



Inherent power of high court VIS a VIS challenges in criminal proceedings: A critical analysis

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Abstract

Section 482 of the Criminal Procedure Code, 1973 confers the circumstances under which the inherent powers may be exercised. These are to give effect to an order under the Code, to prevent abuse of process of court and to secure end of justice. The Supreme Court of India observed that this power should be exercised sparingly, cautiously and carefully. It is to be exercised to do real and substantial justice for the administration of which alone courts exists.

Keywords: inherent powers, sparingly, abuse of process, end of justice

1. Introduction

Section 482 of the Code of Criminal Procedure, 1973 (For brevity 'Code') stipulates the saving of inherent power of High Court which mandates that 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. Section 482 of the Code is a precisely replica of Section 561-A of the Code of Criminal Procedure, 1898. Section 561-A in the Code of the Criminal Procedure, 1898 was added by the Code of Criminal Procedure (Amendment) Act of 1923 as it was felt that the High Courts were unable to render complete justice even if, in a given case, the illegality was blatant and evident. The inherent powers of the High Court preserved are vested in the High Court by law within the meaning of Article 21 of the Constitution of India. Supreme Court held in the case of *Ratilal Bhanji v. Assistant Custom Collector, Bombay* that the procedure for invoking the inherent powers is regulated by rules framed by the High Court and the power to make such rules is conferred on the High Court by the Constitution^[1].

In prescribing the rules of procedure undoubtedly attempts to provide for all cases that are likely to arise, but it is not possible that any legislative enactment dealing with the procedure, however carefully it may be drafted, would succeed in providing for all cases that may possibly arise in future. Lacunae are sometimes discovered in procedural law and it is to cover such lacunae and to deal with cases where such lacunae are discovered that procedural law invariably recognises the existence of inherent power in Courts.

2. No inherent power to the Lower Court under the Law

It has been held by the Supreme Court in *Mithabhai Pashabhai Patel v. State of Gujrat* that the Courts subordinate to the High Court have no inherent power under Sec. 482 of

the Code or otherwise^[2]. A Magistrate or the Sessions court has no inherent power to restore a complaint dismissed for default. As soon as the complaint is dismissed the Magistrate becomes functus officio and has no longer any power to rehear the complaint. A power to restore a complaint dismissed for default by the Magistrate is available only to the High Court. Supreme Court has held in *Minu Kumari v. State of Bihar* that all Courts, whether civil or criminal, possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle that when the law gives a person anything, it gives him that without which it cannot exist^[3].

3. Power conferred under Law to remove injustice

It is relevant to mention here that the section 482 of the Code is a reminder to the High Courts that they are not merely courts of law but also Courts of justice and possess inherent powers to remove injustice. All that this Section does is to preserve the inherent powers of the High Court without conferring any additional powers. Section 482 of the code confers three circumstances under which the inherent jurisdiction may be exercised, namely:-

1. To give effect to an order under the Code.
2. To prevent abuse of the process of court, and
3. To otherwise secure the ends of justice.

Thus, inherent jurisdictions to prevent abuse of process, to secure the ends of justice are terms incapable of definition or enumeration, and capable at the most of test, according to well established principles of criminal jurisprudence. Process is a general word meaning in effect anything done by that Court. The framers of the Code would have not provided which all cases should be covered as abuse of the process of the Court. In the case of *Popular Muthiah v. State of Tamil Nadu*^[4], Supreme Court observed that it is for the Court to take a decision in particular cases.

¹ AIR 1967 SC 1639

² (2009) 6 SCC 332

³ (2006) 4 SC 359

⁴ (2006) 3 SCC (Cri) 245

The Supreme Court has established in the case of *Talab Haji Hussain v. Madhukar Purushottam Mondkar* ^[5] that the inherent power contemplated by Section 482 of the Code has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. The Hon'ble Supreme Court has held in the case of *State of Karnataka v. Muniswami* ^[6] that it is not possible or desirable or even expedient to lay down any inflexible rule which would govern the exercise of the High Court's inherent jurisdiction. Even though the inherent jurisdiction of the High Court under Section 482 of the Code is very wide, it has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised to do real and substantial justice for the administration of which alone courts exist.

