



Dec-06-2016 Tue

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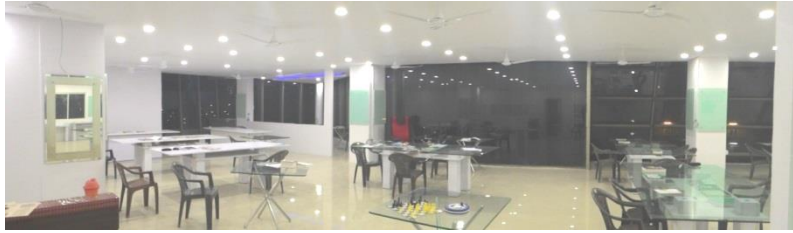
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DEFENDANT STRATEGY TO DISALLOW WITNESS ACCUSED IN ANOTHER OFFENCE



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TABLE OF CONTENTS

INTRODUCTION	4
LIST OF ABBREVIATIONS.....	6
JURISDICTION	2
STATEMENT OF FACTS	2
SYNOPSIS OF ISSUES	2
TABLE OF AUTHORITIES:.....	3
BOOKS	3
STATUTES/ REGULATIONS/CONSTITUTIONAL PROVISIONS	3
CASE LAW INDEX	4
STRATEGIES TO EXCLUDE WITNESSES.....	4
STRATEGY 1. FILE A PETITION FOR IMPEACHMENT PRE-CROSS EXAMINATION	4
STRATEGY 2. FILE A PETITION IN-LIMINE TO EXCLUDE WITNESS.....	6
STRATEGY 3. FILE A VIOR-DIRE PETITION	7
STRATEGY 4.CROSS EXAMINATION OF WITNESS	9
STRATEGY 5. IMPEACHMENT PETITION POST CROSS EXAMINATION.....	11
STRATEGY 6. PETITION TO EXCLUDE WITNESS TESTIMONY.....	11
GROUNDS FOR PETITION IN-LIMINE DISALLOWING WITNESS PW-4	12

SAMPLE FORMAT OF PETITION IN LIMINE	13
MEMORANDUM OF LAW IN SUPPORT OF PETITION IN LIMINE	15
APPENDIX.....	18
APPELLATE JURISDICTION OF THE SUPREME COURT	18
ARTICLE 13 IN THE CONSTITUTION OF INDIA 1949.....	18
ARTICLE 14 IN THE CONSTITUTION OF INDIA 1949.....	18
ARTICLE 16 IN THE CONSTITUTION OF INDIA 1949.....	18
ARTICLE 19 IN THE CONSTITUTION OF INDIA 1949.....	19
ARTICLE 20 IN THE CONSTITUTION OF INDIA 1949.....	20
ARTICLE 21 IN THE CONSTITUTION OF INDIA 1949.....	20
ARTICLE 22 IN THE CONSTITUTION OF INDIA 1949.....	20
ARTICLE 32 IN THE CONSTITUTION OF INDIA 1949.....	21
ARTS. 132 - 136.....	22
ARTICLE 137 IN THE CONSTITUTION OF INDIA 1949.....	24
ARTICLE 138 IN THE CONSTITUTION OF INDIA 1949.....	25
ARTICLE 139 IN THE CONSTITUTION OF INDIA 1949.....	25
ARTICLE 140 IN THE CONSTITUTION OF INDIA 1949.....	26
ARTICLE 141 IN THE CONSTITUTION OF INDIA 1949.....	26
ARTICLE 226 IN THE CONSTITUTION OF INDIA 1949.....	26
THE INDIAN EVIDENCE ACT, 1872.....	27

SECTION 58 IN THE INDIAN EVIDENCE ACT, 1872	27
SECTION 145 IN THE INDIAN EVIDENCE ACT, 1872	27
SECTION 157 IN THE INDIAN EVIDENCE ACT, 1872	27
PROVISIONS IN CRPC TO QUASH CRIMINAL PROCEEDINGS	28
SECTION 482 IN THE CODE OF CRIMINAL PROCEDURE, 1973.....	28
SUGGESTED READINGS:	29

INTRODUCTION

ABSTRACT.

The present article and write-up is an attempt to describe one facet of the question —

WHAT CAN BE A DEFENDANT'S STRATEGY TO DISALLOW A WITNESS
FROM TESTIFYING IN THE PRESENT CASE, GIVEN THE FACT THAT THE
WITNESS IS AN ACCUSED IN A SERIOUS FELONY CHARGE IN A
SEPARATE CRIME?

The intended audience for this article invariably would include —

1. Lawyers,
2. Jurists
3. Academia in the area of Law and other allied subjects
4. Other interested parties

A proper appreciation of this article would require at a minimum, basic understanding of

- The Constitution Of India, 1950
- The Code Of Criminal Procedure, 1973
- The Indian Penal Code, 1860
- The Indian Evidence Act, 1872
- The Negotiable Instrument Act, 1881

For the sake of reading and better understanding of the concept, the factual matrix presented herein is meant for illustrative purposes only, without any intention of prejudice towards anyone. Happy reading.

Vendors¹ (hereinafter “Prosecutor/Respondent”) — Mendez, individually and as next friends of Praveen Babu (“Praveen”), filed a Cheque Bounce Case against Vendee² (hereinafter “Accused/Petitioner”) —Swamy Pollard Insurance Company represented by Swamy Narayan in the Trial Court.

At the time of the Trial, the Prosecutor’s introduce PW-4, by the name of Ghora. PW-4 has the dubious history of being an accused in a separate Crime being investigated by CB-CID, wherein Ghora is A-5 (meaning Accused # 5).

The Accused Trial Lawyer would like to bring a petition, in support of the Accused to disallow PW-4 to testify because of his dubious criminal antecedents.

The Trial Court has disallowed the Petitioner from doing so, on the grounds that Accused in one case can be a Competent Witness in another totally unrelated Case.

