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INHERENT POWER OF HIGH COURT

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The Code of Criminal procedure provides many loopholes which results in Abuse of Procedure but at the same time it contains one important Section which provides unlimited power to the High Court to keep a check on any abuse if done by anyone.

1.1 *Inherent power of Court*

Section 482 of the Code[2], provides:-

"***Nothing on 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."***

Exercise of inherent powers of superior courts has been largely with regard to quashing of proceedings, the emphasis being on a sparing and cautious use of such powers. Inherent power of the court under S.482, Cr.P.C. should be used only when the court comes to the conclusion that there would be manifest injustice or that there would be abuse f powers of court if such power is not exercised.[3] A second revision was held not maintainable as it amounts to abuse of the code.[4] Although remedy of revision of session

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[2] The Code of Criminal Procedure, 1973.
[3] State of Bihar v. Sri Rajendra Agarwala, 1996(1) SCALE, 394.
[4] Deepti v. Akhil Rai, 1995 SCC (Cri.) 1020.

judge under S.399, Cr.P.C., does not bar the invoking of S.482, the High Courts should not act as a second revisional court under the grab of exercise of inherent powers.[5]

Section 482 Cr.P.C. saves inherent powers of the High Court and such a power can be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The power can therefore be exercised to quash the criminal proceedings. The grounds on which the prosecution initiated against an accused can be quashed by the High Court in exercise of power conferred by Section 482 Cr.P.C. has been settled by a catena of decision of this Court rendered in ***Madhu Limaye* v. *State*.**[6]

The inherent power under the Code is available only to the High Court and is subject to certain outlined parameters. It is for the purpose of giving effect to any order under the Code, or to prevent abuse of the process of any Court or to otherwise secure the ends of Justice.[7]

Exercise of power under Section 482 of the Code in a case is an exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances, under which the inherent jurisdiction may be exercised, namely,

(i) To give effect to an order under the Code,

(ii) To prevent abuse of the process of Court, and

(iii) To otherwise secure the ends of justice.

While exercising powers under the section, the Court does not function as a Court of appeal or revision. Inherent jurisdiction under the section though wide 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 ex debito justitiae to do

[5] *Ganesh Narayan Hegde* v. *Bangarappa*, 1995 SCC (Cri.) 634.
[6] AIR 1978 SC 47.
[7] Section 482 of the Code.

real and substantial justice for the administration of which alone Courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent such abuse. It would be an abuse of process of the Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, Court would be justified to quash any proceeding if it finds

that initiation/continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in total.[8]

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 procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine, which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. 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 *quando lex aliquidalicuiconcedit, concederevidetur id sine quo res ipsaesse non potest* (when the law gives a person anything it gives him that without which it cannot exist). While exercising power under this section, the court does not function as a court of appeal or revision.

3.2 *The Background: Inquisitorial v. Accusatorial?*

[8] *State of Orissa* v *Saroj Kumar Sahoo*, (2005) 13 SCC 540

The problem of the use of the inherent power for the quashing of the F.I.R is that it raises a problem which lies at the very core of the Code. It raises an issue which falls fundamentally within any debate regarding the accusatorial and inquisitorial systems of criminal procedure[9] that of harmonizing of the power to investigate on the other.

The Precursor: A look at ***Emperor v. Nazir Ahmad***[10]

In this leading case, the facts recorded were that certain allegations were recorded as F.I.R. on the basis of which investigation was started and thereafter certain more allegations were recorded. The plea of quashing of the investigation was taken and the reason given was that the allegations recorded the first time did not disclose a cognizable offence resulting in the investigation being without any authority. While dismissing the plea, the court made observations to the effect that the functions of the judiciary and the Police were overlapping and should not be interfered with. However, the court still reserved its right to give direction in the nature of Habeas Corpus.

This observation has been quoted in almost all cases thereafter while denying the use of inherent power powers for quashing of F.I.R. However what has not been noted is that this was not meant as an absolute interdict against interference but merely as a factor which should be considered.[11]

Moreover, the Court subsequently made another observation to the effect that if no cognizable offence was disclosed the Police would have no authority to undertake investigation. It further observed that the observations of Newsam J[12] to this effect in a certain case were correct. In that case, an investigation was quashed for failure to disclose a cognizable offence.

