Section 482 Unlawful dismissal of Complaint sec 256 CrPC, 1973

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:

The High Courts have exclusive jurisdiction to entertain these Applications.

1.      Section 482 of CrPC, 1973, recognizes the inherent powers of the High Courts to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

2.      Some of the landmark rulings of Apex Court which illustrate the scope and powers of High Courts to grant relief under this jurisdiction.

Para 18: In State of Haryana & Ors. (appellant) v. Bhajan Lai & Ors. (respondents) [1990], this Court after referring to various decisions of this Court, enumerated various categories of cases by way of illustration wherein the inherent power under Section 482 of the Code should be exercised by the High Court. They are:

(1) Where the allegations made in the first information report or the complaint, even, if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence; justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same; do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

3.      In Som Mittal v. Govt. of Karnataka [2008], the Supreme Court, among other things, said, when it is brought to the notice of the Court that grave miscarriage of justice would be committed if the trial is allowed to proceed where the accused would be harassed unnecessarily if the trial is allowed to linger when prima facie it appears to Court that the trial would likely to be ended in acquittal. In other words, the inherent power of the Court u/s 482 of the Code of Criminal Procedure can be invoked by the High Court either to prevent abuse of process of any Court or otherwise to secure the ends of justice.

4.      In R.P. Kapur v. State of Punjab [1960] this Court summarized some of the categories of cases where inherent power should be exercised to quash a criminal proceeding against the accused, stating:

(i) Where it manifestly appears that there is a legal bar against the institution or continuance e.g. Want of sanction;

(ii) Where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) Where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

5.      The inherent powers of the HC is a wide and wholesome power. If the court has to examine and determine whether the continuation of criminal proceedings would be just or would be improper, there is no reason why there should be any limitation on the powers of the court to look into all the materials available on record. There is nothing in law to place any such limitation on the powers of the HC. Surendra Kumar Yadav versus State of Bihar – [1989 Patna HC].

In the case of State of Bihar vs. Muradali Khan and others, the Apex Court held as under [1989] …..When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the .accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceeding. [See Dhanalakshmi v. R. Prasanna Kumar, State of Bihar v. P.P. Sharma, RupanDeol Bajaj v. Kanwar Pal Singh Gill, State of Kerala v. O.C. Kuttan, State of U.P. v. O.P. Sharma, Rashmi Kumar v. Mahesh Kumar Bhada, SatvinderKaur v. State (Govt. of NCT of Delhi), Rajesh Bajaj v. State NCT of Delhi and State of Karnataka v. M. Devendrappa.]" (emphasis supplied).

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 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 to initiate Criminal Complaint u/s200:

There is no limitation period.

Court fee:

No Court fee.

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”.

Draft Application u/s 482 of CrPC, 1973

IN THE HIGH COURT OF JUDICATURE AT \_\_\_\_\_\_\_\_\_\_

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. \_\_\_\_\_\_\_\_\_OF 20\_\_\_

Application u/s 482 of CrPC, 1973

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

(Original Complainant)

Versus

(1) The State of Maharashtra

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

(Resp No.2 being the Original Accused

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IN THE HIGH COURT OF JUDICATURE AT \_\_\_\_\_\_\_\_\_

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(Resp No.2 being the Original Accused)

SYNOPSIS

|  |  |  |  |
| --- | --- | --- | --- |
| Sr.No. | Date | Particulars | Exhibit |
| 1 |  | Complaint filed by Applicants |  |
| 2 |  |  |  |
| 3 |  |  |  |
| 4 |  |  |  |
| 5 |  |  |  |
| 6 |  | Impugned Order |  |

THE ACTS TO BE RELIED UPON

The Criminal Procedure Code, 1973

The IPC / Negotiable Instruments Act, 1881

Any other as may be applicable.

THE AUTHORITIES TO BE CITED

Judgment at the time of hearing.