1 Collectively referred to herein as “the Respondent(s).”

2 Collectively referred to herein as “the Petitioner (s)”

LIST OF ABBREVIATIONS

S No	Abbreviation	Full Form
1	&	And
2	§	Section
3	§§	Sections
4	¶	Paragraph
5	¶¶	Paragraphs
6	A.C.	Appellate Cases
7	A.P.	Andhra Pradesh
8	AIR	All India Reporter
9	All	Allahabad
10	Anr	Another
11	Bom	Bombay
12	CCR	Current Criminal Reports
13	Co	Company
14	Cri.L.J / CrLJ	Criminal Law Journal
15	CrI.A	Criminal Appeal
16	CrPC / CRPC	Criminal Procedure Code
17	Edn / Ed.	Edition
18	FIR	First Information Report
19	Govt	Government
20	HC	High Court
21	Hon`ble	Honorable
22	I.L.R	Indian Law Reporter

S No	Abbreviation	Full Form
23	Id	<i>Ibid</i>
24	K.B.	King's Bench
25	L.J	Law Journal
26	Ltd	Limited
27	Mad	Madras
28	MP	Madhya Pradesh
29	Mr	Mister
30	n.	Note
31	No	Number
32	Ors	Others
33	Pg	Page
34	Pvt	Private
35	Raj	Rajasthan
36	Re	Reference
37	SC	Supreme Court
38	SCC	Supreme Court Cases
39	SCR	Supreme Court Reporter
40	Sd	Signed
41	Supp.	Supplementary
42	U.P.	Uttar Pradesh
43	U.S.	United States
44	UOI	Union Of India
45	v / Vs	Versus
46	Vol	Volume

JURISDICTION

IT IS HUMBLY SUBMITTED THAT THE SUPREME COURT OF INDIA HAS ORIGINAL JURISDICTION TO ENTERTAIN THIS WRIT PETITION NO.XXX OF 2016 ALONG WITH WRIT PETITIONS IN PUBLIC INTEREST UNDER ARTICLE 32 R/W ARTICLE 132-141 AND ARTICLE 226 OF THE CONSTITUTION.

STATEMENT OF FACTS

THE PETITIONER MOST RESPECTFULLY SHEWETH

1. THAT, the case at hand is related to a cheque bounce case wherein the PETITIONER is the accused.
2. THAT on or about 25-Aug-2016, the PETITIONER/ACCUSED brought to the attention of the Hon'ble Trial Court, the Criminal Antecedents of PW-4 and prayed for a PETITION IN-LIMINE TO DISALLOW PW-4 from testifying on the grounds that PW-4 is an accused (A-5) in a serious offence that is being investigated by CB-CID.
3. The Hon'ble Trial Court disallowed the Petition, on the reasoned grounds that an Accused in a Crime can be a Competent Witness in a separate Crime.
4. The PETITIONER/ACCUSED aggrieved by the aforementioned Order was pleased to file an appeal in the High Court, which also declined to interfere with the findings of the Trial Court.
5. The PETITIONER has therefore approached the Supreme Court for directions to remand the Orders from the High Court and the Trial Court.

SYNOPSIS OF ISSUES

ISSUE – 1

The Prosecutor witness PW-4 is himself an accused in on ongoing investigation by CB-CID, on the charges involving grave moral turpitude and unconscionable actions.

Can the Court can allow the testimony of such witness, PW-4, to be used as evidence in the present matter, involving a Cheque Bounce case?

ISSUE – 2

Whether appreciation of evidence vis-à-vis cross examination of PW4 is sustainable in law

TABLE OF AUTHORITIES:

BOOKS

1. Indian Constitutional Law by Prof. G.C.V. Subba Rao's.

STATUTES/ REGULATIONS/CONSTITUTIONAL PROVISIONS

1. Constitution Of India, 1950
2. The Code of Criminal Procedure, 1973
3. The Indian Penal Code, 1860
4. The Indian Evidence Act, 1872

CONSTITUTION OF INDIA, 1950

ART	DESCRIPTION
13	Laws inconsistent with or in derogation of the fundamental rights
14	Equality before law
19	Protection of certain rights regarding freedom of speech etc
20	Protection in respect of conviction for offences
21	Protection of life and personal liberty
22	Protection against arrest and detention in certain cases
32	Remedies for enforcement of rights conferred by this Part
132 – 136	ARTICLE 132 TO ARTICLE 136 deal with the Appellate Jurisdiction of the Supreme Court in the constitutional cases
137	ART. 137 gives the power to review of judgments or orders by the Supreme Court to review any judgment pronounced or order made by it
138	Enlargement of the jurisdiction of the Supreme Court
139	Conferment on the Supreme Court of powers to issue certain writs
140	Ancillary powers of Supreme Court
141	Law declared by Supreme Court to be binding on all courts
226	Power of High Courts to issue certain writs

CASE LAW INDEX

Cases

<i>Habeeb Mohammad v. State of Hyderabad</i> , AIR SC 51 : 1954 CrLJ 338 : 1954 SCA 514 : 1953 SCJ 678 : 1954 475 : 1954 MWN 233.....	15
<i>Jayakar v. State of Karnataka</i> , 1997 (1) Crimes 237 (Kant).....	17
<i>Sarwan Singh v. State of Punjab</i> , AIR 1976 SC 2304, 1976 CrLJ 1757 : (1976) 4 SCC 369.....	16
<i>State of U.P v. Jaggo</i> , AIR 1971 SC 1586 : 1971 CrLJ 1173 : 1971 SCD 557 : (1971) 2 SCCrR 397 : 1971 CrAppR (SC) 323.....	16

STRATEGIES TO EXCLUDE WITNESSES

STRATEGY 1. FILE A PETITION FOR IMPEACHMENT PRE-CROSS EXAMINATION

STRATEGY 2. FILE A PETITION IN-LIMINE TO EXCLUDE WITNESS

STRATEGY 3. FILE A VIOR-DIRE PETITION ALONG WITH A SET OF PRELIMINARY INTERROGATORIES

STRATEGY 4.CROSS EXAMINATION OF WITNESS

STRATEGY 5. IMPEACHMENT PETITION POST CROSS EXAMINATION

STRATEGY 6. PETITION TO EXCLUDE WITNESS TESTIMONY

STRATEGY 1. FILE A PETITION FOR IMPEACHMENT PRE-CROSS EXAMINATION

The Defence Counsel may raise any or all the below mentioned grounds to file an impeachment petition prior to the Trial Court allowing the Cross Examination of such a witness. This petition must be supported by laying a foundation and relevant evidence.

