**CrPC sec. 397 , 401**

**Section 397: Challenging unlawful Rejection of S.313 Application**

Instructions for drafting

Parties to the Application:

The Accused made in Criminal complaint made u/s 200 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.      That the complainant has misused the judicial process, and has misled the Hon’ble Court.

2.      That there is palpable infirmity in the purported evidences relied upon by the Complainant, on the basis of which, the Hon’ble Court have pleased to issue summons u/s 204.

3.      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;

4.      That by virtue of mandate of Section 313 of CrPC, 1973, this Hon’ble Court is empowered to examine the accused at any stage of inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him;

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.

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;

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………….

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

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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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(Resp No.2 being the Original Complainant)

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THE HUMBLE REVISION

APPLICATION OF THE

APPLICANT ABOVENAMED

1.      The facts of the case –

a)     The Respondent No.2, the original Complainant hereinabove has filed a Complaint u/s 200 or 190 of CrPC.

b)     The Applicant, the original accused submits that the Respondent No.2 / Complainant has misused the judicial process, and has misled the Hon’ble Court.

c)     The Applicant in this backdrop, preferred a Misc. Application before the trial Court, and inter alia, urged the Hon’ble Court to exercise their powers u/s 313(1)(a) of CrPC, 1973, and permit the Applicant herein to show palpable infirmity in the purported evidences relied upon by the Complainant, on the basis of which, the Hon’ble Court have pleased to issue summons u/s 204.

d)     The Hon’ble Court have however were pleased to reject the said Misc. Application.

2.      The Applicant would submit that Section 313 of CrPC, 1973, appears to be most salutary provision to protect innocent persons who are falsely charged / accused as having committed an offence.

The said section enables the accused person to personally move an Application or make a formal request, before the concerned Magistrates Court, to allow him to make due representation before the Court, for to present to the Court any credible evidence he has to show his innocence, or for to impeach the credibility of evidence appearing against him in the Complaint or Chargesheet, and seeking immediate acquittal.

The said Application or formal request may be made at any stage of the trial or may be made even at the stage of Inquiry contemplated u/s 202 of CrPC, 1973.

If the Magistrate is satisfied, he may acquit the accused person, without any trial, of course, after giving an opportunity of hearing to the Complainant / State prosecution.

3.      Fortunately, there is a recent Apex Court ruling on Section 313. In the said ruling, although the issue before the Court was not the examination of accused before evidences are led, yet the Hon’ble Court have unambiguously stated that the said powers may be exercised at any stage of the inquiry or trial.

Nar Singh versus State of Haryana [2015]

Para 9: The power to examine the accused is provided in Section 313 Cr.P.C. which reads as under:-

"313. Power to examine the accused.-

(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court-

(a) may at any stage, without previously warning the accused put such questions to him as the Court considers necessary;

(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case:

Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2). No oath shall be administered to the accused when he is examined under sub- section (1).

(3). The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4). The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(5). The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section."

Para 10: There are two kinds of examination under Section 313 Cr.P.C. The first under Section 313 (1) (a) Cr.P.C. relates to any stage of the inquiry or trial; while the second under Section 313 (1) (b) Cr.P.C. takes place after the prosecution witnesses are examined and before the accused is called upon to enter upon his defence. The former is particular and optional; but the latter is general and mandatory. In Usha K. Pillai V/s. Raj K. Srinivas & Ors., (1993) 3 SCC 208, this Court held that the Court is empowered by Section 313 (1) clause (a) to question the accused at any stage of the inquiry or trial; while Section 313(1) clause (b) obligates the Court to question the accused before he enters his defence on any circumstance appearing in prosecution evidence against him.

4.      There is also ruling of Bombay High Court in this regard, wherein Hon’ble Justice R. C. Chavan, in his 187 page judgment (Unreported), extensively dealt with the issue of false complaints, speedy justice, extensive use of many of the provision of Criminal Procedure Code to reduce the length of litigation, when inherent powers of the High Court may be invoked u/s 482, etc. [Judg dated 22nd March, 2012] [Paras 88 to 90]

Bombay High Court, in the case of Price Waterhouse Coopers versus State of Maharashtra primarily dealt with exercise of the powers of the High Court under Section 482, and thus also dealt with all the relevant and concerned provisions of CrPC, 1973.

In the said judgment, at Para 90, the Court has said that the Accused can make a due representation before the trial Court u/s 313 of the CrPC, to prove his innocence and so as to avoid the hardship and agony of facing the trial.

