



FACULTY OF JURIDICAL SCIENCES

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

SUBJECT CODE- BAL-703

Course- BA LLB, VII Sem

LECTURE 23

Criminal Miscellaneous Petition

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.

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. 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. When a miscellaneous petition is filed a 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 Petition seeking different reliefs. 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 appears 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 consider 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. 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 be discharge the accused, in view of the decision reported in AIR 1978 SC 514 in between Sanjay Gandhi vs. Union of India.

MCQs-

i. The Criminal Miscellaneous Petitions may be filed even of a criminal proceeding

- a. at the inception
- b. at the end
- c. anytime
- d. none of the above

ii. hearing both parties is important or not?

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

iii. what is audi alteram partem?

- a. hearing both parties
- b. hearing only one party
- c. hearing either of the party
- d. none

iv. Whether in criminal miscellaneous application, The court's discretion is there?

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

v. criminal miscellaneous application is filed by whom?

- a. plaintiff
- b. defendant
- c. both of them
- d. none of them