The grounds to initiate an impeachment Petition, include —

Competency:

1. Show that the witness does not know the meaning of an oath and therefore is incompetent to testify. —

In the present factual matrix, if evidence can be adduced to show that PW-4 has been accused of a grave crime and therefore, any testimony by such witness might actually be used as evidence in the other ongoing CB-CID case. Therefore, there is a likelihood that this Witness might be incompetent to testify.

2. Show that the witness did not perceive what he claims to have perceived.
3. Show that the witness does not remember about the events.
4. Show that the witness cannot communicate his testimony.
For example, if PW-4 is incarcerated in the other ongoing CB-CID investigation, then Remand Report would surely have relevant details regarding whether or not PW-4 can communicate his testimony.

Bias, Prejudice and Credibility:—

5. Show bias, prejudice, interest or corruption on the part of the witness.
Present evidence that can demonstrate that PW-4 has bias, prejudice interest or corruption. Bias is an irrational predisposition in favor; prejudice is an irrational predisposition against; interest is a stake in the outcome the present Trial; corruption is bribery.
6. Show that the Witness is involved in a criminal case and there is likelihood of conviction of a felony or misdemeanor involving moral turpitude. —
For such witnesses, one may show that he (1) has been convicted or charged of a felony or a misdemeanor involving moral turpitude,

(2) the quantum of convictions, and (3) the grave nature of the offences, without going into the details. In case, the witness denies the offences or allegations, specific extrinsic evidence may be brought in to contradict such denial. This would suffice to exclude the testimony of such witnesses.

7. Demonstrate that at some time in the past, the witness committed an act which adversely reflects on his credibility, even though that act did not eventually result in a conviction. —

Recall that specific instances of conduct may not be used. Extrinsic evidence may not be used to prove specific instances of conduct. Consider introducing character evidence in the form of affidavits from witnesses who know the past conduct of PW-4. Remember that such evidence may be offered to show the reputation of the witness for truthfulness, but it may **only** be offered after truthfulness of the witness has been attacked. The testifying witness must show familiarity with reputation.

8. Show that the witness has made prior inconsistent statements.

Direct **PW-4** attention to the circumstances of the oral statement, e.g., time, place, subject matter. Ask if **PW4** made the statement.

Reputation:

9. Show that the witness is of ill reputation.

This can be done by obtaining the report from law enforcement agencies, or filing an application vide Right To Information Act. At a bare minimum, this itself would give sufficient time to tackle the impeachment process.

STRATEGY 2. FILE A PETITION IN-LIMINE TO EXCLUDE WITNESS

Related to the issue of limited admissibility is the prejudice that may occur with the introduction of certain types of evidence. Prejudicial effect must be weighed against probative value. Where anticipated in advance, a petition *in limine* can and must be filed. Petitions *in limine* request preliminary rulings on the admissibility of evidence and are generally of four categories:—

- (1) conditionally admitting the evidence;
- (2) conditionally excluding the evidence;
- (3) absolutely admitting the evidence; and
- (4) absolutely excluding the evidence.

The evidence, excluded or admitted conditionally, is subject to proof connecting it with other facts. The requirement for “linking up” the chain of

events is important. For example, in the present case at hand, Cheque Bounce case where proof of the *lack of a legally enforceable debt* would be helpful prior to the introduction of this petition *in limine*.

STRATEGY 3. FILE A VIOR-DIRE PETITION

A *Vior Dire* Petition comprises of a preliminary examination to determine the competency of a witness or juror. This petition typically includes service a preliminary set of Interrogatories whose objective is to disqualify a Witness such as PW-4.

Interrogatories are defined as: “A pre-trial discovery (fact-finding) process in which a witness provides written answers to written questions under oath. The answers must be returned within a specified time and often can be used as evidence in the trial. Objections as to relevancy or clarity may be raised either at the time the interrogatories are answered or when they are used in trial. There are limits on the number of interrogatories that may be asked without the court's permission to keep the questions from being a means of harassment rather than a source of information.”

A sample set of Preliminary Interrogatories is available for download from www.satyagraha.com portal. In case of need, the reader may contact help@satyagraha.com

The author is propounding some sample interrogatories, which could also be utilized during Cross-Examination, as mentioned hereunder —

1. Briefly describe your Age, Qualification, Education, Profession and Background?
2. What is your relationship with the Prosecutor, Accused and other witnesses regarding this matter?
3. Briefly describe to the Court, the details of all your pending Civil and Criminal Cases, including the ongoing investigation by CB-CID.
4. Briefly describe to the Court, the location of your last known addresses for the past 5 years, including the year of instituting the present Cheque Bounce Case.
5. When and where did you first come to know about the matter in controversy regarding the non-payment of Cheque? What happened then?

