**Revision Application u/s 397 / 401**

**Section 397: Challenging unlawful dismissal of Complaint u/s 256 CrPC**

Instructions for drafting

Parties to the Application:

The original complainant would be the Applicant herein; and the concerned State would be the Respondents alongwith the persons who were made Accused in the 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:**

Section 256 of CrPC, 1973, stipulates that if the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day. Provided that where the complainant is represented by a pleader of by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.

1.      The limited issue in these Revision Application is to satisfy the Court that the order of dismissal of complaint and acquittal of accused, due to absence of complainant on the date of hearing, is harsh / bad in law / against the interest of justice. The other grounds could be –

2.      That the circumstances were such which were beyond the control of the Applicant / complainant to remain present on the date of hearing;

3.      That the personal attendance of the Applicant / complainant on the said date of hearing was not necessary, and the Ld. Magistrate, in the judicious exercise of discretion, should have dispensed with the personal attendance of the Applicant / complainant and should have proceeded with the case;

4.      That the complainant was duly represented by Advocate for conducting the prosecution and the trial was not in any manner frustrated due to the absence of Applicant / complainant on the said date of hearing;

5.      That in the interest of justice, the Ld. Magistrate, in the judicious exercise of discretion, should have adjourned the matter instead of taking a harsh step of dismissing the complaint and acquitting the accused, especially when the offences alleged against the accused are grave in nature;

**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:

N. A.

**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 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 –

(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.)

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

a)     That the circumstances were such which were beyond the control of the Applicant / complainant to remain present on the date of hearing;

b)     That the personal attendance of the Applicant / complainant on the said date of hearing was not necessary, and the Ld. Magistrate, in the judicious exercise of discretion, should have dispensed with the personal attendance of the Applicant / complainant and should have proceeded with the case;

c)     That the complainant was duly represented by Advocate for conducting the prosecution and the trial was not in any manner frustrated due to the absence of Applicant / complainant on the said date of hearing;

d)     That in the interest of justice, the Ld. Magistrate, in the judicious exercise of discretion, should have adjourned the matter instead of taking a harsh step of dismissing the complaint and acquitting the accused, especially when the offences alleged against the accused are grave in nature;

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 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 quash and set aside the impugned Order dated \_\_\_\_\_;

b)     The Ld. Magistrate be directed to restore the Complaint;

c)     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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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 \_\_\_\_\_\_\_\_\_

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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