiction, that is to say, the Magistrate Court must be situated in the State in which High Court exercises its jurisdiction.

Material facts to be pleaded:

1.      The facts showing that “Charge” was not formally framed in respect of an offence, and a finding, sentence or order was passed by a Court of competent jurisdiction against the Applicant herein, in respect of the said offence, and, in fact, serious prejudice has been caused thereby to the Applicant herein.

2.      The facts showing that there was error, omission or irregularity in the framing of charges in respect of an offence, and a finding, sentence or order was passed by a Court of competent jurisdiction against the Applicant herein, in respect of the said offence, and, in fact, serious prejudice has been caused thereby to the Applicant herein.

3.      The facts showing that there was misjoinder of charges, in respect of certain offences, and a finding, sentence or order was passed by a Court of competent jurisdiction against the Applicant herein, in respect of those offences, and, in fact, serious prejudice has been caused thereby to the Applicant herein.

4.      The facts showing that there was error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or there was error, or irregularity in any sanction for the prosecution, and failure of justice has in fact been occasioned thereby to the Applicant herein.

5.      The facts showing that no valid charge could be framed against the Applicant herein, having regards to the facts of the case and having regard to certain facts stands proved.

Limitation period:

The Limitation period is 90 days from the date of the impugned order (the order which is under challenge). The time taken in obtaining the certified copy of the impugned order is allowed to be deducted while calculating the limitation period. If there is delay in approaching the Court, a condonation Application may be filed alongwith the Revision Application, setting out therein the number of days of delay and the reasons / grounds to condone the said delay.

Court fee:

The Court fee would vary from State to State. In Maharashtra, the Court fee is paid on the basis of number of pages of documents annexed with the Revision Application, and Rs. is charged for every two pages.

Compliance to conditions, if any:

If applicable: There is an express legal bar engrafted in the CrPC, 1973, or under \_\_\_\_\_\_\_  (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

Verification Clause:

1.      Whereas Parties to the litigation makes series of submissions and allegations against each other, it is a basic requirement of law that Parties must specify in the Verification clause, by reference to the numbered paragraphs of their pleadings, as what facts are which are true to their own knowledge; and what facts are based on the information, belief and legal advice.

2.      Further, Section 297(2) of CrPC, 1973, among other things, stipulates that whoever party is obliged to file an Affidavit in any of the proceedings before the Court, the said Party is obliged to specify in his said Affidavit, by reference to the numbered paragraphs of his affidavit, such facts as the deponent is able to prove from his own knowledge and such other facts he has reasonable ground to believe to be true; and in the latter case, the deponent is obliged to state the grounds of such belief. In the absence of such compliance, a proceedings cannot be said to be duly instituted, and is vulnerable to challenge to be dismissed. Affidavit is required to be filed in Complaints filed u/s 200 of CrPC, 1973, and in other proceedings initiated before the Magistrates Court, Sessions Court or before the High Court.

3.      The person verifying his pleadings is obliged to sign. The Person verifying is also required to state the date and the place at which it was signed.

4.      This requirement of law is based on the principle that whoever comes before the Court, must come with the clean hands and also must come with certain facts and his case should not be based on general, vague or speculative facts.

5.      Therefore, the law requires that whatever is stated by the Party in his proceedings, he must clarify that which statement is made from his own knowledge and which statement is made, based on other information, or based on legal advice.

6.      This is significant from another perspective, where in cases, if the submissions made by the Party were turned out to be false, then, the said Party may be held guilty of perjury / contempt of the Court for knowingly making false statement and misleading the Court, in cases, where he had verified the concerned false Paras emanating from his own knowledge.

7.      The profound object of this verification clause therefore is to prevent or cease frivolous submissions / Applications.

8.      The consequences of not verifying correctly may entail penal consequences. The Apex Court, comprising three Judges Bench, in the case of S.R. Ramaraj Versus Special Court, Bombay, 2003, have inter alia, observed that, “A person is under a legal obligation to verify the allegations of fact made in the pleadings and if he verifies falsely, he comes under the clutches of law”.

BEFORE THE HON’BLE SESSIONS COURT / IN THE HIGH COURT OF JUDICATURE AT \_\_\_\_\_\_\_

AT

CRIMINAL REVISION APPLICATION NO.            OF 20\_\_

IN

…………. / / …………

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_                                                  …..Applicants

(Original Accused)

Versus

(1) The State of Maharashtra

(2) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_                                          ….. Respondents

(Resp No.2 being the Original Complainant)

In the matter of Revision Application u/s 397 / 401 of CrPC in respect of impugned Order dated \_\_\_\_                  passed in \_\_\_\_\_ by \_\_\_\_\_ of                    Court at………….