6. Are you aware of a Notice being issued to the Accused by the Prosecutor? Briefly state the details of the notice issued including When, where and how the Notice was sent and by whom and to whom?
7. Are you aware of the Negotiable Instrument Act 1860?
8. Did you voluntarily approach the Prosecutor to be a witness or did the Prosecutor request you to be a witness in this matter. Briefly provide the dates, location and details of the events leading to your nomination as a Witness (PW-4) in the present matter at controversy.
9. Briefly state the reasons why you believe the Accused owes a legally enforceable debt to the Prosecutor. Can you state the documents upon which you rely to affirm the answer to this question.
10. Are you aware that partial payments were made by Accused and accepted by the Prosecutor? If so, briefly state in your own words the details of each such transaction including Dates, locations, parties and payment amounts.
11. What steps did you or the Prosecutor prior to initiating the Cheque bounce case in the present matter? Did you approach the Police prior to filing this complaint in Court. Briefly provide details of the complaint.
12. Briefly state why your testimony should not be construed as poisoning the mind of the Court, given your Criminal Antecedents and also the fact that you are an accused in a severe felony involving moral turpitude, that is currently under investigation by CB-CID.
13. Suppose the aforementioned investigation by CB-CID, requires you to attend and cooperate with the ongoing investigation, then briefly state how you would like to explain your absence or repeated abstention from any further inquiry, cross examination or discovery requests in the present matter related to Cheque Bounce case.
14. Briefly state the reasons why your testimony as PW-4 is required

The aforementioned list of Interrogatories is illustrative purpose only and not exhaustive. The actual set of interrogatories needs to be prepared by taking into consideration facts and circumstances of each case and situation. Care must be taken to ensure Rules of Evidence are complied with.

STRATEGY 4. CROSS EXAMINATION OF WITNESS

While preparing Cross examination of Witness³, PW-4, it would be helpful to remember the postulation of **THE INDIAN EVIDENCE ACT, 1872 SECTION (§) 136**

SECTION § 136. JUDGE TO DECIDE AS TO ADMISSIBILITY OF EVIDENCE —

When either party proposes to give evidence of any fact, the Judge may ask the party proposing to give the evidence in what manner the alleged fact, if proved, would be relevant; and the Judge shall admit the evidence if he thinks that the fact, if proved, would be relevant, and not otherwise. If the fact proposed to be proved is one of which evidence is admissible only upon proof of some other fact, such last-mentioned fact must be proved before evidence is given of the fact first mentioned, unless the party undertakes to give proof of such fact, and the Court is satisfied with such undertaking. If the relevancy of one alleged fact depends upon another alleged fact being first proved, the Judge may, in his discretion, either permit evidence of the first fact to be given before the second fact is proved, or require evidence to be given of the second fact before evidence is given of the first fact. **ILLUSTRATIONS —**

(a) xxx

(b) It is proposed to prove, by a copy, the contents of a document (***promissory note, cheque, loan amount, proof of payment***) said to be lost. The fact that the original is lost must be proved by the person proposing to produce the copy, before the copy is produced.

(c) xxx.

(d) It is proposed to prove a fact (A) which is said to have been the cause or effect of a fact in issue. There are several intermediate facts (B, C and D) which must be shown to exist before the fact (A) can be regarded as the cause or effect of the fact in issue. The Court may either permit A to be proved

³ Detailed version of cross examination questions can be provided by www.Satyagraha.com Research Team upon review of specific facts and circumstances. In case of need, contact help@satyagraha.com

**before B, C or D is proved, or may require proof of B, C and D
before permitting proof of A.**

The illustrative list of objections (not exhaustive), which *inter alia* serve as a reasons to file Petition *In-Limine* depending upon the facts and circumstances of the case is mentioned hereunder —

Ambiguous	Immaterial/Irrelevant	Qualifications
Argumentative	Impeachment Not Improper	Felony Cases, Prior Conduct
Assuming Facts Not in Evidence	Judicial Notice To Verify Statute	Refreshing Recollection
Authentication or Identification Lacking	Judicial Questioning - Improper	Relevancy Lacking
Best Evidence Rule Violated	Leading	Religion
Bias	Liability Insurance Improper	Remedial Measures
Bolstering Before Impeachment	Limited Admissibility	Repetitive
Business Record Not Established	Misconduct of Counsel	Reputation Evidence Improper
Character Inadmissible	Misleading	Safety Measures
Collateral Matter	Multiple Questions	Scientific Evidence
Competency Not Established	Narrative	Scope of Examination
Computer Graphics Evidence Inadmissible	Offers in Compromise	Self-Serving
Dead Man's Statute Violated	Opinion Rule Violated: Expert Witness	Sequestration Rule Violated
Exhibit Foundation Lacking	Opinion Rule Violated: Lay Witness	Settlement Negotiations
Expert Testimony Improper	Original Writings Rule	Speculative
Foundation Lacking	Parol Evidence Rule Violated	Stipulated
Habit, Routine Practice Improper	Prejudicial	Summaries Inadmissible
Harassment	Prior Conviction - Inadmissible	Tainted Evidence
Hearsay	Prior Inconsistent Statement	Unresponsive
Hypothetical Question Improper	Privileged	Vague

STRATEGY 5. IMPEACHMENT PETITION POST CROSS EXAMINATION

The **INDIAN EVIDENCE ACT, SECTION (§) 138**, provisions defence with the right to cross examination of witnesses. In the present matter at hand, the objects of cross examination are to impeach the accuracy, credibility, and general value of the evidence given in-chief, to sift the facts already stated by the witness, to detect and expose discrepancies, or to elicit suppressed facts which will support the case of the cross examining party. The **INDIAN EVIDENCE ACT, SECTION (§) 138** does not mandate the cross examination to be confined to facts spoken during the examination-in-chief.

STRATEGY 6. PETITION TO EXCLUDE WITNESS TESTIMONY

At this stage, obtain the certified copy of witness statement (PW-4) and move a Petition to strike or exclude witness Testimony on the grounds that —

1. Court may disregard unfavorable facts that were otherwise overlooked. Attach importance to objectionable evidence and inadmissible evidence.
2. If it becomes apparent that evidence is inadmissible only after the PW-4 testimony and evidence has been placed before the Court by the Prosecutor, then the most appropriate procedural device is a Petition to strike the evidence with an instruction from the court that should disregard the inadmissible evidence for all purposes.
3. Another scenario that comes into play is when the inadmissible nature of the evidence becomes apparent only when the witness (PW-4) answers the cross examination question. The answer(s) may be nonresponsive, contains hearsay, etc. A petition with a request for instruction is also appropriate when the witness (PW4) answers before an objection to the question can be made or answers even though the court has sustained a proper objection. If no Petition to strike testimony is made, the evidence is before the court for whatever it is worth because a failure to request a petition to strike and instruction to disregard might constitute waiver of the objection.