[9] The inquisitorial system recognizes judicial supervision of the investigation of crime. It exists in a relatively pure form in countries such as Italy and France where judicial control over pre-trial investigation is maintained by a number of requirements such as reporting of offences to the prosecutor, and the making of critical investigative and charging decisions by the judge.

[10] AIR 1945 PC 18.

[11] *State of West Bengal* v. *S.K. Guha*, 1982 SCC (Cri.). 283.

[12] *M.M.S.T. Chidambram Chettiar* v. *ShanmughanPilai*, AIR 1938 Mad 129.

3.3 *The General Rule Re- examined*

The approach of the Supreme Court has been as a general rule that inherent powers should not be used to quash an investigation based on the reasoning stated in ***Emperor* V. *KhwajaNazir Ahmad*.**[13] This has been stated in a number of cases such as ***Jehan Singh* v. *Delhi Administartion*[14], *State of Bihar* v. *J.A.C. Saldana*[15] and *Kurukshetra University* v. *State of Haryana.*[16]**

But as has been noticed above the aforementioned case does not seem to lay down an absolute interdict against such an exercise of power by the Court. In such a case, reliance on this judgement would be wrong in principal.

Furthermore, as pointed out in the case of***Vinod Kumar* v. *The State***[17], the Supreme Court, though reiterating the dictum in principal did not really follow it in practice. In all these cases, the Court has not dismissed the case at the outset but has actually looked into the contents of the F.I.R. itself. It is only after the examination of the F.I.R. has failed to disclose a cognizable offence that the Court has deemed that the inherent power are not applicable. It is pertinent to note that in such a case the Court is in fact exercising its inherent powers – it merely that the facts do not disclose a situation which merits judicial action.

3.4 *The Exception restated*

In the case of ***State of Haryana* v. *Bhajan Lal*[18],** the Supreme Court sought to lay down certain illustrative cases wherein inherent powers could be exercised before the stage of filing of the charge sheet.

[13]AIR 1945 PC 18.
[14]AIR 1974 SC 1146.
[15] AIR 1980 SC 326.
[16] (2006) 206 CTR (P & H) 122.

[17] AIR 1982 (P & H) 472
[18] 1992 Supp.(1) SCC 335.

These were as follows :-

I. When the allegations even if accepted at its face value in its entirety do not disclose any offence.

II. When the allegations and the other materials if any accompanying the F.I.R. do not disclose an offence justifying investigation under Section 156(1) of the Code except by magistrate's order under Section 155(2).

III. Where uncontroverted allegations made in the F.I.R. and evidence collated in support do not disclose the commission of a cognizable offence.

IV. When the investigation is for a non-cognizable case without the order of the magistrate under Section 155 (2).

V. Where allegations made in the F.I.R. are absurd and inherently improbable so that no prudent person can think it's a sufficient ground.

VI. When there is an express legal bar to the continuance of proceedings.

VII. Where the Criminal proceeding is manifestly attended with malafide or when proceeding is maliciously instituted with an ulterior motive of wreaking vengeance for personal grudge.

"It is well settled that the power under Section 482 Cr.P.C has to be exercised by the High Court, inter alia, to prevent abuse of the process of any court or otherwise to secure the ends of justice. Where criminal proceedings are initiated based on illicit material collected on search and arrest which are per se illegal and vitiate not only a conviction and sentence based on such material but also the trial itself, the proceedings cannot be allowed to go on as it cannot but amount to abuse of the process of the court; in such a case not quashing the proceedings would perpetuate abuse of the process of the court resulting in great hardship and injustice to the accused. In our opinion, exercise of power

under Section 482 CrPC to quash proceedings in a case like the one on hand, would indeed secure the ends of justice."[19]

It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in total.[20]

The grounds on which power under Section 482 Cr.P.C. can be exercised to quash the criminal proceedings basically are:-

(1) Where the allegations made in the FIR or complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused,

(2) Where the uncontroversial allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused,

(3) Where there is an express legal bar engrafted in any of the provisions of Code of Criminal Procedure or the concerned Act to the institution and continuance of the proceedings.