THE POINTS TO BE URGED

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;

IN THE HIGH COURT OF JUDICATURE AT \_\_\_\_\_\_\_\_

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. \_\_\_\_\_\_\_\_\_OF 20\_\_

Application u/s 482 of CrPC, 1973

IN THE MATTER OF

Sections 482 and \_\_\_\_ of Criminal Procedure Code, 1973;

AND

Sections \_\_\_\_ of the IPC / Negotiable Instruments Act, 1881;

AND

Impugned Order passed by Ld. Magistrate in Criminal Complaint Dismissing the u/s 256 of CrPC, 1973

(Full title)

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

(Original Complainant)

Versus

(1) The State of Maharashtra

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

(Resp No.2 being the Original Accused)

THE HONOURABLE CHIEF JUSTICE

AND OTHER PUISNE JUDGES OF

THE HONOURABLE HIGH COURT

OF JUDICATURE AT \_\_\_\_\_\_\_\_

THE HUMBLE APPLICATION OF THE APPLICANTS ABOVENAMED

                                                             MOST RESPECTFULLY SHEWETH.

1.      A very brief introduction of the parties to the case.

2.      The brief facts of the case which are germane to the present controversy, are –

(a)

(b)

(c)  Being aggrieved by the aforesaid impugned Order dated \_\_\_\_\_\_ Applicant invokes the inherent jurisdiction of this Hon’ble Court recognized u/s 482of CrPC, 1973, 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 LG19).

4.      Other submissions, if any.

5.      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;

6.      The Applicants submit that there has been no delay in preferring this Application.

7.      Jurisdiction Clause: The Applicants state that the impugned Order is passed by\_\_\_\_\_\_ at \_\_\_\_\_\_Court at \_\_\_\_\_;. The Applicants states that, therefore, this Hon’ble Court can safely invoke their jurisdiction to entertain the present Application and grant reliefs as prayed; and pass authoritative Orders against the Respondents.

8.      The Applicants further submit that Applicants have not filed any other proceedings in any Court of law or in the Supreme Court, against the Respondents herein, in respect of the reliefs prayed in this Application.

9.      The Applicants, with the leave of the Hon'ble Court, be allowed to add / amend / delete any clause in the present Application.

10. The Applicants therefore, most respectfully pray as under –

(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.

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

Advocate for the

Applicants

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

Applicant

Verification

I, \_\_\_\_\_\_\_,  the  Applicant hereinabove,  do  hereby  solemnly  declare  that what  is  stated  in  Paras \_\_\_\_ are  true  to my own  knowledge, and what  is  stated  in  Paras \_\_\_\_\_\_ are based on information and legal advice which I  believe to be true and correct.

Solemnly  declared  at  \_\_\_\_\_\_          )

This      Day  of \_\_\_\_\_, 20\_\_\_               )

Applicant

Before me

VAKALATNAMA

IN THE HIGH COURT OF JUDICATURE AT \_\_\_\_\_\_\_

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. \_\_\_\_\_\_\_\_\_OF 20\_\_\_

Application u/s 482 of CrPC, 1973

(Full title)

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

(Original Complainant)

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(1) The State of Maharashtra

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

(Resp No.2 being the Original Accused)

To,

Registrar General

 \_\_\_\_\_ 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 \_\_\_\_\_\_

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

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

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

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

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

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

Adv. Code:

IN THE HIGH COURT OF JUDICATURE AT \_\_\_\_\_\_\_\_\_\_

CRIMINAL APPELLATE JURISDICTION

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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

IN THE HIGH COURT OF JUDICATURE AT \_\_\_\_\_\_\_

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. \_\_\_\_\_\_\_\_\_OF 20\_\_\_

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

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

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

This       day of           20            )

Deponent

Identified / Interpreted / Explained

By me

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

Advocate for the

Applicant

Before me

Steps after Institution of Application

1.      Hearing of Application;

2.      Dismissal of Application or Issuance of Notice by Court to Respondents;

3.      Service of copy of Application upon Respondents;

4.      Reply of Respondents, if any;

5.      Oral Arguments before the Court / Submission of Written Arguments;

6.      Order.