GROUND'S FOR PETITION IN-LIMINE DISALLOWING WITNESS PW-4

The PETITIONER's Counsel relies on the following Defences in opposing the presentation of PW-4 to testify as a witness, given the fact that PW-4 is listed as A-5 in a different unrelated crime which *per se* serious offence that is being investigated by CB-CID. The grounds and reasons for the said opposition is as stated below —

1. PW-4 is not a competent witness in the Dishonor of Cheque
2. PW-4 was not present at any of the events that are related to the present dispute related to Dishonor of Cheque between PETITIONER and RESPONDENT.
3. PW-4 is a habitual offender and is involved in a Crime of severe and serious moral turpitude.
4. Trial Court proceedings would get vitiated if an A-5 in CB-CID is brought in as a witness
5. PW-4 can neither confirm nor deny the absence of averments made in the Complaint.
6. PW-4 himself is an accused in a serious Crime or Offence that is currently being investigated by CB-CID. Therefore, any reliance placed upon testimony of such a witness and evidence adduced thereof is substantially outweighed by the danger of unfair prejudice to the PETITIONER in this present matter.
7. PW-4 is not competent to confirm nor deny the Benefit of doubt that can be accorded to the PETITIONER.
8. The reliance placed by the RESPONDENT on PW-4 is only to delay the Trial and commit a vexatious litigation.
9. PW-4 has past enmity with the PETITIONER. Therefore, any testimony given by PW-4 would be tainted on the very face of the record.
10. The prosecutor/RESPONDENT is attempting to put forth refusal based upon arguments evidences the PETITIONER/DEFENDANT's refusal to own admission of guilt. Such an argument or evidence adduced in such a matter is inflammatory, and unfair based upon the statutory right of refusal.
11. The PETITIONER by and through his attorney, and moves This Honorable Court issue an ORDER prohibiting the PROSECUTOR/RESPONDENT from admitting into evidence any testimony from unreliable witnesses such as PW-4. *Such testimony should be excluded as it is more prejudicial than probative.*

SAMPLE FORMAT OF PETITION IN LIMINE

IN THE COURT OF THE
HON'BLE _____ METROPOLITAN SESSIONS JUDGE, Hyderabad, INDIA

MEMORANDUM OF CRIMINAL PETITION

CR. M.P. No. _____ of 2016

IN

CR. NO. _____ OF 2016

BETWEEN:

Swamy Pollard Insurance Company represented by Swamy Narayan

...PETITIONER/ACCUSED

AND

1. Government of Telangana
Rep By Public Prosecutor
2. Mendez, individually and as next friends of Praveen Babu ("Praveen"),

... RESPONDENT/ COMPLAINANT

AFFIDAVIT IN SUPPORT OF PETITION IN LIMINE TO DISALLOW TESTIMONY OF WITNESS PW-4 FILED UNDER CrPC § 10 R/W CrPC § 301 R/W CrPC §§ 242, 223, 244

The PETITIONER humbly **SHEWETH:-**

1. THAT on or about 25-Aug-2016, the PETITIONER/ACCUSED brought to the attention of the Hon'ble Trial Court, the Criminal Antecedents of PW-4
2. THAT PW-4 is an accused (A-5) in a serious offence that is being investigated by CB-CID
3. PW-4 is not a competent witness in the Dishonor of Cheque
4. PW-4 was not present at any of the events that are related to the present dispute related to Dishonor of Cheque between PETITIONER and RESPONDENT.
5. Trial Court proceedings would get vitiated if an A-5 in CB-CID is brought in as a witness

THEREFORE, the PETITIONER/ Defendant, moves *in limine* for directions from the Hon'ble Court to instruct the prosecutor not to make bring forth the testimony of Witness PW-4.

last page corr.

PETITIONER/ACCUSED

Solemnly and sincerely affirm this
The ____TH day of ____, 2016
and signed his name in my presence.

BEFORE ME
ADVOCATE :: HYDERABAD, INDIA

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**IN THE COURT OF THE
HON'BLE _____ METROPOLITAN SESSIONS JUDGE, Hyderabad, INDIA**

MEMORANDUM OF CRIMINAL PETITION

CR. M.P. No. _____ of 2016

IN

CR. No. _____ OF 2016

BETWEEN:

Swamy Pollard Insurance Company represented by Swamy Narayan
...PETITIONER/ACCUSED

AND

1. Government of Telangana
Rep By Public Prosecutor

2. Mendez, individually and as next friends of Praveen Babu ("Praveen"),

... RESPONDENT/ COMPLAINANT

**PETITION IN LIMINE TO DISALLOW TESTIMONY OF WITNESS PW-4
FILED UNDER CrPC § 10 R/W CrPC § 301 R/W CrPC §§ 242, 223, 244**

For the reasons set forth in the accompanying affidavit, the PETITIONER/ Defendant, moves *in limine* for directions from the Hon'ble Court to instruct the prosecutor not to make bring forth the testimony of Witness PW-4

It is further submitted that the probative value of the evidence purportedly to be adduced by PW4 with regards to the present nature of the current controversy is substantially outweighed by the danger of unfair prejudice.