The Hon’be Bombay High Court, in the said para, inter alia, said – “Section  313, of the Code enables a trial court to examine, the  accused  on  the  circumstances  appearing, against  him  in  evidence  at  any  stage,  apart, from the duty to undertake such examination at, the  end  of  the  trial.  If  the  courts  make, proper  use  of  this  power,  the  accused  could, have  an  opportunity  to  say  something  in  his, defence, should he so wish, which may curtail, trial”. The portions Paras 88, 89 and 90 are reproduced –

Para 88. It  was  also  urged  that  recourse  to inherent powers becomes necessary as the trial courts  have  no  power  to  look  into unimpeachable  material  which  could  show  that trial is unwarranted & that such material can be noticed only by the High Court in exercise of  inherent  powers.  This  argument  does  not seem to be jurisprudentially sound. The right of the accused to silence need not be equated to obligation  to  remain  silent.  It  is  not clear  as  to  how  a  person  who  is  to  face  a trial  could  be  forced  to  remain  silent. Historical  basis  for  the  right  of  silence recognized in a person accused is the torture which  he  was  subjected  to  in  making confessions. Therefore he cannot be forced to speak.  He  was  also  not  to  be  forced  to disclose  his  defence  in  advance  of  trial  to prevent  his  being  prejudiced  by  the prosecution bringing up fresh evidence to book him, rather than put him to trial on the basis of evidence collected before a charge-sheet is filed. But when he has the protection of the court, should he so desire, why could he not state his defence? There is a good chance that trial  may  be  obviated  and  in  any  case curtailed if he is, not forced, but permitted to speak out. As an illustration one may take case of voluntarily causing hurt. The accused may admit that he did cause hurt but set up right of private defence, in which case need to record much of evidence could be curtailed.

In  any  case  it  defies  logic  that  an  accused who cannot be heard till a charge is framed by courts  below  has  the  same  right  when  before the  High  Court  on  the  specious  plea  that  if there  is  no  provision  in  the  code  to  do something, it can be done by invoking inherent powers.

Para 89. The  learned  senior  counsel  for  the applicants  submitted  that  this  issue  is  no longer res integra and a Three Judge Bench of the  Supreme  Court  has  already  ruled  to  the contrary in  State of Orissa v. Debendra Nath Padhi, reported in (2005) 1 SCC 568.

Para 90. Even so it may not be necessary to gag, persons accused in a bulk of matters which are landing up in this court from processes issued, for offence  punishable  under  section  138  of, the Negotiable Instruments Act. In these cases, the complainant files an affidavit in lieu of, his  evidence  &  since  a  full  bench  of  this, court has already ruled that such affidavit is, a  substitute  for  verification  to  be  recorded, when a complaint is filed, even at the stage, of  recording  plea,  there  is  evidence     or, circumstances  appearing  in  evidence-  against, the  accused.  Evidence  does  not  mean  only  a, completed deposition after cross examination, since  there  could  be  many  cases  where  there, may not be any cross examination. In warrant, trials  instituted  on  complaints  at  the  stage, of  framing  of  charge  there  is  already, precharge  evidence  of  the  complainant, available     which  has  to  be  of  such  quality, that  if  un-rebutted,  it  would  warrant, conviction  of  the  accused.  In  all  types  of trial by using the provisions of Sections 292, to  296  of  the  Code,  there  could  be  evidence, against  the  accused  even  before  oral, examination  of  witnesses  begins.  Section  313, of the Code enables a trial court to examine, the  accused  on  the  circumstances  appearing, against  him  in  evidence  at  any  stage,  apart, from the duty to undertake such examination at, the  end  of  the  trial.  If  the  courts  make, proper  use  of  this  power,  the  accused  could, have  an  opportunity  to  say  something  in  his, defence, should he so wish, which may curtail, trial. Since first part of section 313 of the, Code  is  as  yet  not  rendered  a  dead  letter, there is no reason why this tool may not be, used.  If intelligently used a large number of, litigants may not be required to rush to this, court.

5.      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.

6.      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.

7.      The grounds for Relief:

a)     That there is not an iota of evidence on record against these Accused to suggest their involvement in the alleged offence u/s \_\_\_\_\_

b)     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;

c)     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;

d)     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;

e)     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;

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

g)     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;

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

i)       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).

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)     The trial Court be directed to decide said Misc. Application in accordance with law;

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

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

d)     Pending the hearing and final disposal of the present Application, the proceedings at the trial court be stayed;

e)     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)

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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 ……