



FACULTY OF JURIDICAL SCIENCES

Name of the faculty- Ms. Neha Khanna
Subject Name- Drafting, Pleading and conveyancing

COURSE NAME- BBA LLB, VII Sem

SUBJECT CODE-BBL-703

LECTURE 25

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. In offences state becomes the party and the accused has to put up his defence. It is the duty of the prosecution on behalf of the state to prove the guilt of an accused. In such a situation the aggrieved party is not required to institute any petition

It is the responsibility of the state to launch prosecution against the criminal who has committed the offences of Criminal nature.The constitution of India empowers the Supreme Court and the High Courts under Art. 32 and 226 to provide remedy to the petition by way of issuing writs the jurisdiction of the High Court under 226 is in nature of ordinary original jurisdiction. It empowers every High Court, within its territorial jurisdiction to issue directions, orders or writs including writs in nature of habeas corpus etc. for the enforcement of any of the fundamental rights as well as "for any other purpose". By virtue of Art.227 every High Court has superintendence on all courts and tribunals through out the territories in relation to which it exercises jurisdiction except those constituted under any law relating to armed forces. The High Court May Call for returns from such courts; Make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts, and Prescribe form in which books, entries and accounts shall be kept by the officers of any such courts. It must be remembered that in exercise of its jurisdiction under 227 High Court does not act as a court of appeal. It cannot, therefore, review or reweigh the evidence upon decision. The supervisory jurisdiction conferred under Art.227 is limited to seeing that the inferior court or tribunal functions within limits of its authority and not to correct any error of law. (Mohd.Yunus V. Mohd. Mustquim AIR 1984 SC 38, 40)

Under the code of Criminal procedure High Court has also empowered its inherent jurisdiction, under sec. 482 Under this sec. the High Court may be exercised its inherent powers in a proper case either to prevent the abuse of process of any court or to secure the ends of justice. Inherent power of the High Court should be exercised only in the exceptional cases. (Amar Chand V. Shanti Bose, AIR 1973 SC 799) In the following cases the inherent jurisdiction of the High Court should be exercised to quash the proceedings. (R.P. Kapur V. state of Punjab AIR 1960 SC 866)

Where there is a legal bar against the institution or continuance of the proceedings Where the allegations in the first information or complaint do not constitute the offence alleged and Where either there is no legal evidence adduced in support of the charge or the evidence adduced in support of the charge or the evidence clearly or manifestly failed prove the charge. No limitation period has been prescribed for making an application under sec. 482 Cr.P.C.

Hence, 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.

MCQs-

i. whether a gift deed can be executed without consideration?

- a.no
- b. yes
- c. partially yes
- d. partially no

ii. The meaning of Criminal Miscellaneous Petitions in general

- a.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
- b. a formal expression of request submitted by way of an application filed before the criminal court
- c the criminal proceedings on different actions of reliefs for some privilege, right, benefit or for an action
- d.none of the above

iii.the plaint is described under order.....?

- a.order VII
- B.Order V
- c. Order VI
- d. order VIII

iv.Plaint is written by-

- a.plaintiff
- b.defendant
- c.both
- d.none of the above

v.written statement is written b-

- a.defendant
- b.plaintiff
- c.both
- c.none of the above