DATE:

LOCATION: HYDERABAD, INDIA

PETITIONER/ACCUSED

Respectfully Submitted By

COUNSEL FOR PETITIONER/ACCUSED

MEMORANDUM OF LAW IN SUPPORT OF PETITION IN LIMINE
MEMORANDUM OF CRIMINAL PETITION

CR. M.P. No. _____ of 2016

IN

CR. No. _____ OF 2016

BETWEEN:

Swamy Pollard Insurance Company represented by Swamy Narayan
...PETITIONER/ACCUSED

AND

1. Government of Telangana
Rep By Public Prosecutor

2. Mendez, individually and as next friends of Praveen Babu ("Praveen"),

... RESPONDENT/ COMPLAINANT

MEMORANDUM OF LAW IN SUPPORT OF
PETITION IN LIMINE TO DISALLOW TESTIMONY OF WITNESS PW-4
FILED UNDER CrPC § 10 R/W CrPC § 301 R/W CrPC §§ 242, 223, 244

Defendant respectfully requests that this Court enter an order prohibiting various prejudicial testimony and improper introduction of a pernicious witness, aka, PW-4, at the mitigation phase. The facts and reasons set forth in elaborate detail in the accompanying affidavit by the PETITIONER/ Defendant are incorporated herewith as if stated herein.

DUTY OF THE PROSECUTION IS TO EXAMINE ALL WITNESSES WHEN EVIDENCE IS
ESSENTIAL TO THE UNFOLDING OF THE NARRATIVE OF EVENTS ON WHICH THE
PROSECUTION CASE IS BASED —

CRPC SECTION (§) 231 has provisions related to EVIDENCE FOR PROSECUTION.

In *Habeeb Mohammad v. State of Hyderabad*, AIR SC 51 : 1954 CrLJ 338 : 1954 SCA 514 : 1953 SCJ 678 : 1954 475 : 1954 MWN 233, it was held —

“¶3. If a material witness is not examined, and the prosecution has no satisfactory explanation to offer for his being withheld, the accused is entitled to ask the Court, to draw the inference under **SEC. (8) 114, ILLUS. (G) OF THE INDIAN EVIDENCE ACT**, that if produced, the evidence of that witness would be unfavorable to the prosecution”

A similar view, as above, has been echoed in the decision of the Apex Court in ***State of U.P v. Jaggio*, AIR 1971 SC 1586 : 1971 CrLJ 1173 : 1971 SCD 557 : (1971) 2 SCCrR 397 : 1971 CrAppR (SC) 323.**

In the present case at hand, there is no foundation laid by the PROSECUTION that the said witness, PW-4, is a material witness. Furthermore, there is no evidence on record that not producing the witness, at this time would preclude the opportunity to the PROSECUTION to produce the witness at an appropriate time, and therefore, the question of withholding the examination of the said Witness does not arise. Instead, it is the case of the PETITIONER, that putting forth the testimony of the witness at this time when the narrative of the case has not been fully espoused by the PROSECUTION, would in turn have the deleterious impact of poisoning the mind of the Court and thereby the *probative value of the evidence* purportedly to be adduced by PW4 with regards to the present nature of the current controversy is substantially outweighed by the danger of *unfair prejudice*.

Moreover, in the case of ***Sarwan Singh v. State of Punjab*, AIR 1976 SC 2304, 1976 CrLJ 1757 : (1976) 4 SCC 369**, it was held —

“Prosecution is bound to produce **only** such witnesses **as are essential** to the unfolding of the prosecution case.”

In the present case at hand, the PROSECUTOR has never propounded reasons or rationale regarding the testimony of Witness, PW-4, at this point of the hearing. Given the backdrop that the Witness, PW-4, is himself an accused in a different case involving moral turpitude, and which is being investigated by CB-CID, lends force to the contention of the PETITIONER that the testimony of the Witness, PW-4 is being injected upon the Court with the sole intention to wreck vengeance upon the PETITIONER, in addition to causing numerous delays in the trial. Moreover, there is no evidence on the record that shows that the testimony of the Witness, PW-4, is essential to the unfolding of the prosecution case. (See PETITIONER’s affidavit at ¶¶3-7)

**REASONABLE GROUNDS EXISTS TO ALLOW ACCUSED THE RIGHT TO DEFER
CROSS-EXAMINATION OF A WITNESS**

The Counsel for the PETITIONER relies on the principle of *Obiter Dicta* postulated in the case of ***Jayakar v. State of Karnataka, 1997 (1) Crimes 237 (Kant)***, wherein it was held —

“The accused is not entitled as of right to postponement of cross-examination of a witness, ***unless he had, on reasonable grounds,*** (emphasis added), a case for exercise of discretion in his favor”.

In the present case at hand, there is reasonable apprehensions as set forth in numerous reasonable grounds elaborated in the PETITIONER’s affidavit, that cross-examination of the Witness PW-4 at this pre-mature juncture of the hearing would be prejudicial to the PETITIONER, thereby depriving him of a fair trial leading to a miscarriage of justice. The PETITIONER therefore makes a plea by taking shelter under **CRPC SEC. (§) 231(2)** and prays to the Court to disallow the PROSECUTOR from bringing forth a premature and prejudicial testimony of a Witness, PW-4, who is himself an accused of a felony involving moral turpitude.

WHEREFORE, having considered the facts, circumstances of the case and memorandum of law in this written argument, the PETITIONER prays to the Court to allow this Petition *in limine* granting directions from the Hon’ble Court to instruct the prosecutor **NOT** to make bring forth the testimony of Witness PW-4, at this present juncture.

DATE:
LOCATION: HYDERABAD, INDIA

PETITIONER/ACCUSED

Respectfully Submitted By

COUNSEL FOR PETITIONER/ACCUSED

APPENDIX

APPELLATE JURISDICTION OF THE SUPREME COURT

ARTICLE 13 IN THE CONSTITUTION OF INDIA 1949

ART. 13 - Laws inconsistent with or in derogation of the fundamental rights

- (1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void
- (2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void
 - a. In this article, unless the context otherwise requires law includes any Ordinance, order, bye law, rule, regulation, notification, custom or usages having in the territory of India the force of law; laws in force includes laws passed or made by Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas
- (3) Nothing in this article shall apply to any amendment of this Constitution made under **ARTICLE 368**, Right of Equality