Thus, it is clear that the provisions of this Code are not intended to limit or affect the inherent powers of the High Court. Apparently, this inherent power can be exercised only for any of the three purposes particularly mentioned in the section. This inherent power cannot naturally be invoked in respect of any matter covered by the specific provisions of the Code. It cannot also be invoked if its exercise would be inconsistent with any of the provisions of the Code. It is only if the matter in question is not covered by any specific provision of the Code that Section 482 cannot come into operation, subject further to the requirement that the exercise of such power must serve either of the three purposes mentioned in the said section.

In exercising its jurisdiction under Section 482 of the Code, the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. This is the function of the trial Court, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained.

4. Inherent Power is an exception for interference not the rule

It is only the High Court whose inherent power has been recognised by Section 482 and even in regard to the High Court's inherent power definite salutary safeguards have been laid down as to its exercise. In the case of *Vishal Paper Tech India Limited v. State of Andhra Pradesh* ^[7] it was held by the High Court of Andhra Pradesh that it is only where the High Court is satisfied either that an order passed under the Code would be rendered ineffective or that the process of any Court would be abused or that the ends of the justice would not be secured that the High Court can and must exercise its inherent power under Section 482 of the Code. In the case of *State of Orrisa v. Saroj Kumar Sahoo* ^[8] it was held by the Supreme Court that it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with the

procedure can provide for all cases that may possibly arise. It has been further laid down in *P.O. Thomas v. Union of India and others*, ^[9] that Section 482 cannot be invoked in non-criminal proceedings.

Inherent powers are not to be exercised ignoring express provisions in the Code. Inherent power of the High Court cannot be invoked in regard to matters which are directly covered by specific provisions in the Code. In the case of *State of Haryana v. Bhajan Lal* ^[10], it was held by the Supreme Court that the inherent power has to be exercised sparingly with circumspection and in the rarest of rare cases. In the case of *Som Mittal v. State of Karnataka* ^[11], it was held by the apex Court that the exercise of power under Section 482 of the Code is not the rule but an exception. In the case of *Janta Dal v. H.S. Chowdhary* ^[12], it was laid down by the apex Court that the inherent power should not be exercised to stifle a legitimate prosecution. In the case of *State of Bihar and others v. K.J.D. Singh*, ^[13] it was held that the High Court not to usurp the jurisdiction of the trial Court. Invoking the inherent power prior to the commencement of trial and letting in of evidence is not desirable. The power to the commencement of trial and letting in of evidence is not desirable. The power should be exercised only in exceptional cases. High Court not to seize the jurisdiction of the trial Court while exercising its power under Section 482 of the Code ^[14]. Further the Hon'ble Supreme Court in *State of West Bengal v. Ashutosh Ghosh* ^[15] emphasised that while exercising jurisdiction under Section 482 of the Code, the High Court will not embark upon an enquiry as to whether the evidence on record is reliable or not to sustain the accusation against the accused. In the case of the *State of Punjab v. Davinder Pal Bhullar and others* ^[16], the Supreme Court laid down that inherent power cannot be exercised to do something which is expressly barred under the Code.

5. Quashing of FIR/Complaint

In the case of *R.P. Kapur v. State of Punjab* ^[17], the Supreme Court has considered the circumstances in which the High Court can, by invoking its inherent powers, quash the criminal proceedings in a subordinate criminal Court. The Supreme Court observed that it is well established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any Court or otherwise to secure ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of the inherent jurisdiction. However, it may be indicated that some categories of cases

⁵ AIR 1958 SC 376

⁶ AIR 1977 SC 1489

⁷ 2005 Cri LJ 1838(AP)

⁸ (2006) 2 SCC (Cri) 272

⁹ 1990 Cri LJ 1028 (Kerala)

¹⁰ AIR 1992 SC 604

¹¹ Criminal Appeal No. 206 of 2008 Adjudicated on 29th January 2008

¹² AIR 1993 SC 892

¹³ 1993 (41) BLJR 1401

¹⁴ 1993 Cri. L.J. 3357 SC

¹⁵ (1979) 4 SCC 381

¹⁶ AIR 2012 SC 364

¹⁷ AIR 1960 SC 866

where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the Court or that quashing of the impugned proceedings would secure the ends of justice.