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\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Advocate for the Applicant

OR

Applicant – In – Person

BEFORE THE HON’BLE SESSIONS COURT / IN THE HIGH COURT OF JUDICATURE AT \_\_\_\_\_\_\_\_

AT

CRIMINAL REVISION APPLICATION NO.            OF 20\_\_

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…………. / / …………

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Mr. / Ms.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Advocate for the Applicant

OR

Applicant – In – Person

Office Notes, Office Memorunda of Corom. Appendices. Court’s order or Court’s of Judge’s Direction

(This page is called proforma as stated in the Index. In sub-ordinate courts, on each of the hearing date, a very brief Note is prepared in respect of each of the matter which are listed on that day. In this Note, the Presiding Judge / Magistrate records (a) Name of the parties / Advocates who appeared on that day, (b) Applications or Affidavits or any other document filed, if any filed by any of the parties, (c) brief direction to both or any of the party to take any step in furtherance of the proceeding, (d) and next date of hearing along with the recording of next stage of the case. The blank pages are annexed with the Complaint bearing only the short title of the case. The aforesaid brief Note is pasted on this page. This Roznama is very important source of information (for recalling / refreshing) for both the parties as well as for the presiding Judge to acquaint themselves about the past happenings in the case.)

BEFORE THE HON’BLE SESSIONS COURT / IN THE HIGH COURT OF JUDICATURE AT BOMBAY

AT

CRIMINAL REVISION APPLICATION NO.            OF 20\_\_

IN

…………. / / …………

(1)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

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\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)                                          .... Applicants

(Original Accused)

Versus

(1)The State of \_\_\_\_\_)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

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\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)                                          .... Respondents

(Resp No.2 being the Original Complainant)

In the matter of Revision Application u/s 397 / 401 of CrPC in respect of impugned Order dated \_\_\_\_                  passed in \_\_\_\_\_ by \_\_\_\_\_\_ of                    Court at………….

THE HUMBLE REVISION

APPLICATION OF THE

APPLICANT ABOVENAMED

1.      The facts of the case –

(a)

(b)

(c)

(d)

2.      Being aggrieved by the aforesaid impugned Order / judgment dated \_\_\_\_\_\_ Applicant begs to prefer this Revision Application on the grounds set out hereinafter.

3.      Infirmities in the impugned finding, sentence or Order: (The Applicant needs to deal with the observations made in the impugned findings, sentence or order, and assailing those, either on facts or on law or on both.

4.      GROUNDS FOR RELIEF (as may be applicable to the facts of the case)

a)     It is a case where “Charge” was not formally framed in respect of an offence, and a finding, sentence or order was passed by a Court of competent jurisdiction against the Applicant, in respect of the said offence, and, in fact, serious prejudice has been caused to the accused thereby; or

b)     It is a case where there was error, omission or irregularity in the framing of charges in respect of an offence, and a finding, sentence or order was passed by a Court of competent jurisdiction against the Applicant, in respect of the said offence, and, in fact, serious prejudice has been caused to the accused thereby; or

c)     It is a case where there was misjoinder of charges, in respect of certain offences, and a finding, sentence or order was passed by a Court of competent jurisdiction against the Applicant, in respect of those offences, and, in fact, serious prejudice has been caused to the accused thereby; or

d)     It is a case where there was error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, and failure of justice has in fact been occasioned thereby; or

e)     It is a case where no valid charge could be framed against the Applicant herein having regards to the facts of the case and having regard to certain facts stands proved.

5.      The main points to be emphasized upon:

6.      Jurisdiction of the Court: A Para narrating facts that this court has jurisdiction to entertain the present Application.

7.      The Applicant states that no other Revision Application, except the present one, has been filed against the impugned finding, Sentence, Order, before this Hon’ble Court.

8.      The Applicant craves leave to refer and rely upon certain exhibited documents, and would rely upon authorities, in support of Applicant’s case.

9.      The Applicant craves leave to add, amend, delete any of the foregoing Paras / grounds, with the leave of this Hon’ble Court.

10. That the present Revision Application has been filed within the prescribed period of limitation.

11. The Applicant therefore, most humbly prays –

a)     To call for the records and proceedings of this Case from the Ld. Magistrates Court / Sessions Court;

b)     To quash and set aside the impugned finding / Sentence / Order dated \_\_\_\_\_;

c)     Be pleased to pass order that a charge be framed and that the trial be recommenced from the point immediately after the framing of the charge.

d)     Be pleased to direct a new trial to be had upon a charge framed in whatever manner the Hon’ble Court thinks fit;

e)     Be pleased to quash the conviction recorded against the Applicant herein;

f)      Pending the hearing and final disposal of the present Application, the operation of impugned finding / Sentence / Order be stayed;

g)     The impugned finding, sentence be reversed or altered to the extent \_\_\_\_\_\_\_\_\_\_ ;

h)     To pass such other and further Order and to grant such further reliefs as this Hon’ble Court deems fit in the facts and circumstances of the case.