ARTICLE 14 IN THE CONSTITUTION OF INDIA 1949

ART. 14 - Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

ARTICLE 16 IN THE CONSTITUTION OF INDIA 1949

ART. 16 - Equality of opportunity in matters of public employment

- (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State
- (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State
- (3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union

territory, any requirement as to residence within that State or Union territory prior to such employment or appointment

- (4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State
- (5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination

ARTICLE 19 IN THE CONSTITUTION OF INDIA 1949

ART. 19 - Protection of certain rights regarding freedom of speech etc

- (1) All citizens shall have the right
 - (a) to freedom of speech and expression;
 - (b) to assemble peaceably and without arms;
 - (c) to form associations or unions;
 - (d) to move freely throughout the territory of India;
 - (e) to reside and settle in any part of the territory of India; and
 - (f) omitted
 - (g) to practise any profession, or to carry on any occupation, trade or business
- (2) Nothing in sub clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence
- (3) Nothing in sub clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order, reasonable restrictions on the exercise of the right conferred by the said sub clause
- (4) Nothing in sub clause (c) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public

order or morality, reasonable restrictions on the exercise of the right conferred by the said sub clause

- (5) Nothing in sub clauses (d) and (e) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, reasonable restrictions on the exercise of any of the rights conferred by the said sub clauses either in the interests of the general public or for the protection of the interests of any Scheduled Tribe
- (6) Nothing in sub clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub clause, and, in particular, nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,
 - (i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or
 - (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise

ARTICLE 20 IN THE CONSTITUTION OF INDIA 1949

ART. 20 - Protection in respect of conviction for offences

- (1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence
- (2) No person shall be prosecuted and punished for the same offence more than once
- (3) No person accused of any offence shall be compelled to be a witness against himself

ARTICLE 21 IN THE CONSTITUTION OF INDIA 1949

ART. 21 - Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law.

ARTICLE 22 IN THE CONSTITUTION OF INDIA 1949

ART. 22 - Protection against arrest and detention in certain cases

- (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be

denied the right to consult, and to be defended by, a legal practitioner of his choice

- (2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate
- (3) Nothing in clauses (1) and (2) shall apply (a) to any person who for the time being is an enemy alien; or (b) to any person who is arrested or detained under any law providing for preventive detention
- (4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless (a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:
- (5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order
- (6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose
- (7) Parliament may by law prescribe
 - (a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub clause (a) of clause (4);
 - (b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and
 - (c) the procedure to be followed by an Advisory Board in an inquiry under sub clause (a) of clause (4)

ARTICLE 32 IN THE CONSTITUTION OF INDIA 1949

ART. 32 - Remedies for enforcement of rights conferred by this Part

- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed
- (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part
- (3) Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2)
- (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution

ARTS. 132 - 136

ARTICLE 132 TO ARTICLE 136 deal with the Appellate Jurisdiction of the Supreme Court in the constitutional cases. **ARTICLE 132** deals with Appellate Jurisdiction of Supreme Court in Appeals from the High Courts in certain cases. Article 133 deals with Appellate Jurisdiction of Supreme Court in Appeals from the High Courts in civil matters. **ARTICLE 133** deals with Appellate Jurisdiction of Supreme Court in regard to criminal matters. **ARTICLES 132, 133 AND 134** must be read with **ARTICLE 134-A** (Certificate for Appeal to the Supreme Court). **ART. 134-A** has been inserted in the Constitution vide Forty-Fourth (44TH) Amendment Act, 1978. **ART. 135** deals with Jurisdiction and powers of the Federal Court under existing law to be exercisable by the Supreme Court. **ART. 136** deals with Special Leave to appeal by the Supreme Court.

ARTICLE 132 IN THE CONSTITUTION OF INDIA 1949

ART. 132 is a general article conferring the Appellate Jurisdiction to the Supreme Court from any judgement, decree or final order of a High Court whether in a civil, criminal or other proceeding. If the High Court certifies that the case involves a substantial question of law. **ARTICLE 132** in The Constitution Of India 1949 refers to Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases, states thus

- (1) An appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court in the territory of India, whether in a civil, criminal or other proceeding, if the High Court certifies under Article 134A that the case involves a substantial question of law as t the interpretation of this Constitution
- (2) *** Omitted

- (3) Where such a certificate is given, any party in the case may appeal to the Supreme Court on the ground that any such question as aforesaid has been wrongly decided. Explanation For the purposes of this article, the expression final order includes an order declaring an issue which, if decided in favour of the appellant, would be sufficient for the final disposal of the case

ARTICLE 133 IN THE CONSTITUTION OF INDIA 1949

ART. 133 refers to Appellate jurisdiction of Supreme Court in appeals from High Courts in regard to civil matters

- (1) An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies under ARTICLE 134A
- (a) that the case involves a substantial question of law of general importance; and
 - (b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court
- (2) Notwithstanding anything in Article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided
- (3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court

ARTICLE 134 IN THE CONSTITUTION OF INDIA 1949

ART. 134 - Appellate jurisdiction of Supreme Court in regard to criminal matters

- (1) An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court has
- (a) on appeal reversed an order of acquittal of an accused person and sentenced him to death; or

- (b) has withdrawn for trial before itself any case from any court subordinate to its authority and has in such trial convicted the accused person and sentenced him to death; or
 - (c) **certifies under ARTICLE 134A** that the case is a fit one for appeal to the Supreme Court: Provided that an appeal under sub clause (c) shall lie subject to such provisions as may be made in that behalf under clause (1) of Article 145 and to such conditions as the High Court may establish or require
- (2) Parliament may by law confer on the Supreme Court any further powers to entertain and hear appeals from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India subject to such conditions and limitations as may be specified in such law

ARTICLE 135 IN THE CONSTITUTION OF INDIA 1949

ART. 135 - Jurisdiction and powers of the Federal Court under existing law to be exercisable by the Supreme Court Until Parliament by law otherwise provides, the Supreme Court shall also have jurisdiction and powers with respect to any matter to which the provisions of Article 133 or Article 134 do not apply if jurisdiction and powers in relation to that matter were exercisable by the Federal Court immediately before the commencement of this Constitution under any existing law

ARTICLE 136 IN THE CONSTITUTION OF INDIA 1949

ART. 136 - Special leave to appeal by the Supreme Court

- (1) Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India
- (2) Nothing in clause (1) shall apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces

ARTICLE 137 IN THE CONSTITUTION OF INDIA 1949

ART. 137 - Review of judgments or orders by the Supreme Court Subject to the provisions of any law made by Parliament or any rules made under **ARTICLE 145**, the Supreme Court shall have power to review any judgment pronounced or order made by it

IMPORTANT POINTS RELEVANT TO INVOKING ART. 137

APEX COURT – The Supreme Court is the Apex Court of the country. It is the highest in India. The Judgement or directions or ratio given by the Supreme Court is final. There is no other appellate authority over and above it.