If the criminal proceedings in question is in respect of an offence alleged to have been committed by the accused person and it manifestly appears that there is legal bar against the institution or continuance of the said proceedings the High Court would be justified in quashing the proceedings on that very ground. Absences of the requisite sanction, for instance, furnish cases under this category. Cases may also arise where the allegation in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged, in such cases no question of appreciating evidences arises, it is a matter merely of looking at the complaint or the FIR to decide whether the offence alleged is disclosed or not. In such cases, it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal Court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category, the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question.

The Supreme has reiterated this power in *Pepsi Foods Ltd. v. Special Judicial Magistrate*^[18] that the power conferred under Article 226/227 of the Constitution of India and Section 482 of the Code have no limit but more the power more the cases and caution is to be exercised while invoking these powers. When the exercise of the powers could be under Article 227 of the Constitution or under Section 482 of the Code, it may not always be necessary to invoke the provisions of Article 226. In the case of *Madhu Limaye v. State of Maharashtra*^[19], the following principles in relation to the exercise of the inherent power of the High Court have been followed ordinarily and generally, almost invariably, barring a few exceptions:

1. That the power is not to be restored to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party,
2. That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure ends of justice.
3. That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

In most of the cases decided during several decades the inherent power of the High Court has been invoked for the

quashing of criminal proceedings on one ground or the other. The Courts have been following guidelines in dealing with requests for quashing criminal proceedings which have been stated by the Supreme Court in *State of Haryana v. Bhajan Lal*^[20], by way of illustrations wherein the extraordinary power under Article 226 of the Constitution or inherent power under Section 482 of the Code can be exercised by the High Court to prevent abuse of process of any Court or to secure ends of justice.

1. Where the allegations in the FIR/complaint, even if they are taken at their face value do not prima facie constitute any offence against the accused.
2. Where the allegations in the FIR/complaint or other materials do not constitute a cognizable offence justifying an investigation by the police under Section 156(1) of the code except under an order of a Magistrate within the purview of Section 155(2).
3. Where the uncontroverted allegations in the FIR/complaint and the evidence collected thereon do not disclose the commission of any offence.
4. Where the allegations in the FIR/complaint do not constitute any cognizable offence but constitute only non-cognizable offence to which no investigation is permitted by the police without the order of Magistrate under Section 155(2).
5. Where the allegations 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 Statute concerned (under which the proceedings is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or in the statute concerned, providing efficacious redress for the grievance of the aggrieved party.
7. Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused with a view to spite him due to private and personal vengeance.

Considering all these aspects, it can be said that the Constitutional Courts cannot and should not quash an FIR which is a nascent document the averments of which will take a tangible shape only after the process of collection of evidence is complete. The proceedings can be quashed under Sec. 482 of the Code upon settlement of the dispute between the parties in cases involving non-compoundable offences like Matrimonial Disputes and where the marital partners have subsequently settled their disputes and differences.

6. Limiting Scope of Inherent Power by Exercising Revisional Jurisdiction

Whether the bar under Section 397 (2) of the Code in relation to interlocutory order, is applicable to Section 482 of the Code? It has been held by the Supreme Court in the case of *Vijayapal Reddy v. State of Andhra Pradesh*^[21] that generally

¹⁸ (1998) 5 SCC 758

¹⁹ (1977) 4 SCC 551

²⁰ AIR 1992 SC 604

²¹ AIR 1978 SC 1590

speaking the bar put on revision of an interlocutory order under Section 397 (2) of the Code cannot be circumvented by invoking the inherent powers under Section 482. But nothing in the Code, not even Section 397 can affect the amplitude of the inherent power preserved in Section 482. It has been held by the Supreme Court in *Madhu Limaye v. State of Maharashtra* ^[22] that where the impugned interlocutory order clearly brings about a situation which is an abuse of the process of the court then for the purpose of securing the ends of justice interference by the High Court is absolutely necessary and nothing contained in Section 397 (2) can limit or affect the exercise of the inherent power of the High Court.