But this power has to be exercised in a rare case and with great circumspection. There are some statutes which create a bar on the power of the Court in taking cognizance of an offence in absence of a sanction by the competent authority like Section 6 of Prevention

[19] *Roy V.D. v. State of Kerala* (2000) 8 SCC 590

[20] *Zandu Pharmaceutical Works Ltd. and Ors*.v. *Mohd. Sharaful Haque and Anr*, AIR 2005 SC *9*

of Corruption Act, 1947 or Section 19 of Prevention of Corruption Act, 1988. Similar provision is contained in Section 196 Cr.P.C. which mandates that no Court shall take cognizance of the offences enumerated in the Section except with the previous sanction of the Central Government or of the State Government. Section 197 Cr.P.C. also creates an embargo on the power of the Court to take cognizance of an offence alleged to have been committed by any person who is or was a Judge or a Magistrate or a public servant not removable from his office save by or with the sanction of the government.[21]

When proceedings are sought to be quashed on account of delay in trial, the cause of delay is important. Thus, where the accused himself obtained a stay[22], and where delay was not due to conduct of prosecution, proceedings were not quashed.[23]

It is improper to quash criminal proceedings at the initial stage where a prima facie case has been clearly made out.[24] In furtherance of this principal the court during pendency of police investigation cannot embark upon a parallel inquiry to ascertain the veracity of allegation in the F.I.R. as long a prima facie, a cognizable offence is made out.[25] In a proceedings under S.482, Cr.P.C., the issue of limitation can be raised.[26]

3.5 *Abuse of Process and Powers of Court*

The High Courts and other courts have been exercising inherent and statutory powers to prevent abuse of process by the litigants. The Bombay High Court had an occasion to impose a fine of Rs. 500/- on a landlady who in order to wreak vengeance on her tenant made a false case of snatching away her purse.[27]

In a case where some witnesses prayed for getting their settlement, recorded under section 164 Cr PC in order to help the accused to set up a plea of alibi, the Orissa High

[21] *Hussainara Khatoon* v. *Home Secretary, State of Bihar*, AIR 1979 SC 1369
[22] *Hariram* v. *State*, 1995 Cr.L.J. 3527 (Mad.).
[23] *B.C. Patel* v. *State of Karnaka*, 1996 Cr.L.J. 631 (Kant.).
[24] *Mushtaq Ahmed* v. *Mohd. Habibur rehman*, 1996 SCC (Cri.) 443.
[25] *Pawan Kumar raja* v. *Sp.CBI (Economic Office Wing, Cal.)*, 1995 Cr.L.J. 3726 (Cal.).
[26] *P.M. kashirusan* v. *Shanmaghan*, 1995 Cr.L.J. 2508 (Mad.).
[27] *Mrs. Minal Manohar* v. *Borwankar* v. *State of Maharashtra*, 1999 Cr LJ 2936(Bom).

Court rejected the prayer and imposed a fine on the accused's wife who moved the court for releasing her husband on a *habeas corpus* petition. In appeal to the apex court, it affirmed the high court's decision.[28]

In the result we held that while exercising inherent jurisdiction under S. 482 court has power to pass "such orders" (not inconsistent with any provision of the code) including the order for costs in appropriate cases (i) to give effect to any order passed under the code or (ii) to prevent abuse of the process of any court or (iii) otherwise to secure the ends of justice. As stated above, this extraordinary power is to be used in extraordinary circumstances and in a judicious manner. Cost may be to meet the litigation expenses or can be exemplary to achieve the aforesaid purposes.

An order made in the absence of a party without hearing him on merits, adversely affecting his rights may be recalled by the High Court in exercise of the inherent powers, under section 482 Cr.P.C. However, the question in each case would be as to whether such principle applies to the facts of a given case or not.[29]

The power available under the Section 482 of the Code was notwithstanding anything else contained in the Code. In case, the High Court is satisfied that an order needs to be made to prevent abuse of the process of any court, or otherwise to secure the ends of justice, the inherent powers are available, and they are not limited or affected by anything else contained in the Code. It observed that however, in cases where the circumstances unmitigatingly bring out that a grave injustice is being done, and an abuse of process of court is taking place, either as a result of the acts of the accused or the unavoidable procedural delays in the courts, it was of the firm opinion that the inherent powers should and need to be exercised.