ART. 137 gives the power to review of judgments or orders by the Supreme Court to review any judgement pronounced or order made by it. This power of review can be exercised by the Supreme Court –

- (a) If it discovers **any new important matters of evidence;**
- (b) If it discovers **any mistake or error apparent on the face of the record.**
- (c) On any other **sufficient and reasonable grounds.**

ART. 137 does not limit the grounds for review. However, the grounds can be limited by –

- (a) The Parliamentary Legislature, or
- (b) Rules made by the Supreme Court.

ARTICLE 138 IN THE CONSTITUTION OF INDIA 1949

ART. 138 - Enlargement of the jurisdiction of the Supreme Court -

- (1) The Supreme Court shall have such further jurisdiction and powers with respect to any of the matters in the Union List as Parliament may by law confer
- (2) The Supreme Court shall have such further jurisdiction, and powers with respect to any matter as the Government of India and the Government of any State may by special agreement confer, if Parliament by law provides for the exercise of such jurisdiction and powers by the Supreme Court

ARTICLE 139 IN THE CONSTITUTION OF INDIA 1949

ART. 139 - Conferment on the Supreme Court of powers to issue certain writs Parliament may by law confer on the Supreme Court power to issue directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for any purposes other than those mentioned in clause (2) of **ARTICLE 32.**

ARTICLE 140 IN THE CONSTITUTION OF INDIA 1949

ART. 140 - Ancillary powers of Supreme Court Parliament may by law make provision for conferring upon the Supreme Court such supplemental powers not inconsistent with any of the provisions of this Constitution as may appear to be necessary or desirable for the purpose of enabling the Court more effectively to exercise the jurisdiction conferred upon it by or under this Constitution.

ARTICLE 141 IN THE CONSTITUTION OF INDIA 1949

ART. 141 - Law declared by Supreme Court to be binding on all courts The law declared by the Supreme Court shall be binding on all courts within the territory of India.

IMPORTANT POINTS

THE APEX COURT – The Supreme Court of India is the Apex Court of the Country. The framers of the Constitution gave utmost importance to it while framing the Constitution.

BINDING JURISDICTION OF THE SUPREME COURT – **ART. 141** provides that the law declared by the Supreme Court shall be binding on all courts within the territory of India.

ARTICLE 226 IN THE CONSTITUTION OF INDIA 1949

ART. 226 - Power of High Courts to issue certain writs

- (1) Notwithstanding anything in **ARTICLE 32** every High Court shall have powers, throughout the territories in relation to which it exercise jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, *prohibitions*, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose
- (2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories
- (3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without
 - (a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

- (b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the aid next day, stand vacated
- (4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme court by clause (2) of **ARTICLE 32**

THE INDIAN EVIDENCE ACT, 1872

SECTION 58 IN THE INDIAN EVIDENCE ACT, 1872

SEC 58- FACTS ADMITTED NEED NOT BE PROVED. —No fact need to be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force at the time they are deemed to have admitted by their pleadings: Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admissions.

SECTION 145 IN THE INDIAN EVIDENCE ACT, 1872

SEC 145 - CROSS-EXAMINATION AS TO PREVIOUS STATEMENTS IN WRITING.—A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.

SECTION 157 IN THE INDIAN EVIDENCE ACT, 1872

SEC. 157 - Former statements of witness may be proved to corroborate later testimony as to same fact.—In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

PROVISIONS IN CRPC TO QUASH CRIMINAL PROCEEDINGS

SECTION 482 IN THE CODE OF CRIMINAL PROCEDURE, 1973

CRPC § 482 - SAVING OF INHERENT POWERS OF HIGH COURT. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court 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.

SUGGESTED READINGS:

1. *Kelkar R.V.*: Criminal Procedure, 3rd Edn. Eastern Book Co., Lucknow, 1993.
2. *Ratanlal and Dhirajlal*, The Code of Criminal Procedure, 15th Edn. Wadhwa & Co.,
3. *Padala Rama Reddi*, The Code of Criminal Procedure, 1973, Asia Law House, Hyderabad.
4. *Prof. S.N. Misra*, The Code of Criminal Procedure, Central Law Agency.
5. *M.P. Tandon*, Criminal Procedure Code, Allahabad Law Agency.
6. *Shoorvir Tyage*, The Code of Criminal Procedure, Allahabad Law Agency.
7. Baddi, A. (2016, Dec 10). DEFENDANT STRATEGY TO DISALLOW WITNESS ACCUSED IN ANOTHER OFFENCE. Retrieved from <http://satyagraha.com/portal/articles/11-crime-and-criminology/1528-defendant-strategy-to-disallow-witness-accused-in-another-offence.html>

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CONGRATULATIONS.

You have just completed getting yourself acquainted with CRPC STRATEGY TO EXCLUDE OR PRECLUDE WITNESS TESTIMONY!!!

Wait !!! You now need to read and re-read this booklet article and practice writing the format mentioned in the Sample Petition In-Limine along with the accompanying Memorandum of Law.

This would require approximately a 2-Hour effort, so that relevant **CRPC** section (§) and its description, mentioned herein, become second nature for you.

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