**397 , 401 of CrPC Challenging unlawful Rejection of 156(3) Application**

Section 397: Challenging unlawful Rejection of 156(3) Application

Instructions for drafting

Parties to the Application:

The Applicant in the 156(3) Application is also the Applicant in 156(3) Application; and the Respondents would be the concerned State, and also the proposed accused.

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 allegations made in 156(3) Application, prima facie makes out a cognizable offence against Respondent No.2, justifying an investigation by police;

2.      The allegations  made in 156(3) Application and other evidences and materials, accompanying the said Application clearly discloses a cognizable offence, justifying an investigation by police;

3.      That the impugned Order is contrary to law and contrary to material and  evidences which are on record;

4.      That the Ld. Magistrate committed an error in appreciating the material evidences on record;

5.      That the Ld. Magistrate failed to appreciate the credible material evidence on record.

**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 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.5/- 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 Complainants)

Versus

(1) The State of Maharashtra

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

(Resp No.2 being the Original proposed Accused )

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

AT

CRIMINAL REVISION APPLICATION NO.            OF 20\_\_

IN

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\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)                                          .... Applicants / (Original Complainants)

Versus

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

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THE HUMBLE REVISION

APPLICATION OF THE

APPLICANT ABOVENAMED

1.      The facts of the case are –

(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 Order: (The Applicant needs to deal with the observations made in the impugned order, and the findings recorded in pursuant thereto, and assailing those observations and findings, either on facts or on law or on both.  Please refer (Link of Illegal / perverse orders of the Court, grievance Sr no.19).

The Parameters laid down by Apex Court for Registration of FIR are –

The Apex Court in the case of State of Haryana versus BhajanLal (1992). In this case the HC had quashed the FIR. The SC set aside the HC order and held as follows – It may further be noted that, for the registration of FIR u/s 154, the word information does not qualify with the word reasonable or credible. At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence, the Police officer concerned cannot embark upon an enquiry as to whether the information laid by the informant is reliable and genuine or otherwise refuse to register a case on the ground that the information is not reliable or credible. Reasonableness or credibility of the said information in not a condition precedent for registration of a case. Also – Gurmito versus State of Punjab 1996 (P & H); RanbirYadav versus State of Bihar 1995 (SC).

It is submitted that the Applicant has aptly spelled out the incriminating acts of the proposed accused / Non Applicants in their Criminal Application and submissions made thereafter during that proceedings, and for the sake of brevity do not repeat the same. Hereto annexed and marked as EXHIBIT “B” the copy of Criminal Application \_\_\_\_\_\_; EXHIBIT “C” the copy of Legal Submissions filed in the said Application.

Where in case it is argued that the allegations made in the Application 156(3) prima facie made out a cognizable offence, then, with the aid of table of offence stated hereinafter, it may be demonstrated that the acts and omissions attributed towards the present Applicants clearly satisfies principal ingredient of each of the offences alleged of.

4.       The Applicant further says that the table hereinbelow, in the first column lay down certain ingredients of the applicable offence / facts to be proved, and, then in the next column, spells out the facts alleged against the Respondent No.2, clearly indicating that offence has been committed by Respondent No.2. (Therefore, the Applicant has to set out in the table, against each of the ingredient, the relevant portion of his Application / pleading, which would demonstrate that the requirement of respective ingredient of the offence has been duly met, or in the alternative, the Applicant may mention the Para number of his Application which sets out the factual aspect of the present case indicating the existence of the particular respective ingredient of the offence.)

5.      It is submitted that after the registration of FIR, the Police conduct an investigation under chapter XII of the code. The police are empowered to perform several acts including to take statements of witnesses u/s 161 of the code; to conduct searches and seizures u/s 100, 165 and 102 of the code; to call for the production of documents and other things u/s 91, 94 of the code; require the attendance of witnesses u/s 160 of the code.

The Applicant most respectfully submits that the object of every investigation is to find out whether the offence alleged have been committed, and if so, who has committed it.

The nature and the attributes of an FIR: The Apex Court in the case of Rotash versus State of Rajasthan (2007), inter alia, observed to say that – The First Information Report, as is well known, is not an encyclopedia of the entire case.  It need not contain all the details. (Para 15).

6.      Therefore, a strong case for the investigation by Police was made out in respect of the offence of \_\_\_\_\_\_\_\_ etc, committed by the proposed accused / Non Applicants in the 156(3) Application.

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

a)     The allegations made in 156(3) Application, prima facie makes out a cognizable offence against the Respondent No.2;

b)     The allegations  made in 156(3) Application and other evidences amd materials, accompanying the said Application clearly discloses a cognizable offence, justifying an investigation by police;

c)     That the impugned Order is contrary to law and contrary to material facts and evidences which are on record;

d)     That the Ld. Magistrate committed an error of law in appreciating the material evidences on record;

e)     That the Ld. Magistrate failed to appreciate the credible material evidence on record…

f)      Any other ground as deem necessary in the facts of the case, including the ground of jurisdiction of the Magistrates Court to pass impugned order.

8.      There could be many other grounds on which the impugned order may said to be bad in law. Please refer (Link of Illegal / perverse orders of the Court, grievance sr no.19).

9.      The main points to be emphasized upon:

10. The Applicant further submits that only a proper investigation of the case would reveal the culpability of the proposed Accused. The Applicant therefore submits that gross miscarriage of justice would occasion if the reliefs prayed are not granted.

11. The Applicant submits that it is in the interest of the civilized communities that crimes should not go unpunished. Moreover, a crime is a wrong which the State deems injurious to the public at large, and the law must reach on all miscreants who take the laws of the land for granted.

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

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

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

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

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

17. The Applicant therefore, most humbly prays –

a)     That the impugned Order dated \_\_\_\_\_\_ be quashed and set aside;

b)     That \_\_\_\_\_\_ Police station, through their SHO, be directed to Register FIR against the Non Applicants / Proposed Accused, as set out in the Criminal Application No.\_\_\_\_\_\_\_\_\_;

c)     Any other relief as this Hon’ble Court deems fit having regard to 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\_\_

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…………. / / …………

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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 Mumbai.

            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 \_\_\_\_\_\_\_\_\_

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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\_\_

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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

Applicant

Before me.