The Full Bench was of the opinion that there was no rational basis for inflexible classification of approvers who are in detention, and those who because of fortuitous

[28] *Jogendra Nahak* v. *State of Orissa*, 1999 Cr LJ 3979 (SC).
[29] Enforcement Inspector, Civil Supplies Deptt, v. Vimal Kumar, 1999 Cr LJ 1521 (Raj).

circumstances happen to be on bail at the time of grant of pardon. A person being granted bail and still not in detention is not considered in law as incompatible. So far an allurement of release if allowed pardon, it is inherently there is any pardon. As such, too much of significance and rigidity need not be attached to time factor. Moreover, a witness, even though an accomplice need not be detained for more than what is essential for procurement of or enabling him to give his evidence. His personal liberty can, therefore, curtailed, if at all, for beneficial ends of administration of justice, and once they are served, his further detention becomes irrelevant. The existence of the provision of detention thus may serve as a damper to opportunities who may be too keen to oblige the police, and also prevent a possible abuse of this process as a short-cut by investigating agencies when they find no other evidence available or dubiously seek to involve innocent persons.

In the opinion of the present writer, the recourse to Section 482 of the Code for grant of Bail to the approver was only a short cut to reach the decision, thereby scuttling the constitutional question of validity of the provision.

Detention of a person even by due process of law has to be reasonable, fair and just and if it is not so, it will amount to violation of Article 21 of the Constitution. Reasonable expeditious trial is warranted by the provision of the Code, and in case this is not done and an approver is detained for a period which is longer than what can be considered to be reasonable in the circumstances of each case, the High Court has always power to declare his detention either illegal or enlarge him on bail while exercising its inherent powers.

Section 482 of the Code starts with the words “Notwithstanding anything contained in the Code”. Thus the inherent power can be exercised even if there was a contrary provision in the Code. Section 482 of the Code does not provide that inherent jurisdiction can be execised notwithstanding any other provision contained in any other enactment. Thus if

an enactment contains a specific bar then inherent jurisdiction cannot be exercised to get over that bar.[30]

Like in the past, the Supreme Court has advised high court to invoke its inherent powers under section 482 of the Code to quash a FIR or a complaint on in extreme exceptions.[31] A FIR needs to be quashed only when a complaint does not disclose any offence or is frivolous, vexatious, or oppressive. However, a high court is not expected to undertake a meticulous analysis of the case before the trial court to find out as to whether the case would end in conviction or acquittal. The allegations of mala fides of the informant are of no consequence and become irrelevant for quashing a FIR, if the information lodged at the police station is relied upon and the offence is registered. The alleged mala fides of the informant, therefore, cannot by themselves be the basis for quashing a FIR.[32] The question of mala fides needs to be decided on the facts of each case.

CONCLUSION

A speedy trial is a constitutional right of every accused. If he is guilty he is to be punished and any delay in punishing the guilty would be ineffective in controlling the crime, which is the basic goal of the criminal justice system. The efficacy of any justice system can be judged by the speed by which the cases are disposed off. Prompt decision taken by the court would have greater impact on the individual in the crime and on the social fabric in general. Generally delay is put at the doorstep of the courts overlooking the crucial role played by other components in the system particularly the police and the prosecutors.

Delay in investigation of crimes or the haphazard way in which the cases are investigated, greatly contribute to the delay in dispensing prompt justice. In many courts, the public prosecutors are not appointed in a timely manner and their services are on occasions not readily available to many courts. In some states there are not sufficient

[30] *Satya narayan Sharma* v. *State of Rajasthan*, AIR 2001 SC 2856.
[31] *Ram Biraji Devi and Anr* v. *Umesh Kumar Singh and Anr*,(2006) 6 SCC 669.
[32] Central Bureau of Investigation (CBI), (2006) 7 SCC 188.

numbers of analytical and forensic laboratories and quite often, the investigating agencies wait for the chemical analyst's report for long periods whereby the filing of the final report is in ordinarily delay. The speed of trial in criminal cases is often determined by none other determined by none other the offender himself. In the grab of a fair trial, he would try all possible means to delay it under a misconception that the longer he is able to prolong the trial, the better his chances of escaping from the hitches of law would be many of these factors are not within the control of the courts.[33]

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