**397 , 401 of CrPC** Summons by Magistrates Court

Section 397: Challenging Summons by Magistrates Court u/s 204

Instructions for drafting

Parties to the Application:

The Accused made in Criminal complaint made u/s 200 or 190 are the Applicants herein; and, the original complainants and the concerned State would be the Respondents.

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 the complaint, even, if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence;

2.      The allegations made in the complaint and the evidences furnished in support of the same, do not disclose the commission of any offence by the Applicants, and do not make out any case against the Applicant;

3.      That there are merely general allegations against the Applicants, without any specific attribution of incriminating acts and omissions, and the whole complaint against the present Applicants is based on speculation of facts, assumptions, imaginations and guessing;

4.      Complaint contains “bare allegation” without attributing “acts or omission” on the part of the accused person, towards the commission of the offences, that is to say, there is not an iota of any incriminating material against the accused so as to warrant the issuance of summons;

5.      There are unimpeachable evidence to show that the offence could not have been committed by the accused person as alleged, and otherwise, the accused would be needlessly harassed of the inevitable agony of criminal trials.

6.      That there are no evidences adduced against the Applicants, and therefore there were no sufficient grounds to proceed against the Applicants, and therefore, the essential requirement of law set out in section 204 of CrPC, 1973 is not satisfied;

7.      That the evidences adduced against the Applicants are so weak and grossly inadequate to call the Applicants to face criminal prosecution;

8.      That requirement of law contemplated u/s 202 of CrPC, 1973 is not complied with;

9.      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;

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.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 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 Ld. Magistrate of                    Court at………….

INDEX

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| SR.NO | DATE | EXHIBIT | PARTICULARS | PAGE    NOS |
| 1 |  |  | Proforma (Roznama) | A to D |
|  |  |  | Application | 1 to |
|  |  |  | Vakalatnama (If any) |  |
|  |  |  | List of Documents |  |
|  |  | “A” |  |  |
|  |  | “B” |  |  |
|  |  | “C” |  |  |
|  |  | “D” |  |  |
|  |  | “E” |  |  |
|  |  | “F” |  |  |
|  |  | “G” |  |  |
|  |  |  | Affidavit in support of the Application |  |

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

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

…………. / / …………

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

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

(Original Accused)

Versus

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

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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 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).

4.      Where in case it is argued that the allegations made in the Application 156(3) do not constitute any 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 do not constitute any offence.

5.       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 Applicant, clearly indicating that no offence can said to be committed by the present Applicants. (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 is not 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 non-existence of the particular respective ingredient of the offence.)

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

a)     The allegations made in the complaint, even, if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence;

b)     The allegations made in the complaint and the evidences furnished in support of the same, do not disclose the commission of any offence by the Applicants, and do not make out any case against the Applicant;

c)     That there are merely general allegations against the Applicants, without any specific attribution of incriminating acts and omissions, and the whole complaint against the present Applicants is based on speculation of facts, assumptions, imaginations and guessing;

d)     Complaint contains “bare allegation” without attributing “acts or omission” on the part of the accused person, towards the commission of the offences, that is to say, there is not an iota of any incriminating material against the accused so as to warrant the issuance of summons;

e)     There are unimpeachable evidence to show that the offence could not have been committed by the accused person as alleged, and otherwise, the accused would be needlessly harassed of the inevitable agony of criminal trials.

f)      That there are no evidences adduced against the Applicants, and therefore there were no sufficient grounds to proceed against the Applicants, and therefore, the essential requirement of law set out in section 204 of CrPC, 1973 is not satisfied;

g)     That the evidences adduced against the Applicants are so weak and grossly inadequate to call the Applicants to face criminal prosecution;

h)     That requirement of law contemplated u/s 202 of CrPC, 1973 is not complied with;

i)       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;

j)       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).

7.      The main points to be emphasized upon:

The Hon’ble Apex Court in the case of Pepsi  Foods  Ltd.  and  Anr.  v. Special Judicial  Magistrate & Ors (1998), inter alia, observed  as –

Summoning of an accused in a criminal cases  is  a  serious matter.  Criminal law  cannot  be set  into  motion  as  a  matter  of course.  It  is  not  that  the complainant  has  to  bring  only two  witnesses  to  support  his allegations in the complaint to have  the  criminal  law  set  into motion.  The  order  of  the magistrate summoning the accused must reflect that he has applied his  mind  to  the  facts  of  the case  and  the  law  applicable thereto.  He  has  to  examine  the nature  of  allegations  made  in the  complaint  and  the  evidence both  oral  and  documentary  in support  thereof  and  would  that be  sufficient  for  the complainant  to  succeed  in bringing  charge  home  to  the accused.  It  is  not  that  the Magistrate is a silent spectator at  the  time  of  recording  of preliminary  evidence  before summoning  of  the  accused. Magistrate  has  to  carefully scrutinize  the  evidence  brought on  record  and  may  even  himself put questions to the complainant and  his  witnesses  to  elicit answers  to  find  out  the truthfulness  of  the  allegations or otherwise and then examine if any  offence  is  prima  facie committed  by  all  or  any  of  the accused.

In a very recent judgment, the remarkable observations of Apex Court deserves a mention. In the case of Sunil Bharti Mittal Versus Central Bureau of Investigation [2015], the Apex Court observed to say that – Para 32: Sine Qua Non for taking cognizance of the offence is the application of mind by the Magistrate and his satisfaction that the allegations, if proved, would constitute an offence. It is, therefore, imperative that on a complaint or on a police report, the Magistrate is bound to consider the question as to whether the same discloses commission of an offence and is required to form such an opinion in this respect. When he does so and decides to issue process, he shall be said to have taken cognizance. At the stage of taking cognizance, the only consideration before the Court remains to consider judiciously whether the material on which the prosecution proposes to prosecute the accused brings out a prima facie case or not.

Article 21 of the Constitution of India commands that “No person shall be deprived of his life and liberty” except according to the procedure established by law. In Criminal jurisprudence, the only safeguard available to an innocent person is the “scrupulous and strict adherence” to the procedure prescribed. Thus, whenever, any of the “prescribed procedure” is not “duly followed and complied with”, and where such non compliance, expressly or by necessary implication, frustrate the personal liberty of the accused person, the violence to fundamental right of the accused enshrined under Article 21 of the Constitution is imminent.

The Applicant submits that institution of any judicial proceedings against a person carries an implicit degree of coercion and no judicial proceedings should be triggered at the whims and fancies of the litigants, which otherwise amounts to sheer harassment, embarrassment, and substantial expenses to the person saddled with litigation.

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

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

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

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

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

13. The Applicant therefore, most humbly prays –

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

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

c)     Pending the hearing and final disposal of the present Application, the operation of impugned Order be stayed;

d)     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

…………. / / …………

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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………….

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

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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…………. / / …………

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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 ……