It is the inadequacy inherent in the Code which fails to provide for all contingencies which has called for the creation of and saving the inherent power of the High Court to act *ex debito justitiae*. The same also explains why the inherent power is not to be exercised in matters specially covered by the other provisions of the Code. Therefore, it is important that the specific bar put by Section 397(2) on the exercise of the revisional jurisdiction in case of interlocutory orders has changed the context of the use of the inherent powers of the High Court. There is nothing in Section 482 that is to be read subject to Section 397(2). However, the High Court is not to take recourse to its inherent powers whenever it is unable to exercise its revisional powers in cases of interlocutory orders. Indiscriminate or frequent use of the inherent power in interlocutory orders would render nugatory the bar put by Section 397(2) of the Code. That would be doing indirectly what the Court is directly forbidden to do under Section 397(2) of the Code. While it would not be proper to fetter or circumscribe the ambit of the inherent powers of the High Court which is a mighty reservoir to be drawn by the litigants in cases where the channels of other legal remedies under the Code are dried up, at the same it would be risky to attempt formulations of principles to be followed in this regard. Circumstances may arise where failure to exercise the inherent powers in case of interlocutory orders may occasion great hardship.

In the case of *Shahid Balwa v. Union of India* ^[23] and *Girish Kumar Suneja v. C.B.I* ^[24], it was held by the Supreme Court that while dealing with the submissions made in relation to the aforesaid order that considering the width and ambit of the investigation which could even spread overseas and also considering the larger public interest, the aforesaid order was passed reserving the right of the accused to move this Court if there is a grievance against the order passed by the Special Judge during the trial and that this would ensure that progress in the trial is not hampered. Such an order was permissible under the provisions of Article 136 read with Article 142 of the Constitution. It was also made clear that the parties cannot invoke the jurisdiction under Article 226 or 227 of the Constitution or under Section 482 of the Code. so as to ensure compliance with the orders passed by this Court otherwise the very purpose and object of the order would be defeated. This Court held in paragraphs 22 and 23 of the Report as follows:

“We may, at the very outset, point out that CBI as well as the

Enforcement Directorate are yet to complete the investigation of the cases relating to 2G Scam and the case which is being tried by the Special Judge is only one amongst them, wherein the charge-sheet has been filed and the trial is in progress. This Court, taking into consideration the width and ambit of the investigation which even spreads overseas and the larger public interest involved, passed the orders impugned, reserving the right of all, including the accused persons, to move this Court if their prayer would amount to staying or impeding the progress of the trial. In case they have any grievance against the orders passed by the Special Judge during trial, they are free to approach this Court so that the progress of the trial would not be hampered by indulging in cumbersome and time-consuming proceedings in the other forums, thereby stultifying the preemptory direction given by this Court for day-to-day trial. Article 136 read with Article 142 of the Constitution of India enables this Court to pass such orders, which are necessary for doing complete justice in any cause or matter pending before it and, any order so made, shall be enforceable throughout the territory of India. The parties, in such a case, cannot invoke the jurisdiction under Article 226 or 227 of the Constitution of India or under Section 482 of the Code so as to interfere with those orders passed by this Court, in exercise of its constitutional powers conferred under Article 136 read with Article 142 of the Constitution of India. Or, else, the parties will move courts inferior to this Court under Article 226 or Article 227 of the Constitution of India or Section 482 of the Code, so as to defeat the very purpose and object of the various orders passed by this Court in exercise of its powers conferred under Article 136 read with Article 142 of the Constitution of India.”