FOR THIS ACT OF KINDNESS THE APPLICANT AS IN DUTY BOUND SHALL EVER PRAY FOR

\_\_\_\_\_\_\_\_\_\_\_\_

Applicant

\_\_\_\_\_\_\_\_\_\_\_

Advocate for the

Applicant

VERIFICATION

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_the Applicant do hereby state on solemn affirmation that what is stated in the paragraphs \_\_\_ to \_\_\_\_ is true to my own knowledge and what is stated in paragraphs \_\_\_\_\_\_ to \_\_\_\_\_\_ is based on the information, belief and legal advice, and I believe the same to be true and correct.

(Solemnly affirmed at \_\_\_\_\_\_\_\_\_)

This       day of           20            )

Deponent

Identified / Interpreted / Explained

By me

\_\_\_\_\_\_\_\_\_\_\_\_\_

Advocate

Before me

VAKALATNAMA

BEFORE THE HON’BLE SESSIONS COURT / IN THE HIGH COURT OF JUDICATURE AT \_\_\_\_\_\_\_\_\_

AT

CRIMINAL REVISION APPLICATION NO.            OF 20\_\_

IN

…………. / / …………

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_                                                  …..Applicants

(Original Accused)

Versus

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To,

Registrar / Registrar General

The Sessions Court / \_\_\_\_\_ High Court

Sir / Madam,

             I / We,  \_\_\_\_\_\_\_\_\_\_\_\_, the Applicant/s, in the above case, do hereby appoint Mr. \_\_\_\_\_\_\_\_\_\_\_\_, Advocate, to act, appear and plead for me and on my behalf in the above matter.

In witness whereof, I / we have set and subscribed my / our hands to this writing at \_\_\_\_\_\_

            Dated this     day of \_\_\_\_\_\_ 20\_\_\_\_

                                                                                                \_\_\_\_\_\_\_\_\_\_

Applicant

Accepted,

Mr.\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Advocate for \_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Mobile No:\_\_\_\_\_\_\_\_

Email Id:\_\_\_\_\_\_\_\_\_

Adv. Code:

BEFORE THE HON’BLE SESSIONS COURT / IN THE HIGH COURT OF JUDICATURE AT \_\_\_\_\_\_\_\_\_

AT

CRIMINAL REVISION APPLICATION NO.            OF 20\_\_

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…………. / / …………

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LIST OF DOCUMENTS RELIED UPON

1.      Exhibit “A”:

2.      Exhibit “B”:

3.      Exhibit “C”:

4.      Exhibit “D”:

5.      Exhibit “E”:

6.      The documents referred and relied upon in the Application;

7.      The documents in the possession of the Respondents;

8.      Any other document, with the leave of the Hon’ble Court.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Advocate for the Applicant

OR

Applicant – In – Person

The copy Exhibits / documents annexed in the Application

BEFORE THE HON’BLE SESSIONS COURT / IN THE HIGH COURT OF JUDICATURE AT \_\_\_\_\_\_\_\_\_

AT

CRIMINAL REVISION APPLICATION NO.            OF 20\_\_

IN

…………. / / …………

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_                                                  …..Applicants

(Original Accused)

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AFFIDAVIT IN SUPPORT OF THE APPLICATION

I, \_\_\_\_\_\_Adult, aged about\_\_\_ Indian Inhabitant of \_\_\_\_\_\_\_ / authorized signatory, the Applicant herein residing at \_\_\_\_\_\_\_ do hereby state on solemn affirmation as under –

1.      I say that I am conversant with the facts of the present Application I am therefore able to depose to the same. I have filed the above Application seeking prayers more particularly mentioned in the Application.

2.      I, for the sake of brevity, repeat and reiterate each and every statement, submissions and contentions made in the Application as if the same are specifically set out herein and form part and parcel of this affidavit. I affirm and verify the correctness of the each and every statement, submissions and contentions as set out in the Application.

3.      I further say that, facts which are set out in the Application at Paras \_\_\_\_\_\_ are based on information and belief and I believe it to be true, on the ground that \_\_\_\_\_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_

Applicant

\_\_\_\_\_\_\_\_\_\_\_

Advocate for the

Applicant

VERIFICATION

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_the abovenamed Applicant do hereby verify the contents of what is stated in the aforesaid paragraphs \_\_\_ to \_\_\_\_ are true and correct to my knowledge and I believe it to be true and correct; and nothing stated herein is false and nothing has been concealed.

(Solemnly affirmed at Mumbai)

This       day of           20            )

Deponent

Identified / Interpreted / Explained

By me

\_\_\_\_\_\_\_\_\_\_\_\_\_

Advocate for the ……