

CRIMINAL MISCELLANEOUS PETITIONS

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1) The meaning of Criminal Miscellaneous Petitions in general cull out from the dictionary and in practice is “ a formal expression of request submitted by way of an application filed before the criminal court in or otherwise in the criminal proceedings on different actions of reliefs for some privilege, right, benefit or for an action”. In general Criminal Miscellaneous Petition is an application filed into the Court for seeking a specific relief.

2) The Criminal Miscellaneous Petitions are one of the important task of the Magistrate/Judge in the criminal courts. The filing of Criminal Miscellaneous Petitions will start even before registering the case by way of Anticipatory bail application. The Criminal Miscellaneous Petitions may be filed even at the inception of a criminal proceeding, during the criminal proceedings or after conclusion of the same. The Courts must cautious while dealing with these petitions with regard to their maintainability on the point of jurisdiction.

3) The orders passed in these petitions are mostly interim in nature, some of the petitions are for specific purpose and some period either interim or final. When a petition is filed seeking interim relief, it is registered as Criminal Miscellaneous Petition. A memo filed before the court of law need not be treated as a petition. The main difference between petition and memo is that memo is nothing but brining a fact to the notice before the court of law and no relief can be sought for in a

memo, however, where a petition is filed requiring some relief from the court, a notice to opposite party is mandatory in most of the cases.

4) When a miscellaneous petition is filed in criminal cases, it is registered as Criminal Miscellaneous Petition. As soon as a petition is filed, primary duty of the court is to see whether the relief sought is provided under the Criminal Procedure Code or not. If it is provided, petition shall be called in court by assigning a miscellaneous number and notice shall be ordered to the opposite party. Having heard both the parties, a detailed order has to be pronounced. In a day to day, criminal courts come across several Criminal Miscellaneous Petitions seeking different reliefs.

5) When a petition is filed under section 239 of Criminal Procedure Code in a Magistrate Court and under Section 227 of Criminal Procedure Code in a court of Sessions, seeking discharge of accused from the warrant case or Sessions case, before allowing that petition, the Court has to see whether there is any prima facie case against the accused. The court has to find out whether or not allegations made are groundless so as to order discharge. The court is not expected to go deep into the matter and hold material would warrant a conviction. What needs to be considered is whether there is a ground for presumption that offence has been committed and not where ground for convicting the accused has been made out.

6) When a petition is filed before the Magistrate of I Class Court, seeking discharge of accused in a case exclusively triable by the Court of Sessions, the Magistrate cannot discharge the accused, in view of the decision reported in AIR 1978 SC 514 in between Sanjay Gandhi vs. Union

of India. A criminal petition for discharge of accused in summons case is not at all maintainable . It was held by the Hon'ble Supreme Court of Indian in a case in between A.Prasad vs. Rooplal Zindal reported in AIR 2004 SC 4674 that “ a criminal miscellaneous petition for discharge of accused in summons case is not at all maintainable” Because there is no question of discharge in summons cases. Discharge of accused in summons case amounts to recall of summons which is not permissible under law. It was held by Hon'ble Supreme Court of India in a decision reported in AIR 2008 SC 1903 in between Hemachandar vs. State of Jharkhand that “ when a petition is filed seeking for discharge of the accused, the court cannot look into the documents produced by the accused.

7) Petition filed by the accused under Section 309 of Criminal Procedure Code, where a witness is present in a court but a party or his advocate is not present or the party or his advocate though present in a court , is not ready to examine or cross examine the witness, the court may, if it thinks fit , record the statement of witnesses and pass such orders as it thinks fit dispensing with the examination of witness in chief or cross examination of that witness as the case may be. Trial Court cannot be permitted to flout the mandate of Sec.309 (1) of Criminal procedure Code, unless the court has very cogent and strong reasons. No court is permitted to adjourn the examination of witnesses who were in attendance beyond the next working day.

It was held in Thampi Vs. State of Kerala reproted in 1994(1) ALT - Criminal -69, that “ Order of Sessions Judge directing Advocate of accused to deposit an amount of Rupees one thousand for adjourning a

Sessions trial at his instance to be paid to witnesses present as day costs – Not legal. Power of Court to adjourn proceedings on such terms as it thinks fit” does not include power to direct Counsel to pay costs. Counsel cannot be identified or equated with that of a party . When witnesses are present, adjournment shall not be granted without examining them except for special reasons to be recorded in writing. Engagement of Counsel in another case not a special reason for adjourning the trial when witnesses are present. Advocate seeking adjournment can be asked to cross examine witnesses. If he is unwilling, accused can be asked to cross examine. If both of them do not avail opportunity without adequate reasons, Court can record “ no cross” and proceed with case.

8) Section 310 of Criminal procedure Code. In some cases the accused comes with a petition under section 310 of Criminal Procedure Code by praying the Court to make a local inspection in some cases any judge or Magistrate may, at any stage of the inquiry, trial or other proceeding, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed, or any other place in which it is in his opinion necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection. Such memorandum shall form part of the record of the case and if the prosecutor, complainant or accused or any other party to the case, so desires, a copy of the memorandum shall be furnished to him on free of cost.

9) In some cases, the accused comes with a petition under section 310 of Criminal procedure Code by praying the court to make local

inspection, but it is not desirable for the court to do so. In a decision held in between Vathadu Venkanna vs. State of Andhra Pradesh, our Honourable High Court held that “ local inspection by presiding officer is not at all a step in a criminal proceedings in normal parlance”.

10) Generally we come across with petitions filed under section 311 of Criminal procedure Code by praying the court to recall witnesses who were already examined, power under Section 311 of Criminal procedure has to be exercised to find out the truth render a just decision of the case.

11) When the prosecution filed a petition under section 319 of Criminal Procedure Code, praying the Court to proceed against other persons other than the accused who are facing trial, the court can pass orders basing on the examination in chief itself, there is no need of giving an opportunity to the proposed accused for cross examination, which was held in a case in between Gangadhar Nandagiri Swamiji vs. State of Uttar Pradesh reported in 2002 (1)ALD 680.

12) In some occasions, the accused used to file petitions under section 91 of Criminal Procedure Code to summon the documents. At the time of framing charges, the court has to examine the material which is produced by the prosecution and it cannot summon any document at the instance of accused, the same was held by the Hon'ble Supreme Court of India in a case in between State of Odisha vs. Devendranath Padi

13) In cases relating to applications for return of case property for interim custody , the court pass an order for interim custody after ascertaining the ownership of that property with a direction to produce the same as and when required or directed by the Court.

14) In addition to the above Criminal Miscellaneous Petitions , another important Criminal Miscellaneous Petition used to be filed by the accused in criminal cases are bail applications filed under Section 436 of Criminal Procedure Code and Sec.437 of Criminal Procedure Code before the Magistrate Court and Sec.438 of Criminal Procedure Code and Sec.439 of Criminal Procedure Code before the Sessions Court for seeking the bail against the accused who is in judicial custody . Under Section 436 of Criminal Procedure Code, Sec.437 and Sec.439 of Criminal Procedure Code seeking bail applications against the accused who is in judicial custody seeking protection from arrest under section 438 of Criminal Procedure Code. There is a separate topic in this workshop for discussion about the bails, Anticipatory bail. Therefore, there is no need to refer anything more in respect of the bail applications.

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