7. Territorial jurisdiction of the High Court

In the case of the *Chellappan Pillai v. Chandulal* ^[25] the Kerala High Court interpreted the territorial jurisdiction of the High Court and held that it is confined only to the Courts subordinate to it in the State for which such High Court has been constituted. A matter pending in a Court under the jurisdiction of another High Court cannot be quashed by the Kerala High Court in exercise of its inherent power under Section 482 of the Code. Inherent powers under Section 482 of the Code can be invoked only when there is no other remedy open to the aggrieved party. Hence, a criminal complaint pending before a Court outside the territorial jurisdiction of the High Court cannot be quashed by the High Court by invoking its inherent powers. In case of *K.L. Suri v. Union of India* ^[26], Punjab and Haryana High Court held that the High Court cannot exercise its inherent jurisdiction under Section 482 of the Code to interfere with a matter pending in a court outside its territorial jurisdiction.

8. Review of Order Passed while exercising Inherent Powers

In the case of *Moti Lal v. State of Madhya Pradesh* ^[27], the inherent power of the High Court cannot be exercised to review an earlier order passed by the High Court since the

²² (1977) 4 SCC 551

²³ (2014) 2 SCC

²⁴ Criminal Appeal No. 1137 of 2017 Adjudicated on 13th July 2017

²⁵ 1980 KLT 411

²⁶ (1988) 2 Crimes 30 (Punjab and Haryana)

²⁷ AIR 1994 SC 1544

power of review is expressly barred under Sec. 362 of the Code. But in *State v. Navjyot Sandhu* ^[28], the Supreme Court observed that the power under Sec. 482 Cr.P.C. could be exercised notwithstanding the power under Sec. 397 or any other provision of the Code though not against the power under other laws. In *Superintendent and Remembrancer of Legal Affairs, West Bengal v. Mohan Singh* ^[29], the Supreme Court held that the High Court was entitled to entertain a subsequent application having regard to the change of situation which was prevailing when the earlier application was dismissed. But, in *Simrikhia v. Dolley Mukherjee* ^[30], it was held that when once the High Court on certain facts has refused to exercise jurisdiction under Section 482 of the Code, a second application on the same ground cannot be entertained.

Section 482 of the Code commences with “nothing in this Code shall be deemed to limit or affect the inherent jurisdiction of the High Court”. These words indicate that Section 482 will have primacy over any other provision in the Code and can, therefore, override even Section 362 of the Code. Of course, in a given case whether the High Court should review its own earlier order by resort to Section 482 of the Code should be left to the discretion of the High Court depending on the facts and circumstances of the case. In *Ramdeo Chauhan @ Rajnath Chauhan v. Bani Kant Das & Ors* ^[31], it has been held by the Supreme Court that review of criminal judgments and orders is permissible on grounds of error apparent on the face of record. Whether a second application under Section 482 of the Code is maintainable should be left with the discretion of the High Court.

9. Conclusion

Thus, it can be concluded that inherent powers can be used sparingly with utmost care and caution. In the case of *Parbatbhai Aahir @ Parbatbhai Bhimsingh Bhai Karmur and others* ^[32], the Hon’ble Supreme has laid down the broad guidelines which emerged from the precedents for entertaining applications under Section 482 of the Code as under:

1. Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court;
2. The invocation of the jurisdiction of the High Court to quash a First Information Report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 of the Code. The power to quash under Section 482 is attracted even if the offence is non-compoundable.
3. In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction

under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power;

4. While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised to secure the ends of justice or to prevent an abuse of the process of any court;
5. The decision as to whether a complaint or First Information Report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated,
6. In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences;
7. As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing in so far as the exercise of the inherent power to quash is concerned;
8. Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute;
9. In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and
10. There is yet an exception to the principle set out in propositions (viii) and (ix) above. Economic offences involving the financial and economic well-being of the state have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.

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²⁸ (2003) 6 SCC 641

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³⁰ AIR 1990 SC 1605

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